

111TH CONGRESS
1ST SESSION

S. _____

To identify and address risks to the stability of the United States financial system through the establishment of the Agency for Financial Stability, to ensure the orderly resolution of failing complex financial institutions in order to minimize economic turmoil and protect the interest of taxpayers, to provide for effective bank supervision through the establishment of the Financial Institutions Regulatory Administration, to enhance the regulation of consumer financial products and services through the establishment of the Consumer Financial Protection Agency, to allow the Federal government to better coordinate and monitor insurance matters through the establishment of the Office of National Insurance in the Department of Treasury, to improve the regulation of derivatives, securities, securities products, credit rating agencies, and hedge funds, to increase investor protections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To identify and address risks to the stability of the United States financial system through the establishment of the Agency for Financial Stability, to ensure the orderly resolution of failing complex financial institutions in order to minimize economic turmoil and protect the interest of taxpayers, to provide for effective bank supervision through the establishment of the Financial Institutions Regulatory Administration, to enhance the regulation of consumer financial products and services through the

establishment of the Consumer Financial Protection Agency, to allow the Federal government to better coordinate and monitor insurance matters through the establishment of the Office of National Insurance in the Department of Treasury, to improve the regulation of derivatives, securities, securities products, credit rating agencies, and hedge funds, to increase investor protections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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 2009”.

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.

TITLE I—AGENCY FOR FINANCIAL STABILITY

- Sec. 101. Short title.
- Sec. 102. Definitions.
- Sec. 103. Agency for Financial Stability established.
- Sec. 104. Agency authority.
- Sec. 105. Authority to require supervision and regulation of financial companies to mitigate systemic risk.
- Sec. 106. Registration with FIRA by specified financial companies.
- Sec. 107. Enhanced supervision and prudential standards for specified financial companies.
- Sec. 108. Heightened standards for bank holding companies that are not specified financial companies.
- Sec. 109. Reports, examinations, and public disclosures.
- Sec. 110. Affiliations.
- Sec. 111. Prompt corrective action for specified financial companies.
- Sec. 112. Concentration limits.
- Sec. 113. Regulations.
- Sec. 114. Avoiding duplication.
- Sec. 115. Agency funding.
- Sec. 116. Resolution of disputes among member agencies.

- Sec. 117. Additional standards applicable to activities or practices for financial stability purposes.
- Sec. 118. Effect of rescission of identification.
- Sec. 119. Mitigation of systemic risk.
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- Sec. 201. Definitions.
- Sec. 202. Systemic risk determination.
- Sec. 203. Resolution; stabilization.
- Sec. 204. Judicial review.
- Sec. 205. Directors not liable for acquiescing in appointment of receiver.
- Sec. 206. Termination and exclusion of other actions.
- Sec. 207. Rulemaking.
- Sec. 208. Powers and duties of the Corporation.
- Sec. 209. Clarification of prohibition regarding concealment of assets from receiver or liquidating agent.
- Sec. 210. Miscellaneous provisions.

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- Sec. 312. Board of Directors of the Administration.
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- Sec. 321. Transfer date.
- Sec. 322. Powers and duties transferred.
- Sec. 323. Abolishment.
- Sec. 324. Savings provisions.
- Sec. 325. References in Federal law to Federal banking agencies.

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- Sec. 331. Transferred powers, authorities, rights, and duties.
- Sec. 332. Regulations and orders.
- Sec. 333. Additional powers and duties of the Chairperson.
- Sec. 334. Additional powers of the Board of Governors and the Federal Deposit Insurance Corporation.
- Sec. 335. Funding.
- Sec. 336. Personnel.
- Sec. 337. Contracting and leasing authority.

Subtitle D—Additional FIRA Authority

- Sec. 341. Examinations of companies that do not control banks.
- Sec. 342. Enforcement.
- Sec. 343. Acquisitions.

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Sec. 344. Prohibition against management interlocks between certain financial holding companies.

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Sec. 351. Use of funds, personnel, and property.
Sec. 352. Transfer of employees.
Sec. 353. Property transferred.
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Sec. 355. Disposition of affairs.
Sec. 356. Continuation of services.

Subtitle F—Termination of Federal Thrift Charter

Sec. 361. Termination of Federal savings associations.
Sec. 362. Branching.

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Sec. 403. Elimination of private adviser exemption; limited exemption for foreign private advisers; limited intrastate exemption.
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Sec. 408. Exemption of and record keeping by private equity fund advisers.
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- Sec. 532. Regulation of reinsurer solvency.
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- Sec. 603. Moratorium and study on treatment of credit card banks, industrial loan companies, and certain other companies under the Bank Holding Company Act of 1956.
- Sec. 604. Reports and examinations of bank holding companies; regulation of functionally regulated subsidiaries.
- Sec. 605. Requirements for financial holding companies to remain well capitalized and well managed.
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- Sec. 609. Lending limits applicable to credit exposure on derivative transactions, repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions.
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- Sec. 718. Segregation of assets held as collateral in swap transactions.
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- Sec. 803. Definitions.
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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) **ADVISORY BOARD.**—The term “Advisory
6 Board” means the State Bank Advisory Board es-
7 tablished under title III.

8 (2) **AFFILIATE.**—The term “affiliate” means
9 any company that controls, is controlled by, or is
10 under common control with another company.

11 (3) **AGENCY.**—The term “Agency” means the
12 Agency for Financial Stability established under title
13 I.

14 (4) **APPROPRIATE FEDERAL BANKING AGEN-**
15 **CY.**—On and after the transfer date, as defined in
16 section 302, the term “appropriate Federal banking
17 agency” means FIRA.

1 (5) BOARD OF GOVERNORS.—The term “Board
2 of Governors” means the Board of Governors of the
3 Federal Reserve System.

4 (6) CFPA.—The term “CFPA” means the
5 Consumer Financial Protection Agency established
6 under title X.

7 (7) COMMISSION.—The term “Commission”
8 means the Securities and Exchange Commission, ex-
9 cept in the context of the Commodity Futures Trad-
10 ing Commission.

11 (8) CORPORATION.—The term “Corporation”
12 means the Federal Deposit Insurance Corporation.

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

18 (10) FEDERAL BANKING AGENCY.—The term—

19 (A) “Federal banking agency” means the
20 Board of Governors, FIRA, and the Corpora-
21 tion; and

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

1 (11) FIRA.—The terms “FIRA” and “FIRA
2 Board” mean the Financial Institutions Regulatory
3 Administration established under title III, and the
4 Board of Directors thereof, respectively.

5 (12) FUNCTIONALLY REGULATED SUB-
6 SIDIARY.—The term “functionally regulated
7 subsidiary” has the same meaning as in section
8 5(c)(5) of the Bank Holding Company Act of 1956
9 (12 U.S.C. 1844(c)(5)).

10 (13) PRIMARY FINANCIAL REGULATORY AGEN-
11 CY.—The term “primary financial regulatory agen-
12 cy” means—

13 (A) FIRA, with respect to an insured de-
14 pository institution, a bank holding company, a
15 savings and loan holding company (as defined
16 in section 10(a) of the Homeowners’ Loan Act),
17 a specified financial company, and a branch,
18 agency, representative office, or commercial
19 lending company of a foreign bank (as defined
20 in section 1 of the International Banking Act of
21 1978);

22 (B) the Securities and Exchange Commis-
23 sion, with respect to—

1 (i) any broker or dealer that is reg-
2 istered with the Commission under the Se-
3 curities Exchange Act of 1934;

4 (ii) any investment company that is
5 registered with the Commission under the
6 Investment Company Act of 1940;

7 (iii) any investment adviser that is
8 registered with the Commission under the
9 Investment Advisers Act of 1940, with re-
10 spect to the investment advisory activities
11 of such company and activities that are in-
12 cidental to such advisory activities; and

13 (iv) any clearing agency registered
14 with the Commission under the Securities
15 Exchange Act of 1934;

16 (C) the Commodity Futures Trading Com-
17 mission, with respect to any futures commission
18 merchant, any commodity trading adviser, and
19 any commodity pool operator registered with
20 the Commodity Futures Trading Commission
21 under the Commodity Exchange Act, with re-
22 spect to the commodities activities of such enti-
23 ty and activities that are incidental to such
24 commodities activities; and

1 (D) the State insurance authority of the
2 State in which an insurance company is domi-
3 ciled, with respect to the insurance activities
4 and activities that are incidental to such insur-
5 ance activities of an insurance company that is
6 subject to supervision by the State insurance
7 authority under State insurance law.

8 (14) PRUDENTIAL STANDARDS.—The term
9 “prudential standards” means enhanced supervision
10 and regulatory standards developed by the Agency
11 under section 107, applicable to specified financial
12 companies.

13 (15) SECRETARY.—The term “Secretary”
14 means the Secretary of the Treasury.

15 (16) SECURITIES TERMS.—The—

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

21 (B) term “investment adviser” has the
22 same meaning as in section 202 of the Invest-
23 ment Advisers Act of 1940 (15 U.S.C. 80b-2);
24 and

1 (C) term “investment company” has the
2 same meaning as in section 2 of the Investment
3 Company Act of 1940 (15 U.S.C. 80a–2).

4 (17) STATE.—The term “State” means any
5 State, commonwealth, territory, or possession of the
6 United States, the District of Columbia, the Com-
7 monwealth of Puerto Rico, the Commonwealth of the
8 Northern Mariana Islands, American Samoa, Guam,
9 or the United States Virgin Islands.

10 (18) WELL CAPITALIZED.—The term “well cap-
11 italized” has the same meaning as in section 110.

12 (19) WELL MANAGED.—The term “well man-
13 aged” has the same meaning as in section 2(o)(9) of
14 the Bank Holding Company Act of 1956 (12 U.S.C.
15 1841(o)(9)).

16 (20) OTHER INCORPORATED DEFINITIONS.—
17 The terms “affiliate”, “bank”, “bank holding com-
18 pany”, “control” (when used with respect to a de-
19 pository institution), “deposit”, “depository institu-
20 tion”, “appropriate Federal banking agency”, “Fed-
21 eral savings association”, “including”, “insured
22 branch”, “insured depository institution”, “national
23 member bank”, “national nonmember bank”, “sav-
24 ings association”, “State bank”, “State member
25 bank”, “State nonmember bank”, “State savings as-

1 sociation”, and “subsidiary” have the same mean-
2 ings as in section 3 of the Federal Deposit Insur-
3 ance Act (12 U.S.C. 1813).

4 **SEC. 3. SEVERABILITY.**

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

12 **SEC. 4. EFFECTIVE DATE.**

13 Except as otherwise specifically provided in this Act
14 and the amendments made in this Act, this Act and such
15 amendments shall take effect on the date of enactment
16 of this Act.

17 **TITLE I—AGENCY FOR**
18 **FINANCIAL STABILITY**

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

20 This title may be cited as the “Financial Stability Act
21 of 2009”.

22 **SEC. 102. DEFINITIONS.**

23 For purposes of this title the following definitions
24 shall apply:

1 (1) AGENCY.—The term “Agency” means the
2 Agency for Financial Stability established under this
3 title.

4 (2) BANK HOLDING COMPANY.—The term
5 “bank holding company” has the same meaning as
6 in section 2 of the Bank Holding Company Act of
7 1956 (12 U.S.C. 1841).

8 (3) FINANCIAL COMPANY DEFINITIONS.—

9 (A) FOREIGN NONBANK FINANCIAL COM-
10 PANY.—The term “foreign nonbank financial
11 company” means a company (other than one
12 that would be treated in the United States as
13 a bank holding company) that is—

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

16 (ii) in whole or in part engaged in, di-
17 rectly or indirectly, including through a
18 branch in the United States, activities in
19 the United States that are financial in na-
20 ture (as defined in section 4(k) of the
21 Bank Holding Company Act of 1956).

22 (B) U.S. NONBANK FINANCIAL COM-
23 PANY.—The term “U.S. nonbank financial com-
24 pany” means a company (other than a bank
25 holding company) that is—

1 (i) incorporated or organized under
2 the laws of the United States or any State;
3 and

4 (ii) in whole or in part engaged in, di-
5 rectly or indirectly, activities in the United
6 States that are financial in nature (as de-
7 fined in section 4(k) of the Bank Holding
8 Company Act of 1956).

9 (C) FINANCIAL COMPANY.—The term “fi-
10 nancial company” means a U.S. nonbank finan-
11 cial company, a foreign nonbank financial com-
12 pany, and a bank holding company, collectively.

13 (4) MEMBER AGENCY.—The term “member
14 agency” means an agency represented by a member
15 of the board of directors of the Agency.

16 (5) SPECIFIED COMPANY DEFINITIONS.—

17 (A) SPECIFIED BANK HOLDING COM-
18 PANY.—The term “specified bank holding com-
19 pany” means a bank holding company that is
20 subject to enhanced supervision and prudential
21 standards, in accordance with section 107.

22 (B) SPECIFIED FOREIGN NONBANK FINAN-
23 CIAL COMPANY.—The term “specified foreign
24 nonbank financial company” means a foreign
25 nonbank financial company that is subject to

1 enhanced supervision and prudential standards,
2 in accordance with section 107.

3 (C) SPECIFIED U.S. NONBANK FINANCIAL
4 COMPANY.—The term “specified U.S. nonbank
5 financial company” means a U.S. nonbank fi-
6 nancial company that is subject to enhanced su-
7 pervision and prudential standards, in accord-
8 ance with section 107.

9 (D) SPECIFIED FINANCIAL COMPANY.—
10 The term “specified financial company” means
11 a specified U.S. nonbank financial company, a
12 specified foreign nonbank financial company,
13 and a specified bank holding company, collec-
14 tively.

15 **SEC. 103. AGENCY FOR FINANCIAL STABILITY ESTAB-**
16 **LISHED.**

17 (a) ESTABLISHMENT.—There is established the
18 Agency for Financial Stability, which shall be an inde-
19 pendent establishment, as defined in section 104 of title
20 5, United States Code.

21 (b) MEMBERSHIP.—The Agency shall be headed by
22 a board of directors, which shall consist of—

23 (1) the Chairperson of the Agency, who shall be
24 appointed by the President, by and with the advice
25 and consent of the Senate;

1 (2) the Secretary of the Treasury;

2 (3) the Chairman of the Board of Governors of
3 the Federal Reserve System;

4 (4) the Chairperson of FIRA;

5 (5) the Director of the CFPA;

6 (6) the Chairman of the Commission;

7 (7) the Chairperson of the Corporation;

8 (8) the Chairperson of the Commodity Futures
9 Trading Commission; and

10 (9) an independent member appointed by the
11 President, by and with the advice and consent of the
12 Senate, having experience in insurance industry or
13 regulation.

14 (c) **TERMS; VACANCY.**—

15 (1) **TERMS.**—The Chairperson and the inde-
16 pendent member of the board of directors of the
17 Agency shall each serve for a term of 6 years.

18 (2) **VACANCY.**—Any vacancy on the board of di-
19 rectors of the Agency shall be filled in the manner
20 in which the original appointment was made.

21 (3) **ACTING OFFICIALS MAY SERVE.**—In the
22 event of a vacancy in the office of the Secretary,
23 Chairman, Chairperson, or Director of a member
24 agency, and pending the appointment of a successor,
25 or during the absence or disability of the Secretary,

1 Chairman, Chairperson, or Director, the acting Sec-
2 retary, Chairman, Chairperson, or Director shall be
3 a member of the board of directors in the place of
4 the Secretary, Chairman, Chairperson, or Director.

5 (d) TECHNICAL AND PROFESSIONAL ADVISORY COM-
6 MITTEES.—The Agency is authorized to appoint such spe-
7 cial advisory, technical, or professional committees as may
8 be useful in carrying out its functions, and the members
9 of such committees may be members of the board of direc-
10 tors of the Agency, or other persons, or both.

11 (e) BOARD MEETINGS.—The board of directors of the
12 Agency shall meet at the call of the Chairperson, but not
13 less frequently than quarterly.

14 (f) NONAPPLICABILITY OF CERTAIN FEDERAL
15 LAWS.—The Federal Advisory Committee Act shall not
16 apply to the Agency, or to any special advisory, technical,
17 or professional committees appointed by the Agency.

18 (g) ASSISTANCE FROM FEDERAL AGENCIES.—Any
19 department or agency of the United States is authorized
20 to provide to the Agency and any special advisory, tech-
21 nical, or professional committees appointed by the Agency,
22 such services, funds, facilities, staff, and other support
23 services as it may determine advisable.

24 (h) COMPENSATION OF MEMBERS OF THE BOARD OF
25 DIRECTORS.—

1 (1) CHAIRPERSON.—The Chairperson of the
2 board of directors of the Agency shall receive com-
3 pensation at the rate prescribed for level II of the
4 Executive Schedule under section 5313 of title 5,
5 United States Code.

6 (2) FEDERAL EMPLOYEE BOARD MEMBERS.—
7 All members of the board of directors of the Agency
8 who are officers or employees of the United States
9 shall serve without compensation in addition to that
10 received for their services as officers or employees of
11 the United States.

12 (3) NON-FEDERAL EMPLOYEE BOARD MEM-
13 BER.—The member of the board of directors of the
14 Agency who is not an officer or employee of the Fed-
15 eral Government shall be compensated at the rate
16 prescribed for level III of the Executive Schedule
17 under section 5314 of title 5, United States Code.

18 (4) CONFORMING AMENDMENTS.—Section 5313
19 of title 5, United States Code, is amended by adding
20 at the end the following:

21 “Chairperson of the Agency for Financial Sta-
22 bility”.

23 (i) AGENCY PERSONNEL.—

1 (1) IN GENERAL.—The Agency may fix the
2 number of, and appoint and direct, all employees of
3 the Agency.

4 (2) COMPENSATION.—The Agency shall fix, ad-
5 just, and administer the pay for all employees of the
6 Agency, without regard to chapter 51 or subchapter
7 III of chapter 53 of title 5, United States Code, re-
8 lating to classification of positions and General
9 Schedule pay rates.

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

14 (A) by striking “the Comptroller of the
15 Currency” and inserting “the Agency for Fi-
16 nancial Stability, the Financial Institutions
17 Regulatory Administration, the Consumer Fi-
18 nancial Protection Agency,”;

19 (B) by striking “Board,” and inserting
20 “Board, and”; and

21 (C) by striking “and the Office of Thrift
22 Supervision,”.

23 (j) DETAIL OF GOVERNMENT EMPLOYEES.—Any
24 Federal Government employee may be detailed to the
25 Agency without reimbursement, and such detail shall be

1 without interruption or loss of civil service status or privi-
2 lege.

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

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

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

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

23 **SEC. 104. AGENCY AUTHORITY.**

24 (a) **PURPOSES AND DUTIES OF THE AGENCY.**—

1 (1) IN GENERAL.—The purposes of the Agency
2 are—

3 (A) to identify risks to United States fi-
4 nancial system stability and economic growth
5 that could arise from the material financial dis-
6 tress or failure of large or complex financial
7 companies;

8 (B) to promote market discipline by elimi-
9 nating expectations on the part of shareholders,
10 creditors, and counterparties of such companies
11 that the Government will shield them from
12 losses in the event of failure; and

13 (C) to respond to emerging risks in finan-
14 cial activities and products that could desta-
15 bilize United States financial markets.

16 (2) DUTIES.—To fulfill its purposes, the Agen-
17 cy shall, in accordance with this title—

18 (A) collect information from member agen-
19 cies and other Federal and State financial regu-
20 latory agencies and, if necessary, directly from
21 financial companies in order to assess risks to
22 the financial system;

23 (B) monitor the financial services market-
24 place in order to identify potential threats to

1 the stability of the United States financial sys-
2 tem;

3 (C) facilitate information sharing and co-
4 ordination among the member agencies and
5 other Federal and State agencies regarding do-
6 mestic financial services policy development,
7 rulemaking, examinations, reporting require-
8 ments, and enforcement actions;

9 (D) identify gaps in regulation that could
10 pose risk to the stability of the United States
11 financial system;

12 (E) require financial companies that may
13 pose threats to United States financial system
14 stability or economic growth in the event of
15 their material financial distress or failure to
16 submit to enhanced supervision and heightened
17 prudential standards;

18 (F) promulgate regulations to establish
19 heightened prudential standards and reporting
20 and disclosure requirements for specified finan-
21 cial companies;

22 (G) promulgate regulations to establish
23 heightened risk-based capital, leverage, and li-
24 quidity requirements that increase on a grad-
25 uated basis for certain bank holding companies;

1 (H) identify systemically important finan-
2 cial market utilities and payment, clearing, and
3 settlement activities (as that term is defined in
4 section 803), and require such utilities and ac-
5 tivities to be subject to prudential standards es-
6 tablished by the Board of Governors;

7 (I) provide a forum for—

8 (i) discussion and analysis of emerg-
9 ing market developments and financial reg-
10 ulatory issues; and

11 (ii) resolution of jurisdictional dis-
12 putes among the members of the board of
13 directors of the Agency; and

14 (J) report to and testify before Congress
15 semiannually on—

16 (i) the activities of the Agency;

17 (ii) significant financial market devel-
18 opments and potential emerging threats to
19 United States financial system stability;

20 (iii) all determinations made under
21 Section 105 and the basis for such deter-
22 minations; and

23 (iv) recommendations—

1 (I) to enhance the integrity, effi-
2 ciency, competitiveness, and stability
3 of United States financial markets;

4 (II) to promote market dis-
5 ciplines; and

6 (III) to maintain investor con-
7 fidence.

8 (b) AUTHORITY TO OBTAIN INFORMATION.—

9 (1) IN GENERAL.—The Agency is authorized to
10 receive, and may request the production of, any data
11 or information from member agencies, as nec-
12 essary—

13 (A) to monitor the financial services mar-
14 ketplace to identify potential threats to the sta-
15 bility of the United States financial system; or

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

18 (2) SUBMISSION BY MEMBER AGENCIES.—Not-
19 withstanding any other provision of law, any mem-
20 ber agency is authorized to provide information to
21 the Agency, and the Agency and the other member
22 agencies shall maintain the confidentiality of such
23 information.

24 (3) FINANCIAL DATA COLLECTION.—

1 (A) IN GENERAL.—The Agency may re-
2 quire the submission of periodic and other re-
3 ports from any financial company solely for the
4 purpose of assessing the extent to which a fi-
5 nancial activity or financial market in which the
6 financial company participates, or the financial
7 company itself, poses a threat to United States
8 financial stability.

9 (B) MITIGATION OF REPORT BURDEN.—
10 Before requiring the submission of reports from
11 financial companies that are regulated by mem-
12 ber agencies, the Agency shall coordinate with
13 such member agencies and shall, whenever pos-
14 sible, rely on information already being col-
15 lected by such member agencies.

16 (4) BACK-UP EXAMINATION BY FIRA.—If the
17 Agency is unable to determine whether the financial
18 activities of a financial company pose a threat to
19 United States financial stability, based on informa-
20 tion or reports obtained under paragraph (3), dis-
21 cussions with management, and publicly available in-
22 formation, the Agency may request FIRA, and
23 FIRA is authorized, to conduct an examination of
24 the financial company for the sole purpose of deter-
25 mining whether a financial company should be treat-

1 ed as a specified financial company for purposes of
2 this title.

3 **SEC. 105. AUTHORITY TO REQUIRE SUPERVISION AND REG-**
4 **ULATION OF FINANCIAL COMPANIES TO MITI-**
5 **GATE SYSTEMIC RISK.**

6 (a) SPECIFIED BANK HOLDING COMPANIES AND
7 SPECIFIED U.S. NONBANK FINANCIAL COMPANIES.—The
8 Agency, on a nondelegable basis, may determine, by regu-
9 lation or order, that a bank holding company or a U.S.
10 nonbank financial company shall be designated as a speci-
11 fied bank holding company or specified U.S. nonbank fi-
12 nancial company, respectively, that is subject to enhanced
13 supervision and prudential standards, in accordance with
14 this title, if the Agency determines that material financial
15 distress at the bank holding company or U.S. nonbank fi-
16 nancial company would pose a threat to United States fi-
17 nancial stability or the United States economy during
18 times of economic stress, based on a consideration of—

19 (1) the amount and nature of the financial as-
20 sets of the company;

21 (2) the amount and types of the liabilities of
22 the company, including the degree of reliance on
23 short-term funding;

24 (3) the extent and type of the off-balance-sheet
25 exposures of the company;

1 (4) the extent and type of the transactions of
2 the company and relationships with other major fi-
3 nancial companies;

4 (5) the importance of the company as a source
5 of credit for households, businesses, and State and
6 local governments and as a source of liquidity for
7 the United States financial system;

8 (6) the recommendation, if any, of a member of
9 the board of directors of the Agency;

10 (7) the operation of, or ownership interest in,
11 any clearing, settlement, or payment business of the
12 company; and

13 (8) any other factors that the Agency deems
14 appropriate.

15 (b) SPECIFIED FOREIGN NONBANK FINANCIAL COM-
16 PANIES.—The Agency, on a nondelegable basis, may de-
17 termine, by regulation or order, that a foreign nonbank
18 financial company that has substantial assets or oper-
19 ations in the United States shall be designated as a speci-
20 fied foreign financial company that is subject to enhanced
21 supervision and prudential standards in accordance with
22 this title, if the Agency determines that material financial
23 distress at the foreign nonbank financial company would
24 pose a threat to United States financial stability or the
25 United States economy, based on consideration of—

1 (1) the principles of national treatment and
2 equality of competitive opportunity;

3 (2) the amount and nature of the United States
4 financial assets of the company;

5 (3) the amount and types of the liabilities of
6 the company used to fund activities and operations
7 in the United States, including the degree of reliance
8 on short-term funding;

9 (4) the extent of the United States-related off-
10 balance-sheet exposure of the company;

11 (5) the extent of the transactions or relation-
12 ships of the company with other United States fi-
13 nancial companies;

14 (6) the importance of the company as a source
15 of credit for United States households, businesses,
16 and State and local governments, and as a source of
17 liquidity for the United States financial system;

18 (7) the recommendation, if any, of a member of
19 the board of directors of the Agency; and

20 (8) any other factors that the Agency deems
21 appropriate.

22 (c) REEVALUATION AND RESCISSION.—The Agency
23 shall—

1 (1) not less frequently than annually, reevaluate
2 its determinations under subsections (a) and (b)
3 with respect to each specified financial company; and

4 (2) by order, rescind any such determination, if
5 the Agency determines that the financial company
6 no longer meets the standards under subsection (a)
7 or (b), as applicable.

8 (d) NOTICE AND OPPORTUNITY FOR HEARING AND
9 FINAL DETERMINATION.—

10 (1) IN GENERAL.—The Agency shall provide to
11 a financial company written notice of a proposed de-
12 termination of the Agency, including an explanation
13 of the basis of the proposed determination of the
14 Agency, that such financial company shall be subject
15 to enhanced supervision and prudential standards in
16 accordance with this title, as a specified financial
17 company.

18 (2) HEARING.—Not later than 30 days after
19 the date of receipt of any notice of a proposed deter-
20 mination under paragraph (1), the financial com-
21 pany may request, in writing, an opportunity for a
22 written or oral hearing before the Agency to contest
23 the proposed determination. Upon receipt of a timely
24 request, the Agency shall fix a time (not later than
25 30 days after the date of receipt of the request) and

1 place at which such company may appear, personally
2 or through counsel, to submit written materials (or,
3 at the sole discretion of the Agency, oral testimony
4 and oral argument).

5 (3) **FINAL DETERMINATION.**—Not later than 60
6 days after the date of a hearing under paragraph
7 (2), the Agency shall notify the financial company of
8 the final determination of the Agency, which shall
9 contain a statement of the basis for the decision of
10 the Agency.

11 (4) **NO HEARING REQUESTED.**—If a financial
12 company does not make a timely request for a hear-
13 ing, the Agency shall notify the financial company,
14 in writing, of the final determination of the Agency
15 under subsection (a) or (b), as applicable, not later
16 than 10 days after the date by which the company
17 may request a hearing under paragraph (2).

18 (e) **EMERGENCY EXCEPTION.**—

19 (1) **IN GENERAL.**—The Agency may waive or
20 modify the requirements of subsection (d) with re-
21 spect to a financial company, if the Agency deter-
22 mines, by an affirmative vote of not fewer than a
23 majority of its members (or if there are fewer than
24 a majority of all members then serving, by a unani-
25 mous vote of all members then serving) that such

1 waiver or modification is necessary or appropriate to
2 prevent or mitigate threats posed by the financial
3 company to United States financial stability.

4 (2) NOTICE.—The Agency shall provide notice
5 of a waiver or modification under this paragraph to
6 the financial company concerned as soon as prac-
7 ticable, but not later than 24 hours after the waiver
8 or modification is granted.

9 (3) OPPORTUNITY FOR HEARING.—The Agency
10 shall allow a financial company to request in writing
11 an opportunity for a written or oral hearing before
12 the Agency to contest a waiver or modification under
13 this paragraph, not later than 10 days after the date
14 of receipt of notice of the waiver or modification by
15 the company. Upon receipt of a timely request, the
16 Agency shall fix a time (not later than 15 days after
17 the date of receipt of the request) and place at
18 which the financial company may appear, personally
19 or through counsel, to submit written materials (or,
20 at the sole discretion of the Agency, oral testimony
21 and oral argument).

22 (4) NOTICE OF FINAL DETERMINATION.—Not
23 later than 30 days after the date of any hearing
24 under paragraph (3), the Agency shall notify the
25 subject financial company of the final determination

1 of the Agency under this paragraph, which shall con-
2 tain a statement of the basis for the decision of the
3 Agency.

4 (f) CONSULTATION.—The Agency shall consult with
5 the primary financial regulatory agency, if any, for each
6 financial company or subsidiary of a financial company
7 that is being considered for designation as a specified fi-
8 nancial company under this section before the Agency
9 makes any final determination with respect to such finan-
10 cial company or subsidiary under subsection (a), (b), or
11 (c).

12 **SEC. 106. REGISTRATION WITH FIRA BY SPECIFIED FINAN-**
13 **CIAL COMPANIES.**

14 (a) IN GENERAL.—Not later than 180 days after the
15 date of a final Agency determination under section 105
16 that a financial company is a specified financial company,
17 such specified financial company (other than a specified
18 bank holding company or another financial company that
19 is already registered with FIRA) shall register with FIRA,
20 on forms prescribed by FIRA, which shall include such
21 information as FIRA, in consultation with the Agency,
22 may deem necessary or appropriate to carry out this title.

23 (b) AUTHORITY TO EXTEND.—The Agency may, in
24 its discretion, extend the time period within which a speci-
25 fied financial company shall—

- 1 (B) leverage limits;
- 2 (C) liquidity requirements;
- 3 (D) a contingent capital requirement;
- 4 (E) resolution plan and credit exposure re-
- 5 port requirements;
- 6 (F) prompt corrective action requirements;
- 7 (G) concentration limits; and
- 8 (H) overall risk management requirements.

9 (2) PRUDENTIAL STANDARDS FOR FOREIGN FI-
10 NANCIAL COMPANIES.—In applying the standards
11 set forth in paragraph (1) to specified foreign finan-
12 cial companies, the Agency shall give due regard to
13 the principle of national treatment and equality of
14 competitive opportunity.

15 (3) CONSIDERATIONS.—In prescribing pruden-
16 tial standards under paragraph (1), the Agency
17 shall—

- 18 (A) take into account differences among
- 19 specified financial companies, based on—
 - 20 (i) the factors described in subsections
 - 21 (a) and (b) of section 105;
 - 22 (ii) whether the company owns an in-
 - 23 sured depository institution;
 - 24 (iii) nonfinancial activities and affili-
 - 25 ations of the company; and

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

3 (B) to the extent possible, ensure that
4 small changes in the factors listed in sub-
5 sections (a) and (b) of section 105 would not
6 result in sharp, discontinuous changes in the
7 prudential standards established pursuant para-
8 graphs (1) and (2) of this subsection.

9 (4) **WELL CAPITALIZED AND WELL MAN-**
10 **AGED.**—The Agency shall require specified financial
11 companies to be well capitalized and well managed,
12 at all times.

13 (5) **RISK COMMITTEE.**—

14 (A) **IN GENERAL.**—The Agency shall re-
15 quire each specified financial company that is a
16 publicly traded company to establish a risk
17 committee, as set forth in subparagraph (B),
18 not later than 1 year after the date of receipt
19 of a notice of final determination pursuant to
20 section 105(d)(3) with respect to such specified
21 financial company.

22 (B) **RISK COMMITTEE.**—The risk com-
23 mittee shall—

1 (i) be responsible for the oversight of
2 the enterprise-wide risk management prac-
3 tices of the specified financial company;

4 (ii) include such number of inde-
5 pendent directors as the Agency may de-
6 termine appropriate, based on the nature
7 of operations, size of assets, and other ap-
8 propriate criteria related to the specified fi-
9 nancial company; and

10 (iii) include at least 1 risk manage-
11 ment expert having experience in identi-
12 fying, assessing, and managing risk expo-
13 sures of large, complex firms.

14 (C) RULEMAKING.—The Agency shall issue
15 final rules to carry out this paragraph, not later
16 than 1 year after the date of enactment of this
17 Act.

18 (D) RULE OF CONSTRUCTION.—Nothing in
19 this paragraph may be construed to direct or
20 authorize the Agency to establish risk manage-
21 ment standards, or to require the use of a sin-
22 gle generally accepted risk management stand-
23 ard over any other similarly recognized stand-
24 ard.

25 (e) CONTINGENT CAPITAL.—

1 (1) IN GENERAL.—The Agency shall promul-
2 gate regulations that require specified financial com-
3 panies to maintain a minimum amount of long-term
4 hybrid debt that is convertible to equity when—

5 (A) a specified financial company fails to
6 meet prudential standards established by the
7 Agency; and

8 (B) the Agency has determined that
9 threats to United States financial system sta-
10 bility make such a conversion necessary.

11 (2) FACTORS TO CONSIDER.—In establishing
12 regulations under this subsection, the Agency shall
13 consider—

14 (A) an appropriate transition period for
15 implementation of a conversion under this sub-
16 section;

17 (B) the factors described in subsection
18 (b)(3)(A);

19 (C) capital requirements applicable to the
20 specified financial company and its subsidiaries;
21 and

22 (D) any other factor that the Agency
23 deems appropriate.

1 **SEC. 108. HEIGHTENED STANDARDS FOR BANK HOLDING**
2 **COMPANIES THAT ARE NOT SPECIFIED FI-**
3 **NANCIAL COMPANIES.**

4 (a) IN GENERAL.—Subject to the limitation in sub-
5 section (b), the Agency shall, by regulation, establish
6 heightened standards for bank holding companies that are
7 not specified financial companies, which shall include—

- 8 (1) risk-based capital requirements;
9 (2) leverage limits; and
10 (3) liquidity requirements.

11 (b) LIMITATION.—The Agency may not establish
12 heightened standards under subsection (a) for any bank
13 holding company that has total assets of less than
14 \$10,000,000,000.

15 (c) CONSIDERATIONS.—In prescribing heightened
16 standards under subsection (a), the Agency shall—

17 (1) take into account differences among bank
18 holding companies, based on—

19 (A) any factor described in subsections (a)
20 and (b) of section 105, if applicable; and

21 (B) any other factors that the Agency de-
22 termines appropriate;

23 (2) establish such standards on a graduated
24 basis; and

25 (3) to the extent possible, ensure that small
26 changes in the factors listed in subsections (a) and

1 (b) of section 105 would not result in sharp, dis-
2 continuous changes in the standards established pur-
3 suant to subsection (a).

4 (d) RISK COMMITTEE.—

5 (1) REGULATIONS.—

6 (A) REQUIRED REGULATIONS.—The Agen-
7 cy shall promulgate regulations to require each
8 bank holding company that (i) is not a specified
9 financial company, (ii) is a publicly traded com-
10 pany, and (iii) has total assets of greater than
11 or equal to \$10,000,000,000, to establish a risk
12 committee as set forth in paragraph (2).

13 (B) PERMISSIVE REGULATIONS.—The
14 Agency may promulgate regulations to require
15 each bank holding company that (i) is not a
16 specified financial company, (ii) is a publicly
17 traded company, and (iii) has total assets of
18 less than \$10,000,000,000, to establish a risk
19 committee as set forth in paragraph (2).

20 (2) RISK COMMITTEE.—Each risk committee
21 established pursuant to this subsection shall—

22 (A) be responsible for the oversight of the
23 enterprise-wide risk management practices of
24 the bank holding company;

1 (B) include such number of independent
2 directors as the Agency may determine appro-
3 priate based on the nature of operations, size of
4 assets, and other appropriate criteria related to
5 the bank holding company; and

6 (C) include at least one risk management
7 expert with experience in identifying, assessing,
8 and managing risk exposures.

9 (3) RULEMAKING.—

10 (A) TIMING.—Not later than 1 year after
11 the date of the enactment of this Act, the Agen-
12 cy shall issue final rules to carry out this sub-
13 section.

14 (B) RULE OF CONSTRUCTION.—Nothing in
15 this subsection shall be construed to direct or
16 authorize the Agency to establish risk manage-
17 ment standards, or to require the use of a sin-
18 gle generally accepted risk management stand-
19 ard over any other similarly recognized stand-
20 ard.

21 **SEC. 109. REPORTS, EXAMINATIONS, AND PUBLIC DISCLO-**
22 **SURES.**

23 (a) REPORTS.—

24 (1) IN GENERAL.—Subject to paragraph (2),
25 the Agency may require specified financial compa-

1 nies, and any subsidiary thereof, to submit certified
2 reports to keep the Agency informed as to—

3 (A) the financial condition of the company,
4 systems for monitoring and controlling finan-
5 cial, operating, and other risks, transactions
6 with any depository institution subsidiaries, and
7 the extent to which the activities and operations
8 of the company and its subsidiaries could,
9 under adverse circumstances, have the potential
10 to disrupt financial markets or affect overall fi-
11 nancial stability; and

12 (B) compliance by the company or its sub-
13 sidiaries with applicable provisions of this title.

14 (2) USE OF EXISTING REPORTS.—

15 (A) IN GENERAL.—For purposes of com-
16 pliance with paragraph (1), the Agency shall, to
17 the fullest extent possible, use—

18 (i) reports that a specified financial
19 company or any functionally regulated sub-
20 sidiary of such company has been required
21 to provide to other Federal or State regu-
22 latory agencies;

23 (ii) information that is otherwise re-
24 quired to be reported publicly; and

1 (iii) externally audited financial state-
2 ments.

3 (B) AVAILABILITY.—Each specified finan-
4 cial company, and any subsidiary thereof, shall
5 provide to the Agency, at the request of the
6 Agency, copies of all reports referred to in sub-
7 paragraph (A).

8 (3) ENHANCED PUBLIC DISCLOSURES.—The
9 Agency may prescribe, by regulation, periodic public
10 disclosures by specified financial companies in order
11 to support market evaluation of the risk profile, cap-
12 ital adequacy, and risk management capabilities
13 thereof.

14 (b) APPROVAL OF RESOLUTION PLAN AND CREDIT
15 EXPOSURE REPORTS.—

16 (1) RESOLUTION PLAN.—The Agency shall re-
17 quire each specified financial company to report pe-
18 riodically to the Agency, FIRA, and the Corporation
19 the plan of the specified financial company for rapid
20 and orderly resolution in the event of material finan-
21 cial distress or failure.

22 (2) CREDIT EXPOSURE REPORT.—The Agency
23 shall require each specified financial company to re-
24 port periodically to the Agency, FIRA, and the Cor-
25 poration on—

1 (A) the nature and extent to which the
2 company has credit exposure to other bank
3 holding companies or financial companies; and

4 (B) the nature and extent to which other
5 bank holding companies or financial companies
6 have credit exposure to that company.

7 (3) REVIEW AND DETERMINATION.—FIRA and
8 the Corporation shall—

9 (A) review the information provided in ac-
10 cordance with this section by each specified fi-
11 nancial company; and

12 (B) jointly determine if, based on all avail-
13 able information, the resolution plan required
14 under paragraph (1) is credible and would fa-
15 cilitate an orderly resolution of the specified fi-
16 nancial company under title 11, United States
17 Code, or title II of this Act.

18 (4) NOTICE OF DEFICIENCIES.—If FIRA and
19 the Corporation jointly determine pursuant to sub-
20 paragraph (3)(B) that the resolution plan of a speci-
21 fied financial company is not credible or would not
22 facilitate an orderly resolution of the specified finan-
23 cial company under title 11, United States Code, or
24 title II of this Act—

1 (A) FIRA and the Corporation shall notify
2 the specified financial company of the defi-
3 ciencies in the resolution plan; and

4 (B) the specified financial company shall
5 resubmit the resolution plan within a time
6 frame determined by the Agency, with revisions
7 demonstrating that the plan is credible and
8 would result in an orderly resolution under title
9 11, United States Code, or title II of this Act,
10 including any proposed changes in business op-
11 erations and corporate structure to facilitate
12 implementation of the plan.

13 (5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

14 (A) IN GENERAL.—If a specified financial
15 company fails to resubmit the resolution plan
16 within the time frame established by the Agen-
17 cy, with such revisions as are required under
18 subparagraph (4)(B), FIRA and the Corpora-
19 tion may jointly impose more stringent capital,
20 leverage, and liquidity requirements and restric-
21 tions on the growth, activities, and operations
22 of the specified financial company or any of its
23 subsidiaries, until such time as the specified fi-
24 nancial company resubmits a plan that rem-
25 edies the deficiencies.

1 (B) DIVESTITURE.—FIRA and the Cor-
2 poration, in consultation with the Agency, may
3 direct a specified financial company, by order,
4 to divest certain assets or operations identified
5 by FIRA and the Corporation, to facilitate an
6 orderly resolution of the specified financial com-
7 pany under title 11, United States Code, or
8 title II of this Act in the event of its failure, in
9 any case in which—

10 (i) FIRA and the Corporation have
11 jointly imposed more stringent require-
12 ments on the specified financial company
13 pursuant to subparagraph (A); and

14 (ii) the specified financial company
15 has failed, within the 2-year period begin-
16 ning on the date of the imposition of such
17 requirements under subparagraph (A), to
18 resubmit the resolution plan with such re-
19 visions as were required under paragraph
20 (4)(B).

21 (6) RULES.—Not later than 18 months after
22 the date of enactment of this Act, the Agency shall
23 issue final rules implementing this subsection.

1 **SEC. 110. AFFILIATIONS.**

2 (a) AFFILIATIONS.—Nothing in this title shall be
3 construed to require a specified financial company to con-
4 form its activities to the requirements of section 4 of the
5 Bank Holding Company Act of 1956 (12 U.S.C. 1843).

6 (b) REQUIREMENT.—If a specified financial company
7 conducts activities other than those that are determined
8 to be financial in nature or incidental thereto under sec-
9 tion 4(k) of the Bank Holding Company Act of 1956, the
10 Agency may require the specified financial company to es-
11 tablish and conduct all activities that are determined to
12 be financial in nature or incidental thereto under that sec-
13 tion 4(k) in an intermediate holding company established
14 pursuant to regulation of the Agency, not later than 90
15 days after the date on which the specified financial com-
16 pany was notified of the determination under section
17 105(a).

18 (c) REGULATIONS.—The Agency shall promulgate
19 regulations to establish—

20 (1) the criteria for determining whether to re-
21 quire a specified financial company to establish an
22 intermediate holding company under subsection (b);
23 and

24 (2) any restrictions or limitations on trans-
25 actions between such intermediate holding company
26 and its affiliates.

1 **SEC. 111. PROMPT CORRECTIVE ACTION FOR SPECIFIED FI-**
2 **NANCIAL COMPANIES.**

3 (a) DEFINITIONS.—For purposes of this section the
4 following definitions shall apply:

5 (1) CAPITAL CATEGORIES.—

6 (A) WELL CAPITALIZED.—A specified fi-
7 nancial company is “well capitalized” if it ex-
8 ceeds the required minimum level for each rel-
9 evant capital measure, as established by the
10 Agency.

11 (B) UNDERCAPITALIZED.—A specified fi-
12 nancial company is “undercapitalized” if it fails
13 to meet the required minimum level for any rel-
14 evant capital measure, as established by the
15 Agency.

16 (C) SIGNIFICANTLY UNDERCAPITALIZED.—
17 A specified financial company is “significantly
18 undercapitalized” if it is significantly below the
19 required minimum level for any relevant capital
20 measure, as established by the Agency.

21 (D) CRITICALLY UNDERCAPITALIZED.—A
22 specified financial company is “critically under-
23 capitalized” if it fails to meet any level specified
24 in subsection (c)(3)(A).

25 (2) OTHER DEFINITIONS.—

1 (A) AVERAGE.—The “average” of an ac-
2 counting item (such as total assets or tangible
3 equity) during a given period means the sum of
4 that item at the close of business on each busi-
5 ness day during that period, divided by the
6 total number of business days in that period.

7 (B) CAPITAL DISTRIBUTION.—The term
8 “capital distribution” means—

9 (i) a distribution of cash or other
10 property by a specified financial company
11 to its owners, made on account of that
12 ownership, but not including any dividend
13 consisting only of shares of the specified fi-
14 nancial company or rights to purchase
15 such shares;

16 (ii) a payment by a specified financial
17 company to repurchase, redeem, retire, or
18 otherwise acquire any of its shares or other
19 ownership interests, including any exten-
20 sion of credit to finance acquisition of
21 those shares or interests by any person; or

22 (iii) a transaction that the Agency or
23 FIRA determines, by order or regulation,
24 to be in substance a distribution of capital

1 to the owners of the specified financial
2 company.

3 (C) CAPITAL RESTORATION PLAN.—The
4 term “capital restoration plan” means a plan
5 required under subsection (e)(2).

6 (D) COMPENSATION.—The term “com-
7 pensation” includes any payment of money or
8 provision of any other thing of value in consid-
9 eration of employment.

10 (E) RELEVANT CAPITAL MEASURE.—The
11 term “relevant capital measure” means the
12 measures described in subsection (c).

13 (F) REQUIRED MINIMUM LEVEL.—The
14 term “required minimum level” means, with re-
15 spect to each relevant capital measure, the min-
16 imum acceptable capital level specified by the
17 Agency, by regulation.

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

23 (b) PROMPT CORRECTIVE ACTION.—FIRA shall, for
24 the purposes of minimizing threats to the stability of the
25 United States financial system and protecting the interest

1 of taxpayers, take prompt corrective action to resolve the
2 problems of specified financial companies, in accordance
3 with regulations promulgated by the Agency.

4 (c) CAPITAL STANDARDS.—

5 (1) RELEVANT CAPITAL MEASURES.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B)(ii), the capital standards pre-
8 scribed by the Agency under this section shall
9 include—

10 (i) a leverage limit; and

11 (ii) a risk-based capital requirement.

12 (B) OTHER CAPITAL MEASURES.—The
13 Agency may, by regulation—

14 (i) establish any additional relevant
15 capital measures to carry out this section;

16 or

17 (ii) rescind any relevant capital meas-
18 ure required under subparagraph (A),
19 upon determining that the measure is no
20 longer an appropriate means for carrying
21 out this section.

22 (2) CAPITAL CATEGORIES GENERALLY.—The
23 Agency shall, by regulation, specify for each relevant
24 capital measure the level at which a specified finan-

1 cial company is well capitalized, undercapitalized,
2 and significantly undercapitalized.

3 (3) CRITICAL CAPITAL.—

4 (A) AGENCY TO SPECIFY LEVEL.—

5 (i) LEVERAGE LIMIT.—The Agency
6 shall, by regulation, specify the ratio of
7 tangible equity to total assets at which a
8 specified financial company is critically
9 undercapitalized.

10 (ii) OTHER RELEVANT CAPITAL MEAS-
11 URES.—The Agency may, by regulation,
12 specify for 1 or more other relevant capital
13 measures, the level at which a specified fi-
14 nancial company is critically undercapital-
15 ized.

16 (B) LEVERAGE LIMIT RANGE.—The level
17 specified under subparagraph (A)(i) shall re-
18 quire tangible equity in an amount that is equal
19 to—

20 (i) not less than 2 percent of total as-
21 sets of the specified financial company;
22 and

23 (ii) except as provided in clause (i),
24 not more than 65 percent of the required

1 minimum level of capital under the lever-
2 age limit.

3 (d) CAPITAL DISTRIBUTIONS RESTRICTED.—

4 (1) IN GENERAL.—A specified financial com-
5 pany shall make no capital distribution if, after
6 making the distribution, the specified financial com-
7 pany would be undercapitalized.

8 (2) EXCEPTION.—Notwithstanding paragraph
9 (1), FIRA may permit a specified financial company
10 to repurchase, redeem, retire, or otherwise acquire
11 shares or ownership interests, if the repurchase, re-
12 demption, retirement, or other acquisition—

13 (A) is made in connection with the
14 issuance of additional shares or obligations of
15 the specified financial company in at least an
16 equivalent amount; and

17 (B) will reduce the financial obligations of,
18 or otherwise improve the financial condition of,
19 the specified financial company.

20 (e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED
21 COMPANIES.—

22 (1) MONITORING REQUIRED.—FIRA shall—

23 (A) closely monitor the condition of any
24 specified financial company that is under-
25 capitalized;

1 (B) closely monitor compliance by any
2 specified financial company that is under-
3 capitalized with capital restoration plans, re-
4 strictions, and requirements imposed under this
5 section; and

6 (C) periodically review the plan, restric-
7 tions, and requirements applicable to any speci-
8 fied financial company that is undercapitalized
9 to determine whether the plan, restrictions, and
10 requirements are effective.

11 (2) CAPITAL RESTORATION PLAN REQUIRED.—

12 (A) IN GENERAL.—Any specified financial
13 company that is undercapitalized shall submit
14 an acceptable capital restoration plan to FIRA
15 within the time allowed by FIRA under sub-
16 paragraph (D).

17 (B) CONTENTS OF PLAN.—The capital res-
18 toration plan required by subparagraph (A)
19 shall—

20 (i) specify—

21 (I) the steps that the specified fi-
22 nancial company will take to become
23 well capitalized;

24 (II) the levels of capital to be at-
25 tained by the specified financial com-

1 (D) DEADLINES FOR SUBMISSION AND RE-
2 VIEW OF PLANS.—FIRA shall, by regulation,
3 establish deadlines that—

4 (i) provide specified financial compa-
5 nies with reasonable time to submit capital
6 restoration plans, but in no case later than
7 45 days after the date on which the speci-
8 fied financial company becomes under-
9 capitalized; and

10 (ii) require FIRA to act on capital
11 restoration plans expeditiously, but in no
12 case later than 60 days after the date on
13 which the plan is submitted.

14 (3) ASSET GROWTH RESTRICTED.—A specified
15 financial company that is undercapitalized may not
16 permit its average total assets during any calendar
17 quarter to exceed its average total assets during the
18 preceding calendar quarter, unless—

19 (A) FIRA has accepted the capital restora-
20 tion plan of the specified financial company;

21 (B) any increase in total assets is con-
22 sistent with the plan; and

23 (C) the specified financial company ratio of
24 tangible equity to total assets increases during
25 the calendar quarter at a rate that is sufficient

1 to enable it to become well capitalized within a
2 reasonable time.

3 (4) **PRIOR APPROVAL REQUIRED FOR ACQUISITIONS AND NEW LINES OF BUSINESS.**—A specified
4 financial company that is undercapitalized may not,
5 directly or indirectly, acquire any interest in any
6 company or insured depository institution, or engage
7 in any new line of business, unless—

9 (A) FIRA has accepted the capital restora-
10 tion plan of the specified financial company, the
11 specified financial company is implementing the
12 plan, and FIRA determines that the proposed
13 action is consistent with and will further
14 achievement of the plan;

15 (B) FIRA determines that the specific pro-
16 posed action is appropriate; or

17 (C) FIRA has exempted the specified fi-
18 nancial company from the requirements of this
19 paragraph with respect to the class of acquisi-
20 tions that includes the proposed action.

21 (5) **DISCRETIONARY SAFEGUARDS.**—FIRA may,
22 with respect to any specified financial company that
23 is undercapitalized, take actions described in any
24 subparagraph of subsection (f)(2), if FIRA deter-
25 mines that those actions are necessary to restore the

1 specified financial company to well capitalized sta-
2 tus.

3 (f) SIGNIFICANTLY UNDERCAPITALIZED COMPANIES
4 AND UNDERCAPITALIZED COMPANIES THAT FAIL TO
5 SUBMIT AND IMPLEMENT CAPITAL RESTORATION
6 PLANS.—

7 (1) IN GENERAL.—This subsection shall apply
8 with respect to any specified financial company—

9 (A) that is significantly undercapitalized;

10 or

11 (B) that—

12 (i) is undercapitalized; and

13 (ii) fails—

14 (I) to submit an acceptable cap-
15 ital restoration plan within the time
16 allowed by FIRA under subsection
17 (e)(2)(D); or

18 (II) in any material respect, to
19 implement a capital restoration plan
20 acceptable to FIRA.

21 (2) SPECIFIC ACTIONS AUTHORIZED.—

22 (A) IN GENERAL.—FIRA shall carry out
23 this subsection by taking 1 or more of the ac-
24 tions described in subparagraphs (B) through
25 (H).

1 (B) REQUIRING RECAPITALIZATION.—

2 FIRA may—

3 (i) require the specified financial com-
4 pany to sell enough of its shares or obliga-
5 tions so that the specified financial com-
6 pany will be well capitalized after the sale;

7 (ii) further require instruments sold
8 under clause (i) to be voting shares; or

9 (iii) require the specified financial
10 company to be acquired by or combine with
11 another company.

12 (C) RESTRICTING TRANSACTIONS WITH AF-
13 FILIATES.—FIRA may—

14 (i) require the specified financial com-
15 pany to comply with section 23A of the
16 Federal Reserve Act (12 U.S.C. 371c), as
17 if it were a member bank; and

18 (ii) further restrict the transactions of
19 the specified financial company with affili-
20 ates and insiders.

21 (D) RESTRICTING ASSET GROWTH.—FIRA
22 may restrict the asset growth of the specified fi-
23 nancial company more stringently than as spec-
24 ified in subsection (e)(3), or require it to reduce
25 its total assets.

1 (E) RESTRICTING ACTIVITIES.—FIRA may
2 require the specified financial company or any
3 of its subsidiaries to alter, reduce, or terminate
4 any activity that FIRA determines poses exces-
5 sive risk to the specified financial company.

6 (F) IMPROVING MANAGEMENT.—FIRA
7 may—

8 (i) order a new election for the board
9 of directors of the specified financial com-
10 pany;

11 (ii) require the specified financial
12 company to dismiss from office any direc-
13 tor or senior executive officer who had held
14 office for more than 180 days immediately
15 before the date on which the specified fi-
16 nancial company became undercapitalized,
17 except that a dismissal under this clause
18 shall not be construed to be a removal
19 under section 8 of the Federal Deposit In-
20 surance Act (12 U.S.C. 1818); or

21 (iii) require the specified financial
22 company to employ qualified senior execu-
23 tive officers (who, if FIRA so specifies,
24 shall be subject to approval by FIRA).

1 (G) REQUIRING DIVESTITURE.—FIRA
2 may require the specified financial company to
3 divest itself of or liquidate any subsidiary, if
4 FIRA determines that the subsidiary is in dan-
5 ger of becoming insolvent, poses a significant
6 risk to the specified financial company, or is
7 likely to cause a significant dissipation of the
8 assets or earnings of the specified financial
9 company.

10 (H) REQUIRING OTHER ACTION.—FIRA
11 may require the specified financial company to
12 take any other action that FIRA determines
13 will better carry out the purpose of this section
14 than any other action or combination of actions
15 authorized by this paragraph.

16 (3) PRESUMPTION IN FAVOR OF CERTAIN AC-
17 TIONS.—In complying with paragraph (2), FIRA
18 shall, unless FIRA determines that such action
19 would not be appropriate, take the action authorized
20 in—

21 (A) clause (i) or (iii) of paragraph (2)(B);

22 and

23 (B) paragraph (2)(C)(i).

24 (4) SENIOR EXECUTIVE OFFICER COMPENSA-
25 TION RESTRICTED.—

1 (A) IN GENERAL.—The specified financial
2 company may not, without the prior written ap-
3 proval of FIRA—

4 (i) pay any bonus to any senior execu-
5 tive officer; or

6 (ii) provide compensation to any sen-
7 ior executive officer at a rate exceeding the
8 average rate of compensation (excluding
9 bonuses, stock options, and profit-sharing)
10 of that officer during the 12 calendar
11 months preceding the calendar month in
12 which the specified financial company be-
13 came undercapitalized.

14 (B) FAILURE TO SUBMIT PLAN.—FIRA
15 may not grant any approval under subpara-
16 graph (A) with respect to a specified financial
17 company that has failed to submit an accept-
18 able capital restoration plan in accordance with
19 this section.

20 (5) CONSULTATION WITH OTHER REGU-
21 LATORS.—Before FIRA makes a determination
22 under paragraph (2)(F) with respect to a subsidiary
23 that is a broker, dealer, government securities
24 broker, government securities dealer, investment
25 company, or investment adviser, FIRA shall consult

1 with the Commission and, in the case of any other
2 subsidiary which is subject to any financial responsi-
3 bility or capital requirement, the primary financial
4 regulatory agency for such subsidiary, if any, with
5 respect to the proposed determination of FIRA, and
6 actions pursuant to such determination.

7 (g) MORE STRINGENT TREATMENT BASED ON
8 OTHER SUPERVISORY CRITERIA.—

9 (1) IN GENERAL.—If FIRA determines (after
10 notice and an opportunity for hearing) that a speci-
11 fied financial company is in an unsafe or unsound
12 condition or, pursuant to section 8(b)(8) of the Fed-
13 eral Deposit Insurance Act (12 U.S.C. 1818(b)(8)),
14 deems the specified financial company to be engag-
15 ing in an unsafe or unsound practice, FIRA may—

16 (A) if the specified financial company is
17 well capitalized, require the specified financial
18 company to comply with one or more provisions
19 of subsections (d) and (e), as if the specified fi-
20 nancial company were undercapitalized; or

21 (B) if the specified financial company is
22 undercapitalized, take any one or more actions
23 authorized under subsection (f)(2), as if the
24 specified financial company were significantly
25 undercapitalized.

1 (2) CONTENTS OF PLAN.—A plan that may be
2 required pursuant to paragraph (1)(A) shall specify
3 the steps that the specified financial company will
4 take to correct the unsafe or unsound condition or
5 practice.

6 (h) MANDATORY BANKRUPTCY PETITION OR RESO-
7 LUTION FOR CRITICALLY UNDERCAPITALIZED COMPA-
8 NIES.—FIRA, in consultation with the Corporation, shall,
9 not later than 90 days after the date on which a specified
10 financial company becomes critically undercapitalized—

11 (1) require the specified financial company to
12 file a petition for bankruptcy under section 301 of
13 title 11, United States Code;

14 (2) file a petition for involuntary bankruptcy on
15 behalf of a specified financial company under section
16 303 of title 11, United States Code; or

17 (3) submit a written recommendation pursuant
18 to section 202 with respect to the specified financial
19 company.

20 (i) IMPLEMENTATION.—FIRA shall prescribe such
21 regulations, issue such orders, and take such other actions
22 as FIRA determines to be necessary to carry out this sec-
23 tion.

24 (j) OTHER AUTHORITY NOT AFFECTED.—This sec-
25 tion does not limit any authority of the Agency, FIRA,

1 any other Federal regulatory agency, or a State to take
2 action in addition to (but not in derogation of) that re-
3 quired under this section.

4 (k) CONSULTATION.—The Agency, FIRA, and the
5 Secretary shall consult with their foreign counterparties
6 and through appropriate multilateral organizations to
7 reach agreement to extend comprehensive and robust pru-
8 dential supervision and regulation to all highly leveraged
9 and substantially interconnected financial companies. In
10 their regulation and supervision of specified foreign finan-
11 cial companies, the Agency and FIRA shall take into ac-
12 count the extent to which such companies are subject to
13 standards comparable to those applied to other specified
14 U.S. nonbank financial companies.

15 (l) ADMINISTRATIVE REVIEW OF DISMISSAL OR-
16 DERS.—

17 (1) TIMELY PETITION REQUIRED.—A director
18 or senior executive officer dismissed pursuant to an
19 order under subsection (f)(2)(F)(ii) may obtain re-
20 view of that order by filing a written petition for re-
21 instatement with FIRA, not later than 10 days after
22 the date of receipt of notice of the dismissal.

23 (2) PROCEDURE.—

1 (A) HEARING REQUIRED.—FIRA shall
2 give a petitioner under this paragraph an op-
3 portunity—

4 (i) to submit written materials in sup-
5 port of the petition; and

6 (ii) to appear, personally or through
7 counsel, before 1 or more members of
8 FIRA or designated employees of FIRA.

9 (B) DEADLINE FOR HEARING.—FIRA
10 shall—

11 (i) schedule the hearing authorized by
12 subparagraph (A)(ii) promptly after a peti-
13 tion is filed under this paragraph; and

14 (ii) hold the hearing not later than 30
15 days after the date on which the petition
16 is filed, unless the petitioner requests that
17 the hearing be held at a later time.

18 (C) DEADLINE FOR DECISION.—Not later
19 than 60 days after the date of the hearing
20 under this paragraph, the Agency shall—

21 (i) by order, grant or deny the peti-
22 tion;

23 (ii) if the order is adverse to the peti-
24 tioner, set forth the basis for the order;
25 and

1 (iii) notify the petitioner of the order.

2 (3) STANDARD FOR REVIEW OF DISMISSAL OR-
3 DERS.—The petitioner shall bear the burden of prov-
4 ing that the continued employment of the petitioner
5 would materially strengthen the ability of the speci-
6 fied financial company—

7 (A) to become well capitalized, to the ex-
8 tent that the order is based on the capital level
9 of or failure to submit or implement a capital
10 restoration plan by the specified financial com-
11 pany; and

12 (B) to correct the unsafe or unsound con-
13 dition or unsafe or unsound practice, to the ex-
14 tent that the order is based on subsection
15 (g)(1).

16 (m) ENFORCEMENT AUTHORITY FOR SPECIFIED
17 FOREIGN FINANCIAL COMPANY.—

18 (1) TERMINATION AUTHORITY.—If FIRA deter-
19 mines that a condition, practice, or activity of a
20 specified foreign financial company does not comply
21 with this title or the rules or orders prescribed by
22 the Agency under this title, or otherwise poses a
23 threat to United States financial stability, FIRA
24 may, after notice and opportunity for a hearing,
25 order a specified foreign financial company that op-

1 erates a branch, agency, or subsidiary in the United
2 States to terminate the activities of such branch,
3 agency, or subsidiary.

4 (2) DISCRETION TO DENY HEARING.—FIRA
5 may issue an order under paragraph (1) without
6 providing for an opportunity for a hearing, if FIRA
7 determines that expeditious action is necessary in
8 order to protect the public interest.

9 (n) AUTHORITY TO FILE INVOLUNTARY PETITION
10 FOR BANKRUPTCY.—Section 303 of title 11, United
11 States Code, is amended by adding at the end the fol-
12 lowing:

13 “(m)(1) Notwithstanding subsections (a) and (b) of
14 this section, an involuntary case may be commenced by
15 the Financial Institutions Regulatory Administration
16 against a specified financial company, on the ground that
17 the specified financial company is critically undercapital-
18 ized.

19 “(2) For purposes of this subsection, the terms ‘bank
20 holding company’, ‘specified financial company’, and ‘criti-
21 cally undercapitalized’ have the same meanings as in sec-
22 tions 102 and 111 of the Restoring American Financial
23 Stability Act of 2009.”.

1 **SEC. 112. CONCENTRATION LIMITS.**

2 (a) STANDARDS.—In order to limit the risks that the
3 failure of any specified financial company could pose to
4 any other specified financial company and to the stability
5 of the United States financial system, the Agency, by reg-
6 ulation, shall prescribe standards that limit such risks.

7 (b) LIMITATION ON CREDIT EXPOSURE.—The regu-
8 lations prescribed by the Agency under subsection (a) shall
9 prohibit each specified financial company from having
10 credit exposure to any unaffiliated company that exceeds
11 25 percent of the capital stock and surplus (or such lower
12 amount as the Agency may determine by regulation to be
13 necessary to mitigate risks to financial stability) of the
14 specified financial company.

15 (c) CREDIT EXPOSURE.—For purposes of subsection
16 (b), “credit exposure” to a company means—

17 (1) all extensions of credit to the company, in-
18 cluding loans, deposits, and lines of credit;

19 (2) all repurchase agreements and reverse re-
20 purchase agreement with the company;

21 (3) all securities borrowing and lending trans-
22 actions with the company, to the extent that such
23 transactions create credit exposure for the specified
24 financial company;

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

4 (5) all purchases of or investment in securities
5 issued by the company;

6 (6) counterparty credit exposure to the com-
7 pany in connection with a derivative transaction be-
8 tween the specified financial company and the com-
9 pany; and

10 (7) any other similar transactions that the
11 Agency, by regulation, determines to be a credit ex-
12 posure for purposes of this section.

13 (d) **ATTRIBUTION RULE.**—For purposes of this sec-
14 tion, any transaction by a specified financial company with
15 any person is a transaction with a company, to the extent
16 that the proceeds of the transaction are used for the ben-
17 efit of, or transferred to that company.

18 (e) **RULEMAKING.**—The Agency may issue such regu-
19 lations and orders, including definitions consistent with
20 this section, as may be necessary to administer and carry
21 out this section.

22 (f) **EXEMPTIONS.**—The Agency may, by regulation or
23 order, exempt transactions, in whole or in part, from the
24 definition of “credit exposure”, if the Agency finds that

1 the exemption is in the public interest and is consistent
2 with the purpose of this section.

3 (g) **TRANSITION PERIOD.**—This section and any reg-
4 ulations and orders of the Agency under this section shall
5 not be effective until 3 years after the date of enactment
6 of this section. The Agency may extend such period for
7 up to an additional 2 years to promote financial stability.

8 **SEC. 113. REGULATIONS.**

9 Not later than 18 months after the date of enactment
10 of this Act, the Agency shall issue final regulations to im-
11 plement this title, including—

12 (1) detailed criteria for determining whether a
13 financial company should be designated as a speci-
14 fied financial company for purposes of this title;

15 (2) the procedures for collecting information
16 from financial companies to make such determina-
17 tions; and

18 (3) the procedures that a financial company
19 shall follow to request a hearing on the decisions of
20 the Agency.

21 **SEC. 114. AVOIDING DUPLICATION.**

22 The Agency shall take any action that the Agency
23 deems appropriate to avoid imposing requirements under
24 this title that are duplicative of requirements applicable
25 to financial companies under other provisions of law.

1 SEC. 115. AGENCY FUNDING.**2 (a) FINANCIAL STABILITY FUND.—**

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

6 (2) FUND RECEIPTS.—All amounts provided to
7 the Agency under subsection (c), and all supervisory
8 assessments that the Agency receives under sub-
9 section (d) shall be deposited into the Financial Sta-
10 bility Fund.

11 (3) INVESTMENTS AUTHORIZED.—

12 (A) AMOUNTS IN FUND MAY BE IN-
13 VESTED.—The Chairperson may request the
14 Secretary to invest the portion of the Financial
15 Stability Fund that is not, in the judgment of
16 the Chairperson, required to meet the needs of
17 the Agency.

18 (B) ELIGIBLE INVESTMENTS.—Invest-
19 ments shall be made by the Secretary in obliga-
20 tions of the United States or obligations that
21 are guaranteed as to principal and interest by
22 the United States, with maturities suitable to
23 the needs of the Financial Stability Fund, as
24 determined by the Chairperson.

25 (C) INTEREST AND PROCEEDS CRED-
26 ITED.—The interest on, and the proceeds from

1 the sale or redemption of, any obligations held
2 in the Financial Stability Fund shall be cred-
3 ited to and form a part of the Financial Sta-
4 bility Fund.

5 (b) USE OF FUNDS.—

6 (1) IN GENERAL.—Funds obtained by, trans-
7 ferred to, or credited to the Financial Stability Fund
8 shall be immediately available to the Agency, and
9 shall remain available until expended, to pay the ex-
10 penses of the Agency in carrying out its duties and
11 responsibilities.

12 (2) FEES, ASSESSMENTS, AND OTHER FUNDS
13 NOT GOVERNMENT FUNDS.—Funds obtained by,
14 transferred to or credited to the Financial Stability
15 Fund shall not be construed to be Government funds
16 or appropriated monies.

17 (3) AMOUNTS NOT SUBJECT TO APPORTION-
18 MENT.—Notwithstanding any other provision of law,
19 amounts in the Financial Stability Fund shall not be
20 subject to apportionment for purposes of chapter 15
21 of title 31, United States Code, or under any other
22 authority or for any other purpose.

23 (c) INTERIM FUNDING.—During the 2-year period
24 following the date of enactment of this Act, the Board of

1 Governors shall provide to the Agency an amount suffi-
2 cient to cover the expenses of the Agency.

3 (d) **PERMANENT SELF-FUNDING.**—

4 (1) **IN GENERAL.**—Beginning 2 years after the
5 date of enactment of this Act, the Agency shall es-
6 tablish, by regulation, an assessment schedule, in-
7 cluding the assessment base and rates applicable to
8 specified financial companies, that takes into ac-
9 count differences among specified financial compa-
10 nies, based on the considerations for establishing the
11 prudential standards under section 107(b)(3)(B), to
12 recoup the total expenses of the Agency to the max-
13 imum extent possible.

14 (2) **SHORTFALL.**—To the extent that the as-
15 sessments under paragraph (1) do not fully recoup
16 the total expenses of the Agency, the Board of Gov-
17 ernors shall provide to the Agency an amount suffi-
18 cient to cover the shortfall.

19 **SEC. 116. RESOLUTION OF DISPUTES AMONG MEMBER**
20 **AGENCIES.**

21 (a) **REQUEST FOR DISPUTE RESOLUTION.**—The
22 Agency shall resolve a dispute among 2 or more member
23 agencies if—

24 (1) a member agency has a dispute with an-
25 other member agency about the respective jurisdic-

1 tion over a particular financial company or financial
2 activity or product (excluding matters for which an-
3 other dispute mechanism specifically has been pro-
4 vided under Federal law);

5 (2) the disputing agencies cannot, after a dem-
6 onstrated good faith effort, resolve the dispute with-
7 out the intervention of the Agency;

8 (3) any of the member agencies involved in the
9 dispute—

10 (A) provides all other disputants prior no-
11 tice of its intent to request dispute resolution
12 by the Agency; and

13 (B) requests in writing, not earlier than 14
14 days after providing the notice described in sub-
15 paragraph (A), that the Agency resolve the dis-
16 pute.

17 (b) **AGENCY DECISION.**—The Agency shall decide the
18 dispute—

19 (1) within a reasonable time after receiving the
20 dispute resolution request;

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

23 (3) by agreeing with 1 of the disputants regard-
24 ing the entirety of the matter or by determining a
25 compromise position.

1 (c) FORM AND BINDING EFFECT.—An Agency deci-
2 sion under this section shall—

3 (1) be in writing;

4 (2) include an explanation of the reasons there-
5 for; and

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

8 **SEC. 117. ADDITIONAL STANDARDS APPLICABLE TO ACTIVI-**
9 **TIES OR PRACTICES FOR FINANCIAL STA-**
10 **BILITY PURPOSES.**

11 (a) IN GENERAL.—The Agency may issue rec-
12 ommendations to the primary financial regulatory agen-
13 cies to apply new or heightened standards and safeguards,
14 including standards enumerated in section 107 and 108,
15 for a financial activity or practice conducted by financial
16 companies under their respective jurisdictions, if the
17 Agency determines that the conduct of such activity or
18 practice could create or increase the risk of significant li-
19 quidity, credit, or other problems spreading among finan-
20 cial companies or United States markets.

21 (b) PROCEDURE FOR RECOMMENDATIONS TO REGU-
22 LATORS.—

23 (1) NOTICE AND OPPORTUNITY FOR COM-
24 MENT.—

1 (A) IN GENERAL.—The Agency shall con-
2 sult with the primary financial regulatory agen-
3 cies and provide notice to the public and oppor-
4 tunity for comment for any proposed rec-
5 ommendation that the primary financial regu-
6 latory agencies apply new or heightened stand-
7 ards and safeguards for a financial activity or
8 practice.

9 (2) CRITERIA.—The new or heightened stand-
10 ards and safeguards for a financial activity or prac-
11 tice recommended under paragraph (1)—

12 (A) shall take costs to long-term financial
13 and economic growth into account; and

14 (B) may include prescribing the conduct of
15 the activity or practice in specific ways (such as
16 by limiting its scope, or applying particular cap-
17 ital or risk-management requirements to the
18 conduct of the activity) or prohibiting the activ-
19 ity or practice.

20 (c) IMPLEMENTATION OF RECOMMENDED STAND-
21 ARDS.—

22 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
23 AGENCY.—

24 (A) IN GENERAL.—Each primary financial
25 regulatory agency is authorized to impose, re-

1 quire reports regarding, examine for compliance
2 with, and enforce standards in accordance with
3 this section with respect to those entities for
4 which it is the primary financial regulatory
5 agency.

6 (B) **RULE OF CONSTRUCTION.**—The au-
7 thority under this paragraph is in addition to,
8 and does not limit, any other authority of a pri-
9 mary financial regulatory agency. Compliance
10 by an entity with actions taken by a primary fi-
11 nancial regulatory agency under this section
12 shall be enforceable in accordance with the stat-
13 utes governing the respective jurisdiction of the
14 primary financial regulatory agency over the en-
15 tity, as if the agency action were taken under
16 those statutes.

17 (2) **IMPOSITION OF STANDARDS.**—Standards
18 imposed under this subsection shall be the standards
19 recommended by the Agency in accordance with sub-
20 section (a), or any other similar standards that the
21 Agency deems acceptable, after consultation between
22 the Agency and the primary financial regulatory
23 agency.

24 (d) **REPORT TO CONGRESS.**—The Agency shall report
25 to Congress on—

1 (1) any recommendations by the Agency issued
2 under this section;

3 (2) the implementation or failure to implement
4 such recommendation on the part of the a primary
5 financial regulatory agency; and

6 (3) in such cases where no appropriate primary
7 financial regulatory agency exists for the financial
8 company conducting financial activities or practices
9 referred to in subsection (a), recommendations for
10 legislation that would prevent such activities or prac-
11 tices from threatening the stability of the United
12 States financial system.

13 **SEC. 118. EFFECT OF RESCISSION OF IDENTIFICATION.**

14 (a) NOTICE.—If the Agency determines that a speci-
15 fied financial company, activity or practice no longer re-
16 quires any heightened standards implemented under this
17 title, including standards imposed under section 107, 108,
18 or 117, the Agency shall inform the relevant primary fi-
19 nancial regulatory agency or agencies of that finding.

20 (b) DETERMINATION OF PRIMARY FINANCIAL REGU-
21 LATORY AGENCY TO CONTINUE.—A primary financial
22 regulatory agency that has imposed heightened standards
23 for financial stability purposes under this title shall deter-
24 mine whether standards that it has imposed under this
25 title should remain in effect.

1 SEC. 119. MITIGATION OF SYSTEMIC RISK.

2 (a) IN GENERAL.—If the Agency determines, after
3 consultation with FIRA and after notice and an oppor-
4 tunity for hearing, that the size of a specified financial
5 company or the scope or nature of activities directly or
6 indirectly conducted by a specified financial company
7 poses a threat to the safety and soundness of the specified
8 financial company or to the financial stability of the
9 United States, the Agency, in consultation with FIRA,
10 may require the specified financial company to sell or oth-
11 erwise transfer assets or off-balance-sheet items to unaf-
12 filiated entities, to terminate one or more activities, or to
13 impose conditions on the manner in which the specified
14 financial company conducts one or more activities.

15 (b) APPLICATION TO FOREIGN FINANCIAL COMPA-
16 NIES.—The Agency shall prescribe regulations regarding
17 the application of heightened standards under this title to
18 foreign nonbank financial companies and companies that
19 own or control a Federal or State branch, subsidiary, or
20 operating entity that is a specified financial company, giv-
21 ing due regard to the principle of national treatment and
22 equality of competitive opportunity.

23 SEC. 120. RULE OF CONSTRUCTION.

24 Any regulation or standard imposed by the Agency
25 under this title shall supersede any conflicting, less strin-

1 gent requirements of the primary financial regulatory
2 agency, but only to the extent of the conflict.

3 **TITLE II—ENHANCED**
4 **RESOLUTION AUTHORITY**

5 **SEC. 201. DEFINITIONS.**

6 For purposes of this title, the following definitions
7 shall apply:

8 (1) APPROPRIATE FEDERAL REGULATORY
9 AGENCY.—

10 (A) CORPORATION AND COMMISSION.—The
11 term “appropriate Federal regulatory agency”
12 means—

13 (i) the Corporation; and

14 (ii) the Commission, if the financial
15 company, or an affiliate thereof, is a
16 broker or dealer registered with the Com-
17 mission under section 15(b) of the Securi-
18 ties Exchange Act of 1934 (15 U.S.C.
19 78o(b)) (other than an insured depository
20 institution).

21 (B) RULES OF CONSTRUCTION.—More
22 than 1 agency may be an appropriate Federal
23 regulatory agency with respect to any given fi-
24 nancial company, in which case—

1 (i) the Commission shall be the appro-
2 priate Federal regulatory agency for pur-
3 poses of section 202, if the largest sub-
4 sidiary of the financial company is a
5 broker or dealer, as measured by total as-
6 sets as of the end of the previous calendar
7 quarter; and

8 (ii) otherwise the Corporation shall be
9 the appropriate Federal regulatory agency
10 for purposes of section 202.

11 (2) BRIDGE FINANCIAL COMPANY.—The term
12 “bridge financial company” means a new financial
13 company organized in accordance with section
14 208(h) by the Corporation.

15 (3) COVERED FINANCIAL COMPANY.—The term
16 “covered financial company” means a financial com-
17 pany for which a determination has been made pur-
18 suant to and in accordance with section 202(b).

19 (4) COVERED SUBSIDIARY.—The term “covered
20 subsidiary” means a subsidiary described in para-
21 graph (10)(B)(iv).

22 (5) CUSTOMER PROPERTY.—The term “cus-
23 tomer property” has the meaning ascribed to it in
24 the Securities Investor Protection Act of 1970.

1 (6) FINANCIAL COMPANY.—The term “financial
2 company” means any company that—

3 (A) is incorporated or organized under any
4 provision of Federal law or the laws of any
5 State; and

6 (B) is—

7 (i) a bank holding company, as de-
8 fined in section 2(a) of the Bank Holding
9 Company Act of 1956 (12 U.S.C.
10 1841(a));

11 (ii) any specified financial company,
12 as defined in section 102;

13 (iii) any company that is predomi-
14 nantly engaged in activities that are finan-
15 cial in nature or incidental thereto for pur-
16 poses of section 4(k) of the Bank Holding
17 Company Act of 1956; or

18 (iv) any subsidiary of any company
19 described in clauses (i) through (iii) (other
20 than an insured depository institution, any
21 broker or dealer registered with the Com-
22 mission under section 15(b) of the Securi-
23 ties Exchange Act of 1934 (15 U.S.C.
24 78o(b)), that is a member of the Securities

1 Investor Protection Corporation, or an in-
2 surance company).

3 (7) FUND.—The term “Fund” means the Sys-
4 temic Resolution Fund established in accordance
5 with section 208(n).

6 (8) SPECIFIED FINANCIAL COMPANY.—The
7 term “specified financial company” means a finan-
8 cial company subject to heightened prudential stand-
9 ards, as defined in section 102.

10 (9) INSURANCE COMPANY.—The term “insur-
11 ance company” means a domestic insurance com-
12 pany, as that term is defined for purposes of title
13 11, United States Code.

14 **SEC. 202. SYSTEMIC RISK DETERMINATION.**

15 (a) WRITTEN RECOMMENDATION AND DETERMINA-
16 TION.—

17 (1) VOTE REQUIRED.—

18 (A) IN GENERAL.—Subject to subpara-
19 graph (B), FIRA and the Corporation, at the
20 request of the Secretary, the Chairperson of the
21 FIRA Board, or the Chairperson of the Agency,
22 or on their own initiative, shall consider wheth-
23 er to make the written recommendation author-
24 ized in paragraph (2) with respect to a specified
25 financial company. Such recommendation shall

1 be made upon a vote of not less than two-thirds
2 of the members of the FIRA Board then serv-
3 ing and two-thirds of the members of the board
4 of directors of the Corporation then serving.

5 (B) CASES INVOLVING BROKERS OR DEAL-
6 ERS.—In any case in which a financial company
7 has a broker or a dealer as its largest sub-
8 sidiary, as measured by total assets as the end
9 of the previous calendar quarter, the Commis-
10 sion and FIRA, at the request of the Secretary
11 or the Chairman of the FIRA Board, or on
12 their own initiative, shall consider whether to
13 make the written recommendation authorized in
14 paragraph (2) with respect to a specified finan-
15 cial company. Such recommendation shall be
16 made upon a vote of not less than two-thirds of
17 the members of the FIRA Board then serving
18 and the members of the Commission then serv-
19 ing.

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

23 (A) an evaluation of whether the specified
24 financial company is in default or in danger of
25 default;

1 (B) a description of the effect that the de-
2 fault of the specified financial company would
3 have on economic conditions or financial sta-
4 bility in the United States; and

5 (C) a recommendation regarding the na-
6 ture and the extent of actions to be taken under
7 section 203 regarding the specified financial
8 company.

9 (b) DETERMINATION BY THE SECRETARY.—Notwith-
10 standing any other provision of Federal or State law, if,
11 upon a written recommendation as provided for in sub-
12 section (a)(1), the Secretary (in consultation with the
13 President) determines that—

14 (1) the specified financial company is in default
15 or in danger of default;

16 (2) the failure of the specified financial com-
17 pany and its resolution under otherwise applicable
18 Federal or State law would have serious adverse ef-
19 fects on financial stability or economic conditions in
20 the United States; and

21 (3) any action under section 203 would avoid or
22 mitigate such adverse effects, taking into consider-
23 ation the effectiveness of the action in mitigating po-
24 tential adverse effects on the financial system or eco-
25 nomic conditions, the cost to the general fund of the

1 Treasury, and the potential to increase excessive risk
2 taking on the part of creditors, counterparties, and
3 shareholders in the specified financial company;
4 then the Secretary shall take action in accordance with
5 section 203(a); the Corporation shall take action in ac-
6 cordance with section 203(b), and the Corporation may
7 take 1 or more actions specified in section 203(c).

8 (c) DOCUMENTATION AND REVIEW.—

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

10 (A) document any determination under
11 subsection (b); and

12 (B) retain the documentation for review
13 under paragraph (2).

14 (2) GAO REVIEW.—The Comptroller General of
15 the United States shall review and report to Con-
16 gress on any determination under subsection (b), in-
17 cluding—

18 (A) the basis for the determination;

19 (B) the purpose for which any action was
20 taken pursuant thereto; and

21 (C) the likely effect of the determination
22 and such action on the incentives and conduct
23 of specified financial companies and their credi-
24 tors, counterparties, and shareholders.

1 (3) REPORT TO CONGRESS.—Not later than 30
2 days after a determination is made under subsection
3 (b), the Secretary shall provide written notice of the
4 determination to the Committee on Banking, Hous-
5 ing, and Urban Affairs of the Senate and the Com-
6 mittee on Financial Services of the House of Rep-
7 resentatives, including a description of the basis for
8 the determination.

9 (d) DEFAULT OR IN DANGER OF DEFAULT.—For
10 purposes of subsection (b), a specified financial company
11 shall be considered to be in default or in danger of default
12 if, as determined in accordance with subsection (b)—

13 (1) a case has been, or likely will promptly be,
14 commenced with respect to the specified financial
15 company under title 11, United States Code;

16 (2) the specified financial company is critically
17 undercapitalized, as such term has been or may be
18 defined by the Agency under section 111;

19 (3) the specified financial company has in-
20 curred, or is likely to incur, losses that will deplete
21 all or substantially all of its capital, and there is no
22 reasonable prospect for the company to avoid such
23 depletion without assistance under section 203;

1 (4) the assets of the specified financial company
2 are, or are likely to be, less than its obligations to
3 creditors and others; or

4 (5) the specified financial company is, or is like-
5 ly to be, unable to pay its obligations (other than
6 those subject to a bona fide dispute) in the normal
7 course of business.

8 **SEC. 203. RESOLUTION; STABILIZATION.**

9 (a) APPOINTMENT OF RECEIVER.—Upon the Sec-
10 retary making a determination in accordance with section
11 202(b), the Secretary shall appoint the Corporation as re-
12 ceiver for the covered financial company.

13 (b) CONSULTATION.—The Corporation, as receiver—

14 (1) shall consult with the primary financial reg-
15 ulatory agency of the covered financial company and
16 its covered subsidiaries for purposes of ensuring an
17 orderly resolution of the covered financial company;

18 (2) may consult with, or under section
19 208(a)(1)(B)(v) or section 208(a)(1)(K), acquire the
20 services of, any outside experts, as appropriate to in-
21 form and aid the Corporation in the resolution proc-
22 ess; and

23 (3) shall consult with the primary financial reg-
24 ulatory agencies of any subsidiaries of the covered fi-
25 nancial company that are not covered subsidiaries,

1 and coordinate with such regulators regarding the
2 treatment of such solvent subsidiaries and the separate
3 resolution of any such insolvent subsidiaries
4 under other governmental authority, as appropriate.

5 (c) **EMERGENCY STABILIZATION AFTER APPOINT-**
6 **MENT OF RECEIVER.**—Upon the appointment by the Sec-
7 retary of the Corporation as receiver under subsection (a),
8 the Corporation may, in its corporate capacity and as an
9 agency of the United States, with the approval of the Sec-
10 retary and subject to the conditions in subsections (d) and
11 (e), under such terms and conditions as the Corporation
12 deems appropriate—

13 (1) make loans to, or purchase any debt obliga-
14 tion of, the covered financial company or any cov-
15 ered subsidiary;

16 (2) purchase or guarantee against loss the as-
17 sets of the covered financial company or any covered
18 subsidiary, directly or through an entity established
19 by the Corporation for such purpose;

20 (3) assume or guarantee the obligations of the
21 covered financial company or any covered subsidiary
22 to 1 or more third parties;

23 (4) acquire any type of equity interest or secu-
24 rity of the covered financial company or any covered
25 subsidiary;

1 (5) take a lien on any or all assets of the cov-
2 ered financial company or any covered subsidiary,
3 including a first priority lien on all unencumbered
4 assets of the company or any covered subsidiary to
5 secure repayment of any transactions conducted
6 under this subsection; or

7 (6) sell or transfer all, or any part, of such ac-
8 quired assets, liabilities, obligations, equity interests,
9 or securities of the covered financial company or any
10 covered subsidiary.

11 (d) **MANDATORY TERMS AND CONDITIONS FOR ALL**
12 **STABILIZATION ACTIONS.**—The Corporation, as receiver,
13 is authorized to take the stabilization actions listed in sub-
14 section (c), only if—

15 (1) the Corporation, with the written approval
16 of the Secretary, determines that such action is nec-
17 essary for the purpose of financial stability and not
18 for the purpose of preserving the covered financial
19 company;

20 (2) the Corporation ensures that the share-
21 holders of a covered financial company do not re-
22 ceive payment until after all other claims are fully
23 paid;

1 (3) the Corporation ensures that taking any ac-
2 tion listed in subsection (c) will not prevent unse-
3 cured creditors from bearing losses; and

4 (4) the Corporation ensures that management
5 responsible for the failed condition of the covered fi-
6 nancial company is removed (if such management
7 has not already been removed at the time at which
8 the Corporation is appointed receiver).

9 (e) **RECOUPMENT OF FUNDS EXPENDED FOR SYS-**
10 **TEMIC STABILIZATION PURPOSES.**—Amounts expended
11 from the Fund by the Corporation under this section shall
12 be repaid in full to the Fund from—

13 (1) amounts received through the resolution
14 process, including—

15 (A) the proceeds of the sale of, or income
16 from, the assets of the covered financial com-
17 pany; and

18 (B) the proceeds of the transfer of any se-
19 curities obtained under subsection (c); and

20 (2) if the sources described in paragraph (1)
21 are insufficient to repay the amount of the stabiliza-
22 tion action in full, the difference shall be recouped
23 through assessments on financial companies in ac-
24 cordance with section 208(o).

1 SEC. 204. JUDICIAL REVIEW.

2 If the Corporation is appointed receiver for a covered
3 financial company, the covered financial company, may,
4 not later than 30 days thereafter, bring an action in the
5 United States district court for the judicial district in
6 which the home office of such covered financial company
7 is located, or in the United States District Court for the
8 District of Columbia, for an order requiring that the re-
9 ceiver be removed, and the court shall, upon the merits,
10 dismiss such action or direct the receiver to be removed.
11 Review of such an action shall be limited to the appoint-
12 ment of a receiver under section 203.

**13 SEC. 205. DIRECTORS NOT LIABLE FOR ACQUIESCING IN
14 APPOINTMENT OF RECEIVER.**

15 The members of the board of directors (or body per-
16 forming similar functions) of a covered financial company
17 shall not be liable to the shareholders or creditors thereof
18 for acquiescing in or consenting in good faith to—

19 (1) the appointment of the Corporation as re-
20 ceiver for the covered financial company under sec-
21 tion 203; or

22 (2) an acquisition, combination, or transfer of
23 assets or liabilities under section 208.

1 **SEC. 206. TERMINATION AND EXCLUSION OF OTHER AC-**
2 **TIONS.**

3 The Corporation as receiver for a covered financial
4 company under this title shall immediately, and by oper-
5 ation of law, terminate any case commenced with respect
6 to the covered financial company under title 11, United
7 States Code, or any proceeding under any State insolvency
8 law with respect to the covered financial company, and no
9 such case or proceeding may be commenced with respect
10 to the covered financial company at any time while the
11 Corporation acts as receiver for the covered financial com-
12 pany.

13 **SEC. 207. RULEMAKING.**

14 The Corporation may, in consultation with the Agen-
15 cy, prescribe such rules or regulations as the Corporation
16 considers necessary or appropriate to implement this title.

17 **SEC. 208. POWERS AND DUTIES OF THE CORPORATION.**

18 (a) POWERS AND AUTHORITIES.—

19 (1) GENERAL POWERS.—

20 (A) SUCCESSOR TO COVERED FINANCIAL
21 COMPANY.—The Corporation shall, upon ap-
22 pointment as receiver for a covered financial
23 company under section 203, and by operation of
24 law, succeed to—

25 (i) all rights, titles, powers, and privi-
26 leges of the covered financial company, and

1 of any stockholder, member, officer, or di-
2 rector of such institution with respect to
3 the covered financial company and the as-
4 sets of the covered financial company; and

5 (ii) title to the books, records, and as-
6 sets of any previous receiver or other legal
7 custodian of such covered financial com-
8 pany.

9 (B) OPERATION OF THE COVERED FINAN-
10 CIAL COMPANY.—The Corporation, as receiver
11 for a covered financial company, may—

12 (i) take over the assets of and operate
13 the covered financial company with all the
14 powers of the members or shareholders,
15 the directors, and the officers of the cov-
16 ered financial company, and conduct all
17 business of the covered financial company;

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

20 (iii) perform all functions of the cov-
21 ered financial company, in the name of the
22 covered financial company;

23 (iv) preserve and conserve the assets
24 and property of the covered financial com-
25 pany; and

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

4 (C) FUNCTIONS OF COVERED FINANCIAL
5 COMPANY OFFICERS, DIRECTORS, AND SHARE-
6 HOLDERS.—

7 (i) IN GENERAL.—The Corporation
8 may provide for the exercise of any func-
9 tion by any member or stockholder, direc-
10 tor, or officer of any covered financial com-
11 pany for which the Corporation has been
12 appointed as receiver under this title.

13 (ii) PRESUMPTION.—There shall be a
14 strong presumption that the Corporation,
15 as receiver for a covered financial com-
16 pany, will remove management responsible
17 for the failed condition of the covered fi-
18 nancial company (if such management has
19 not already been removed at the time at
20 which the Corporation is appointed as re-
21 ceiver).

22 (D) ADDITIONAL POWERS AS RECEIVER.—
23 The Corporation may, as receiver for a covered
24 financial company, and subject to all legally en-
25 forceable and perfected security interests, place

1 the covered financial company in liquidation
2 and proceed to realize upon the assets of the
3 covered financial company, in such manner as
4 the Corporation deems appropriate, including
5 through the sale of assets, the transfer of assets
6 to a bridge financial company established under
7 subsection (h), or the exercise of any other
8 rights or privileges granted to the receiver
9 under this section.

10 (E) ORGANIZATION OF BRIDGE COMPA-
11 NIES.—The Corporation, as receiver for a cov-
12 ered financial company may organize a bridge
13 financial company under subsection (h).

14 (F) MERGER; TRANSFER OF ASSETS AND
15 LIABILITIES.—

16 (i) IN GENERAL.—Subject to clause
17 (ii), the Corporation, as receiver for a cov-
18 ered financial company, may—

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

21 (II) transfer any asset or liability
22 of the covered financial company (in-
23 cluding assets and liabilities associ-
24 ated with any trust or custody busi-
25 ness) without obtaining any approval,

1 assignment, or consent with respect to
2 such transfer.

3 (ii) FEDERAL AGENCY APPROVAL;
4 ANTITRUST REVIEW.—With respect to a
5 transaction described in clause (i) that re-
6 quires approval by a Federal agency—

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

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

22 (III) if a filing with the Depart-
23 ment of Justice or the Federal Trade
24 Commission is required under the
25 Hart-Scott-Rodino Antitrust Improve-

1 ments Act of 1976, the waiting period
2 shall expire not later than the 30th
3 day following the date of such filing,
4 notwithstanding any other provision of
5 Federal law or any attempt by any
6 Federal agency to extend such waiting
7 period, and no further request for in-
8 formation by any Federal agency shall
9 be permitted.

10 (G) PAYMENT OF VALID OBLIGATIONS.—

11 The Corporation, as receiver for a covered fi-
12 nancial company, shall, to the extent that funds
13 are available, pay all valid obligations of the
14 covered financial company that are due and
15 payable at the time of the appointment of the
16 Corporation as receiver, in accordance with the
17 prescriptions and limitations of this title.

18 (H) SUBPOENA AUTHORITY.—

19 (i) IN GENERAL.—The Corporation,
20 as receiver for a covered financial com-
21 pany, may, for purposes of carrying out
22 any power, authority, or duty with respect
23 to the covered financial company (includ-
24 ing determining any claim against the cov-
25 ered financial company and determining

1 and realizing upon any asset of any person
2 in the course of collecting money due the
3 covered financial company), exercise any
4 power established under section 8(n) of the
5 Federal Deposit Insurance Act, as if the
6 covered financial company were an insured
7 depository institution.

8 (ii) **RULE OF CONSTRUCTION.**—This
9 section may not be construed as limiting
10 any rights that the Corporation, in any ca-
11 pacity, might otherwise have to exercise
12 any powers described in clause (i) under
13 any other provision of law.

14 (I) **INCIDENTAL POWERS.**—The Corpora-
15 tion, as receiver for a covered financial com-
16 pany, may take any action authorized by this
17 section that the Corporation determines is in
18 the best interests of the covered financial com-
19 pany, its customers, its creditors, its counter-
20 parties, or the stability of the United States fi-
21 nancial system.

22 (J) **UTILIZATION OF PRIVATE SECTOR.**—In
23 carrying out its responsibilities in the manage-
24 ment and disposition of assets from a covered
25 financial company, the Corporation, as receiver

1 for a covered financial company, may utilize the
2 services of private persons, including real estate
3 and loan portfolio asset management, property
4 management, auction marketing, legal, and bro-
5 kerage services, if such services are available in
6 the private sector, and the Corporation deter-
7 mines that utilization of such services is prac-
8 ticable, efficient, and cost effective.

9 (K) SHAREHOLDERS AND CREDITORS OF
10 COVERED FINANCIAL COMPANY.—Notwith-
11 standing any other provision of law, the Cor-
12 poration, as receiver for a covered financial
13 company, by operation of law, to the rights, ti-
14 tles, powers, and privileges described in sub-
15 paragraph (A), shall terminate all rights and
16 claims that the stockholders and creditors of
17 the covered financial company may have against
18 the assets of the covered financial company or
19 the Corporation arising out of their status as
20 stockholders or creditors, except for their right
21 to payment, resolution, or other satisfaction of
22 their claims, as permitted under this section.
23 The Corporation shall ensure that actions taken
24 under section 203(c) will not prevent share-
25 holders and unsecured creditors from bearing

1 losses, consistent with the priority of claims
2 provisions in section 208(b).

3 (L) COORDINATION WITH FOREIGN FINAN-
4 CIAL AUTHORITIES.—The Corporation, as re-
5 ceiver for a covered financial company, shall co-
6 ordinate with the appropriate foreign financial
7 authorities regarding the resolution of subsidi-
8 aries of the covered financial company that are
9 established in a country other than the United
10 States.

11 (2) AUTHORITY OF CORPORATION TO DETER-
12 MINE CLAIMS.—

13 (A) IN GENERAL.—The Corporation may,
14 as receiver for a covered financial company, de-
15 termine claims in accordance with the require-
16 ments of this subsection and regulations pre-
17 scribed under paragraph (3).

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

23 (i) promptly publish a notice to the
24 creditors of the covered financial company
25 to present their claims, together with

1 proof, to the receiver by a date specified in
2 the notice, which shall be not earlier than
3 90 days after the date of publication of
4 such notice; and

5 (ii) republish such notice 1 month and
6 2 months, respectively, after the date of
7 publication under clause (i).

8 (C) MAILING REQUIRED.—The receiver
9 shall mail a notice similar to the notice pub-
10 lished under subparagraph (B)(i) at the time of
11 such publication to any creditor shown on the
12 books of the covered financial company—

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

15 (ii) upon discovery of the name and
16 address of a claimant not appearing on the
17 books of the covered financial company,
18 not later than 30 days after the date of the
19 discovery of such name and address.

20 (3) RULEMAKING AUTHORITY RELATING TO DE-
21 TERMINATION OF CLAIMS.—

22 (A) IN GENERAL.—Subject to subsection
23 (b), the Corporation may prescribe rules and
24 regulations regarding the allowance or disallow-
25 ance of claims by the Corporation and providing

1 for administrative determination of claims and
2 review of such determination.

3 (B) EXISTING RULES.—The Corporation
4 may elect to use the regulations adopted pursu-
5 ant to section 11 of the Federal Deposit Insur-
6 ance Act (12 U.S.C. 1821) with respect to the
7 determination of claims for a covered financial
8 company, as if the covered financial company
9 were an insured depository institution.

10 (4) PROCEDURES FOR DETERMINATION OF
11 CLAIMS.—

12 (A) DETERMINATION PERIOD.—

13 (i) IN GENERAL.—Before the end of
14 the 180-day period beginning on the date
15 on which any claim against a covered fi-
16 nancial company is filed with the Corpora-
17 tion as receiver, the Corporation shall de-
18 termine whether to allow or disallow the
19 claim, and shall notify the claimant of any
20 determination with respect to such claim.

21 (ii) EXTENSION OF TIME.—The period
22 described in clause (i) may be extended by
23 a written agreement between the claimant
24 and the Corporation.

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 determination with respect to any
5 claim is mailed to the last address of the
6 claimant which appears—

7 (I) on the books of the covered fi-
8 nancial 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 any claim filed under
15 clause (i) is disallowed, the notice to the
16 claimant shall contain—

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

19 (II) the procedures available for
20 obtaining agency review of the deter-
21 mination to disallow the claim or judi-
22 cial determination of the claim.

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

1 under paragraph (2)(B)(i) by the Corporation
2 from any claimant which is proved to the satis-
3 faction of the Corporation.

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

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

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

1 a creditor or claim of security, preference,
2 or priority which is not proved to the satis-
3 faction of the Corporation.

4 (ii) PAYMENTS TO LESS THAN FULLY
5 SECURED CREDITORS.—In the case of a
6 claim of a creditor against a covered finan-
7 cial company which is secured by any prop-
8 erty or other asset of such covered finan-
9 cial company, the receiver—

10 (I) may treat the portion of such
11 claim which exceeds an amount equal
12 to the fair market value of such prop-
13 erty or other asset as an unsecured
14 claim against the covered financial
15 company; 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 or perfected security
7 interest in the assets of the covered fi-
8 nancial company securing any such
9 extension of credit.

10 (iv) NO JUDICIAL REVIEW OF DETER-
11 MINATION.—No court may review the de-
12 termination of the Corporation pursuant to
13 this subparagraph to disallow a claim.

14 (E) LEGAL EFFECT OF FILING.—

15 (i) STATUTE OF LIMITATION
16 TOLLED.—For purposes of any applicable
17 statute of limitations, the filing of a claim
18 with the Corporation shall constitute a
19 commencement of an action.

20 (ii) NO PREJUDICE TO OTHER AC-
21 TIONS.—Subject to paragraph (9), the fil-
22 ing of a claim with the Corporation shall
23 not prejudice any right of the claimant to
24 continue any action which was filed before
25 the date of appointment of the Corporation

1 as receiver for the covered financial com-
2 pany.

3 (5) PROVISION FOR JUDICIAL DETERMINATION
4 OF CLAIMS.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), a claimant may file suit on a claim
7 (or continue an action commenced before the
8 date of the appointment of the Corporation as
9 receiver) in the district or territorial court of
10 the United States for the district within which
11 the principal place of business of the covered fi-
12 nancial company is located or the United States
13 District Court for the District of Columbia (and
14 such court shall have jurisdiction to hear such
15 claim).

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

19 (i) the end of the period described in
20 paragraph (4)(A)(i) (or, if extended by
21 agreement of the Corporation and the
22 claimant, the period described in para-
23 graph (4)(A)(ii)) with respect to any claim
24 against a covered financial company for
25 which the Corporation is receiver; or

1 (ii) the date of any notice of disallow-
2 ance of such claim pursuant to paragraph
3 (4)(A)(i).

4 (C) STATUTE OF LIMITATIONS.—If any
5 claimant fails to file suit on such claim (or con-
6 tinue an action commenced before the date of
7 the appointment of the Corporation as receiver)
8 before the end of the 60-day period described in
9 subparagraph (B), the claim shall be deemed to
10 be disallowed (other than any portion of such
11 claim which was allowed by the receiver) as of
12 the end of such period, such disallowance shall
13 be final, and the claimant shall have no further
14 rights or remedies with respect to such claim.

15 (6) EXPEDITED DETERMINATION OF CLAIMS.—

16 (A) PROCEDURE REQUIRED.—The Cor-
17 poration shall establish a procedure for expe-
18 dited relief outside of the routine claims process
19 established under paragraph (4) for any claim-
20 ant that—

21 (i) alleges the existence of a legally
22 valid and enforceable or perfected security
23 interest in assets of any covered financial
24 company for which the appropriate Federal

1 regulatory agency has been appointed as
2 receiver; and

3 (ii) alleges that irreparable injury will
4 occur if the routine claims procedure is fol-
5 lowed.

6 (B) DETERMINATION PERIOD.—Before the
7 end of the 90-day period beginning on the date
8 on which any claim is filed in accordance with
9 the procedures established pursuant to subpara-
10 graph (A), the Corporation shall—

11 (i) determine—

12 (I) whether to allow or disallow
13 such claim; or

14 (II) whether such claim should be
15 determined pursuant to the proce-
16 dures established pursuant to para-
17 graph (4);

18 (ii) notify the claimant of the deter-
19 mination; and

20 (iii) if the claim is disallowed, provide
21 a statement of each reason for the dis-
22 allowance and the procedure for obtaining
23 a judicial determination.

24 (C) PERIOD FOR FILING OR RENEWING
25 SUIT.—Any claimant who files a request for ex-

1 pedited relief shall be permitted to file a suit,
2 or to continue such a suit filed before the ap-
3 pointment of the Corporation as receiver, seek-
4 ing a determination of the rights of the claim-
5 ant with respect to such security interest after
6 the earlier of—

7 (i) the end of the 90-day period begin-
8 ning on the date of the filing of a request
9 for expedited relief; or

10 (ii) the date on which the Corporation
11 denies the claim.

12 (D) STATUTE OF LIMITATIONS.—If an ac-
13 tion described in subparagraph (C) is not filed,
14 or the motion to renew a previously filed suit is
15 not made, before the end of the 30-day period
16 beginning on the date on which such action or
17 motion may be filed in accordance with sub-
18 paragraph (B), the claim shall be deemed to be
19 disallowed as of the end of such period (other
20 than any portion of such claim which was al-
21 lowed by the receiver), such disallowance shall
22 be final, and the claimant shall have no further
23 rights or remedies with respect to such claim.

24 (E) LEGAL EFFECT OF FILING.—

1 (i) STATUTE OF LIMITATION
2 TOLLED.—For purposes of any applicable
3 statute of limitations, the filing of a claim
4 with the receiver shall constitute a com-
5 mencement of an action.

6 (ii) NO PREJUDICE TO OTHER AC-
7 TIONS.—Subject to paragraph (9), the fil-
8 ing of a claim with the receiver shall not
9 prejudice any right of the claimant to con-
10 tinue any action which was filed before the
11 appointment of the Corporation as receiver
12 for the covered financial company.

13 (7) AGREEMENTS AGAINST INTEREST OF THE
14 RECEIVER.—No agreement that tends to diminish or
15 defeat the interest of the Corporation as receiver in
16 any asset acquired by the receiver under this section
17 shall be valid against the receiver, unless such agree-
18 ment is in writing and executed by an authorized of-
19 ficer or representative of the covered financial com-
20 pany, and has been since the time of its execution
21 an official record of the company.

22 (8) PAYMENT OF CLAIMS.—

23 (A) IN GENERAL.—The Corporation as re-
24 ceiver may, in its discretion and to the extent
25 funds are available, pay creditor claims, in such

1 manner and amounts as are authorized under
2 this section, which are—

3 (i) allowed by the receiver;

4 (ii) approved by the Corporation pur-
5 suant to a final determination pursuant to
6 paragraph (6); or

7 (iii) determined by the final judgment
8 of any court of competent jurisdiction.

9 (B) PAYMENT OF DIVIDENDS ON
10 CLAIMS.—The Corporation as receiver may, in
11 the sole discretion of the Corporation, and to
12 the extent otherwise permitted by this section,
13 pay dividends on proven claims at any time,
14 and no liability shall attach to the Corporation
15 (in the capacity of the Corporation as receiver),
16 by reason of any such payment, for failure to
17 pay dividends to a claimant whose claim is not
18 proved at the time of any such payment.

19 (C) RULEMAKING AUTHORITY OF COR-
20 PORATION.—The Corporation may prescribe
21 such rules, including definitions of terms, as it
22 deems appropriate to establish a single uniform
23 interest rate for, or to make payments of post
24 insolvency interest to creditors holding proven
25 claims against the receivership estates of a cov-

1 ered financial company following satisfaction by
2 the receiver for the principal amount of all
3 creditor claims.

4 (9) **SUSPENSION OF LEGAL ACTIONS.—**

5 (A) **IN GENERAL.—**After the appointment
6 of the Corporation as receiver for a covered fi-
7 nancial company, the Corporation may request
8 a stay in any non-criminal judicial action or
9 proceeding to which such covered financial com-
10 pany is or becomes a party, for a period not to
11 exceed 90 days.

12 (B) **GRANT OF STAY BY ALL COURTS RE-**
13 **QUIRED.—**Upon receipt of a request by the Cor-
14 poration pursuant to subparagraph (A) for a
15 stay of any non-criminal judicial action or pro-
16 ceeding in any court having jurisdiction of such
17 action or proceeding, the court shall grant such
18 stay as to all parties.

19 (10) **ADDITIONAL RIGHTS AND DUTIES.—**

20 (A) **PRIOR FINAL ADJUDICATION.—**The
21 Corporation shall abide by any final
22 unappealable judgment of any court of com-
23 petent jurisdiction which was rendered before
24 the appointment of the Corporation as receiver.

1 (B) RIGHTS AND REMEDIES OF RE-
2 CEIVER.—In the event of any appealable judg-
3 ment, the Corporation as receiver shall—

4 (i) have all the rights and remedies
5 available to the covered financial company
6 (before the date of appointment of the re-
7 ceiver under section 203) and the Corpora-
8 tion, including removal to Federal court
9 and all appellate rights; and

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

12 (C) NO ATTACHMENT OR EXECUTION.—No
13 attachment or execution may issue by any court
14 upon assets in the possession of the receiver for
15 a covered financial company.

16 (D) LIMITATION ON JUDICIAL REVIEW.—
17 Except as otherwise provided in this subsection,
18 no court shall have jurisdiction over—

19 (i) any claim or action for payment
20 from, or any action seeking a determina-
21 tion of rights with respect to, the assets of
22 any covered financial company for which
23 the Corporation has been appointed re-
24 ceiver, including any assets which the Cor-

1 poration may acquire from itself as such
2 receiver; or

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

6 (E) DISPOSITION OF ASSETS.—In exer-
7 cising any right, power, privilege, or authority
8 as receiver in connection with any covered fi-
9 nancial company for which the Corporation is
10 acting as receiver under this section, the Cor-
11 poration shall, to the greatest extent prac-
12 ticable, conduct its operations in a manner
13 that—

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

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

19 (iii) minimizes the cost to the general
20 fund of the Treasury;

21 (iv) mitigates the potential for serious
22 adverse effects to the financial system and
23 the United States economy;

1 (v) ensures timely and adequate com-
2 petition and fair and consistent treatment
3 of offerors; and

4 (vi) prohibits discrimination on the
5 basis of race, sex, or ethnic groups in the
6 solicitation and consideration of offers.

7 (11) STATUTE OF LIMITATIONS FOR ACTIONS
8 BROUGHT BY RECEIVER.—

9 (A) IN GENERAL.—Notwithstanding any
10 provision of any contract, the applicable statute
11 of limitations with regard to any action brought
12 by the Corporation as receiver for a covered fi-
13 nancial company shall be—

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

16 (I) the 6-year period beginning
17 on the date on which the claim ac-
18 crues; or

19 (II) the period applicable under
20 State law; and

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

23 (I) the 3-year period beginning
24 on the date on which the claim ac-
25 crues; or

1 (II) the period applicable under
2 State law.

3 (B) DETERMINATION OF THE DATE ON
4 WHICH A CLAIM ACCRUES.—For purposes of
5 subparagraph (A), the date on which the stat-
6 ute of limitations begins to run on any claim
7 described in subparagraph (A) shall be the later
8 of—

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

11 (ii) the date on which the cause of ac-
12 tion accrues.

13 (C) REVIVAL OF EXPIRED STATE CAUSES
14 OF ACTION.—

15 (i) IN GENERAL.—In the case of any
16 tort claim described in clause (ii) for which
17 the statute of limitation applicable under
18 State law with respect to such claim has
19 expired not more than 5 years before the
20 date of appointment of the Corporation as
21 receiver for a covered financial company,
22 the Corporation may bring an action as re-
23 ceiver on such claim without regard to the
24 expiration of the statute of limitation ap-
25 plicable under State law.

1 (ii) CLAIMS DESCRIBED.—A tort
2 claim referred to in clause (i) is a claim
3 arising from fraud, intentional misconduct
4 resulting in unjust enrichment, or inten-
5 tional misconduct resulting in substantial
6 loss to the covered financial company.

7 (12) FRAUDULENT TRANSFERS.—

8 (A) IN GENERAL.—The Corporation, as re-
9 ceiver for any covered financial company, may
10 avoid a transfer of any interest of an institu-
11 tion-affiliated party, or any person that the
12 Corporation determines is a debtor of the cov-
13 ered financial company, in property, or any ob-
14 ligation incurred by such party or person, that
15 was made during the 5-year period preceding
16 the date on which the Corporation was ap-
17 pointed receiver, if such party or person volun-
18 tarily or involuntarily made such transfer or in-
19 curred such liability with the intent to hinder,
20 delay, or defraud the covered financial company
21 or the Corporation.

22 (B) RIGHT OF RECOVERY.—To the extent
23 that a transfer is avoided under subparagraph
24 (A), the Corporation may recover, for the ben-
25 efit of the covered financial company, the prop-

1 erty transferred or, if a court so orders, the
2 value of such property (at the time of such
3 transfer) from—

4 (i) the initial transferee of such trans-
5 fer or the institution-affiliated party or
6 person for whose benefit such transfer was
7 made; or

8 (ii) any immediate or mediate trans-
9 feree of any such initial transferee.

10 (C) RIGHTS OF TRANSFEREE OR OBLI-
11 GEE.—The Corporation may not recover under
12 subparagraph (B)—

13 (i) any transfer that takes for value,
14 including satisfaction or securing of a
15 present or antecedent debt, in good faith;
16 or

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

19 (D) RIGHTS UNDER THIS SUBSECTION.—
20 The rights of the Corporation as receiver for a
21 covered financial company under this subsection
22 shall be superior to any rights of a trustee or
23 any other party (other than any party which is
24 a Federal agency) under title 11, United States
25 Code.

1 (E) DEFINITION.—For purposes of this
2 paragraph, the term “institution-affiliated
3 party” means—

4 (i) any director, officer, employee, or
5 controlling stockholder of, or agent for, a
6 covered financial company;

7 (ii) any shareholder, consultant, joint
8 venture partner, and any other person as
9 determined by the Corporation (by regula-
10 tion or otherwise) who participates in the
11 conduct of the affairs of a covered finan-
12 cial company; and

13 (iii) any independent contractor (in-
14 cluding any attorney, appraiser, or ac-
15 countant) who knowingly or recklessly par-
16 ticipates in any violation of any law or reg-
17 ulation, any breach of fiduciary duty, or
18 any unsafe or unsound practice, which
19 caused or is likely to cause more than a
20 minimal financial loss to, or a significant
21 adverse effect on, the covered financial
22 company.

23 (13) ATTACHMENT OF ASSETS AND OTHER IN-
24 JUNCTIVE RELIEF.—Subject to paragraph (14), any
25 court of competent jurisdiction may, at the request

1 of the Corporation as receiver for a covered financial
2 company, issue an order in accordance with Rule 65
3 of the Federal Rules of Civil Procedure, including an
4 order placing the assets of any person designated by
5 the Corporation under the control of the court and
6 appointing a trustee to hold such assets.

7 (14) STANDARDS.—

8 (A) SHOWING.—Rule 65 of the Federal
9 Rules of Civil Procedure shall apply with re-
10 spect to any proceeding under paragraph (13),
11 without regard to the requirement of such rule
12 that the applicant show that the injury, loss, or
13 damage is irreparable and immediate.

14 (B) STATE PROCEEDING.—If, in the case
15 of any proceeding in a State court, the court
16 determines that rules of civil procedure avail-
17 able under the laws of the State provide sub-
18 stantially similar protections to the right of the
19 parties to due process as provided under Rule
20 65 (as modified with respect to such proceeding
21 by subparagraph (A)), the relief sought by the
22 Corporation pursuant to paragraph (14) may be
23 requested under the laws of such State.

24 (15) TREATMENT OF CLAIMS ARISING FROM
25 BREACH OF CONTRACTS EXECUTED BY THE COR-

1 PORATION AS RECEIVER .—Notwithstanding any
2 other provision of this subsection, any final and
3 unappealable judgment for monetary damages en-
4 tered against the Corporation as receiver for a cov-
5 ered financial company for the breach of an agree-
6 ment executed or approved by the Corporation after
7 the date of its appointment shall be paid as an ad-
8 ministrative expense of the receiver. Nothing in this
9 paragraph shall be construed to limit the power of
10 a receiver to exercise any rights under contract or
11 law, including to terminate, breach, cancel, or other-
12 wise discontinue such agreement.

13 (16) ACCOUNTING AND RECORDKEEPING RE-
14 QUIREMENTS.—

15 (A) IN GENERAL.—The Corporation as re-
16 ceiver for a covered financial company shall,
17 consistent with the accounting and reporting
18 practices and procedures established by the
19 Corporation, maintain a full accounting of each
20 receivership or other disposition of any covered
21 financial company.

22 (B) ANNUAL ACCOUNTING OR REPORT.—
23 With respect to each receivership to which the
24 Corporation is appointed, the Corporation shall
25 make an annual accounting or report, as appro-

1 appropriate, available to the Secretary and the Comp-
2 troller General of the United States.

3 (C) AVAILABILITY OF REPORTS.—Any re-
4 port prepared pursuant to subparagraph (B)
5 shall be made available by the Corporation upon
6 request to any member of the public.

7 (D) RECORDKEEPING REQUIREMENT.—

8 (i) IN GENERAL.—The Corporation
9 shall prescribe such regulations and estab-
10 lish retention schedules, as the Corporation
11 determines to be appropriate, regarding
12 the management and disposition of the
13 records of a covered financial company for
14 which the Corporation is appointed as re-
15 ceiver, with due regard for—

16 (I) the costs and other burdens
17 imposed on the receiver by the main-
18 tenance of such records;

19 (II) the avoidance of duplicative
20 record retention; and

21 (III) the expected evidentiary
22 needs of the Corporation as receiver,
23 and the public regarding the records
24 of failed insured depository institu-
25 tions.

1 (ii) OLD RECORDS.—Notwithstanding
2 clause (i), and unless otherwise required by
3 applicable Federal law or court order, the
4 Corporation may, at any time, destroy any
5 records of a covered financial company for
6 which the Corporation is appointed re-
7 ceiver, provided that 10 years have elapsed
8 since the records were created or acquired
9 by the covered financial company.

10 (iii) RECORDS DEFINED.—As used in
11 this subparagraph, the terms “records”
12 and “records of a covered financial com-
13 pany” mean any document, book, paper,
14 map, photograph, microfiche, microfilm,
15 computer or electronically-created record
16 generated or maintained by the covered fi-
17 nancial company in the course of and nec-
18 essary to its transaction of business.

19 (b) PRIORITY OF EXPENSES AND UNSECURED
20 CLAIMS.—

21 (1) IN GENERAL.—Unsecured claims against a
22 covered financial company, or the Corporation as re-
23 ceiver for such covered financial company under this
24 section, that are proven to the satisfaction of the re-
25 ceiver shall have priority in the following order:

1 (A) Administrative expenses of the re-
2 ceiver.

3 (B) Any amounts owed to the United
4 States, unless the United States agrees or con-
5 sents otherwise.

6 (C) Any other general or senior liability of
7 the covered financial company (which is not a
8 liability described under subparagraph (D) or
9 (E)).

10 (D) Any obligation subordinated to general
11 creditors (which is not an obligation described
12 under subparagraph (E)).

13 (E) Any obligation to shareholders, mem-
14 bers, general partners, limited partners, or
15 other persons with interests in the equity of the
16 covered financial company arising as a result of
17 their status as shareholders, members, general
18 partners, limited partners, or other persons
19 with interests in the equity of the covered finan-
20 cial company.

21 (2) **POST-RECEIVERSHIP FINANCING PRI-**
22 **ORITY.**—In the event that the Corporation as re-
23 ceiver for a covered financial company is unable to
24 obtain unsecured credit for the covered financial
25 company from commercial sources, the Corporation

1 as receiver may obtain credit or incur debt on the
2 part of the covered financial company, which shall
3 have priority over any or all administrative expenses
4 of the receiver under paragraph (1)(A).

5 (3) CLAIMS OF THE UNITED STATES.—Unse-
6 cured claims of the United States shall, at a min-
7 imum, have a higher priority than liabilities of the
8 covered financial company that count as regulatory
9 capital.

10 (4) CREDITORS SIMILARLY SITUATED.—All
11 claimants of a covered financial company that are
12 similarly situated under paragraph (1) shall be
13 treated in a similar manner, except that the Cor-
14 poration as receiver may take any action (including
15 making payments) that does not comply with this
16 subsection, if—

17 (A) the Corporation determines that such
18 action is necessary—

19 (i) to maximize the value of the assets
20 of the covered financial company;

21 (ii) to maximize the present value re-
22 turn from the sale or other disposition of
23 the assets of the covered financial com-
24 pany;

1 (iii) to minimize the amount of any
2 loss realized upon the sale or other disposi-
3 tion of the assets of the covered financial
4 company; or

5 (iv) to contain or address serious ad-
6 verse effects on financial stability or the
7 United States economy; and

8 (B) all claimants that are similarly situ-
9 ated under paragraph (1) receive not less than
10 the amount provided in subsection (d)(2).

11 (5) SECURED CLAIMS UNAFFECTED.—This sub-
12 section shall not affect secured claims, except to the
13 extent that the security is insufficient to satisfy the
14 claim, and then only with regard to the difference
15 between the claim and the amount realized from the
16 security.

17 (6) DEFINITIONS.—As used in this subsection,
18 the term “administrative expenses of the receiver”
19 includes—

20 (A) the actual, necessary costs and ex-
21 penses incurred by the Corporation as receiver
22 in preserving the assets of a covered financial
23 company or liquidating or otherwise resolving
24 the affairs of a covered financial company; and

1 (B) any obligations that the Corporation
2 as receiver determines are necessary and appro-
3 priate to facilitate the smooth and orderly liq-
4 uidation or other resolution of the covered fi-
5 nancial company.

6 (c) PROVISIONS RELATING TO CONTRACTS ENTERED
7 INTO BEFORE APPOINTMENT OF RECEIVER.—

8 (1) AUTHORITY TO REPUDIATE CONTRACTS.—

9 In addition to any other rights that a receiver may
10 have, the Corporation as receiver for any covered fi-
11 nancial company may disaffirm or repudiate any
12 contract or lease—

13 (A) to which the covered financial company
14 is a party;

15 (B) the performance of which the Corpora-
16 tion as receiver, in the discretion of the Cor-
17 poration, determines to be burdensome; and

18 (C) the disaffirmance or repudiation of
19 which the Corporation as receiver determines,
20 in the discretion of the Corporation, will pro-
21 mote the orderly administration of the affairs of
22 the covered financial company.

23 (2) TIMING OF REPUDIATION.—The Corpora-
24 tion, as receiver for any covered financial company,
25 shall determine whether or not to exercise the rights

1 of repudiation under this subsection within a reason-
2 able period of time following the date of such ap-
3 pointment.

4 (3) CLAIMS FOR DAMAGES FOR REPUDI-
5 ATION.—

6 (A) IN GENERAL.—Except as provided in
7 paragraphs (4), (5), and (6) and subparagraph
8 (C) of this paragraph, the liability of the Cor-
9 poration, as receiver for a covered financial
10 company, for the disaffirmance or repudiation
11 of any contract pursuant to paragraph (1) shall
12 be—

13 (i) limited to actual direct compen-
14 satory damages; and

15 (ii) determined as of—

16 (I) the date of the appointment
17 of the Corporation as receiver ; or

18 (II) in the case of any contract
19 or agreement referred to in paragraph
20 (8), the date of the disaffirmance or
21 repudiation of such contract or agree-
22 ment.

23 (B) NO LIABILITY FOR OTHER DAM-
24 AGES.—For purposes of subparagraph (A), the

1 term “actual direct compensatory damages”
2 does not include—

- 3 (i) punitive or exemplary damages;
4 (ii) damages for lost profits or oppor-
5 tunity; or
6 (iii) damages for pain and suffering.

7 (C) MEASURE OF DAMAGES FOR REPUDI-
8 ATION OF QUALIFIED FINANCIAL CONTRACTS.—
9 In the case of any qualified financial contract
10 or agreement to which paragraph (8) applies,
11 compensatory damages shall be—

- 12 (i) deemed to include normal and rea-
13 sonable costs of cover or other reasonable
14 measures of damages utilized in the indus-
15 tries for such contract and agreement
16 claims; and
17 (ii) paid in accordance with this sub-
18 section and subsection (d), except as other-
19 wise specifically provided in this sub-
20 section.

21 (4) LEASES UNDER WHICH THE COVERED FI-
22 NANCIAL COMPANY IS THE LESSEE.—

23 (A) IN GENERAL.—If the Corporation as
24 receiver disaffirms or repudiates a lease under
25 which the covered financial company was the

1 lessee, the receiver shall not be liable for any
2 damages (other than damages determined pur-
3 suant to subparagraph (B)) for the
4 disaffirmance or repudiation of such lease.

5 (B) PAYMENTS OF RENT.—Notwith-
6 standing subparagraph (A), the lessor under a
7 lease to which subparagraph (A) applies shall—

8 (i) be entitled to the contractual rent
9 accruing before the later of the date on
10 which—

11 (I) the notice of disaffirmance or
12 repudiation is mailed; or

13 (II) the disaffirmance or repudi-
14 ation becomes effective, unless the les-
15 sor is in default or breach of the
16 terms of the lease;

17 (ii) have no claim for damages under
18 any acceleration clause or other penalty
19 provision in the lease; and

20 (iii) have a claim for any unpaid rent,
21 subject to all appropriate offsets and de-
22 fenses, due as of the date of the appoint-
23 ment which shall be paid in accordance
24 with this subsection and subsection (d).

1 the lease after the date of the repudi-
2 ation of such lease; and

3 (II) may offset against any rent
4 payment which accrues after the date
5 of the repudiation of the lease, any
6 damages which accrue after such date
7 due to the nonperformance of any ob-
8 ligation of the covered financial com-
9 pany under the lease after such date;
10 and

11 (ii) the Corporation as receiver shall
12 not be liable to the lessee for any damages
13 arising after such date as a result of the
14 repudiation, other than the amount of any
15 offset allowed under clause (i)(II).

16 (6) CONTRACTS FOR THE SALE OF REAL PROP-
17 erty.—

18 (A) IN GENERAL.—If the receiver repudi-
19 ates any contract (which meets the require-
20 ments of subsection (a)(7)) for the sale of real
21 property, and the purchaser of such real prop-
22 erty under such contract is in possession and is
23 not, as of the date of such repudiation, in de-
24 fault, such purchaser may either—

1 (i) treat the contract as terminated by
2 such repudiation; or

3 (ii) remain in possession of such real
4 property.

5 (B) PROVISIONS APPLICABLE TO PUR-
6 CHASER REMAINING IN POSSESSION.—If any
7 purchaser of real property under any contract
8 described in subparagraph (A) remains in pos-
9 session of such property pursuant to clause (ii)
10 of subparagraph (A)—

11 (i) the purchaser—

12 (I) shall continue to make all
13 payments due under the contract after
14 the date of the repudiation of the con-
15 tract; and

16 (II) may offset against any such
17 payments any damages which accrue
18 after such date due to the non-
19 performance (after such date) of any
20 obligation of the covered financial
21 company under the contract; and

22 (ii) the Corporation as receiver shall—

23 (I) not be liable to the purchaser
24 for any damages arising after such
25 date as a result of the repudiation,

1 other than the amount of any offset
2 allowed under clause (i)(II);

3 (II) deliver title to the purchaser
4 in accordance with the provisions of
5 the contract; and

6 (III) have no obligation under
7 the contract other than the perform-
8 ance required under subclause (II).

9 (C) ASSIGNMENT AND SALE ALLOWED.—

10 (i) IN GENERAL.—No provision of this
11 paragraph shall be construed as limiting
12 the right of the Corporation as receiver to
13 assign the contract described in subpara-
14 graph (A) and sell the property subject to
15 the contract and the provisions of this
16 paragraph.

17 (ii) NO LIABILITY AFTER ASSIGNMENT
18 AND SALE.—If an assignment and sale de-
19 scribed in clause (i) is consummated, the
20 Corporation as receiver shall have no fur-
21 ther liability under the contract described
22 in subparagraph (A) or with respect to the
23 real property which was the subject of such
24 contract.

1 (7) PROVISIONS APPLICABLE TO SERVICE CON-
2 TRACTS.—

3 (A) SERVICES PERFORMED BEFORE AP-
4 POINTMENT.—In the case of any contract for
5 services between any person and any covered fi-
6 nancial company for which the Corporation has
7 been appointed receiver, any claim of such per-
8 son for services performed before the date of
9 appointment shall be—

10 (i) a claim to be paid in accordance
11 with subsections (a), (b), and (d); and

12 (ii) deemed to have arisen as of the
13 date the receiver was appointed.

14 (B) SERVICES PERFORMED AFTER AP-
15 POINTMENT AND PRIOR TO REPUDIATION.—If,
16 in the case of any contract for services de-
17 scribed in subparagraph (A), the Corporation as
18 receiver accepts performance by the other per-
19 son before making any determination to exer-
20 cise the right of repudiation of such contract
21 under this section—

22 (i) the other party shall be paid under
23 the terms of the contract for the services
24 performed; and

1 (ii) the amount of such payment shall
2 be treated as an administrative expense of
3 the receivership.

4 (C) ACCEPTANCE OF PERFORMANCE NO
5 BAR TO SUBSEQUENT REPUDIATION.—The ac-
6 ceptance by the Corporation as receiver for
7 services referred to in subparagraph (B) in con-
8 nection with a contract described in subpara-
9 graph (B) shall not affect the right of the Cor-
10 poration as receiver to repudiate such contract
11 under this section at any time after such per-
12 formance.

13 (8) CERTAIN QUALIFIED FINANCIAL CON-
14 TRACTS.—

15 (A) RIGHTS OF PARTIES TO CONTRACTS.—
16 Subject to subsection (a)(7) and paragraphs (9)
17 and (10) of this subsection, and notwith-
18 standing any other provision of this section, any
19 other provision of Federal law, or the law of
20 any State, no person shall be stayed or prohib-
21 ited from exercising—

22 (i) any right that such person has to
23 cause the termination, liquidation, or accel-
24 eration of any qualified financial contract
25 with a covered financial company which

1 arises upon the date of appointment of the
2 Corporation as receiver for such covered fi-
3 nancial company at any time after such
4 appointment;

5 (ii) any right under any security
6 agreement or arrangement or other credit
7 enhancement related to one or more quali-
8 fied financial contracts described in clause
9 (i); and

10 (iii) any right to offset or net out any
11 termination value, payment amount, or
12 other transfer obligation arising under or
13 in connection with 1 or more contracts and
14 agreements described in clause (i), includ-
15 ing any master agreement for such con-
16 tracts or agreements.

17 (B) **APPLICABILITY OF OTHER PROVI-**
18 **SIONS.**—Subsection (a)(9) shall apply in the
19 case of any judicial action or proceeding
20 brought against the Corporation as receiver re-
21 ferred to in subparagraph (A), or the subject
22 covered financial company, by any party to a
23 contract or agreement described in subpara-
24 graph (A)(i) with such covered financial com-
25 pany.

1 (C) CERTAIN TRANSFERS NOT AVOID-
2 ABLE.—

3 (i) IN GENERAL.—Notwithstanding
4 paragraph (11), section 5242 of the Re-
5 vised Statutes of the United States or any
6 other provision of Federal or State law re-
7 lating to the avoidance of preferential or
8 fraudulent transfers, the Corporation,
9 whether acting as the Corporation or as re-
10 ceiver for a covered financial company,
11 may not avoid any transfer of money or
12 other property in connection with any
13 qualified financial contract with a covered
14 financial company.

15 (ii) EXCEPTION FOR CERTAIN TRANS-
16 FERS.—Clause (i) shall not apply to any
17 transfer of money or other property in con-
18 nection with any qualified financial con-
19 tract with a covered financial company if
20 the Corporation determines that the trans-
21 feree had actual intent to hinder, delay, or
22 defraud such company, the creditors of
23 such company, or the Corporation as re-
24 ceiver appointed for such company.

1 (D) CERTAIN CONTRACTS AND AGREE-
2 MENTS DEFINED.—For purposes of this sub-
3 section, the following definitions shall apply:

4 (i) QUALIFIED FINANCIAL CON-
5 TRACT.—The term “qualified financial
6 contract” means any securities contract,
7 commodity contract, forward contract, re-
8 purchase agreement, swap agreement, and
9 any similar agreement that the Corpora-
10 tion determines by regulation, resolution,
11 or order to be a qualified financial contract
12 for purposes of this paragraph.

13 (ii) SECURITIES CONTRACT.—The
14 term “securities contract”—

15 (I) means a contract for the pur-
16 chase, sale, or loan of a security, a
17 certificate of deposit, a mortgage loan,
18 any interest in a mortgage loan, a
19 group or index of securities, certifi-
20 cates of deposit, or mortgage loans or
21 interests therein (including any inter-
22 est therein or based on the value
23 thereof) or any option on any of the
24 foregoing, including any option to
25 purchase or sell any such security,

1 certificate of deposit, mortgage loan,
2 interest, group or index, or option,
3 and including any repurchase or re-
4 verse repurchase transaction on any
5 such security, certificate of deposit,
6 mortgage loan, interest, group or
7 index, or option (whether or not such
8 repurchase or reverse repurchase
9 transaction is a “repurchase agree-
10 ment”, as defined in clause (v));

11 (II) does not include any pur-
12 chase, sale, or repurchase obligation
13 under a participation in a commercial
14 mortgage loan unless the Corporation
15 determines by regulation, resolution,
16 or order to include any such agree-
17 ment within the meaning of such
18 term;

19 (III) means any option entered
20 into on a national securities exchange
21 relating to foreign currencies;

22 (IV) means the guarantee (in-
23 cluding by novation) by or to any se-
24 curities clearing agency of any settle-
25 ment of cash, securities, certificates of

1 deposit, mortgage loans or interests
2 therein, group or index of securities,
3 certificates of deposit or mortgage
4 loans or interests therein (including
5 any interest therein or based on the
6 value thereof) or option on any of the
7 foregoing, including any option to
8 purchase or sell any such security,
9 certificate of deposit, mortgage loan,
10 interest, group or index, or option
11 (whether or not such settlement is in
12 connection with any agreement or
13 transaction referred to in subclauses
14 (I) through (XII) (other than sub-
15 clause (II)));

16 (V) means any margin loan;

17 (VI) means any extension of
18 credit for the clearance or settlement
19 of securities transactions;

20 (VII) means any loan transaction
21 coupled with a securities collar trans-
22 action, any prepaid securities forward
23 transaction, or any total return swap
24 transaction coupled with a securities
25 sale transaction;

1 (VIII) means any other agree-
2 ment or transaction that is similar to
3 any agreement or transaction referred
4 to in this clause;

5 (IX) means any combination of
6 the agreements or transactions re-
7 ferred to in this clause;

8 (X) means any option to enter
9 into any agreement or transaction re-
10 ferred to in this clause;

11 (XI) means a master agreement
12 that provides for an agreement or
13 transaction referred to in any of sub-
14 clauses (I) through (X), other than
15 subclause (II), together with all sup-
16 plements to any such master agree-
17 ment, without regard to whether the
18 master agreement provides for an
19 agreement or transaction that is not a
20 securities contract under this clause,
21 except that the master agreement
22 shall be considered to be a securities
23 contract under this clause only with
24 respect to each agreement or trans-
25 action under the master agreement

1 that is referred to in any of sub-
2 clauses (I) through (X), other than
3 subclause (II); and

4 (XII) means any security agree-
5 ment or arrangement or other credit
6 enhancement related to any agree-
7 ment or transaction referred to in this
8 clause, including any guarantee or re-
9 imbursement obligation in connection
10 with any agreement or transaction re-
11 ferred to in this clause.

12 (iii) COMMODITY CONTRACT.—The
13 term “commodity contract” means—

14 (I) with respect to a futures com-
15 mission merchant, a contract for the
16 purchase or sale of a commodity for
17 future delivery on, or subject to the
18 rules of, a contract market or board
19 of trade;

20 (II) with respect to a foreign fu-
21 tures commission merchant, a foreign
22 future;

23 (III) with respect to a leverage
24 transaction merchant, a leverage
25 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 2
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 defini-
5 tion 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 of the Federal Reserve System)

1 or securities that are direct obliga-
2 tions of, or that are fully guaranteed
3 by, the United States or any agency
4 of the United States against the
5 transfer of funds by the transferee of
6 such certificates of deposit, eligible
7 bankers' acceptances, securities, mort-
8 gage loans, or interests with a simul-
9 taneous agreement by such transferee
10 to transfer to the transferor thereof
11 certificates of deposit, eligible bank-
12 ers' acceptances, securities, mortgage
13 loans, or interests as described above,
14 at a date certain not later than 1 year
15 after such transfers or on demand,
16 against the transfer of funds, or any
17 other similar agreement;

18 (II) does not include any repur-
19 chase obligation under a participation
20 in a commercial mortgage loan, unless
21 the Corporation determines, by regu-
22 lation, resolution, or order to include
23 any such participation within the
24 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 sub-
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 subclause.

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 determination by any court of
19 competent jurisdiction, or other public
20 authority 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 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 third 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 (G) RECORDKEEPING.—The Corporation,
16 in consultation with the Agency, may prescribe
17 regulations requiring that the covered financial
18 company maintain such records with respect to
19 qualified financial contracts (including market
20 valuations) as the Corporation determines to be
21 necessary or appropriate in order to assist the
22 Corporation as receiver for the covered financial
23 company in being able to exercise its rights and
24 fulfill its obligations under this paragraph or
25 paragraph (9) or (10).

1 (9) TRANSFER OF QUALIFIED FINANCIAL CON-
2 TRACTS.—

3 (A) IN GENERAL.—In making any transfer
4 of assets or liabilities of a covered financial
5 company in default which includes any qualified
6 financial contract, the Corporation as receiver
7 for such covered financial company shall ei-
8 ther—

9 (i) transfer to one financial institu-
10 tion, other than a financial institution for
11 which a conservator, receiver, trustee in
12 bankruptcy, or other legal custodian has
13 been appointed or which is otherwise the
14 subject of a bankruptcy or insolvency pro-
15 ceeding—

16 (I) all qualified financial con-
17 tracts between any person or any af-
18 filiate of such person and the covered
19 financial company in default;

20 (II) all claims of such person or
21 any affiliate of such person against
22 such covered financial company under
23 any such contract (other than any
24 claim which, under the terms of any
25 such contract, is subordinated to the

1 claims of general unsecured creditors
2 of such company);

3 (III) all claims of such covered fi-
4 nancial company against such person
5 or any affiliate of such person under
6 any such contract; and

7 (IV) all property securing or any
8 other credit enhancement for any con-
9 tract described in subclause (I) or any
10 claim described in subclause (II) or
11 (III) under any such contract; or

12 (ii) transfer none of the qualified fi-
13 nancial contracts, claims, property or other
14 credit enhancement referred to in clause (i)
15 (with respect to such person and any affil-
16 iate of such person).

17 (B) TRANSFER TO FOREIGN BANK, FINAN-
18 CIAL INSTITUTION, OR BRANCH OR AGENCY
19 THEREOF.—In transferring any qualified finan-
20 cial contracts and related claims and property
21 under subparagraph (A)(i), the Corporation as
22 receiver for the covered financial company shall
23 not make such transfer to a foreign bank, fi-
24 nancial institution organized under the laws of
25 a foreign country, or a branch or agency of a

1 foreign bank or financial institution unless,
2 under the law applicable to such bank, financial
3 institution, branch or agency, to the qualified
4 financial contracts, and to any netting contract,
5 any security agreement or arrangement or other
6 credit enhancement related to one or more
7 qualified financial contracts, the contractual
8 rights of the parties to such qualified financial
9 contracts, netting contracts, security agree-
10 ments or arrangements, or other credit en-
11 hancements are enforceable substantially to the
12 same extent as permitted under this section.

13 (C) TRANSFER OF CONTRACTS SUBJECT
14 TO THE RULES OF A CLEARING ORGANIZA-
15 TION.—In the event that the Corporation as re-
16 ceiver for a covered financial company transfers
17 any qualified financial contract and related
18 claims, property, or credit enhancement pursu-
19 ant to subparagraph (A)(i) and such contract is
20 cleared by or subject to the rules of a clearing
21 organization, the clearing organization shall not
22 be required to accept the transferee as a mem-
23 ber by virtue of the transfer.

24 (D) DEFINITIONS.—For purposes of this
25 paragraph—

1 (i) the term “financial institution”
2 means a broker or dealer, a depository in-
3 stitution, a futures commission merchant,
4 a bridge financial company, or any other
5 institution determined by the Corporation,
6 by regulation, to be a financial institution;
7 and

8 (ii) the term “clearing organization”
9 has the same meaning as in section 402 of
10 the Federal Deposit Insurance Corporation
11 Improvement Act of 1991.

12 (10) NOTIFICATION OF TRANSFER.—

13 (A) IN GENERAL.—

14 (i) NOTICE.—The Corporation shall
15 provide notice in accordance with clause

16 (ii), if—

17 (I) the Corporation as receiver
18 for a covered financial company in de-
19 fault or in danger of default transfers
20 any assets or liabilities of the covered
21 financial company; and

22 (II) the transfer includes any
23 qualified financial contract.

24 (ii) TIMING.—The Corporation as re-
25 ceiver for a covered financial company

1 shall notify any person who is a party to
2 any contract described in clause (i) of such
3 transfer not later than 5:00 p.m. (eastern
4 time) on the third business day following
5 the date of the appointment of the Cor-
6 poration as receiver.

7 (B) CERTAIN RIGHTS NOT ENFORCE-
8 ABLE.—

9 (i) RECEIVERSHIP.—A person who is
10 a party to a qualified financial contract
11 with a covered financial company may not
12 exercise any right that such person has to
13 terminate, liquidate, or net such contract
14 under paragraph (8)(A) solely by reason of
15 or incidental to the appointment under this
16 section of the Corporation as receiver for
17 the covered financial company (or the in-
18 solvency or financial condition of the cov-
19 ered financial company for which the Cor-
20 poration has been appointed as receiver)—

21 (I) until 5:00 p.m. (eastern time)
22 on the third business day following
23 the date of the appointment; or

24 (II) after the person has received
25 notice that the contract has been

1 transferred pursuant to paragraph
2 (9)(A).

3 (ii) NOTICE.—For purposes of this
4 paragraph, the Corporation as receiver for
5 a covered financial company shall be
6 deemed to have notified a person who is a
7 party to a qualified financial contract with
8 such covered financial company, if the Cor-
9 poration has taken steps reasonably cal-
10 culated to provide notice to such person by
11 the time specified in subparagraph (A).

12 (C) TREATMENT OF BRIDGE FINANCIAL
13 COMPANY.—For purposes of paragraph (9), a
14 bridge financial company shall not be consid-
15 ered to be a covered financial company for
16 which a conservator, receiver, trustee in bank-
17 ruptcy, or other legal custodian has been ap-
18 pointed, or which is otherwise the subject of a
19 bankruptcy or insolvency proceeding.

20 (D) BUSINESS DAY DEFINED.—For pur-
21 poses of this paragraph, the term “business
22 day” means any day other than any Saturday,
23 Sunday, or any day on which either the New
24 York Stock Exchange or the Federal Reserve
25 Bank of New York is closed.

1 (11) DISAFFIRMANCE OR REPUDIATION OF
2 QUALIFIED FINANCIAL CONTRACTS.—In exercising
3 the rights of disaffirmance or repudiation of the
4 Corporation as receiver with respect to any qualified
5 financial contract to which a covered financial com-
6 pany is a party, the Corporation shall either—

7 (A) disaffirm or repudiate all qualified fi-
8 nancial contracts between—

9 (i) any person or any affiliate of such
10 person; and

11 (ii) the covered financial company in
12 default; or

13 (B) disaffirm or repudiate none of the
14 qualified financial contracts referred to in sub-
15 paragraph (A) (with respect to such person or
16 any affiliate of such person).

17 (12) CERTAIN SECURITY AND CUSTOMER IN-
18 TERESTS NOT AVOIDABLE.—No provision of this
19 subsection shall be construed as permitting the
20 avoidance of any—

21 (A) legally enforceable or perfected secu-
22 rity interest in any of the assets of any covered
23 financial company except where such an inter-
24 est is taken in contemplation of the insolvency
25 of the covered financial company or with the in-

1 tent to hinder, delay, or defraud the company
2 or the creditors of such company; or

3 (B) legally enforceable interest in customer
4 property.

5 (13) AUTHORITY TO ENFORCE CONTRACTS.—

6 (A) IN GENERAL.—The Corporation as re-
7 ceiver for a covered financial company may en-
8 force any contract, other than a liability insur-
9 ance contract of a director or officer or a finan-
10 cial institution bond, entered into by the cov-
11 ered financial company, notwithstanding any
12 provision of the contract providing for termi-
13 nation, default, acceleration, or exercise of
14 rights upon, or solely by reason of, insolvency
15 or the appointment of or the exercise of rights
16 or powers by a receiver .

17 (B) CERTAIN RIGHTS NOT AFFECTED.—
18 No provision of this paragraph may be con-
19 strued as impairing or affecting any right of the
20 Corporation as receiver to enforce or recover
21 under a liability insurance contract of a director
22 or officer or financial institution bond under
23 other applicable law.

24 (C) CONSENT REQUIREMENT.—

1 (i) IN GENERAL.—Except as otherwise
2 provided by this section, no person may ex-
3 ercise any right or power to terminate, ac-
4 celerate, or declare a default under any
5 contract to which the covered financial
6 company is a party, or to obtain possession
7 of or exercise control over any property of
8 the covered financial company or affect
9 any contractual rights of the covered finan-
10 cial company, without the consent of the
11 Corporation as receiver for the covered fi-
12 nancial company, during the 90-day period
13 beginning on the date of the appointment
14 of the Corporation as receiver.

15 (ii) CERTAIN EXCEPTIONS.—No provi-
16 sion of this subparagraph shall apply to a
17 director or officer liability insurance con-
18 tract or a financial institution bond, to the
19 rights of parties to certain qualified finan-
20 cial contracts pursuant to paragraph (8),
21 or to the rights of parties to netting con-
22 tracts pursuant to subtitle A of title IV of
23 the Federal Deposit Insurance Corporation
24 Improvement Act of 1991 (12 U.S.C. 4401
25 et seq.), or shall be construed as permit-

1 ting the Corporation as receiver to fail to
2 comply with otherwise enforceable provi-
3 sions of such contract.

4 (14) EXCEPTION FOR FEDERAL RESERVE
5 BANKS AND CORPORATION SECURITY INTEREST.—

6 No provision of this subsection shall apply with re-
7 spect to—

8 (A) any extension of credit from any Fed-
9 eral reserve bank or the Corporation to any cov-
10 ered financial company; or

11 (B) any security interest in the assets of
12 the covered financial company securing any
13 such extension of credit.

14 (15) SAVINGS CLAUSE.—The meanings of terms
15 used in this subsection are applicable for purposes of
16 this subsection only, and shall not be construed or
17 applied so as to challenge or affect the characteriza-
18 tion, definition, or treatment of any similar terms
19 under any other statute, regulation, or rule, includ-
20 ing the Gramm-Leach-Bliley Act, the Legal Cer-
21 tainty for Bank Products Act of 2000, the securities
22 laws (as that term is defined in section 3(a)(47) of
23 the Securities Exchange Act of 1934), and the Com-
24 modity Exchange Act.

25 (d) VALUATION OF CLAIMS IN DEFAULT.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of Federal law or the law of any State, and
3 regardless of the method utilized by the Corporation
4 for a covered financial company, including trans-
5 actions authorized under subsection (h), this sub-
6 section shall govern the rights of the creditors of any
7 such covered financial company.

8 (2) MAXIMUM LIABILITY.—The maximum li-
9 ability of the Corporation, acting as receiver for a
10 covered financial company or in any other capacity,
11 to any person having a claim against the Corpora-
12 tion as receiver or the covered financial company for
13 which the Corporation is appointed shall equal the
14 amount that such claimant would have received if—

15 (A) a determination had not been made
16 under section 202 with respect to the covered
17 financial company; and

18 (B) the covered financial company had
19 been liquidated under title 11, United States
20 Code, or any case related to title 11, United
21 States Code (including a case initiated by the
22 Securities Investor Protection Corporation with
23 respect to a financial company that is subject to
24 the Securities Investor Protection Act of 1970),
25 or any State insolvency law.

1 (3) ADDITIONAL PAYMENTS AUTHORIZED.—

2 (A) IN GENERAL.—The Corporation, as re-
3 ceiver for a covered financial company and with
4 the approval of the Secretary, may make addi-
5 tional payments or credit additional amounts to
6 or with respect to or for the account of any
7 claimant or category of claimants of the covered
8 financial company, if the Corporation deter-
9 mines that such payments or credits are nec-
10 essary or appropriate—

11 (i) to minimize losses to the Corpora-
12 tion as receiver from the resolution of the
13 covered financial company under this sec-
14 tion; or

15 (ii) to prevent or mitigate serious ad-
16 verse effects to financial stability or the
17 United States economy.

18 (B) MANNER OF PAYMENT.—The Corpora-
19 tion may make payments or credit amounts
20 under subparagraph (A) directly to the claim-
21 ants or may make such payments or credit such
22 amounts to a company other than a covered fi-
23 nancial company or a bridge financial company
24 established with respect thereto in order to in-

1 duce such other company to accept liability for
2 such claims.

3 (e) LIMITATION ON COURT ACTION.—Except as pro-
4 vided in this section or at the request of the receiver ap-
5 pointed for a covered financial company under this section,
6 no court may take any action to restrain or affect the exer-
7 cise of powers or functions of the receiver hereunder.

8 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

9 (1) IN GENERAL.—A director or officer of a
10 covered financial company may be held personally
11 liable for monetary damages in any civil action de-
12 scribed in paragraph (2) by, on behalf of, or at the
13 request or direction of the Corporation, which action
14 is prosecuted wholly or partially for the benefit of
15 the Corporation—

16 (A) acting as receiver for such covered fi-
17 nancial company;

18 (B) acting based upon a suit, claim, or
19 cause of action purchased from, assigned by, or
20 otherwise conveyed by the Corporation as re-
21 ceiver ; or

22 (C) acting based upon a suit, claim, or
23 cause of action purchased from, assigned by, or
24 otherwise conveyed in whole or in part by a cov-
25 ered financial company or its affiliate in con-

1 nection with assistance provided under section
2 203.

3 (2) **ACTIONS COVERED.**—Paragraph (1) shall
4 apply with respect to actions for gross negligence,
5 including any similar conduct or conduct that dem-
6 onstrates a greater disregard of a duty of care (than
7 gross negligence) including intentional tortious con-
8 duct, as such terms are defined and determined
9 under applicable State law.

10 (3) **SAVINGS CLAUSE.**—Nothing in this sub-
11 section shall impair or affect any right of the Cor-
12 poration under other applicable law.

13 (g) **DAMAGES.**—In any proceeding related to any
14 claim against a director, officer, employee, agent, attorney,
15 accountant, or appraiser of a covered financial company,
16 or any other party employed by or providing services to
17 a covered financial company, recoverable damages deter-
18 mined to result from the improvident or otherwise im-
19 proper use or investment of any assets of the covered fi-
20 nancial company shall include principal losses and appro-
21 priate interest.

22 (h) **BRIDGE FINANCIAL COMPANIES.**—

23 (1) **ORGANIZATION.**—

24 (A) **PURPOSE.**—The Corporation, as re-
25 ceiver for one or more covered financial compa-

1 nies or in anticipation of being appointed re-
2 ceiver for one or more covered financial compa-
3 nies, may organize one or more bridge financial
4 companies in accordance with this subsection.

5 (B) **AUTHORITIES.**—Upon the creation of
6 a bridge financial company under subparagraph
7 (A) with respect to a covered financial com-
8 pany, such bridge financial company may—

9 (i) assume such liabilities (including
10 liabilities associated with any trust or cus-
11 tody business) of such covered financial
12 company as the Corporation may, in its
13 discretion, determine to be appropriate;

14 (ii) purchase such assets (including
15 assets associated with any trust or custody
16 business) of such covered financial com-
17 pany as the Corporation may, in its discre-
18 tion, determine to be appropriate; and

19 (iii) perform any other temporary
20 function which the Corporation may, in its
21 discretion, prescribe in accordance with
22 this section.

23 (2) **CHARTER AND ESTABLISHMENT.**—

24 (A) **ESTABLISHMENT.**—The Corporation,
25 as receiver for a covered financial company,

1 may grant a Federal charter to and approve ar-
2 ticles of association for one or more bridge fi-
3 nancial company or companies with respect to
4 such covered financial company which shall, by
5 operation of law and immediately upon issuance
6 of its charter and approval of its articles of as-
7 sociation, be established and operate in accord-
8 ance with, and subject to, such charter, articles,
9 and this section.

10 (B) MANAGEMENT.—Upon its establish-
11 ment, a bridge financial company shall be under
12 the management of a board of directors ap-
13 pointed by the Corporation.

14 (C) ARTICLES OF ASSOCIATION.—The arti-
15 cles of association and organization certificate
16 of a bridge financial company shall have such
17 terms as the Corporation may provide, and
18 shall be executed by such representatives as the
19 Corporation may designate.

20 (D) TERMS OF CHARTER; RIGHTS AND
21 PRIVILEGES.—Subject to and in accordance
22 with the provisions of this subsection, the Cor-
23 poration shall—

24 (i) establish the terms of the charter
25 of a bridge financial company and the

1 rights, powers, authorities and privileges of
2 a bridge financial company granted by the
3 charter or as an incident thereto; and

4 (ii) provide for, and establish the
5 terms and conditions governing, the man-
6 agement (including the bylaws and the
7 number of directors of the board of direc-
8 tors) and operations of the bridge financial
9 company.

10 (E) TRANSFER OF RIGHTS AND PRIVI-
11 LEGES OF COVERED FINANCIAL COMPANY.—

12 (i) IN GENERAL.—Notwithstanding
13 any other provision of Federal law or the
14 law of any State, the Corporation may pro-
15 vide for a bridge financial company to suc-
16 ceed to and assume any rights, powers, au-
17 thorities or privileges of the covered finan-
18 cial company with respect to which the
19 bridge financial company was established
20 and, upon such determination by the Cor-
21 poration, the bridge financial company
22 shall immediately and by operation of law
23 succeed to and assume such rights, powers,
24 authorities, and privileges.

1 (ii) EFFECTIVE WITHOUT AP-
2 PROVAL.—Any succession to or assumption
3 by a bridge financial company of rights,
4 powers, authorities or privileges of a cov-
5 ered financial company under clause (i) or
6 otherwise shall be effective without any
7 further approval under Federal or State
8 law, assignment, or consent with respect
9 thereto.

10 (F) CORPORATE GOVERNANCE AND ELEC-
11 TION AND DESIGNATION OF BODY OF LAW.—To
12 the extent permitted by the Corporation and
13 consistent with this section and any rules, regu-
14 lations or directives issued by the Corporation
15 under this section, a bridge financial company
16 may elect to follow the corporate governance
17 practices and procedures as are applicable to a
18 corporation incorporated under the general cor-
19 poration law of the State of Delaware, or the
20 State of incorporation or organization of the
21 covered financial company with respect to which
22 the bridge financial company was established,
23 as such law may be amended from time to time.

24 (G) CAPITAL.—

1 (i) CAPITAL NOT REQUIRED.—Not-
2 withstanding any other provision of Fed-
3 eral or State law, a bridge financial com-
4 pany may, if permitted by the Corporation,
5 operate without any capital or surplus, or
6 with such capital or surplus as the Cor-
7 poration may in its discretion determine to
8 be appropriate.

9 (ii) NO CONTRIBUTION BY APPRO-
10 PRIATE FEDERAL REGULATORY AGENCY
11 REQUIRED.—The Corporation is not re-
12 quired to pay capital into a bridge finan-
13 cial company or to issue any capital stock
14 on behalf of a bridge financial company es-
15 tablished under this subsection.

16 (iii) AUTHORITY.—If the Corporation
17 determines that such action is advisable,
18 the Corporation may cause capital stock or
19 other securities of a bridge financial com-
20 pany established with respect to a covered
21 financial company to be issued and offered
22 for sale in such amounts and on such
23 terms and conditions as the financial may,
24 in its discretion, determine.

1 (3) INTERESTS IN AND ASSETS AND OBLIGA-
2 TIONS OF COVERED FINANCIAL COMPANY.—Notwith-
3 standing paragraph (1) or (2) or any other provision
4 of law—

5 (A) a bridge financial company shall as-
6 sume, acquire, or succeed to the assets or liabil-
7 ities of a covered financial company (including
8 the assets or liabilities associated with any trust
9 or custody business) only to the extent that
10 such assets or liabilities are transferred by the
11 Corporation to the bridge financial company in
12 accordance with, and subject to the restrictions
13 set forth in, paragraph (1)(B); and

14 (B) a bridge financial company shall not
15 assume, acquire, or succeed to any obligation
16 that a covered financial company for which the
17 Corporation has been appointed as receiver may
18 have to any shareholder, member, general part-
19 ner, limited partner, or other person with an in-
20 terest in the equity of the covered financial
21 company that arises as a result of the status of
22 that person having an equity claim in the cov-
23 ered financial company.

24 (4) BRIDGE FINANCIAL COMPANY TREATED AS
25 BEING IN DEFAULT FOR CERTAIN PURPOSES.—A

1 bridge financial company shall be treated as a cov-
2 ered financial company in default at such times and
3 for such purposes as the Corporation may, in its dis-
4 cretion, determine.

5 (5) TRANSFER OF ASSETS AND LIABILITIES.—

6 (A) TRANSFER OF ASSETS AND LIABIL-
7 ITIES.—The Corporation, as receiver for a cov-
8 ered financial company, may transfer any assets
9 and liabilities of a covered financial company
10 (including any assets or liabilities associated
11 with any trust or custody business) to one or
12 more bridge financial companies in accordance
13 with and subject to the restrictions of para-
14 graph (1).

15 (B) SUBSEQUENT TRANSFERS.—At any
16 time after the establishment of a bridge finan-
17 cial company with respect to a covered financial
18 company, the Corporation, as receiver, may
19 transfer any assets and liabilities of such cov-
20 ered financial company as the Corporation may,
21 in its discretion, determine to be appropriate in
22 accordance with and subject to the restrictions
23 of paragraph (1).

24 (C) TREATMENT OF TRUST OR CUSTODY
25 BUSINESS.—For purposes of this paragraph,

1 the trust or custody business, including fidu-
2 ciary appointments, held by any covered finan-
3 cial company is included among its assets and
4 liabilities.

5 (D) EFFECTIVE WITHOUT APPROVAL.—
6 The transfer of any assets or liabilities, includ-
7 ing those associated with any trust or custody
8 business of a covered financial company to a
9 bridge financial company shall be effective with-
10 out any further approval under Federal or
11 State law, assignment, or consent with respect
12 thereto.

13 (E) EQUITABLE TREATMENT OF SIMI-
14 LARLY SITUATED CREDITORS.—The Corpora-
15 tion shall treat all creditors of a covered finan-
16 cial company that are similarly situated under
17 subsection (b)(1) in a similar manner in exer-
18 cising the authority of the Corporation under
19 this subsection to transfer any assets or liabil-
20 ities of the covered financial company to one or
21 more bridge financial companies established
22 with respect to such covered financial company,
23 except that the Corporation may take actions
24 (including making payments) that do not com-
25 ply with this subparagraph, if—

1 (i) the Corporation determines that
2 such actions are necessary—

3 (I) to maximize the value of the
4 assets of the covered financial com-
5 pany;

6 (II) to maximize the present
7 value return from the sale or other
8 disposition of the assets of the covered
9 financial company;

10 (III) to minimize the amount of
11 any loss realized upon the sale or
12 other disposition of the assets of the
13 covered financial company; or

14 (IV) to contain or address serious
15 adverse effects to financial stability or
16 the United States economy; and

17 (ii) all creditors that are similarly sit-
18 uated under subsection (b)(1) receive not
19 less than the amount provided in sub-
20 section (d)(2).

21 (F) **LIMITATION ON TRANSFER OF LIABIL-**
22 **ITIES.**—Notwithstanding any other provision of
23 law, the aggregate amount of liabilities of a cov-
24 ered financial company that are transferred to,
25 or assumed by, a bridge financial company from

1 a covered financial company may not exceed the
2 aggregate amount of the assets of the covered
3 financial company that are transferred to, or
4 purchased by, the bridge financial company
5 from the covered financial company.

6 (6) STAY OF JUDICIAL ACTION.—Any judicial
7 action to which a bridge financial company becomes
8 a party by virtue of its acquisition of any assets or
9 assumption of any liabilities of a covered financial
10 company shall be stayed from further proceedings
11 for a period of not longer than 45 days (or such
12 longer period as may be agreed to upon the consent
13 of all parties) at the request of the bridge financial
14 company.

15 (7) AGREEMENTS AGAINST INTEREST OF THE
16 BRIDGE FINANCIAL COMPANY.—No agreement that
17 tends to diminish or defeat the interest of the bridge
18 financial company in any asset of a covered financial
19 company acquired by the bridge financial company
20 shall be valid against the bridge financial company,
21 unless such agreement is in writing and executed by
22 an authorized officer or representative of the covered
23 financial company, and has been, since the time of
24 its execution on official record of the company.

25 (8) NO FEDERAL STATUS.—

1 (A) AGENCY STATUS.—A bridge financial
2 company is not an agency, establishment, or in-
3 strumentality of the United States.

4 (B) EMPLOYEE STATUS.—Representatives
5 for purposes of paragraph (1)(B), directors, of-
6 ficers, employees, or agents of a bridge financial
7 company are not, solely by virtue of service in
8 any such capacity, officers or employees of the
9 United States. Any employee of the Corporation
10 or of any Federal instrumentality who serves at
11 the request of the Corporation as a representa-
12 tive for purposes of paragraph (1)(B), director,
13 officer, employee, or agent of a bridge financial
14 company shall not—

15 (i) solely by virtue of service in any
16 such capacity lose any existing status as
17 an officer or employee of the United States
18 for purposes of title 5, United States Code,
19 or any other provision of law; or

20 (ii) receive any salary or benefits for
21 service in any such capacity with respect to
22 a bridge financial company in addition to
23 such salary or benefits as are obtained
24 through employment with the Corporation
25 or such Federal instrumentality.

1 (9) **EXEMPT TAX STATUS.**—Notwithstanding
2 any other provision of Federal or State law, a bridge
3 financial company, its franchise, property, and in-
4 come shall be exempt from all taxation now or here-
5 after imposed by the United States, by any territory,
6 dependency, or possession thereof, or by any State,
7 county, municipality, or local taxing authority.

8 (10) **FEDERAL AGENCY APPROVAL; ANTITRUST**
9 **REVIEW.**—If a transaction involving the merger or
10 sale of a bridge financial company requires approval
11 by a Federal agency, the transaction may not be
12 consummated before the 5th calendar day after the
13 date of approval by the Federal agency responsible
14 for such approval with respect thereto. If, in connec-
15 tion with any such approval a report on competitive
16 factors from the Attorney General is required, the
17 Federal agency responsible for such approval shall
18 promptly notify the Attorney General of the pro-
19 posed transaction and the Attorney General shall
20 provide the required report within 10 days of the re-
21 quest. If a filing is required under the Hart-Scott-
22 Rodino Antitrust Improvements Act of 1976 with
23 the Department of Justice or the Federal Trade
24 Commission, the waiting period shall expire not later
25 than the 30th day following such filing notwith-

1 standing any other provision of Federal law or any
2 attempt by any Federal agency to extend such wait-
3 ing period, and no further request for information
4 by any Federal agency shall be permitted.

5 (11) DURATION OF BRIDGE FINANCIAL COM-
6 PANY.—Subject to paragraphs (13) and (14), the
7 status of a bridge financial company as such shall
8 terminate at the end of the 2-year period following
9 the date on which it was granted a charter. The
10 Corporation may, in its discretion, extend the status
11 of the bridge financial company as such for no more
12 than 3 additional 1-year periods.

13 (12) TERMINATION OF BRIDGE FINANCIAL COM-
14 PANY STATUS.—The status of any bridge financial
15 company as such shall terminate upon the earliest
16 of—

17 (A) the merger or consolidation of the
18 bridge financial company with a company that
19 is not a bridge financial company;

20 (B) at the election of the Corporation, the
21 sale of a majority of the capital stock of the
22 bridge financial company to a company other
23 than the Corporation and other than another
24 bridge financial company;

1 (C) the sale of 80 percent, or more, of the
2 capital stock of the bridge financial company to
3 a person other than the Corporation and other
4 than another bridge financial company;

5 (D) at the election of the Corporation, ei-
6 ther the assumption of all or substantially all of
7 the liabilities of the bridge financial company by
8 a company that is not a bridge financial com-
9 pany, or the acquisition of all or substantially
10 all of the assets of the bridge financial company
11 by a company that is not a bridge financial
12 company, or other entity as permitted under
13 applicable law; and

14 (E) the expiration of the period provided in
15 paragraph (11), or the earlier dissolution of the
16 bridge financial company, as provided in para-
17 graph (14).

18 (13) EFFECT OF TERMINATION EVENTS.—

19 (A) MERGER OR CONSOLIDATION.—A
20 merger or consolidation as provided in para-
21 graph (12)(A) shall be conducted in accordance
22 with, and shall have the effect provided in, the
23 provisions of applicable law. For the purpose of
24 effecting such a merger or consolidation, the
25 bridge financial company shall be treated as a

1 corporation organized under the laws of the
2 State of Delaware (unless the law of another
3 State has been selected by the bridge financial
4 company in accordance with paragraph (2)(F)),
5 and the Corporation shall be treated as the sole
6 shareholder thereof, notwithstanding any other
7 provision of State or Federal law.

8 (B) CHARTER CONVERSION.—Following
9 the sale of a majority of the capital stock of the
10 bridge financial company, as provided in para-
11 graph (12)(B), the Corporation may amend the
12 charter of the bridge financial company to re-
13 flect the termination of the status of the bridge
14 financial company as such, whereupon the com-
15 pany shall have all of the rights, powers, and
16 privileges under its constituent documents and
17 applicable Federal or State law. In connection
18 therewith, the Corporation may take such steps
19 as may be necessary or convenient to reincor-
20 porate the bridge financial company under the
21 laws of a State and, notwithstanding any provi-
22 sions of Federal or State law, such State-char-
23 tered corporation shall be deemed to succeed by
24 operation of law to such rights, titles, powers
25 and interests of the bridge financial company as

1 the Corporation may provide, with the same ef-
2 fect as if the bridge financial company had
3 merged with the State-chartered corporation
4 under provisions of the corporate laws of such
5 State.

6 (C) SALE OF STOCK.—Following the sale
7 of 80 percent or more of the capital stock of a
8 bridge financial company, as provided in para-
9 graph (12)(C), the company shall have all of
10 the rights, powers, and privileges under its con-
11 stituent documents and applicable Federal or
12 State law. In connection therewith, the Cor-
13 poration may take such steps as may be nec-
14 essary or convenient to reincorporate the bridge
15 financial company under the laws of a State
16 and, notwithstanding any provisions of Federal
17 or State law, the State-chartered corporation
18 shall be deemed to succeed by operation of law
19 to such rights, titles, powers and interests of
20 the bridge financial company as the Corpora-
21 tion may provide, with the same effect as if the
22 bridge financial company had merged with the
23 State-chartered corporation under provisions of
24 the corporate laws of such State.

1 (D) ASSUMPTION OF LIABILITIES AND
2 SALE OF ASSETS.—Following the assumption of
3 all or substantially all of the liabilities of the
4 bridge financial company, or the sale of all or
5 substantially all of the assets of the bridge fi-
6 nancial company, as provided in paragraph
7 (12)(D), at the election of the Corporation, the
8 bridge financial company may retain its status
9 as such for the period provided in paragraph
10 (11) or may be dissolved at the election of the
11 Corporation.

12 (E) AMENDMENTS TO CHARTER.—Fol-
13 lowing the consummation of a transaction de-
14 scribed in subparagraph (A), (B), (C), or (D)
15 of paragraph (12), the charter of the resulting
16 company shall be amended to reflect the termi-
17 nation of bridge financial company status, if ap-
18 propriate.

19 (14) DISSOLUTION OF BRIDGE FINANCIAL COM-
20 PANY.—

21 (A) IN GENERAL.—Notwithstanding any
22 other provision of Federal or State law, if the
23 status of a bridge financial company as such
24 has not previously been terminated by the oc-

1 currence of an event specified in subparagraph
2 (A), (B), (C), or (D) of paragraph (12)—

3 (i) the Corporation may, in its discre-
4 tion, dissolve the bridge financial company
5 in accordance with this paragraph at any
6 time; and

7 (ii) the Corporation shall promptly
8 commence dissolution proceedings in ac-
9 cordance with this paragraph upon the ex-
10 piration of the 2-year period following the
11 date on which the bridge financial com-
12 pany was chartered, or any extension
13 thereof, as provided in paragraph (11).

14 (B) PROCEDURES.—The Corporation shall
15 remain the receiver for a bridge financial com-
16 pany for the purpose of dissolving the bridge fi-
17 nancial company. The Corporation as receiver
18 for a bridge financial company shall wind up
19 the affairs of the bridge financial company in
20 conformity with the provisions of law relating to
21 the liquidation of covered financial companies
22 under this title. With respect to any such bridge
23 financial company, the Corporation as receiver
24 shall have all the rights, powers, and privileges
25 and shall perform the duties related to the exer-

1 eise of such rights, powers, or privileges granted
2 by law to the Corporation as receiver for a cov-
3 ered financial company under this title and,
4 notwithstanding any other provision of law, in
5 the exercise of such rights, powers, and privi-
6 leges, the Corporation shall not be subject to
7 the direction or supervision of any State agency
8 or other Federal agency.

9 (15) **AUTHORITY TO OBTAIN CREDIT.**—

10 (A) **IN GENERAL.**—A bridge financial com-
11 pany may obtain unsecured credit and issue un-
12 secured debt.

13 (B) **INABILITY TO OBTAIN CREDIT.**—If a
14 bridge financial company is unable to obtain
15 unsecured credit or issue unsecured debt, the
16 Corporation may authorize the obtaining of
17 credit or the issuance of debt by the bridge fi-
18 nancial company—

19 (i) with priority over any or all of the
20 obligations of the bridge financial com-
21 pany;

22 (ii) secured by a lien on property of
23 the bridge financial company that is not
24 otherwise subject to a lien; or

1 (iii) secured by a junior lien on prop-
2 erty of the bridge financial company that
3 is subject to a lien.

4 (C) LIMITATIONS.—

5 (i) IN GENERAL.—The Corporation,
6 after notice and a hearing, may authorize
7 the obtaining of credit or the issuance of
8 debt by a bridge financial company that is
9 secured by a senior or equal lien on prop-
10 erty of the bridge financial company that
11 is subject to a lien, only if—

12 (I) the bridge financial company
13 is unable to otherwise obtain such
14 credit or issue such debt; and

15 (II) there is adequate protection
16 of the interest of the holder of the lien
17 on the property with respect to which
18 such senior or equal lien is proposed
19 to be granted.

20 (D) BURDEN OF PROOF.—In any hearing
21 under this subsection, the Corporation has the
22 burden of proof on the issue of adequate protec-
23 tion.

24 (16) EFFECT ON DEBTS AND LIENS.—The re-
25 versal or modification on appeal of an authorization

1 under this subsection to obtain credit or issue debt,
2 or of a grant under this section of a priority or a
3 lien, does not affect the validity of any debt so
4 issued, or any priority or lien so granted, to an enti-
5 ty that extended such credit in good faith, whether
6 or not such entity knew of the pendency of the ap-
7 peal, unless such authorization and the issuance of
8 such debt, or the granting of such priority or lien,
9 were stayed pending appeal.

10 (i) **SHARING RECORDS.**—If the Corporation has been
11 appointed as receiver for a covered financial company,
12 FIRA shall make all records relating to the covered finan-
13 cial company available to the Corporation, which may be
14 used by the Corporation in any manner that the Corpora-
15 tion determines to be appropriate.

16 (j) **EXPEDITED PROCEDURES FOR CERTAIN**
17 **CLAIMS.**—

18 (1) **TIME FOR FILING NOTICE OF APPEAL.**—

19 The notice of appeal of any order, whether interlocu-
20 tory or final, entered in any case brought by the
21 Corporation against a covered financial company's
22 director, officer, employee, agent, attorney, account-
23 ant, or appraiser or any other person employed by
24 or providing services to a covered financial company
25 shall be filed not later than 30 days after the date

1 of entry of the order. The hearing of the appeal shall
2 be held not later than 120 days after the date of the
3 notice of appeal. The appeal shall be decided not
4 later than 180 days after the date of the notice of
5 appeal.

6 (2) SCHEDULING.—A court of the United
7 States shall expedite the consideration of any case
8 brought by the Corporation against a director, offi-
9 cer, employee, agent, attorney, accountant, or ap-
10 praiser of a covered financial company or any other
11 person employed by or providing services to a cov-
12 ered financial company. As far as practicable, the
13 court shall give such case priority on its docket.

14 (3) JUDICIAL DISCRETION.—The court may
15 modify the schedule and limitations stated in para-
16 graphs (1) and (2) in a particular case, based on a
17 specific finding that the ends of justice that would
18 be served by making such a modification would out-
19 weigh the best interest of the public in having the
20 case resolved expeditiously.

21 (k) FOREIGN INVESTIGATIONS.—The Corporation, as
22 receiver for any covered financial company, and for pur-
23 poses of carrying out any power, authority, or duty with
24 respect to a covered financial company—

1 (1) may request the assistance of any foreign fi-
2 nancial authority and provide assistance to any for-
3 eign financial authority in accordance with section
4 8(v) of the Federal Deposit Insurance Act, as if the
5 covered financial company were an insured deposi-
6 tory institution, the Corporation were the appro-
7 priate Federal banking agency for the company, and
8 any foreign financial authority were the foreign
9 banking authority; and

10 (2) may maintain an office to coordinate for-
11 eign investigations or investigations on behalf of for-
12 eign financial authorities.

13 (l) **PROHIBITION ON ENTERING SECRECY AGREE-**
14 **MENTS AND PROTECTIVE ORDERS.**—The Corporation
15 may not enter into any agreement or approve any protec-
16 tive order which prohibits the Corporation from disclosing
17 the terms of any settlement of an administrative or other
18 action for damages or restitution brought by the Corpora-
19 tion in its capacity as receiver for a covered financial com-
20 pany.

21 (m) **LIQUIDATION OF CERTAIN COVERED FINANCIAL**
22 **COMPANIES OR BRIDGE FINANCIAL COMPANIES.**—

23 (1) **IN GENERAL.**—Except as specifically pro-
24 vided in this section, and notwithstanding any other
25 provision of law, the Corporation, in connection with

1 the liquidation of any covered financial company or
2 bridge financial company with respect to which the
3 Corporation has been appointed as receiver, shall—

4 (A) in the case of any covered financial
5 company or bridge financial company that is or
6 has a subsidiary that is a stockbroker, but is
7 not a member of the Securities Investor Protec-
8 tion Corporation, apply the provisions of sub-
9 chapter III of chapter 7 of title 11, United
10 States Code, in respect of the distribution to
11 any customer of all customer name securities
12 and customer property, as if such covered fi-
13 nancial company or bridge financial company
14 were a debtor for purposes of such subchapter;
15 or

16 (B) in the case of any covered financial
17 company or bridge financial company that is a
18 commodity broker, apply the provisions of sub-
19 chapter IV of chapter 7 of title 11, United
20 States Code, in respect of the distribution to
21 any customer of all customer property, as if
22 such covered financial company or bridge finan-
23 cial company were a debtor for purposes of
24 such subchapter.

1 (2) DEFINITIONS.—For purposes of this sub-
2 section—

3 (A) the terms “customer”, “customer
4 name securities” and “customer property” have
5 the same meanings as in section 741 of title II,
6 United States Code; and

7 (B) the terms “commodity broker” and
8 “stockbroker” have the same meanings as in
9 section 101 of title 11, United States Code.

10 (n) SYSTEMIC RESOLUTION FUND.—

11 (1) ESTABLISHMENT.—There is established in
12 the Treasury of the United States a separate fund
13 to be known as the “Systemic Resolution Fund”,
14 which shall be available without further appropria-
15 tion for the cost of actions authorized by this title,
16 upon a determination made under section 202 to the
17 Corporation to carry out the authorities contained in
18 this title, including the payment of administrative
19 expenses, the payment of principal and interest by
20 the Corporation on obligations issued under para-
21 graph (3), and the exercise of authorities under sec-
22 tion 203.

23 (2) PROCEEDS.—Amounts received by the Cor-
24 poration (including amounts borrowed under para-
25 graph (3) and assessments received under subsection

1 (o), but excluding amounts received by any covered
2 financial company when the Corporation is acting in
3 its capacity as receiver for such company, and ex-
4 cluding amounts credited to the appropriate financ-
5 ing account as a means of financing credit activity,
6 as applicable) shall be deposited into the Fund.

7 (3) CAPITALIZATION OF FUND.—

8 (A) CORPORATION AUTHORIZED TO ISSUE
9 OBLIGATIONS.—In order to capitalize the Fund,
10 upon the Secretary making the determination
11 provided for in section 202, the Corporation is
12 authorized to issue obligations to the Secretary.

13 (B) SECRETARY AUTHORIZED TO PUR-
14 CHASE OBLIGATIONS.—The Secretary may, in
15 the discretion of the Secretary, and under such
16 terms and conditions as the Secretary may re-
17 quire, purchase or agree to purchase any obliga-
18 tions issued under subparagraph (A), and for
19 such purpose the Secretary is authorized to use
20 as a public debt transaction the proceeds of the
21 sale of any securities issued under chapter 31
22 of title 31, United States Code, and the pur-
23 poses for which securities may be issued under
24 chapter 31 of title 31, United States Code, are
25 extended to include such purchases.

1 (C) INTEREST RATE.—Each purchase of
2 obligations by the Secretary under this para-
3 graph shall be upon such terms and conditions
4 as to yield a return at a rate not less than a
5 rate determined by the Secretary, taking into
6 consideration the current average yield on out-
7 standing marketable obligations of the United
8 States of comparable maturity.

9 (D) SECRETARY AUTHORIZED TO SELL OB-
10 LIGATIONS.—The Secretary may sell, upon such
11 terms and conditions and at such price or
12 prices as the Secretary shall determine, any of
13 the obligations acquired under this paragraph.

14 (E) PUBLIC DEBT TRANSACTIONS.—All
15 purchases and sales by the Secretary of such
16 obligations under this paragraph shall be treat-
17 ed as public debt transactions of the United
18 States, and the proceeds from the sale of any
19 obligations acquired by the Secretary under this
20 paragraph shall be deposited into the Treasury
21 of the United States as miscellaneous receipts.

22 (o) RECOVERY OF EXPENDED FUNDS FROM FINAN-
23 CIAL COMPANIES.—

24 (1) RISK-BASED ASSESSMENTS.—

1 (A) IN GENERAL.—The Corporation shall
2 recover the amount of funds expended out of
3 the Fund under subsection (n) and which have
4 not otherwise been recouped.

5 (B) AUTHORIZED ACTION.—Steps to re-
6 cover such amounts shall include one or more
7 risk-based assessments on financial companies,
8 in such amount and manner, and subject to
9 such terms and conditions as the Corporation
10 determines, with the concurrence of the Sec-
11 retary, and the Agency, are necessary to pay in
12 full the obligations issued by Corporation to the
13 Secretary, within 60 months from the date of
14 the determination of the Secretary under sec-
15 tion 202.

16 (C) EXTENSIONS AUTHORIZED.—The Cor-
17 poration may, with the approval of the Sec-
18 retary and the Agency for Financial Stability,
19 extend the time period under paragraph (2), if
20 the Corporation determines that an extension is
21 necessary to avoid a serious adverse effect on
22 the financial system or economic conditions in
23 the United States.

24 (2) ASSESSMENT THRESHOLD AND GRADUATED
25 ASSESSMENT RATE.—

1 (A) IN GENERAL.—The Corporation shall
2 not impose assessments under this subsection
3 any financial company whose total assets are
4 less than \$10,000,000,000.

5 (B) GRADUATED ASSESSMENTS.—The Cor-
6 poration shall assess any financial company
7 with \$10,000,000,000 or more in total assets
8 on a graduated basis that assesses financial
9 companies with greater assets at a higher rate.

10 (C) CONSIDERATION OF OTHER ASSIST-
11 ANCE.—The Corporation shall impose assess-
12 ments under this subsection at a higher rate on
13 any financial company that received payments
14 or credit pursuant to section 208(d)(3).

15 (3) RISK-BASED ASSESSMENT CONSIDER-
16 ATIONS.—In imposing assessments under para-
17 graphs (1) and (2), the Corporation shall—

18 (A) take into account economic conditions
19 generally affecting financial companies, so as to
20 allow assessments to be lower during less favor-
21 able economic conditions;

22 (B) take into account any assessments im-
23 posed on a subsidiary of a financial company
24 that is—

1 (i) an insured depository institution
2 pursuant to section 7 or section
3 13(c)(4)(G) of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1817, 1823(c)(4)(G));

5 (ii) a member of the Securities Inves-
6 tor Protection Corporation pursuant to
7 section 4 of the Securities Investor Protec-
8 tion Act of 1970 (15 U.S.C. 78ddd); or

9 (iii) an insurance company pursuant
10 to applicable State law to cover (or reim-
11 burse payments made to cover) the costs of
12 rehabilitation, liquidation, or other State
13 insolvency proceeding with respect to one
14 or more insurance companies;

15 (C) take into account the risks presented
16 by the financial company to financial stability
17 or the United States economy and the extent to
18 which the financial company has benefitted, or
19 likely would benefit, from the resolution of a fi-
20 nancial company under this title;

21 (D) take into account such other factors as
22 the Corporation deems appropriate;

23 (E) distinguish among different classes of
24 assets or different types of financial companies
25 (including distinguishing among different types

1 of financial companies, based on their levels of
2 capital and leverage) in order to establish com-
3 parable assessment bases among financial com-
4 panies subject to this subsection;

5 (F) establish the parameters for the grad-
6 uated assessment requirement in paragraph (2);
7 and

8 (G) take into account the extent and type
9 of off-balance-sheet exposures of financial com-
10 panies.

11 (4) **COLLECTION OF INFORMATION.**—The Cor-
12 poration may impose on covered financial companies
13 described in paragraph (2) such collection of infor-
14 mation requirements that the Corporation deems
15 necessary to carry out this subsection, after a deter-
16 mination under section 202.

17 (5) **RULEMAKING.**—The Corporation shall, in
18 consultation with the Secretary and the Agency, pre-
19 scribe regulations to carry out this subsection.

20 **SEC. 209. CLARIFICATION OF PROHIBITION REGARDING**
21 **CONCEALMENT OF ASSETS FROM RECEIVER**
22 **OR LIQUIDATING AGENT.**

23 (a) **IN GENERAL.**—Section 1032(1) of title 18,
24 United States Code, is amended by inserting “the Federal
25 Deposit Insurance Corporation acting as receiver for a

1 covered financial company, in accordance with title II of
2 the Restoring American Financial Stability Act of 2009,”
3 before “or 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 **SEC. 210. MISCELLANEOUS PROVISIONS.**

8 (a) BANKRUPTCY CODE AMENDMENT.—Section
9 109(b)(2) of title 11, United States Code, is amended by
10 inserting “covered financial company (as that term is de-
11 fined in section 201 of the Restoring American Financial
12 Stability Act of 2009),” after “domestic insurance com-
13 pany,”.

14 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
15 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12
16 U.S.C. 1823(c)(4)(G)(i)) is amended by inserting before
17 the period at the end the following: “, except that the de-
18 termination with regard to the exercise of authority by the
19 Corporation under this subparagraph shall apply only to
20 an insured depository institution, except where severe fi-
21 nancial conditions exist which threaten the stability of a
22 significant number of insured depository institutions”.

23 (c) FEDERAL DEPOSIT INSURANCE CORPORATION
24 IMPROVEMENT ACT OF 1991.—Section 403(a) of the Fed-
25 eral Deposit Insurance Corporation Improvement Act of

1 1991 (12 U.S.C. 4403(a)) is amended by inserting “sec-
2 tion 208(c) of the Restoring American Financial Stability
3 Act of 2009, section 1367 of the Federal Housing Enter-
4 prises Financial Safety and Soundness Act of 1992 (12
5 U.S.C. 4617(d)),” after “section 11(e) of the Federal De-
6 posit Insurance Act,”.

7 **TITLE III—FINANCIAL INSTITU-**
8 **TIONS REGULATORY ADMIN-**
9 **ISTRATION**

10 **SEC. 301. PURPOSES.**

11 The purposes of this title are—

12 (1) to provide for the safe and sound operation
13 of the banking system of the United States;

14 (2) to preserve and protect the dual system of
15 Federal and State-chartered depository institutions;

16 (3) to ensure the fair and appropriate super-
17 vision of each depository institution, regardless of
18 the size or type of charter of the depository institu-
19 tion;

20 (4) to streamline and rationalize the supervision
21 of depository institutions and the holding companies
22 of depository institutions; and

23 (5) to improve the supervision of systemically
24 significant financial institutions.

1 **SEC. 302. DEFINITIONS.**

2 In this title—

3 (1) the term “Chairperson” means the Chair-
4 person of FIRA;

5 (2) the term “community bank” means a small
6 national bank, a small State bank, a small Federal
7 savings association, and a small State savings asso-
8 ciation, as determined by FIRA;

9 (3) the term “covered institution” means an in-
10 stitution described in paragraphs (1) through (9) of
11 section 3(q) of the Federal Deposit Insurance Act
12 (12 U.S.C. 1813(q)), as amended by this Act;

13 (4) the term “FIRA Board” means the Board
14 of Directors of the Financial Institutions Regulatory
15 Administration established under section 312;

16 (5) the term “specified financial institution”
17 has the same meaning as in section 101;

18 (6) the term “transfer date” means the date es-
19 tablished under section 321;

20 (7) the term “transferred employee” means an
21 employee transferred to FIRA under section 352;
22 and

23 (8) the term “Vice Chairperson” means the
24 Vice Chairperson of FIRA.

1 **Subtitle A—Financial Institutions**
2 **Regulatory Administration Es-**
3 **tablished**

4 **SEC. 311. ESTABLISHMENT OF ADMINISTRATION.**

5 (a) ESTABLISHMENT.—There is established the Fi-
6 nancial Institutions Regulatory Administration, which
7 shall be an independent establishment, as defined in sec-
8 tion 104 of title 5, United States Code.

9 (b) INDEPENDENCE OF FIRA, AGENCY AND
10 CFPA.—

11 (1) FEDERAL INFORMATION POLICY.—Section
12 3502(5) of title 44, United States Code, is amended
13 by inserting “the Financial Institutions Regulatory
14 Administration, Agency for Financial Stability, Con-
15 sumer Financial Protection Agency,” after “the Se-
16 curities and Exchange Commission,”.

17 (2) INDEPENDENCE OF FINANCIAL REGU-
18 LATORY AGENCIES.—Section 111 of Public Law 93–
19 495 (12 U.S.C. 250) is amended by striking “Comp-
20 troller of the Currency, the Director of the Office of
21 Thrift Supervision” and inserting “Financial Insti-
22 tutions Regulatory Administration, Agency for Fi-
23 nancial Stability, Consumer Financial Protection
24 Agency”.

1 **SEC. 312. BOARD OF DIRECTORS OF THE ADMINISTRATION.**

2 (a) FIRA BOARD ESTABLISHED.—The management
3 of FIRA shall be vested in a Board of Directors.

4 (b) MEMBERS.—The members of the FIRA Board
5 shall be—

6 (1) the Chairperson of the Corporation;

7 (2) the Chairman of the Board of Governors;

8 and

9 (3) 3 individuals appointed by the President, by
10 and with the advice and consent of the Senate, from
11 among individuals who are citizens of the United
12 States.

13 (c) POLITICAL AFFILIATION.—Not more than 3 of
14 the members of the FIRA Board may be members of the
15 same political party.

16 (d) CHAIRPERSON AND VICE CHAIRPERSON.—

17 (1) CHAIRPERSON.—One of the appointed
18 members of the FIRA Board shall be designated by
19 the President, by and with the advice and consent
20 of the Senate, to serve as Chairperson of the FIRA
21 Board for a term of 5 years.

22 (2) VICE CHAIRPERSON.—One of the appointed
23 members of the FIRA Board shall be—

24 (A) appointed from among individuals hav-
25 ing experience in the supervision of State
26 banks; and

1 (B) designated by the President, by and
2 with the advice and consent of the Senate, to
3 serve as Vice Chairperson of the FIRA Board.

4 (3) **ACTING CHAIRPERSON.**—In the event of a
5 vacancy in the position of Chairperson, or during the
6 absence or disability of the Chairperson, the Vice
7 Chairperson shall act as Chairperson.

8 (e) **TERMS.**—

9 (1) **TERM OF APPOINTED MEMBERS.**—Each
10 member of the FIRA Board appointed under sub-
11 section (b)(3) shall be appointed for a term of 6
12 years.

13 (2) **INTERIM APPOINTMENTS.**—An individual
14 appointed to fill a vacancy occurring before the expi-
15 ration of the term of a member shall be appointed
16 only for the remainder of the term of the member.

17 (3) **CONTINUATION OF SERVICE.**—The Chair-
18 person, Vice Chairperson, and each appointed mem-
19 ber of the FIRA Board may continue to serve after
20 the expiration of the term of office to which such
21 member was appointed until a successor has been
22 appointed and qualified.

23 (f) **VACANCY.**—

1 (1) IN GENERAL.—Any vacancy on the FIRA
2 Board shall be filled in the manner in which the
3 original appointment was made.

4 (2) ACTING OFFICIALS MAY SERVE.—In the
5 event of a vacancy in the office of the Chairperson
6 of the Corporation or the office of Chairman of the
7 Board of Governors, and pending the appointment of
8 a successor, or during the absence or disability of
9 the Chairperson of the Corporation or the Chairman
10 of the Board of Governors, the acting Chairperson
11 of the Corporation or the acting Chairman of the
12 Board of Governors, as the case may be, shall be a
13 member of the FIRA Board in the place of the
14 Chairperson of the Corporation or the Chairman of
15 the Board of Governors.

16 (g) INELIGIBILITY FOR OTHER OFFICES.—

17 (1) POSTSERVICE RESTRICTION.—

18 (A) IN GENERAL.—No member of the
19 FIRA Board may hold any office, position, or
20 employment in any covered institution during—

21 (i) the period of service of such mem-
22 ber on the FIRA Board; and

23 (ii) the 2-year period beginning on the
24 date on which such member ceases to serve
25 on the FIRA Board.

1 (B) EXCEPTION FOR MEMBERS WHO
2 SERVE FULL TERM.—The limitation contained
3 in subparagraph (A)(ii) shall not apply to any
4 member who has ceased to serve on the FIRA
5 Board after serving the full term for which such
6 member was appointed.

7 (2) RESTRICTION DURING SERVICE.—No mem-
8 ber of the FIRA Board may—

9 (A) be an officer, director, or employee of
10 any covered institution, Federal reserve bank,
11 or Federal home loan bank; or

12 (B) hold stock in any covered institution.

13 (3) CERTIFICATION.—Upon taking office, each
14 member of the FIRA Board shall—

15 (A) certify under oath that the member
16 has complied with this subsection; and

17 (B) file the certification under subpara-
18 graph (A) with the secretary of the FIRA
19 Board.

20 (h) COMPENSATION.—

21 (1) COMPENSATION OF CHAIRPERSON.—The
22 Chairperson shall receive compensation at the rate
23 prescribed for level II of the Executive Schedule
24 under section 5313 of title 5, United States Code.

1 (2) OTHER BOARD MEMBERS.—The 3 ap-
2 pointed members of the FIRA Board shall each be
3 compensated at the rate prescribed for level III of
4 the Executive Schedule under section 5314 of title
5 5, United States Code.

6 (3) CONFORMING AMENDMENTS.—Title 5,
7 United States Code, is amended—

8 (A) in section 5313, by adding at the end
9 the following:

10 “Chairperson of the Financial Institutions Reg-
11 ulatory Administration.

12 “Director of the Consumer Financial Protection
13 Agency.

14 “Chairperson of the board of directors of the
15 Agency for Financial Stability.”; and

16 (B) in section 5314, by adding at the end
17 the following:

18 “Board members of the Financial Institutions
19 Regulatory Administration (3).

20 “Board members of the Consumer Financial
21 Protection Agency (3).

22 “Board member of the Agency for Financial
23 Stability (1).”.

1 **SEC. 313. STATE BANK ADVISORY BOARD.**

2 (a) ADVISORY BOARD ESTABLISHED.—There is es-
3 tablished within FIRA a State Bank Advisory Board,
4 which shall—

5 (1) make recommendations to the FIRA Board
6 concerning—

7 (A) rules, guidelines, and orders of FIRA;

8 (B) the streamlining of the regulation and
9 supervision of State-chartered community banks
10 that are well managed and well capitalized (as
11 those terms are defined in section 38 of the
12 Federal Deposit Insurance Act (12 U.S.C.
13 1831o)), including the extent to which the
14 States, in lieu of FIRA, are able to carry out
15 additional supervision of small State-chartered
16 community banks, in a manner that is con-
17 sistent with the safe and sound operation of
18 such small State-chartered community banks;
19 and

20 (C) any proposed supervisory, examination,
21 or enforcement policies of FIRA that may af-
22 fect the financial performance, condition, effi-
23 ciency, or competitiveness of State banks; and

24 (2) inform the FIRA Board about developments
25 and issues relating to State banks and the super-
26 vision of State banks.

1 (b) MEMBERS.—

2 (1) NUMBER OF MEMBERS; TERM.—The Advi-
3 sory Board shall have 5 members, who shall serve
4 for terms of 2 years.

5 (2) APPOINTMENT.—The members of the Advi-
6 sory Board shall be appointed by the FIRA Board,
7 in consultation with the Conference of State Bank-
8 ing Supervisors, from among the State bank com-
9 missioners, in rotation.

10 (c) PERSONNEL, ADMINISTRATIVE SERVICES, AND
11 PROPERTY.—FIRA shall provide to the Advisory Board
12 such personnel, administrative services, and property as
13 FIRA, in consultation with the Advisory Board, deter-
14 mines are necessary to carry out this section.

15 (d) FEDERAL ADVISORY COMMITTEE ACT.—The pro-
16 visions of the Federal Advisory Committee Act (5 U.S.C.
17 App.) shall not apply to the Advisory Board.

18 **SEC. 314. DIVISION OF COMMUNITY BANK SUPERVISION.**

19 (a) DIVISION ESTABLISHED.—There is established
20 within FIRA, the Division of Community Bank Super-
21 vision.

22 (b) PURPOSES.—The Division of Community Bank
23 Supervision shall—

1 (1) make recommendations to the FIRA Board
2 for standards appropriate to the supervision of com-
3 munity banks;

4 (2) examine and supervise community banks;
5 and

6 (3) promote a healthy community bank sector.

7 (c) **DIRECTOR.**—The head of the Division of Commu-
8 nity Bank Supervision shall be the Director of Community
9 Bank Supervision, who shall—

10 (1) be appointed by the Chairperson; and

11 (2) report directly to the Chairperson.

12 (d) **STAFF.**—FIRA shall—

13 (1) employ such staff as are necessary to carry
14 out this section; and

15 (2) ensure that employees of the Division of
16 Community Bank Supervision have experience or
17 training in community bank supervision.

18 (e) **PROHIBITION.**—No member of the FIRA Board
19 or other employee of FIRA may promote the conversion
20 of a State bank to a national bank, subject to rules issued
21 by the FIRA Board, in consultation with the Advisory
22 Board.

1 **Subtitle B—Transfer of Powers and**
2 **Duties to FIRA**

3 **SEC. 321. TRANSFER DATE.**

4 (a) TRANSFER DATE.—Except as provided in sub-
5 section (b), the term “transfer date” means the date that
6 is 1 year after the date of enactment of this Act.

7 (b) EXTENSION PERMITTED.—

8 (1) NOTICE REQUIRED.—The Secretary, in con-
9 sultation with the Comptroller of the Currency, the
10 Director of the Office of Thrift Supervision, the
11 Board of Governors, and the Corporation, may des-
12 ignate a transfer date that is not later than 18
13 months after the date of enactment of this Act, if
14 the Secretary transmits to the Committee on Bank-
15 ing, Housing, and Urban Affairs of the Senate and
16 the Committee on Financial Services of the House of
17 Representatives—

18 (A) a written determination that orderly
19 implementation of this title is not feasible be-
20 fore the date that is 1 year after the date of en-
21 actment of this Act;

22 (B) an explanation of why an extension is
23 necessary for the orderly implementation of this
24 title; and

1 (C) a description of the steps that will be
2 taken to effect an orderly and timely implemen-
3 tation of this title within the extended time pe-
4 riod.

5 (2) PUBLICATION OF NOTICE.—Not later than
6 180 days after the date of enactment of this Act, the
7 Secretary shall publish in the Federal Register no-
8 tice of any date designated under paragraph (1).

9 **SEC. 322. POWERS AND DUTIES TRANSFERRED.**

10 (a) EFFECTIVE DATE.—This section, and the amend-
11 ments made by this section, shall take effect on the trans-
12 fer date.

13 (b) OFFICE OF THE COMPTROLLER OF THE CUR-
14 RENCY.—Except as provided in title X, all functions of
15 the Office of the Comptroller of the Currency and of the
16 Comptroller of the Currency are transferred to FIRA.

17 (c) OFFICE OF THRIFT SUPERVISION.—Except as
18 provided in title X, all functions of the Office of Thrift
19 Supervision and the Director of the Office of Thrift Super-
20 vision are transferred to FIRA.

21 (d) CERTAIN FUNCTIONS OF THE CORPORATION.—

22 (1) IN GENERAL.—All functions of the Corpora-
23 tion relating to the supervision or regulation of State
24 nonmember banks and foreign banks having an in-

1 sured branch are transferred to FIRA, including all
2 functions of the Corporation under—

3 (A) sections 7(a), 20, 21, 22, 27, 30(e),
4 32, 33, 34, 35, 36, 37, and 39, subsections (b)
5 through (n), (r), (s), (u), and (v) of section 8,
6 subsections (b)(2)(A), (c), (d), and (e) of sec-
7 tion 10, and subsections (c) (other than para-
8 graph (1)), (d), (g), (i), (j), (l), (o), and (p) of
9 section 18 of the Federal Deposit Insurance
10 Act;

11 (B) the Depository Institution Manage-
12 ment Interlocks Act;

13 (C) the Federal Financial Institutions Ex-
14 amination Council Act of 1978;

15 (D) the Right to Financial Privacy Act of
16 1978;

17 (E) the Bank Service Corporation Act;

18 (F) the Expedited Funds Availability Act;

19 (G) the Financial Institutions Reform, Re-
20 covery, and Enforcement Act of 1989;

21 (H) the Federal Deposit Insurance Cor-
22 poration Improvement Act of 1991; and

23 (I) the Depository Institutions Disaster
24 Relief Act of 1992.

1 (2) FUNCTIONS NOT TRANSFERRED.—Notwith-
2 standing paragraph (1), no functions of the Cor-
3 poration relating to deposit insurance or resolution
4 are transferred to FIRA.

5 (3) CONFORMING AMENDMENTS.—Section 3(q)
6 of the Federal Deposit Insurance Act (12 U.S.C.
7 1813(q)) is amended by striking “means—” and all
8 that follows through the end of the subsection and
9 inserting the following: “means FIRA, in the case
10 of—

11 “(1) any national banking association

12 “(2) any branch or agency of a foreign bank;

13 “(3) any State insured bank;

14 “(4) any foreign bank that operates a branch in
15 the United States;

16 “(5) any agency or commercial lending com-
17 pany, other than a Federal agency;

18 “(6) supervisory or regulatory proceedings aris-
19 ing from the authority given to the Board of Gov-
20 ernors under section 7(e)(1) of the International
21 Banking Act of 1978 (12 U.S.C. 3105(c)(1)), in-
22 cluding such proceedings under the Financial Insti-
23 tutions Supervisory Act of 1966;

24 “(7) any bank holding company and any sub-
25 sidiary of a bank holding company; and

1 “(8) any savings association or any savings and
2 loan holding company.”.

3 (e) CERTAIN FUNCTIONS OF THE BOARD OF GOV-
4 ERNORS.—

5 (1) IN GENERAL.—All functions of the Board of
6 Governors (and any Federal Reserve bank) relating
7 to the supervision of member banks, branches or
8 agencies of foreign banks with respect to any provi-
9 sion of the Federal Reserve Act which is made appli-
10 cable under the International Banking Act of 1978,
11 foreign banks that do not operate an insured branch,
12 agencies or commercial lending companies (other
13 than a Federal agency), supervisory or regulatory
14 proceedings arising from the authority given to the
15 Board of Governors under section 7(c)(1) of the
16 International Banking Act of 1978 (12 U.S.C.
17 3105(e)(1)), including such proceedings under the
18 Financial Institutions Supervisory Act of 1966 (12
19 U.S.C. 1464 et seq.), bank holding companies, and
20 the subsidiaries of bank holding companies are
21 transferred to FIRA, including the functions of the
22 Board of Governors under—

23 (A) sections 6 (other than the 1st and 2d
24 paragraphs), 9, 19(h), 23, 23A, 23B, 24(a),

1 24A, 25, 25A, and 29, and subsections (g) and
2 (h) of section 22, of the Federal Reserve Act;
3 (B) the Bank Holding Company Act of
4 1956;
5 (C) the Bank Holding Company Act
6 Amendments of 1970;
7 (D) the International Banking Act of
8 1978;
9 (E) sections 20, 31, and 32 of the Banking
10 Act of 1933;
11 (F) the Federal Deposit Insurance Act;
12 (G) the Bank Protection Act of 1968;
13 (H) the Depository Institution Manage-
14 ment Interlocks Act;
15 (I) the Bank Service Corporation Act;
16 (J) the Federal Financial Institutions Ex-
17 amination Council Act of 1978;
18 (K) the Right to Financial Privacy Act of
19 1978;
20 (L) the International Lending Supervision
21 Act of 1983;
22 (M) the Expedited Funds Availability Act;
23 (N) the Financial Institutions Reform, Re-
24 covery, and Enforcement Act of 1989;

1 (O) the Federal Deposit Insurance Cor-
2 poration Improvement Act of 1991; and

3 (P) the Depository Institutions Disaster
4 Relief Act of 1992.

5 (2) FUNCTIONS NOT TRANSFERRED.—Notwith-
6 standing paragraph (1), no functions of the Board
7 of Governors under this Act or the Federal Reserve
8 Act (12 U.S.C. 221 et seq.) relating to monetary
9 policy, open market operations, payment, settlement,
10 or clearing activities, financial market utilities, or
11 advances or extensions of credit under the Federal
12 Reserve Act are transferred to FIRA.

13 **SEC. 323. ABOLISHMENT.**

14 (a) OFFICE OF COMPTROLLER OF THE CURRENCY
15 ABOLISHED.—Effective 90 days after the transfer date,
16 the Office of the Comptroller of the Currency and the posi-
17 tion of Comptroller of the Currency are abolished.

18 (b) OFFICE OF THRIFT SUPERVISION ABOLISHED.—
19 Effective 90 days after the transfer date, the Office of
20 Thrift Supervision and the position of Director of the Of-
21 fice of Thrift Supervision are abolished.

22 **SEC. 324. SAVINGS PROVISIONS.**

23 (a) OFFICE OF THE COMPTROLLER OF THE CUR-
24 RENCY.—

1 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
2 TIONS NOT AFFECTED.—Sections 322(b) and 323
3 shall not affect the validity of any right, duty, or ob-
4 ligation of the United States, the Comptroller of the
5 Currency, the Office of the Comptroller of the Cur-
6 rency, or any other person, that existed on the day
7 before the transfer date.

8 (2) CONTINUATION OF SUITS.—This title shall
9 not abate any action or proceeding commenced by or
10 against the Comptroller of the Currency or the Of-
11 fice of the Comptroller of the Currency before the
12 transfer date, except that, for any action or pro-
13 ceeding arising out of a function of the Comptroller
14 of the Currency transferred to the Chairperson by
15 this title, the Chairperson or FIRA shall be sub-
16 stituted for the Comptroller of the Currency or the
17 Office of the Comptroller of the Currency, as the
18 case may be, as a party to any such action or pro-
19 ceeding as of the transfer date.

20 (b) OFFICE OF THRIFT SUPERVISION.—

21 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
22 TIONS NOT AFFECTED.—Sections 322(c) and 323
23 shall not affect the validity of any right, duty, or ob-
24 ligation of the United States, the Director of the Of-
25 fice of Thrift Supervision, the Office of Thrift Su-

1 pervision, or any other person, that existed on the
2 day before the transfer date.

3 (2) CONTINUATION OF SUITS.—This Act shall
4 not abate any action or proceeding commenced by or
5 against the Director of the Office of Thrift Super-
6 vision or the Office of Thrift Supervision before the
7 transfer date, except that, for any action or pro-
8 ceeding arising out of a function of the Director of
9 the Office of Thrift Supervision transferred to the
10 Chairperson by this title, the Chairperson or FIRA
11 shall be substituted for the Director of the Office of
12 Thrift Supervision or the Office of Thrift Super-
13 vision, as the case may be, as a party to the action
14 or proceeding as of the transfer date.

15 (c) CORPORATION.—

16 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
17 TIONS NOT AFFECTED.—Section 322(d) shall not af-
18 fect the validity of any right, duty, or obligation of
19 the United States, the Corporation, or any other
20 person, that existed on the day before the transfer
21 date.

22 (2) CONTINUATION OF SUITS.—This Act shall
23 not abate any action or proceeding commenced by or
24 against the Corporation before the transfer date, ex-
25 cept that, for any action or proceeding arising out

1 of a function of the Corporation transferred to the
2 Chairperson or FIRA by this title, the Chairperson
3 or FIRA shall be substituted for the Corporation, as
4 the case may be, as a party to the action or pro-
5 ceeding as of the transfer date.

6 (d) BOARD OF GOVERNORS.—

7 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
8 TIONS NOT AFFECTED.—Section 322(e) shall not af-
9 fect the validity of any right, duty, or obligation of
10 the United States, the Board of Governors, any Fed-
11 eral Reserve bank, or any other person, that existed
12 on the day before the transfer date.

13 (2) CONTINUATION OF SUITS.—This Act shall
14 not abate any action or proceeding commenced by or
15 against the Board of Governors or a Federal Re-
16 serve bank before the transfer date, except that, for
17 any action or proceeding arising out of a function of
18 the Board of Governors or a Federal Reserve bank
19 transferred to the Chairperson or FIRA by this title,
20 the Chairperson or FIRA shall be substituted for the
21 Board of Governors or the Federal Reserve bank, as
22 the case may be, as a party to the action or pro-
23 ceeding as of the transfer date.

1 (e) CONTINUATION OF EXISTING ORDERS, RESOLU-
2 TIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS,
3 ETC.—

4 (1) OFFICE OF THE COMPTROLLER OF THE
5 CURRENCY.—All orders, resolutions, determinations,
6 agreements, and regulations, interpretative rules,
7 other interpretations, guidelines, procedures, and
8 other advisory materials that have been issued,
9 made, prescribed, or allowed to become effective by
10 the Office of the Comptroller of the Currency, or by
11 a court of competent jurisdiction, in the performance
12 of functions that are transferred by this title and
13 that are in effect on the day before the transfer
14 date, shall continue in effect according to the terms
15 of those orders, resolutions, determinations, agree-
16 ments, and regulations, interpretative rules, other
17 interpretations, guidelines, procedures, and other ad-
18 visory materials, and shall be enforceable by or
19 against FIRA until modified, terminated, set aside,
20 or superseded in accordance with applicable law by
21 FIRA, by any court of competent jurisdiction, or by
22 operation of law.

23 (2) OFFICE OF THRIFT SUPERVISION.—All or-
24 ders, resolutions, determinations, agreements, and
25 regulations, interpretative rules, other interpreta-

1 tions, guidelines, procedures, and other advisory ma-
2 terials, that have been issued, made, prescribed, or
3 allowed to become effective by the Office of Thrift
4 Supervision, or by a court of competent jurisdiction,
5 in the performance of functions that are transferred
6 by this title and that are in effect on the day before
7 the transfer date, shall continue in effect according
8 to the terms of those orders, resolutions, determina-
9 tions, agreements, and regulations, interpretative
10 rules, other interpretations, guidelines, procedures,
11 and other advisory materials, and shall be enforce-
12 able by or against FIRA until modified, terminated,
13 set aside, or superseded in accordance with applica-
14 ble law by FIRA, by any court of competent jurisdic-
15 tion, or by operation of law.

16 (3) CORPORATION.—All orders, resolutions, de-
17 terminations, agreements, and regulations, interpre-
18 tative rules, other interpretations, guidelines, proce-
19 dures, and other advisory materials, that have been
20 issued, made, prescribed, or allowed to become effec-
21 tive by the Corporation, or by a court of competent
22 jurisdiction, in the performance of functions that are
23 transferred by this title and that are in effect on the
24 day before the transfer date, shall continue in effect
25 according to the terms of those orders, resolutions,

1 determinations, agreements, and regulations, inter-
2 pretative rules, other interpretations, guidelines, pro-
3 cedures, and other advisory materials, and shall be
4 enforceable by or against FIRA until modified, ter-
5 minated, set aside, or superseded in accordance with
6 applicable law by FIRA, by any court of competent
7 jurisdiction, or by operation of law.

8 (4) BOARD OF GOVERNORS.—All orders, resolu-
9 tions, determinations, agreements, and regulations,
10 interpretative rules, other interpretations, guidelines,
11 procedures, and other advisory materials, that have
12 been issued, made, prescribed, or allowed to become
13 effective by the Board of Governors, or by a court
14 of competent jurisdiction, in the performance of
15 functions that are transferred by this title and that
16 are in effect on the day before the transfer date,
17 shall continue in effect according to the terms of
18 those orders, resolutions, determinations, agree-
19 ments, and regulations, interpretative rules, other
20 interpretations, guidelines, procedures, and other ad-
21 visory materials, and shall be enforceable by or
22 against FIRA until modified, terminated, set aside,
23 or superseded in accordance with applicable law by
24 FIRA, by any court of competent jurisdiction, or by
25 operation of law.

1 (f) IDENTIFICATION OF REGULATIONS CONTIN-
2 UED.—Not later than the transfer date, the Chairperson
3 shall—

4 (1) in consultation with the Comptroller of the
5 Currency, the Director of the Office of Thrift Super-
6 vision, the Chairman of the Board of Governors, and
7 the Chairperson of the Corporation, identify the reg-
8 ulations continued under subsection (c) that will be
9 enforced by FIRA; and

10 (2) publish a list of such regulations in the
11 Federal Register.

12 (g) STATUS OF REGULATIONS PROPOSED OR NOT
13 YET EFFECTIVE.—

14 (1) PROPOSED REGULATIONS.—Any proposed
15 regulation of the Office of the Comptroller of the
16 Currency, the Office of Thrift Supervision, the Cor-
17 poration, or the Board of Governors which that
18 agency, in performing functions transferred by this
19 title, has proposed before the transfer date but has
20 not published as a final regulation before that date,
21 shall be deemed to be a proposed regulation of
22 FIRA.

23 (2) REGULATIONS NOT YET EFFECTIVE.—Any
24 interim or final regulation of the Office of the
25 Comptroller of the Currency, the Office of Thrift

1 Supervision, the Corporation, or the Board of Gov-
2 ernors which that agency, in performing functions
3 transferred by this title, has published before the
4 transfer date but which has not become effective be-
5 fore that date, shall become effective as a regulation
6 of FIRA according to the terms of the regulation.

7 **SEC. 325. REFERENCES IN FEDERAL LAW TO FEDERAL**
8 **BANKING AGENCIES.**

9 (a) OFFICE OF THE COMPTROLLER OF THE CUR-
10 RENCY AND THE OFFICE OF THRIFT SUPERVISION.—

11 (1) COMPTROLLER OF THE CURRENCY AND DI-
12 RECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

13 On and after the transfer date, any reference in any
14 Federal law to the Comptroller of the Currency or
15 the Director of the Office of Thrift Supervision shall
16 be deemed to be a reference to the FIRA Board.

17 (2) OFFICE OF THE COMPTROLLER OF THE
18 CURRENCY AND THE OFFICE OF THRIFT SUPER-
19 VISION.—On and after the transfer date, any ref-
20 erence in any Federal law to the Office of the Comp-
21 troller of the Currency or the Office of Thrift Super-
22 vision shall be deemed to be a reference to FIRA.

23 (b) CORPORATION AND BOARD OF GOVERNORS.—

24 (1) CORPORATION.—On and after the transfer
25 date, any reference in any Federal law to the Cor-

1 poration or the Board of Directors of such Corpora-
2 tion in connection with any function of the Corpora-
3 tion or Board of Directors under any provision of
4 law referred to in section 322(d) shall be deemed to
5 be a reference to FIRA.

6 (2) BOARD OF GOVERNORS.—On and after the
7 transfer date, any reference in any Federal law to
8 the Board of Governors or any Federal Reserve
9 bank in connection with any function of the Board
10 of Governors or any Federal Reserve bank under
11 any provision of law referred to in section 322(e)
12 shall be deemed to be a reference to FIRA.

13 **Subtitle C—Operations of FIRA**

14 **SEC. 331 TRANSFERRED POWERS, AUTHORITIES, RIGHTS,** 15 **AND DUTIES.**

16 The FIRA Board shall have—

17 (1) all powers, authorities, rights, and duties
18 that, as of the day before the transfer date, were
19 vested in—

20 (A) the Office of the Comptroller of the
21 Currency and the Comptroller of the Currency;
22 and

23 (B) the Office of Thrift Supervision and
24 the Director of the Office of Thrift Supervision;

1 (2) the powers, authorities, rights, and duties
2 relating to the functions described in section 322(d)
3 that were vested in the Corporation, as of the day
4 before the transfer date; and

5 (3) the powers, authorities, rights, and duties
6 relating to the functions described in section 322(e)
7 that were vested in the Board of Governors, as of
8 the day before the transfer date.

9 **SEC. 332. REGULATIONS AND ORDERS.**

10 FIRA may prescribe such regulations and guidelines,
11 and issue such orders, as FIRA determines to be appro-
12 priate to carry out this title, and the powers, authorities,
13 rights, and duties transferred to FIRA under this title.

14 **SEC. 333. ADDITIONAL POWERS AND DUTIES OF THE**
15 **CHAIRPERSON.**

16 (a) **BOARD MEMBERSHIP.**—The Chairperson, in his
17 or her capacity as the Chairperson of FIRA, shall serve
18 as a member of—

19 (1) the Agency for Financial Stability, estab-
20 lished under title I;

21 (2) the Consumer Financial Protection Agency,
22 established under title X; and

23 (3) the Neighborhood Reinvestment Corpora-
24 tion, established under section 603 of the Housing

1 and Community Development Amendments of 1978
2 (42 U.S.C. 8102).

3 (b) LITIGATION.—The Chairperson may act in the
4 name of the Chairperson and through the attorneys of the
5 Chairperson—

6 (1) to enforce any provision of this title, or any
7 other provision of law over which the Chairperson
8 has jurisdiction; and

9 (2) in any action, suit, or proceeding, to which
10 the Chairperson is a party.

11 **SEC. 334. ADDITIONAL POWERS OF THE BOARD OF GOV-**
12 **ERNORS AND THE FEDERAL DEPOSIT INSUR-**
13 **ANCE CORPORATION.**

14 (a) DEFINITION.—For purposes of this section, the
15 term “covered institution” means an institution regulated
16 by FIRA under this title.

17 (b) ADDITIONAL POWERS OF THE BOARD OF GOV-
18 ERNORS.—

19 (1) IN GENERAL.—Subject to the limitations
20 described in paragraphs (2) and (3), the Board of
21 Governors may, if it determines that such action is
22 necessary to carry out the responsibilities of the
23 Board of Governors (including the Federal reserve
24 banks) relating to monetary policy, open market op-
25 erations, payment, settlement, or clearing activities,

1 financial market utilities, or advances or extensions
2 of credit under the Federal Reserve Act (12 U.S.C.
3 221 et seq.) under this Act and otherwise applicable
4 Federal law—

5 (A) request any information from a cov-
6 ered institution;

7 (B) request any information from FIRA,
8 including examination reports; and

9 (C) request that employees of the Board of
10 Governors (including employees of Federal re-
11 serve banks) participate with FIRA in any ex-
12 amination by FIRA of a covered institution.

13 (2) USE OF OTHER SOURCES OF INFORMA-
14 TION.—To the fullest extent possible, the Board of
15 Governors shall use, in lieu of a request for informa-
16 tion from a covered institution—

17 (A) reports that a covered institution or
18 any subsidiary of a covered institution has been
19 required to provide to another Federal or State
20 regulatory agency;

21 (B) information that is available from
22 FIRA or a State regulatory agency;

23 (C) information that is otherwise required
24 to be reported publicly; and

1 (D) externally audited financial statements
2 of the covered institution or subsidiary of the
3 covered institution.

4 (3) COMPLIANCE BY FIRA WITH REQUESTS BY
5 BOARD OF GOVERNORS.—

6 (A) PROVISION OF INFORMATION.—

7 (i) IN GENERAL.—FIRA shall provide
8 any information requested by the Board of
9 Governors under paragraph (1)(B).

10 (ii) INFORMATION FROM COVERED IN-
11 STITUTIONS.—Upon a request by the
12 Board of Governors to FIRA for informa-
13 tion relating to a covered institution, FIRA
14 shall promptly provide such information.

15 (B) COORDINATION WITH FIRA ON EXAMI-
16 NATIONS.—Upon a request by the Board of
17 Governors under paragraph (1)(C), FIRA shall
18 coordinate with the Board of Governors to en-
19 able employees of the Board of Governors (in-
20 cluding employees of a Federal reserve bank) to
21 participate in an examination of a covered insti-
22 tution.

23 (c) ADDITIONAL POWERS OF THE CORPORATION.—

24 (1) IN GENERAL.—Subject to the limitations
25 described in paragraphs (2) and (3), the Chair-

1 person of the Corporation may, if the Chairperson of
2 the Corporation determines that such action is nec-
3 essary to carry out the responsibilities of the Cor-
4 poration relating to deposit insurance or resolution
5 under this Act and otherwise applicable Federal
6 law—

7 (A) request any information from a cov-
8 ered institution;

9 (B) request any information from FIRA,
10 including examination reports; and

11 (C) request that staff of the Corporation
12 participate with FIRA in any examination by
13 FIRA of a covered institution.

14 (2) USE OF OTHER SOURCES OF INFORMA-
15 TION.—To the fullest extent possible, the Corpora-
16 tion shall use, in lieu of a request for information
17 from a covered institution—

18 (A) reports that a covered institution or
19 any subsidiary of a covered institution has been
20 required to provide to another Federal or State
21 regulatory agency;

22 (B) information that is available from
23 FIRA or a State regulatory agency;

24 (C) information that is otherwise required
25 to be reported publicly; and

1 (D) externally audited financial statements
2 of the covered institution or subsidiary of the
3 covered institution.

4 (3) COMPLIANCE BY FIRA WITH REQUESTS BY
5 CORPORATION.—

6 (A) PROVISION OF INFORMATION.—

7 (i) IN GENERAL.—FIRA shall provide
8 any information requested by the Chair-
9 person of the Corporation under paragraph
10 (1)(B).

11 (ii) INFORMATION FROM COVERED IN-
12 STITUTIONS.—Upon a request by the Cor-
13 poration to FIRA for information relating
14 to a covered institution, FIRA shall
15 promptly provide such information.

16 (B) COORDINATION WITH FIRA ON EXAMI-
17 NATIONS.—Upon a request by the Chairperson
18 of the Corporation under paragraph (1)(C),
19 FIRA shall coordinate with the Corporation to
20 enable staff of the Corporation to participate in
21 an examination of a covered institution.

22 (4) ADDITIONAL SPECIAL EXAMINATION POW-
23 ERS.—Section 10(b) of the Federal Deposit Insur-
24 ance Act (12 U.S.C. 1820(b)) is amended—

25 (A) by striking paragraph (5);

1 (B) by redesignating paragraphs (6) and
2 (7) as paragraphs (5) and (6), respectively; and

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

4 “(7) PARTICIPATION IN FIRA EXAMINATIONS.—

5 “(A) AUTHORITY TO PARTICIPATE IN FIRA
6 EXAMINATIONS.—The Chairperson may direct
7 an examiner appointed under paragraph (1) to
8 participate in an examination by FIRA of an
9 institution regulated by FIRA under title III of
10 the Restoring American Financial Stability Act
11 of 2009.

12 “(B) COORDINATION.—The Chairperson
13 shall coordinate with FIRA to enable the staff
14 of the Corporation to participate in the exam-
15 ination of an institution described in subpara-
16 graph (A).”.

17 (5) TECHNICAL AND CONFORMING AMEND-
18 MENTS.—Section 10(b) of the Federal Deposit In-
19 surance Act (12 U.S.C. 1820(b)) is amended—

20 (A) in paragraph (2)—

21 (i) by striking subparagraph (A); and

22 (ii) by redesignating subparagraphs

23 (B) and (C) as subparagraphs (A) and

24 (B), respectively; and

1 (B) in paragraph (4)(A), in the matter
2 preceding clause (i), by striking “paragraph (2)
3 or (3)” and inserting “paragraph (2), (3), and
4 (7)”.

5 (d) **TECHNICAL AND CONFORMING AMENDMENTS.—**

6 (1) **BOARD OF GOVERNORS.—**Section 11(a) of
7 the Federal Reserve Act (12 U.S.C. 248(a)) is
8 amended by adding at the end the following:

9 “(3) To exercise the additional powers of the Board
10 under section 334(b) of the Restoring American Financial
11 Stability Act of 2009.”.

12 (2) **CORPORATION.—**Section 7(a) of the Federal
13 Deposit Insurance Act (12 U.S.C. 1817(a)) is
14 amended by adding at the end the following:

15 “(12) **INFORMATION RELATING TO INSTITU-**
16 **TIONS REGULATED BY FIRA.—**For the purposes of
17 appropriately insuring deposits and understanding
18 and monitoring risks to the Deposit Insurance
19 Fund, the Corporation may exercise the additional
20 powers of the Corporation under section 334(c) of
21 the Restoring American Financial Stability Act of
22 2009.”.

1 **SEC. 335. FUNDING.**

2 (a) DEFINITION.—In this section, the term “FIRA
3 Fund” means the Financial Institutions Regulatory Ad-
4 ministration Fund established under subsection (c).

5 (b) AUTHORITY TO COLLECT ASSESSMENTS, FEES,
6 AND OTHER CHARGES, AND TO RECEIVE TRANSFERRED
7 FUNDS.—

8 (1) IN GENERAL.—Effective on the transfer
9 date, except as provided in paragraph (2), the Chair-
10 person may collect an assessment, fee, or other
11 charge from any covered institution (including any
12 affiliate of a covered institution) supervised or regu-
13 lated by FIRA, as the Chairperson determines is
14 necessary or appropriate to carry out this title.

15 (2) AMOUNT OF ASSESSMENTS, FEES, AND
16 OTHER CHARGES.—

17 (A) CONSIDERATIONS.—In establishing the
18 amount of an assessment, fee, or charge col-
19 lected from a covered institution under this sub-
20 section, the Chairperson may take into account
21 the total assets of the covered institution (in-
22 cluding any affiliate of the covered institution),
23 the financial and managerial condition of the
24 covered institution, and the examination rating
25 of a covered institution that is supervised or
26 regulated by FIRA.

1 (B) AMOUNT OF FEES ESTABLISHED.—

2 (i) NATIONAL BANKS, FEDERAL SAV-
3 INGS ASSOCIATIONS, AND FEDERAL
4 BRANCHES AND AGENCIES.—

5 (I) IN GENERAL.—For national
6 banks, Federal savings associations,
7 and Federal branches and agencies
8 that are supervised or regulated by
9 FIRA, the aggregate amount of as-
10 sessments, fees, and charges that are
11 collected by FIRA from all such na-
12 tional banks, savings associations, and
13 Federal branches and agencies shall
14 be not less than the estimated total
15 expenses of FIRA for carrying out all
16 duties of FIRA with respect to such
17 national banks, Federal savings asso-
18 ciations, and Federal branches and
19 agencies.

20 (II) LIMITATION.—The aggregate
21 amount collected by FIRA under this
22 clause from all national banks, Fed-
23 eral savings associations, Federal
24 branches and agencies that have less
25 than \$10,000,000,000 in total assets

1 may not exceed 20 percent of the ag-
2 gregate amount collected by FIRA
3 from all national banks, Federal sav-
4 ings associations, and Federal
5 branches and agencies under this
6 clause.

7 (ii) **SMALLER STATE BANKS, STATE**
8 **SAVINGS ASSOCIATIONS, AND STATE-LI-**
9 **CENSED BRANCHES AND AGENCIES.—**
10 FIRA may not collect an assessment, fee,
11 or charge under this subsection from a
12 State bank, State savings association, or
13 State-licensed branch or agency that—

14 (I) is supervised or regulated by
15 FIRA; and

16 (II) has total assets of less than
17 \$10,000,000,000.

18 (iii) **LARGER STATE BANKS.—**For
19 State banks, State savings associations,
20 and State-licensed branches and agencies
21 that are supervised or regulated by FIRA
22 and that have total assets of
23 \$10,000,000,000 or more, the aggregate
24 amount of assessments, fees, and charges
25 collected by FIRA from all such State

1 banks, State savings associations, and
2 State-licensed branches and agencies shall
3 be an amount equal to 50 percent of the
4 estimated total expenses of FIRA for car-
5 rying out all duties of FIRA with respect
6 to such State banks, State savings associa-
7 tions, and State-licensed branches and
8 agencies.

9 (iv) SMALLER BANK HOLDING COMPA-
10 NIES AND SAVINGS AND LOAN HOLDING
11 COMPANIES.—FIRA may not collect an as-
12 sessment, fee, or charge under this sub-
13 section from a bank holding company or a
14 savings and loan holding company that is
15 supervised or regulated by FIRA and that
16 has total assets of less than
17 \$10,000,000,000.

18 (v) LARGER BANK HOLDING COMPA-
19 NIES AND SAVINGS AND LOAN HOLDING
20 COMPANIES.—

21 (I) IN GENERAL.—For bank
22 holding companies and savings and
23 loan holding companies that are su-
24 pervised or regulated by FIRA and
25 that have total assets of

1 that are supervised or regulated by FIRA,
2 the aggregate amount collected by FIRA
3 shall be not less than the estimated total
4 expenses of FIRA for carrying out all du-
5 ties of FIRA with respect to such covered
6 institutions.

7 (C) TRANSFER OF FUNDS.—

8 (i) BY BOARD OF GOVERNORS.—

9 (I) FOR DUTIES RELATING TO
10 SMALLER STATE BANKS AND STATE
11 SAVINGS ASSOCIATIONS.—The Board
12 of Governors shall transfer to FIRA
13 an amount equal to 20 percent of the
14 estimated total expenses of FIRA for
15 carrying out all duties of FIRA with
16 respect to State banks and State sav-
17 ings associations having total assets of
18 less than \$10,000,000,000.

19 (II) FOR DUTIES RELATING TO
20 SMALLER STATE-LICENSED BRANCHES
21 AND AGENCIES.—The Board of Gov-
22 ernors shall transfer to FIRA an
23 amount equal to the estimated total
24 expenses of FIRA for carrying out all
25 duties of FIRA with respect to State-

1 licensed branches and agencies having
2 total assets of less than
3 \$10,000,000,000.

4 (III) FOR DUTIES RELATING TO
5 LARGER STATE BANKS.—The Board
6 of Governors shall transfer to FIRA
7 an amount equal to 50 percent of the
8 estimated total expenses of FIRA for
9 carrying out all duties of FIRA with
10 respect to State banks, State savings
11 associations, and State-licensed
12 branches and agencies having total as-
13 sets of \$10,000,000,000 or more.

14 (IV) FOR DUTIES RELATING TO
15 SMALLER BANK HOLDING COMPANIES
16 AND SAVINGS AND LOAN HOLDING
17 COMPANIES.—

18 (aa) IN GENERAL.—The
19 Board of Governors shall transfer
20 to FIRA an amount equal to the
21 total estimated expenses of FIRA
22 for carrying out all duties of
23 FIRA with respect to bank hold-
24 ing companies and savings and
25 loan holding companies having

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1 total assets of less than
2 \$10,000,000,000.

3 (bb) ESTIMATION OF EX-
4 PENSES.—For purposes of this
5 subclause, the estimated expenses
6 of FIRA for carrying out all du-
7 ties of FIRA with respect to
8 bank holding companies and sav-
9 ings and loan holding companies
10 described in item (aa) shall not
11 include any estimated expenses
12 incurred by FIRA for carrying
13 out all duties of FIRA with re-
14 spect to national banks, Federal
15 savings associations, State banks,
16 and State savings associations.

17 (ii) BY CORPORATION.—The Corpora-
18 tion shall transfer to FIRA an amount
19 equal to 80 percent of the estimated total
20 expenses incurred by FIRA for carrying
21 out all duties of FIRA with respect to
22 State banks and State savings associations
23 having total assets of less than
24 \$10,000,000,000.

1 (c) FINANCIAL INSTITUTIONS REGULATORY ADMIN-
2 ISTRATION FUND.—

3 (1) FUND ESTABLISHED.—There is established
4 in the Treasury of the United States a separate fund
5 to be known as the “Financial Institutions Regu-
6 latory Administration Fund” (referred to in this
7 subsection as the “FIRA Fund”).

8 (2) FUND RECEIPTS.—All amounts transferred
9 to FIRA under section 354, and all moneys received
10 by FIRA from any other source, shall be deposited
11 into the FIRA Fund.

12 (3) INVESTMENT AUTHORITY.—

13 (A) AMOUNTS IN FIRA FUND MAY BE IN-
14 VESTED.—FIRA may request the Secretary to
15 invest the portion of the FIRA Fund that is
16 not, in the judgment of FIRA, required to meet
17 the needs of the FIRA Fund.

18 (B) ELIGIBLE INVESTMENTS.—Invest-
19 ments authorized by this paragraph shall be
20 made by the Secretary in obligations of the
21 United States or obligations that are guaran-
22 teed as to principal and interest by the United
23 States, with maturities suitable to the needs of
24 the FIRA Fund, as determined by FIRA.

1 (C) INTEREST AND PROCEEDS CRED-
2 ITED.—The interest on, and the proceeds from
3 the sale or redemption of, any obligations held
4 in the Fund shall be credited to and form a
5 part of the Fund.

6 **SEC. 336. PERSONNEL.**

7 (a) APPOINTMENT.—

8 (1) IN GENERAL.—The Chairperson may fix the
9 number of, and appoint and direct, all employees of
10 FIRA.

11 (2) AMENDMENT.—Section 5240 of the Revised
12 Statutes of the United States (12 U.S.C. 481) is
13 amended—

14 (A) in the first sentence of the first undes-
15 ignated paragraph, by striking “The Comp-
16 troller of the Currency, with the approval of the
17 Secretary of the Treasury,” and inserting “The
18 Chairperson of the Financial Institutions Regu-
19 latory Administration (referred to in this sec-
20 tion as the ‘Chairperson’)”;

21 (B) in the second undesignated para-
22 graph—

23 (i) in the fourth sentence, by striking
24 “with the approval of the Secretary of the
25 Treasury”; and

1 (ii) by striking the ninth sentence;

2 (C) by striking “Comptroller of the Cur-
3 rency” each place that term appears and insert-
4 ing “Chairperson”; and

5 (D) by striking “Comptroller” each place
6 that term appears and inserting “Chairperson”.

7 (b) COMPENSATION.—

8 (1) IN GENERAL.—The Chairperson may fix the
9 number of, and appoint and direct, an executive di-
10 rector and all other employees of FIRA. The employ-
11 ment of an executive director shall be subject to con-
12 firmation by the FIRA Board.

13 (2) COMPENSATION.—The Chairperson shall
14 fix, adjust, and administer the pay for the executive
15 director and all other employees of FIRA, without
16 regard to chapter 51 or subchapter III of chapter 53
17 of title 5, United States Code, relating to classifica-
18 tion of positions and General Schedule pay rates.

19 (3) ANNUAL REPORT TO CONGRESS.—The
20 Chairperson shall submit to Congress an annual re-
21 port on the structure of compensation and benefits
22 of the employees of FIRA.

1 **SEC. 337. 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 Chairperson may—

5 (1) enter into and perform contracts, execute
6 instruments, and acquire, in any lawful manner,
7 such goods and services, or personal or real property
8 (or property interest) as the Chairperson deems nec-
9 essary to carry out the duties and responsibilities of
10 FIRA; and

11 (2) hold, maintain, sell, lease, or otherwise dis-
12 pose of the property (or property interest) acquired
13 under paragraph (1).

14 **Subtitle D—Additional FIRA**
15 **Authority**

16 **SEC. 341. EXAMINATIONS OF COMPANIES THAT DO NOT**
17 **CONTROL BANKS.**

18 (a) IN GENERAL.—FIRA may make examinations of
19 each specified U.S. nonbank financial company and each
20 subsidiary of such company, and any United States sub-
21 sidiaries, branches, or agencies of a specified foreign
22 nonbank financial company, to determine—

23 (1) the nature of the operations and financial
24 condition of the company and such subsidiaries;

25 (2) the financial, operational, and other risks
26 within the holding company that may pose a threat

1 to the safety and soundness of such holding com-
2 pany or to the stability of the United States finan-
3 cial system;

4 (3) the systems for monitoring and controlling
5 such risks; and

6 (4) compliance with the prudential standards
7 promulgated by the Agency or any provision of Fed-
8 eral law that FIRA has specific jurisdiction to en-
9 force against such company or subsidiary of such
10 company and those governing transactions and rela-
11 tionships between such company and any other spec-
12 ified financial company.

13 (b) USE OF EXAMINATION REPORTS.—FIRA shall,
14 to the extent possible, for purposes of this section, use re-
15 ports of examination of functionally regulated subsidiaries
16 made by their primary financial regulatory agency.

17 (c) ENHANCED PUBLIC DISCLOSURES.—In order to
18 support market evaluation of the risk profile, capital ade-
19 quacy, and risk management capabilities of a specified fi-
20 nancial company, FIRA shall require such company to
21 make such periodic public disclosures as the Agency may,
22 by regulation, prescribe.

23 **SEC. 342. ENFORCEMENT.**

24 (a) IN GENERAL.—Except as provided in subsection
25 (b), a specified U.S. nonbank financial company, a speci-

1 fied foreign nonbank financial company, and their subsidi-
2 aries shall be subject to the provisions of subsections (b)
3 through (n) of section 8 of the Federal Deposit Insurance
4 Act (12 U.S.C. 1818), in the same manner and to the
5 same extent as if the company were a bank holding com-
6 pany and its subsidiaries were insured depository institu-
7 tions, as provided in section 8(b)(3) of the Federal Deposit
8 Insurance Act (12 U.S.C. 1818(b)(3)).

9 (b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY
10 REGULATED SUBSIDIARIES.—

11 (1) REFERRAL.—If FIRA determines that a
12 condition, practice, or activity of a functionally regu-
13 lated subsidiary of a financial company described in
14 subsection (a) does not comply with the regulations
15 or orders prescribed by the Agency under this Act,
16 or otherwise poses a threat to the financial stability
17 of the United States, FIRA may recommend in writ-
18 ing to the primary financial regulatory agency for
19 the subsidiary that such agency initiate a super-
20 visory action or enforcement proceeding. The rec-
21 ommendation shall be accompanied by a written ex-
22 planation of the concerns giving rise to the rec-
23 ommendation.

24 (2) BACKSTOP AUTHORITY.—If the primary fi-
25 nancial regulatory agency does not initiate an action

1 or enforcement proceeding before the end of the 30-
2 day period beginning on the date on which such
3 agency receives a recommendation under paragraph
4 (1), FIRA shall report to the Agency for Financial
5 Stability the failure of the primary financial regu-
6 latory agency to initiate an action or enforcement
7 proceeding.

8 **SEC. 343. ACQUISITIONS.**

9 (a) ACQUISITIONS OF BANKS; TREATMENT AS A
10 BANK HOLDING COMPANY.—For purposes of section 3 of
11 the Bank Holding Company Act of 1956 (12 U.S.C.
12 1842), a specified financial company shall be deemed to
13 be, and shall be treated as, a bank holding company.

14 (b) ACQUISITION OF NONBANK COMPANIES.—

15 (1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—
16 Notwithstanding section 4(k)(6)(B) of the Bank
17 Holding Company Act of 1956 (12 U.S.C.
18 1843(k)(6)(B)), a specified financial company shall
19 not acquire direct or indirect ownership or control of
20 any voting shares of any company engaged in non-
21 banking activities having total consolidated assets of
22 \$10,000,000,000 or more, without providing written
23 notice to FIRA in advance of the transaction.

24 (2) EXEMPTIONS.—The prior notice require-
25 ment in paragraph (1) shall not apply with regard

1 to the acquisition of shares that would qualify for
2 the exemptions in section 4(c) or section 4(k)(4)(E)
3 of the Bank Holding Company Act of 1956 (12
4 U.S.C. 1843(c) and (k)(4)(E)).

5 (3) NOTICE PROCEDURES.—The notice proce-
6 dures set forth in section 4(j)(1) of the Bank Hold-
7 ing Company Act of 1956 (12 U.S.C. 1843(j)(1)),
8 without regard to section 4(j)(3) of that Act, shall
9 apply to an acquisition of any company (other than
10 an insured depository institution) by a specified fi-
11 nancial company, as described in paragraph (1), in-
12 cluding a financial company engaged in activities de-
13 scribed in section 4(k) of that Act.

14 (4) STANDARDS FOR REVIEW.—

15 (A) CRITERIA.—In addition to the stand-
16 ards provided in section 4(j)(2) of the Bank
17 Holding Company Act of 1956 (12 U.S.C.
18 1843(j)(2)), FIRA shall consider the extent to
19 which the proposed acquisition would result in
20 greater or more concentrated risks to global or
21 United States financial stability or the global or
22 United States economy.

23 (B) WELL CAPITALIZED AND WELL MAN-
24 AGED.—FIRA shall deny any proposed acquisi-
25 tion for which notice has been submitted pursu-

1 ant to paragraph (1) by a specified financial
2 company, unless before and immediately after
3 the proposed acquisition, the specified financial
4 company is and will be well capitalized and well
5 managed.

6 (5) APPLICATION OF BANK HOLDING COMPANY
7 REQUIREMENTS.—Nothing in this section is in-
8 tended to, nor shall it be deemed to, annul, alter, or
9 otherwise modify any requirement to which a finan-
10 cial company is otherwise subject as a result of its
11 status as a bank holding company or financial hold-
12 ing company, other than section 4(k)(6)(B) of the
13 Bank Holding Company Act of 1956 (12 U.S.C.
14 1843(k)(6)(B)), which shall be inapplicable to an ac-
15 quisition of voting shares of any company engaged
16 in nonbanking activities by a specified financial com-
17 pany that is subject to the filing requirement in
18 paragraph (1).

19 **SEC. 344. PROHIBITION AGAINST MANAGEMENT INTER-**
20 **LOCKS BETWEEN CERTAIN FINANCIAL HOLD-**
21 **ING COMPANIES.**

22 A specified financial company shall be treated as a
23 bank holding company for purposes of the Depository In-
24 stitutions Management Interlocks Act (12 U.S.C. 3201 et
25 seq.), except that FIRA shall not exercise the authority

1 provided in section 7 of that Act (12 U.S.C. 3207) to per-
2 mit service by a management official of a specified U.S.
3 financial company as a management official of any other
4 nonaffiliated specified U.S. financial company (other than
5 to provide a temporary exemption for interlocks resulting
6 from a merger, acquisition, or consolidation).

7 **Subtitle E—Transitional Provisions**

8 **SEC. 351. INTERIM USE OF FUNDS, PERSONNEL, AND PROP-** 9 **ERTY.**

10 (a) INTERIM AUTHORITY OF CHAIRPERSON.—During
11 the period beginning on the date on which the first Chair-
12 person is appointed under section 312 and ending on the
13 transfer date, the Chairperson shall—

14 (1) consult and cooperate with the Comptroller
15 of the Currency, the Director of the Office of Thrift
16 Supervision, the Chairman of the Board of Gov-
17 ernors, and the Chairperson of the Corporation to
18 facilitate the orderly transfer of functions to FIRA;

19 (2) determine, from time to time—

20 (A) the amount of funds necessary to pay
21 the expenses of FIRA (including expenses for
22 personnel, property, and administrative serv-
23 ices);

1 (B) which personnel are appropriate to fa-
2 cilitate the orderly transfer of functions under
3 this title; and

4 (C) what property and administrative serv-
5 ices are necessary to support FIRA; and

6 (3) take such actions as may be necessary to
7 provide for the orderly implementation of this title.

8 (b) INTERIM RESPONSIBILITIES.—Before the trans-
9 fer date, upon the request of the Chairperson, the Office
10 of the Comptroller of the Currency, the Office of Thrift
11 Supervision, the Board of Governors, and the Corporation
12 shall each—

13 (1) pay to the Chairperson, from funds ob-
14 tained by such agencies through assessments, fees,
15 or other charges, 25 percent of the total amount
16 that the Director determines to be necessary under
17 subsection (a)(2)(A);

18 (2) detail to FIRA such personnel as the Chair-
19 person determines to be appropriate under sub-
20 section (a)(2)(B); and

21 (3) make available to FIRA such property and
22 provide to FIRA such administrative services as the
23 Chairperson determines to be necessary under sub-
24 section (a)(2)(C).

1 (c) NOTICE REQUIRED.—The Chairperson shall give
2 to the Comptroller of the Currency, the Director of the
3 Office of Thrift Supervision, the Chairman of the Board
4 of Governors, and the Chairperson of the Corporation rea-
5 sonable notice of any request that the Chairperson intends
6 to make under subsection (b).

7 **SEC. 352. TRANSFER OF EMPLOYEES.**

8 (a) IN GENERAL.—

9 (1) TRANSFER OF EMPLOYEES.—

10 (A) OFFICE OF THE COMPTROLLER OF
11 THE CURRENCY AND OFFICE OF THRIFT SU-
12 PERVISION.—All employees of the Office of the
13 Comptroller of the Currency and the Office of
14 Thrift Supervision shall be transferred to
15 FIRA.

16 (B) CORPORATION.—

17 (i) DETERMINATION BY CHAIR-
18 PERSON.—The Chairperson, in consulta-
19 tion with the Corporation, shall determine
20 the number and type of employees of the
21 Corporation necessary to carry out the du-
22 ties transferred to FIRA under section
23 322(e) in accordance with this title.

24 (ii) TRANSFER.—The Corporation
25 shall transfer to FIRA the number and

1 type of employees the Chairperson deter-
2 mines are necessary under clause (i).

3 (C) BOARD OF GOVERNORS.—

4 (i) DETERMINATION BY CHAIR-
5 PERSON.—

6 (I) IN GENERAL.—The Chair-
7 person, in consultation with the Board
8 of Governors, shall determine the
9 number and type of employees of the
10 Board of Governors necessary to carry
11 out the duties transferred to FIRA
12 under section 322(d) in accordance
13 with this title.

14 (II) FEDERAL RESERVE BANK
15 EMPLOYEES.—For purposes of this
16 clause, the term “employee of the
17 Board of Governors” includes an em-
18 ployee of a Federal reserve bank who,
19 on the day before the transfer date,
20 performs functions on behalf of the
21 Board of Governors.

22 (ii) TRANSFER.—The Board of Gov-
23 ernors shall transfer to FIRA the number
24 and type of employees the Chairperson de-
25 termines are necessary under clause (i).

1 (D) TRANSFER OF EMPLOYEES PER-
2 FORMING CONSUMER FINANCIAL PROTECTION
3 FUNCTIONS.—Nothing in this paragraph shall
4 affect the transfer of employees performing or
5 supporting consumer financial protection func-
6 tions of the Comptroller of the Currency, the
7 Director of the Office of Thrift Supervision, the
8 Corporation, or the Board of Governors to the
9 Consumer Financial Protection Agency, as pro-
10 vided in title X of this Act.

11 (2) APPOINTMENT AUTHORITY FOR EXCEPTED
12 SERVICE TRANSFERRED.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), any appointment authority
15 of the Office of the Comptroller of the Cur-
16 rency, the Office of Thrift Supervision, the
17 Board of Governors, and the Corporation under
18 Federal law that relates to the functions trans-
19 ferred under section 322, including the regula-
20 tions of the Office of Personnel Management,
21 for filling the positions of employees in the ex-
22 cepted service shall be transferred to the Chair-
23 person.

24 (B) DECLINING TRANSFERS ALLOWED.—
25 The Chairperson may decline to accept a trans-

1 fer of authority under subparagraph (A) (and
2 the employees appointed under that authority)
3 to the extent that such authority relates to posi-
4 tions excepted from the competitive service be-
5 cause of their confidential, policy-making, pol-
6 icy-determining, or policy-advocating character.

7 (b) **TIMING OF TRANSFERS AND POSITION ASSIGN-**
8 **MENTS.**—Each employee to be transferred under this sec-
9 tion shall—

10 (1) be transferred not later than 90 days after
11 the transfer date; and

12 (2) receive notice of the position assignment of
13 the employee not later than 120 days after the effec-
14 tive date of the transfer.

15 (c) **TRANSFER OF FUNCTIONS.**—

16 (1) **IN GENERAL.**—Notwithstanding any other
17 provision of law, the transfer of employees under
18 this title shall be deemed a transfer of functions for
19 the purpose of section 3503 of title 5, United States
20 Code.

21 (2) **PRIORITY OF THIS ACT.**—If any provision
22 of this title conflicts with any protection provided to
23 a transferred employee under section 3503 of title 5,
24 United States Code, the provisions of this title shall
25 control.

1 (d) EMPLOYEES' STATUS AND ELIGIBILITY.—The
2 transfer of functions and employees under this title, and
3 the abolishment of the Office of the Comptroller of the
4 Currency and the Office of Thrift Supervision under sec-
5 tion 323, shall not affect the status of the transferred em-
6 ployees as employees of an agency of the United States
7 under any provision of law.

8 (e) EQUAL STATUS AND TENURE POSITIONS.—

9 (1) STATUS AND TENURE.—Each transferred
10 employee shall be placed in a position at FIRA with
11 the same status and tenure as the transferred em-
12 ployee held on the day before the date on which the
13 employee was transferred.

14 (2) FUNCTIONS.—To the extent practicable,
15 each transferred employee shall be placed in a posi-
16 tion at FIRA responsible for the same functions and
17 duties as the transferred employee had on the day
18 before the date on which the employee was trans-
19 ferred, in accordance with the expertise and pref-
20 erences of the transferred employee.

21 (f) NO ADDITIONAL CERTIFICATION REQUIRE-
22 MENTS.—An examiner who is a transferred employee shall
23 not be subject to any additional certification requirements
24 before being placed in a comparable position in FIRA, if
25 the examiner carries out examinations of the same type

1 of institutions as an employee of FIRA as the examiner
2 carried out before the date on which the employee was
3 transferred.

4 (g) PERSONNEL ACTIONS LIMITED.—

5 (1) 2-YEAR PROTECTION.—Except as provided
6 in paragraph (2), during the 2-year period beginning
7 on the transfer date, an employee holding a perma-
8 nent position on the day before the date on which
9 the employee was transferred shall not be involun-
10 tarily separated or involuntarily reassigned outside
11 the locality pay area (as defined by the Office of
12 Personnel Management) of the employee.

13 (2) EXCEPTIONS.—The Chairperson may—

14 (A) separate a transferred employee for
15 cause, including for unacceptable performance;
16 or

17 (B) terminate an appointment to a position
18 excepted from the competitive service because of
19 its confidential policy-making, policy-deter-
20 mining, or policy-advocating character.

21 (h) PAY.—

22 (1) 2-YEAR PROTECTION.—Except as provided
23 in paragraph (2), during the 2-year period beginning
24 on the date on which the employee was transferred
25 under this title, a transferred employee shall be paid

1 at a rate that is not less than the basic rate of pay,
2 including any geographic differential, that the trans-
3 ferred employee received during the 2-year period
4 immediately preceding the date on which the em-
5 ployee was transferred.

6 (2) **EXCEPTIONS.**—The Chairperson may re-
7 duce the rate of basic pay of a transferred em-
8 ployee—

9 (A) for cause, including for unacceptable
10 performance; or

11 (B) with the consent of the transferred
12 employee.

13 (3) **PROTECTION ONLY WHILE EMPLOYED.**—
14 This subsection shall apply to a transferred em-
15 ployee only during the period that the transferred
16 employee remains employed by FIRA.

17 (4) **PAY INCREASES PERMITTED.**—Nothing in
18 this subsection shall limit the authority of the Chair-
19 person to increase the pay of a transferred employee.

20 (i) **BENEFITS.**—

21 (1) **RETIREMENT BENEFITS FOR TRANSFERRED**
22 **EMPLOYEES.**—

23 (A) **IN GENERAL.**—

24 (i) **CONTINUATION OF EXISTING RE-**
25 **TIREMENT PLAN.**—Each transferred em-

1 ployee shall remain enrolled in the retire-
2 ment plan of the transferred employee, for
3 as long as the transferred employee is em-
4 ployed by FIRA.

5 (ii) EMPLOYER'S CONTRIBUTION.—
6 The Chairperson shall pay any employer
7 contributions to the existing retirement
8 plan of each transferred employee, as re-
9 quired under each such existing retirement
10 plan.

11 (B) DEFINITION.—In this paragraph, the
12 term “existing retirement plan” means, with re-
13 spect to a transferred employee, the retirement
14 plan (including the Financial Institutions Re-
15 tirement Fund), and any associated thrift sav-
16 ings plan, of the agency from which the em-
17 ployee was transferred in which the employee
18 was enrolled on the day before the date on
19 which the employee was transferred.

20 (2) BENEFITS OTHER THAN RETIREMENT BEN-
21 EFITS.—

22 (A) DURING FIRST YEAR.—

23 (i) EXISTING PLANS CONTINUE.—
24 During the 1-year period following the
25 transfer date, each transferred employee

1 may retain membership in any employee
2 benefit program (other than a retirement
3 benefit program) of the agency from which
4 the employee transferred, including any
5 dental, vision, long term care, or life insur-
6 ance program to which the employee be-
7 longed on the day before the transfer date.

8 (ii) EMPLOYER'S CONTRIBUTION.—
9 The Chairperson shall pay any employer
10 cost required to extend coverage in the
11 benefit program to the transferred em-
12 ployee as required under that program or
13 negotiated agreements.

14 (B) DENTAL, VISION, OR LIFE INSURANCE
15 AFTER FIRST YEAR.—If, after the 1-year period
16 beginning on the transfer date, the Chairperson
17 determines that FIRA will not continue to par-
18 ticipate in any dental, vision, or life insurance
19 program of an agency from which an employee
20 transferred, a transferred employee who is a
21 member of the program may, before the deci-
22 sion of the Chairperson takes effect and without
23 regard to any regularly scheduled open season,
24 elect to enroll in—

1 (i) the enhanced dental benefits pro-
2 gram established under chapter 89A of
3 title 5, United States Code;

4 (ii) the enhanced vision benefits estab-
5 lished under chapter 89B of title 5, United
6 States Code; and

7 (iii) the Federal Employees' Group
8 Life Insurance Program established under
9 chapter 87 of title 5, United States Code,
10 without regard to any requirement of in-
11 surability.

12 (C) LONG TERM CARE INSURANCE AFTER
13 1ST YEAR.—If, after the 1-year period begin-
14 ning on the transfer date, the Chairperson de-
15 termines that FIRA will not continue to partici-
16 pate in any long term care insurance program
17 of an agency from which an employee trans-
18 ferred, a transferred employee who is a member
19 of such a program may, before the decision of
20 Chairperson takes effect, elect to apply for cov-
21 erage under the Federal Long Term Care In-
22 surance Program established under chapter 90
23 of title 5, United States Code, under the under-
24 writing requirements applicable to a new active
25 workforce member, as described in part 875 of

1 title 5, Code of Federal Regulations (or any
2 successor thereto).

3 (D) CONTRIBUTION OF TRANSFERRED EM-
4 PLOYEE.—

5 (i) IN GENERAL.—Subject to clause
6 (ii), a transferred employee who is enrolled
7 in a plan under the Federal Employees
8 Health Benefits Program shall pay any
9 employee contribution required under the
10 plan.

11 (ii) COST DIFFERENTIAL.—The
12 Chairperson shall pay any difference in
13 cost between the employee contribution re-
14 quired under the plan provided to trans-
15 ferred employees by the agency from which
16 the employee transferred on the date of en-
17 actment of this Act and the plan provided
18 by the Chairperson under this section.

19 (iii) FUNDS TRANSFER.—The Chair-
20 person shall transfer to the Employees
21 Health Benefits Fund established under
22 section 8909 of title 5, United States
23 Code, an amount determined by the Direc-
24 tor of the Office of Personnel Manage-
25 ment, after consultation with the Chair-

1 person and the Office of Management and
2 Budget, to be necessary to reimburse the
3 Fund for the cost to the Fund of providing
4 any benefits under this subparagraph that
5 are not otherwise paid for by a transferred
6 employee under clause (i).

7 (E) SPECIAL PROVISIONS TO ENSURE CON-
8 TINUATION OF LIFE INSURANCE BENEFITS.—

9 (i) IN GENERAL.—An annuitant, as
10 defined in section 8901 of title 5, United
11 States Code, who is enrolled in a life insur-
12 ance plan administered by an agency from
13 which employees are transferred under this
14 Act on the day before the transfer date
15 shall be eligible for coverage by a life in-
16 surance plan under sections 8706(b),
17 8714a, 8714b, or 8714c of title 5, United
18 States Code, or by a life insurance plan es-
19 tablished by the Chairperson, without re-
20 gard to any regularly scheduled open sea-
21 son or any requirement of insurability.

22 (ii) CONTRIBUTION OF TRANSFERRED
23 EMPLOYEE.—

24 (I) IN GENERAL.—Subject to
25 subclause (II), a transferred employee

1 enrolled in a life insurance plan under
2 this clause shall pay any employee
3 contribution required by the plan.

4 (II) COST DIFFERENTIAL.—The
5 Chairperson shall pay any difference
6 in cost between the benefits provided
7 by the agency from which the em-
8 ployee transferred on the date of en-
9 actment of this Act and the benefits
10 provided under this section.

11 (III) FUNDS TRANSFER.—The
12 Chairperson shall transfer to the Em-
13 ployees' Life Insurance Fund estab-
14 lished under section 8714 of title 5,
15 United States Code, an amount deter-
16 mined by the Director of the Office of
17 Personnel Management, after con-
18 sultation with the Chairperson and
19 the Office of Management and Budg-
20 et, to be necessary to reimburse the
21 Fund for the cost to the Fund of pro-
22 viding benefits under this subpara-
23 graph not otherwise paid for by a
24 transferred employee under subclause
25 (I).

1 (IV) CREDIT FOR TIME EN-
2 ROLLED IN OTHER PLANS.—For any
3 transferred employee, enrollment in a
4 life insurance plan administered by
5 the agency from which the employee
6 transferred, the Chairperson imme-
7 diately before enrollment in a life in-
8 surance plan under chapter 87 of title
9 5, United States Code, shall be con-
10 sidered as enrollment in a life insur-
11 ance plan under that chapter for pur-
12 poses of section 8706(b)(1)(A) of title
13 5, United States Code.

14 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
15 FICATION SYSTEM.—Not later than 2 years after the
16 transfer date, the Chairperson shall implement a uniform
17 pay and classification system for all transferred employ-
18 ees.

19 (k) EQUITABLE TREATMENT.—In administering the
20 provisions of this section, the Chairperson—

21 (1) may not take any action that would unfairly
22 disadvantage a transferred employee relative to any
23 other transferred employee on the basis of prior em-
24 ployment by the Office of the Comptroller of the
25 Currency, the Office of Thrift Supervision, the Cor-

1 poration, the Board of Governors, or a Federal re-
2 serve bank; and

3 (2) may take such action as is appropriate in
4 an individual case to ensure that a transferred em-
5 ployee receives equitable treatment, with respect to
6 the status, tenure, pay, benefits (other than benefits
7 under programs administered by the Office of Per-
8 sonnel Management), and accrued leave or vacation
9 time for prior periods of service with any Federal
10 agency of the transferred employee.

11 **SEC. 353. PROPERTY TRANSFERRED.**

12 (a) **PROPERTY DEFINED.**—For purposes of this sec-
13 tion, the term “property” includes all real property (in-
14 cluding leaseholds) and all personal property (including
15 computers, furniture, fixtures, equipment, books, ac-
16 counts, records, reports, files, memoranda, paper, reports
17 of examination, work papers and correspondence related
18 to such reports, and any other information or materials).

19 (b) **IN GENERAL.**—

20 (1) **OTS AND OCC.**—Not later than 90 days
21 after the transfer date, all property of the Office of
22 the Comptroller of the Currency and the Office of
23 Thrift Supervision shall be transferred to FIRA.

24 (2) **BOARD OF GOVERNORS.**—

1 (A) IN GENERAL.—Not later than 90 days
2 after the transfer date, all property of the
3 Board of Governors that FIRA (in consultation
4 with the Board of Governors) determines is
5 used, on the day before the transfer date, to
6 perform or support the functions of the Board
7 of Governors transferred to FIRA under this
8 Act, shall be transferred to FIRA.

9 (B) FEDERAL RESERVE BANKS.—For pur-
10 poses of this paragraph, the term “property of
11 the Board of Governors” includes any property
12 of a Federal reserve bank that FIRA (in con-
13 sultation with the Board of Governors) deter-
14 mines is used, on the day before the transfer
15 date, to perform or support the functions of the
16 Board of Governors transferred to FIRA under
17 this Act.

18 (3) CORPORATION.—Not later than 90 days
19 after the transfer date, all property of the Corpora-
20 tion that FIRA (in consultation with the Corpora-
21 tion) determines is used, on the day before the
22 transfer date, to perform or support the functions of
23 the Corporation transferred to FIRA under this Act,
24 shall be transferred to FIRA.

1 (c) **CONTRACTS RELATED TO PROPERTY TRANS-**
2 **FERRED.**—Each contract, agreement, lease, license, per-
3 mit, and similar arrangement relating to property trans-
4 ferred to the Chairperson by this section shall be trans-
5 ferred to the Chairperson together with the property.

6 (d) **PRESERVATION OF PROPERTY.**—Property identi-
7 fied for transfer under this section shall not be altered,
8 destroyed, or deleted before transfer under this section.

9 **SEC. 354. FUNDS TRANSFERRED.**

10 Except to the extent that funds are necessary to dis-
11 pose of the affairs of the Office of the Comptroller of the
12 Currency and the Office of Thrift Supervision under sec-
13 tion 355, all funds that, on the day before the transfer
14 date, are available to the Comptroller of the Currency and
15 the Director of the Office of Thrift Supervision to pay the
16 expenses of the Office of the Comptroller of the Currency
17 and the Office of Thrift Supervision shall be transferred
18 to FIRA on the transfer date and deposited into the Fi-
19 nancial Institutions Regulatory Administration Fund es-
20 tablished under section 335.

21 **SEC. 355. DISPOSITION OF AFFAIRS.**

22 (a) **IN GENERAL.**—During the 90-day period begin-
23 ning on the transfer date, the Comptroller of the Cur-
24 rency, the Director of the Office of Thrift Supervision, the

1 Board of Governors, and the Board of Directors of the
2 Corporation—

3 (1) shall, solely for the purpose of winding up
4 the affairs of the Office of the Comptroller of the
5 Currency, the Office of Thrift Supervision, the
6 Board of Governors, and the Corporation, respec-
7 tively, relating to any function transferred to FIRA
8 under this title—

9 (A) manage the employees of such agencies
10 and provide for the payment of the compensa-
11 tion and benefits of the employees that accrue
12 before the transfer date; and

13 (B) manage any property of such agencies,
14 until the date that the property is transferred
15 under section 353; and

16 (2) may take any other action necessary to
17 wind up the affairs of the Office of the Comptroller
18 of the Currency, the Office of Thrift Supervision,
19 the Board of Governors, and the Corporation, re-
20 spectively, relating to the functions transferred
21 under this title.

22 (b) **AUTHORITY AND STATUS OF COMPTROLLER AND**
23 **DIRECTOR.—**

24 (1) **IN GENERAL.—**Notwithstanding the trans-
25 fer of functions under this title, during the 90-day

1 period beginning on the transfer date, the Comp-
2 troller of the Currency and the Director of the Of-
3 fice of Thrift Supervision shall retain and may exer-
4 cise any authority vested in the Comptroller of the
5 Currency and the Director of the Office of Thrift
6 Supervision, respectively, on the day before the
7 transfer date, only to the extent necessary—

8 (A) to wind up the Office of the Comp-
9 troller of the Currency and the Office of Thrift
10 Supervision; and

11 (B) to carry out the transfer under this
12 title during such 90-day period.

13 (2) OTHER PROVISIONS.—For purposes of
14 paragraph (1), the Comptroller of the Currency and
15 the Director of the Office of Thrift Supervision
16 shall, during the 90-day period beginning on the
17 transfer date, continue to be—

18 (A) treated as officers of the United
19 States; and

20 (B) entitled to receive compensation at the
21 same annual rate of basic pay that the Comp-
22 troller of the Currency and the Director of the
23 Office of Thrift Supervision, respectively, re-
24 ceived on the day before the transfer date.

1 **SEC. 356. 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 the
6 Comptroller of the Currency, the Office of Thrift Super-
7 vision, the Board of Governors, or the Corporation in con-
8 nection with functions transferred to FIRA under this
9 title, shall—

10 (1) continue to provide such services, subject to
11 reimbursement by FIRA, until the transfer of func-
12 tions under this title is complete; and

13 (2) consult with the Chairperson to coordinate
14 and facilitate a prompt and orderly transition.

15 **Subtitle F—Termination of Federal**
16 **Thrift Charter**

17 **SEC. 361. TERMINATION OF FEDERAL SAVINGS ASSOCIA-**
18 **TIONS.**

19 (a) IN GENERAL.—The Director of the Office of
20 Thrift Supervision, or the Chairperson, as the case may
21 be, may not issue a charter for a Federal savings associa-
22 tion under section 5 of the Home Owners' Loan Act (12
23 U.S.C. 1464).

24 (b) CONFORMING AMENDMENT.—Section 5(a) of the
25 Home Owner's Loan Act (12 U.S.C. 1464(a)) is amended
26 to read as follows:

1 “(a) IN GENERAL.—In order to provide thrift institu-
2 tions for the deposit of funds and for the extension of cred-
3 it for homes and other goods and services, the Director
4 is authorized, under such regulations as the Director may
5 prescribe, to provide for the examination, operation, and
6 regulation of associations to be known as Federal savings
7 associations (including Federal savings banks), giving pri-
8 mary consideration to the best practices of thrift institu-
9 tions in the United States. The lending and investment
10 powers conferred by this section are intended to encourage
11 such institutions to provide credit for housing safely and
12 soundly.”.

13 (c) PROSPECTIVE REPEAL.—Effective on the date on
14 which the Chairperson determines that no Federal savings
15 associations exist, section 5 of the Home Owner’s Loan
16 Act (12 U.S.C. 1464) is repealed.

17 **SEC. 362. BRANCHING.**

18 (a) DEFINITION.—In this subsection, the term “cov-
19 ered savings association” means a depository institution
20 that—

21 (1) is a savings association on the date of en-
22 actment of this Act; and

23 (2) becomes a bank not later than 1 year after
24 the date of enactment of this Act, or is treated as

1 a bank for purposes of the Federal Deposit Insur-
2 ance Act (12 U.S.C. 1811 et seq.).

3 (b) CONTINUATION OF OPERATION OF BRANCHES
4 PERMITTED.—

5 (1) IN GENERAL.—Notwithstanding any provi-
6 sion of the Federal Deposit Insurance Act, the Bank
7 Holding Company Act of 1956, or any other provi-
8 sion of Federal or State law, a covered savings asso-
9 ciation may continue to operate any branch or agen-
10 cy that the covered savings association—

11 (A) operated as a branch or agency on or
12 before the date of enactment of this Act; or

13 (B) was in the process of establishing as a
14 branch or agency on or before the date of en-
15 actment of this Act.

16 (c) ESTABLISHING A BRANCH OR AGENCY.—For
17 purposes of subsection (b), a covered savings association
18 is in the process of establishing a branch or agency, if
19 the covered savings association—

20 (1) has received approval from the Chairperson
21 to establish the branch or agency;

22 (2) has pending with the Chairperson an appli-
23 cation or notice to establish the branch or agency;

24 (3) has a legal and contractual obligation to es-
25 tablish the branch or agency; or

1 (4) has received authority from the appropriate
2 Federal banking agency (as defined in section 3(q)
3 of the Federal Deposit Insurance Act (12 U.S.C.
4 1813(q))) to establish the branch or agency in con-
5 nection with the assumption of liabilities or an ac-
6 quisition of an insured depository institution pursu-
7 ant to subsection (f) or (k) of section 13 of the Fed-
8 eral Deposit Insurance Act (12 U.S.C. 1823) or sec-
9 tion 408(m) of the National Housing Act (as in ef-
10 fect before the date of enactment of the Financial
11 Institutions Reform, Recovery, and Enforcement Act
12 of 1989).

13 **Subtitle G—Additional Powers of** 14 **the Corporation**

15 **SEC. 371. DEPOSIT INSURANCE REFORMS.**

16 (a) **SIZE DISTINCTIONS.**—Section 7(b)(2) of the Fed-
17 eral Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is
18 amended—

19 (1) by striking subparagraph (D); and

20 (2) by redesignating subparagraph (C) as sub-
21 paragraph (D).

22 (b) **ANNUAL ASSESSMENT RATE.**—Section 7(b)(2) of
23 the Federal Deposit Insurance Act (12 U.S.C.
24 1817(b)(2)), as amended by this section, is amended by
25 inserting after subparagraph (B) the following:

1 “(C) ASSESSMENT BASE.—The assessment
2 of any insured depository institution imposed
3 under this subsection shall be an amount equal
4 to the product of—

5 “(i) an assessment rate established by
6 the Corporation; and

7 “(ii) the amount of the average total
8 assets of the insured depository institution
9 during the assessment period, minus the
10 amount of the average tangible equity of
11 the insured depository institution during
12 the assessment period.”.

13 **SEC. 372. MANAGEMENT OF THE FEDERAL DEPOSIT INSUR-**
14 **ANCE CORPORATION.**

15 Section 2(a)(1) of the Federal Deposit Insurance Act
16 (12 U.S.C. 1812(a)(1)) is amended—

17 (1) in subparagraph (A), by striking “Comp-
18 troller of the Currency” and inserting “Chairman of
19 the Board of Governors of the Federal Reserve Sys-
20 tem”; and

21 (2) in subparagraph (B), by striking “Director
22 of the Office of Thrift Supervision” and inserting
23 “the Chairperson of FIRA”.

1 **TITLE IV—REGULATION OF AD-**
2 **VISERS TO HEDGE FUNDS**
3 **AND OTHERS**

4 **SEC. 401. SHORT TITLE.**

5 This title may be cited as the “Private Fund Invest-
6 ment Advisers Registration Act of 2009”.

7 **SEC. 402. DEFINITIONS.**

8 Section 202(a) of the Investment Advisers Act of
9 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the
10 end the following:

11 “(29) The term ‘private fund’ means an invest-
12 ment fund that—

13 “(A) would be an investment company (as
14 defined in section 3 of the Investment Company
15 Act of 1940 (15 U.S.C. 80a–3)), but for section
16 3(e)(1) or 3(e)(7) of that Act; and

17 “(B) either—

18 “(i) is organized or otherwise created
19 under the laws of the United States or of
20 a State; or

21 “(ii) has 10 percent or more of its
22 outstanding securities owned by United
23 States persons.

24 “(30) The term ‘foreign private adviser’ means
25 any investment adviser who—

1 “(A) has no place of business in the
2 United States;

3 “(B) has fewer than 15 clients who are
4 domiciled in or residents of the United States;

5 “(C) has assets under management attrib-
6 utable to clients who are domiciled in or resi-
7 dents of the United States of less than
8 \$25,000,000, or such higher amount as the
9 Commission may, by rule, deem appropriate in
10 accordance with the purposes of this title; and

11 “(D) neither holds itself out generally to
12 the public in the United States as—

13 “(i) an investment adviser, nor acts as
14 an investment adviser to any investment
15 company registered under the Investment
16 Company Act of 1940; or

17 “(ii) a company which has elected to
18 be a business development company pursu-
19 ant to section 54 of the Investment Com-
20 pany Act of 1940 (15 U.S.C. 80a-53), and
21 has not withdrawn its election.”.

1 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION;**
2 **LIMITED EXEMPTION FOR FOREIGN PRIVATE**
3 **ADVISERS; LIMITED INTRASTATE EXEMP-**
4 **TION.**

5 Section 203(b) of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b–3(b)) is amended—

7 (1) in paragraph (1), by inserting “, other than
8 an investment adviser who acts as an investment ad-
9 viser to any private fund,” before “all of whose”;

10 (2) by striking paragraph (3) and inserting the
11 following:

12 “(3) any investment adviser that is a foreign
13 private adviser;”; and

14 (3) in paragraph (6)—

15 (A) in subparagraph (A), by striking “or”
16 at the end;

17 (B) in subparagraph (B), by striking the
18 period at the end and inserting “; or”; and

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

20 “(C) a private fund.”.

21 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS;**
22 **EXAMINATIONS; DISCLOSURES.**

23 Section 204 of the Investment Advisers Act of 1940
24 (15 U.S.C. 80b–4) is amended—

25 (1) by redesignating subsections (b) and (c) as
26 subsections (c) and (d), respectively; and

1 (2) by inserting after subsection (a) the fol-
2 lowing:

3 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

4 “(1) IN GENERAL.—The Commission may re-
5 quire any investment adviser registered under this
6 title—

7 “(A) to maintain such records of, and file
8 with the Commission such reports regarding,
9 private funds advised by the investment adviser,
10 as necessary and appropriate in the public in-
11 terest and for the protection of investors, or for
12 the assessment of systemic risk by the Agency
13 for Financial Stability; and

14 “(B) to provide or make available to the
15 Agency for Financial Stability those reports or
16 records or the information contained therein.

17 “(2) TREATMENT OF RECORDS.—The records
18 and reports of any private fund provided to an in-
19 vestment adviser registered under this title who pro-
20 vides investment advice to that private fund shall be
21 deemed to be the records and reports of the invest-
22 ment adviser.

23 “(3) REQUIRED INFORMATION.—The records
24 and reports required to be filed with the Commission
25 under this subsection shall include, for each private

1 fund advised by the investment adviser, a description
2 of—

3 “(A) the amount of assets under manage-
4 ment, use of leverage;

5 “(B) counterparty credit risk exposure;

6 “(C) trading and investment positions;

7 “(D) valuation methodologies of the fund;

8 “(E) types of assets held;

9 “(F) side arrangements or side letters,
10 whereby certain investors in a fund obtain more
11 favorable rights or entitlements than other in-
12 vestors;

13 “(G) trading practices; and

14 “(H) such other information as the Com-
15 mission, in consultation with the Agency for Fi-
16 nancial Stability, deems necessary and appro-
17 priate in the public interest and for the protec-
18 tion of investors or for the assessment of sys-
19 temic risk.

20 “(4) MAINTENANCE OF RECORDS.—An invest-
21 ment adviser registered under this title shall main-
22 tain such records of private funds advised by the in-
23 vestment adviser for such period or periods as the
24 Commission, by rule, may prescribe as necessary and
25 appropriate in the public interest and for the protec-

1 tion of investors, or for the assessment of systemic
2 risk.

3 “(5) EXAMINATION OF RECORDS.—

4 “(A) PERIODIC AND SPECIAL EXAMINA-
5 TIONS.—The Commission—

6 “(i) shall conduct periodic inspections
7 of all records of private funds maintained
8 by an investment adviser registered under
9 this title in accordance with a schedule es-
10 tablished by the Commission; and

11 “(ii) may conduct at any time and
12 from time to time such additional, special,
13 and other examinations as the Commission
14 may prescribe as necessary and appro-
15 priate in the public interest and for the
16 protection of investors, or for the assess-
17 ment of systemic risk.

18 “(B) AVAILABILITY OF RECORDS.—An in-
19 vestment adviser registered under this title shall
20 make available to the Commission any copies or
21 extracts from such records as may be prepared
22 without undue effort, expense, or delay, as the
23 Commission or its representatives may reason-
24 ably request.

1 “(6) INFORMATION SHARING.—The Commission
2 shall make available to the Agency for Financial
3 Stability copies of all reports, documents, records,
4 and information filed with or provided to the Com-
5 mission by an investment adviser under this sub-
6 section as the Agency for Financial Stability may
7 consider necessary for the purpose of assessing the
8 systemic risk posed by a private fund. Information
9 in all such reports, documents, records, and informa-
10 tion in this subsection shall be kept strictly confiden-
11 tial.

12 “(7) CONFIDENTIALITY OF REPORTS.—Not-
13 withstanding any other provision of law, the Com-
14 mission may not be compelled to disclose any super-
15 visory report or information contained therein re-
16 quired to be filed with the Commission under this
17 subsection, except that nothing in this subsection
18 authorizes the Commission—

19 “(A) to withhold information from Con-
20 gress, upon an agreement of confidentiality; or

21 “(B) prevent the Commission from com-
22 plying with—

23 “(i) a request for information from
24 any other Federal department or agency or
25 any self-regulatory organization requesting

1 the report or information for purposes
2 within the scope of its jurisdiction; or

3 “(ii) an order of a court of the United
4 States in an action brought by the United
5 States or the Commission.

6 “(8) PUBLIC INFORMATION EXCEPTION.—For
7 purposes of section 552 of title 5, United States
8 Code, this subsection shall be considered a statute
9 described in subsection (b)(3)(B) of such section
10 552.

11 “(9) REPORT TO CONGRESS.—The Commission
12 shall report annually to Congress on how the Com-
13 mission has used the data collected pursuant to this
14 subsection to monitor the markets for the protection
15 of investors and the integrity of the markets.”.

16 **SEC. 405. DISCLOSURE PROVISION ELIMINATED.**

17 Section 210 of the Investment Advisers Act of 1940
18 (15 U.S.C. 80(b)–10) is amended by striking subsection
19 (c).

20 **SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.**

21 Section 211 of the Investment Advisers Act of 1940
22 (15 U.S.C. 80b–11) is amended—

23 (1) in subsection (a)—

24 (A) by striking the second sentence;

1 (B) by inserting before the period at the
2 end of the first sentence the following: “, in-
3 cluding rules and regulations defining technical,
4 trade, and other terms used in this title.”;

5 (C) by inserting “(1) IN GENERAL.—” be-
6 fore “The Commission”; and

7 (D) by adding at the end the following:

8 “(2) COMMISSION AUTHORITY.—For the pur-
9 poses of its rules and regulations, the Commission
10 may—

11 “(A) classify persons and matters within
12 its jurisdiction and prescribe different require-
13 ments for different classes of persons or mat-
14 ters; and

15 “(B) ascribe different meanings to terms
16 (including the term ‘client’) used in different
17 sections of this title, as the Commission deter-
18 mines necessary to effect the purposes of this
19 title.”; and

20 (2) by adding at the end the following:

21 “(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The
22 Commission and the Commodity Futures Trading Com-
23 mission shall, after consultation with the Agency for Fi-
24 nancial Stability, not later than 6 months after the date
25 of enactment of the Private Fund Investment Advisers

1 Registration Act of 2009, jointly promulgate rules to es-
2 tablish the form and content of the reports required to
3 be filed with the Commission under subsection 204(b) and
4 with the Commodity Futures Trading Commission by in-
5 vestment advisers that are registered both under the In-
6 vestment Advisers Act of 1940 (15 U.S.C. 80b et seq.)
7 and the Commodity Exchange Act (7 U.S.C. 1a et seq.).”.

8 **SEC. 407. EXEMPTIONS OF VENTURE CAPITAL FUND ADVIS-**
9 **ERS.**

10 Section 203 of the Investment Advisers Act of 1940
11 (15 U.S.C. 80b–3) is amended by adding at the end the
12 following:

13 “(1) EXEMPTION OF VENTURE CAPITAL FUND AD-
14 VISERS.—No investment adviser shall be subject to the
15 registration requirements of this title with respect to the
16 provision of investment advice relating to a venture capital
17 fund. Not later than 6 months after the date of enactment
18 of this subsection, the Commission shall issue final rules
19 to identify and define the term ‘venture capital fund’ for
20 purposes of this subsection.”.

21 **SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRI-**
22 **VATE EQUITY FUND ADVISERS.**

23 Section 203 of the Investment Advisers Act of 1940
24 (15 U.S.C. 80b–3) is amended by adding at the end the
25 following:

1 “(m) EXEMPTION OF AND REPORTING BY PRIVATE
2 EQUITY FUND ADVISERS.—

3 “(1) IN GENERAL.—Except as provided in this
4 subsection, no investment adviser shall be subject to
5 the registration or reporting requirements of this
6 title with respect to the provision of investment ad-
7 vice relating to a private equity fund.

8 “(2) MAINTENANCE OF RECORDS AND ACCESS
9 BY COMMISSION.—Not later than 6 months after the
10 date of enactment of this subsection, the Commis-
11 sion shall issue final rules—

12 “(A) to require investment advisers de-
13 scribed in paragraph (1) to maintain such
14 records and provide to the Commission such an-
15 nual or other reports as the Commission deter-
16 mines necessary and appropriate in the public
17 interest and for the protection of investors; and

18 “(B) to identify and define the term ‘pri-
19 vate equity fund’ for purposes of this sub-
20 section.”.

21 **SEC. 409. FAMILY OFFICES.**

22 Section 202(a)(11) of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking
24 “or (G)” and inserting the following: “(G) any family of-
25 fice, as defined by rule, regulation, or order of the Com-

1 mission, in accordance with the purposes of this title; or
2 (H)”.

3 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**
4 **THRESHOLD FOR FEDERAL REGISTRATION**
5 **OF INVESTMENT ADVISERS.**

6 Section 203A(a)(1)(A) of the Investment Advisers
7 Act (15 U.S.C. 80b-3a(a)(1)(A)) is amended by striking
8 “\$25,000,000” and inserting “\$100,000,000”.

9 **SEC. 411. CUSTODY OF CLIENT ASSETS.**

10 The Investment Advisers Act of 1940 (15 U.S.C.
11 80b-1 et seq.) is amended by adding at the end the fol-
12 lowing new section:

13 **“SEC. 223. INDEPENDENT CUSTODY OF CLIENT ASSETS.**

14 “The Commission shall prescribe rules requiring in-
15 vestment advisers registered under this title to use an
16 independent custodian to hold client assets, where nec-
17 essary and appropriate in the public interest and for the
18 protection of investors.”.

19 **SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STAND-**
20 **ARD FOR INFLATION.**

21 The Commission shall, by rule—

22 (1) increase the financial threshold for an ac-
23 credited investor, as set forth in the rules of the
24 Commission under the Securities Act of 1933, by
25 calculating an amount that is greater than the

1 amount in effect on the date of enactment of this
2 Act of \$200,000 income for a natural person (or
3 \$300,000 for a couple) and \$1,000,000 in assets, as
4 the Commission determines is appropriate and in the
5 public interest, in light of price inflation since those
6 figures were determined; and

7 (2) adjust that threshold not less frequently
8 than once every 5 years, to reflect the percentage in-
9 crease in the cost of living.

10 **SEC. 413. STUDIES AND REPORTS.**

11 The Comptroller General of the United States shall
12 conduct a study on—

13 (1) the appropriate criteria for determining the
14 financial thresholds or other criteria needed to qual-
15 ify for accredited investor status and eligibility to in-
16 vest in hedge funds, and shall submit a report to
17 Congress on the results of such study not later than
18 1 year after the date of enactment of this Act;

19 (2) the feasibility of forming a self-regulatory
20 organization to oversee hedge funds, private equity
21 funds, and venture capital funds, and shall submit
22 a report to Congress on the results of such study not
23 later than 1 year after the date of enactment of this
24 Act; and

1 (3) the state of short selling in the stock mar-
2 ket, with particular attention to the impact of recent
3 rule changes and the incidence of the failure to de-
4 liver shares sold short, and shall submit a report to
5 Congress on the results of such study not later than
6 2 years after the date of enactment of this Act.

7 **TITLE V—INSURANCE**
8 **Subtitle A—Office of National**
9 **Insurance**

10 **SEC. 501. SHORT TITLE.**

11 This subtitle may be cited as the “Office of National
12 Insurance Act of 2009”.

13 **SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL IN-**
14 **SURANCE.**

15 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
16 chapter 3 of subtitle I of title 31, United States Code,
17 is amended—

18 (1) by redesignating section 312 as section 315;

19 (2) by redesignating section 313 as section 312;

20 and

21 (3) by inserting after section 312 (as so redес-
22 ignated) 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 Agency for Fi-
21 nancial Stability that it designate an insurer,
22 including the affiliates of such insurer, as an
23 entity subject to regulation as a specified finan-
24 cial company, as such term is defined under
25 title I of the Restoring American Financial Sta-
26 bility Act of 2009;

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 and assisting the Secretary in negoti-
12 ating International Insurance Agreements on
13 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 regarding
19 insurance matters of national importance and
20 prudential insurance matters of international
21 importance; and

22 “(G) to perform such other related duties
23 and authorities as may be assigned to the Of-
24 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).

9 “(e) **GATHERING OF INFORMATION.**—

10 “(1) **IN GENERAL.**—In carrying out the func-
11 tions required under subsection (c), the Office
12 may—

13 “(A) receive and collect data and informa-
14 tion on and from the insurance industry and in-
15 surers;

16 “(B) enter into information-sharing agree-
17 ments;

18 “(C) analyze and disseminate data and in-
19 formation; and

20 “(D) issue reports regarding all lines of in-
21 surance except health insurance.

22 “(2) **COLLECTION OF INFORMATION FROM IN-**
23 **SURERS AND AFFILIATES.**—Except as provided in
24 paragraph (3), the Office may require an insurer, or
25 any affiliate of an insurer, to submit such data or

1 information that the Office may reasonably require
2 in carrying out the functions described under sub-
3 section (c).

4 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
5 graph (2) shall not apply with respect to any insurer
6 or affiliate thereof that meets a minimum size
7 threshold that the Office may establish, whether by
8 order or rule.

9 “(4) ADVANCE COORDINATION.—Before col-
10 lecting any data or information under paragraph (2)
11 from an insurer, or any affiliate of an insurer, the
12 Office shall coordinate with each relevant State in-
13 surance regulator (or other relevant Federal or State
14 regulatory agency, if any, in the case of an affiliate
15 of an insurer) to determine if the information to be
16 collected is available from, or may be obtained in a
17 timely manner by, such State insurance regulator,
18 individually or collectively, another regulatory agen-
19 cy, or publicly available sources. Notwithstanding
20 any other provision of law, each such relevant State
21 insurance regulator or other Federal or State regu-
22 latory agency is authorized to provide to the Office
23 such data or information.

24 “(5) CONFIDENTIALITY.—

1 “(A) RETENTION OF PRIVILEGE.—The
2 submission of any nonpublicly available data
3 and information to the Office under this sub-
4 section shall not constitute a waiver of, or oth-
5 erwise affect, any privilege arising under Fed-
6 eral or State law (including the rules of any
7 Federal or State court) to which the data or in-
8 formation is otherwise subject.

9 “(B) CONTINUED APPLICATION OF PRIOR
10 CONFIDENTIALITY AGREEMENTS.—Any require-
11 ment under Federal or State law to the extent
12 otherwise applicable, or any requirement pursu-
13 ant to a written agreement in effect between
14 the original source of any nonpublicly available
15 data or information and the source of such data
16 or information to the Office, regarding the pri-
17 vacy or confidentiality of any data or informa-
18 tion in the possession of the source to the Of-
19 fice, shall continue to apply to such data or in-
20 formation after the data or information has
21 been provided pursuant to this subsection to the
22 Office.

23 “(C) INFORMATION SHARING AGREE-
24 MENT.—Any data or information obtained by
25 the Office may be made available to State in-

1 surance regulators, individually or collectively,
2 through an information sharing agreement
3 that—

4 “(i) shall comply with applicable Fed-
5 eral law; and

6 “(ii) shall not constitute a waiver of,
7 or otherwise affect, any privilege under
8 Federal or State law (including the rules
9 of any Federal or State Court) to which
10 the data or information is otherwise sub-
11 ject.

12 “(D) AGENCY DISCLOSURE REQUIRE-
13 MENTS.—Section 552 of title 5, United States
14 Code, shall apply to any data or information
15 submitted to the Office by an insurer or an af-
16 filiate of an insurer.

17 “(6) SUBPOENAS AND ENFORCEMENT.—The
18 Director shall have the power to require by subpoena
19 the production of the data or information requested
20 under paragraph (2). Subpoenas shall bear the sig-
21 nature of the Director and shall be served by any
22 person or class of persons designated by the Director
23 for that purpose. In the case of contumacy or failure
24 to obey a subpoena, the subpoena shall be enforce-
25 able by order of any appropriate district court of the

1 United States. Any failure to obey the order of the
2 court may be punished by the court as a contempt
3 of court.

4 “(f) PREEMPTION OF STATE INSURANCE MEAS-
5 URES.—

6 “(1) STANDARD.—A State insurance measure
7 shall be preempted if, and only to the extent that the
8 Director determines, in accordance with this sub-
9 section, that the measure—

10 “(A) results in less favorable treatment of
11 a non-United States insurer domiciled in a for-
12 eign jurisdiction that is subject to an inter-
13 national insurance agreement on prudential
14 measures than a United States insurer domi-
15 ciled, licensed, or otherwise admitted in that
16 State; and

17 “(B) is inconsistent with an International
18 Insurance Agreement on Prudential Measures.

19 “(2) DETERMINATION.—

20 “(A) NOTICE OF POTENTIAL INCONSIST-
21 ENCY.—Before making any determination
22 under paragraph (1), the Director shall—

23 “(i) notify and consult with the appro-
24 priate State regarding any potential incon-
25 sistency or preemption;

1 “(ii) cause to be published in the Fed-
2 eral Register notice of the issue regarding
3 the potential inconsistency or preemption,
4 including a description of each State insur-
5 ance measure at issue and any applicable
6 International Insurance Agreement on
7 Prudential Measures;

8 “(iii) provide interested parties a rea-
9 sonable opportunity to submit written com-
10 ments to the Office; and

11 “(iv) consider any comments received.

12 “(B) SCOPE OF REVIEW.—For purposes of
13 this subsection, the determination of the Direc-
14 tor regarding State insurance measures shall be
15 limited to the subject matter contained within
16 the international insurance agreement on pru-
17 dential measure involved.

18 “(C) NOTICE OF DETERMINATION OF IN-
19 CONSISTENCY.—Upon making any determina-
20 tion under paragraph (1), the Director shall—

21 “(i) notify the appropriate State of
22 the determination and the extent of the in-
23 consistency;

24 “(ii) establish a reasonable period of
25 time, which shall not be less than 30 days,

1 before the determination shall become ef-
2 fective; and

3 “(iii) notify the Committee on Bank-
4 ing, Housing, and Urban Affairs of the
5 Senate and the Committee on Financial
6 Services of the House of Representatives of
7 the inconsistency.

8 “(3) NOTICE OF EFFECTIVENESS.—Upon the
9 conclusion of the period referred to in paragraph
10 (2)(C)(ii), if the basis for such determination still
11 exists, the determination shall become effective and
12 the Director shall—

13 “(A) cause to be published a notice in the
14 Federal Register that the preemption has be-
15 come effective, as well as the effective date; and

16 “(B) notify the appropriate State.

17 “(4) LIMITATION.—No State may enforce a
18 State insurance measure to the extent that such
19 measure has been preempted under this subsection.

20 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
21 DURES ACT.—Determinations of inconsistency made pur-
22 suant to subsection (f)(2) shall be subject to the applicable
23 provisions of subchapter II of chapter 5 of title 5, United
24 States Code (relating to administrative procedure), and
25 chapter 7 of such title (relating to judicial review).

1 “(h) REGULATIONS, POLICIES, AND PROCEDURES.—
2 The Secretary may issue orders, regulations, policies, and
3 procedures to implement this section.

4 “(i) CONSULTATION.—The Director shall consult
5 with State insurance regulators, individually or collec-
6 tively, to the extent the Director determines appropriate,
7 in carrying out the functions of the Office.

8 “(j) SAVINGS PROVISIONS.—Nothing in this section
9 shall—

10 “(1) preempt—

11 “(A) any State insurance measure that
12 governs any insurer’s rates, premiums, under-
13 writing, or sales practices;

14 “(B) any State coverage requirements for
15 insurance;

16 “(C) the application of the antitrust laws
17 of any State to the business of insurance; or

18 “(D) any State insurance measure gov-
19 erning the capital or solvency of an insurer, ex-
20 cept to the extent that such State insurance
21 measure results in less favorable treatment of a
22 non-United State insurer than a United States
23 insurer;

1 “(2) be construed to alter, amend, or limit any
2 provision of the Consumer Financial Protection
3 Agency Act of 2009; or

4 “(3) affect the preemption of any State insur-
5 ance measure otherwise inconsistent with and pre-
6 empted by Federal law.

7 “(k) **RETENTION OF EXISTING STATE REGULATORY**
8 **AUTHORITY.**—Nothing in this section or section 314 shall
9 be construed to establish or provide the Office or the De-
10 partment of the Treasury with general supervisory or reg-
11 ulatory authority over the business of insurance.

12 “(l) **ANNUAL REPORT TO CONGRESS.**—Beginning
13 September 30, 2011, the Director shall submit a report
14 on or before September 30 of each calendar year to the
15 President and to the Committee on Banking, Housing,
16 and Urban Affairs of the Senate and the Committee on
17 Financial Services of the House of Representatives on the
18 insurance industry, any actions taken by the Office pursu-
19 ant to subsection (f) (regarding preemption of inconsistent
20 State insurance measures), and any other information as
21 deemed relevant by the Director or as requested by such
22 Committees.

23 “(m) **STUDY AND REPORT ON REGULATION OF IN-**
24 **SURANCE.**—

1 “(1) IN GENERAL.—Not later than 18 months
2 after the date of enactment of this section, the Di-
3 rector shall conduct a study and submit a report to
4 Congress on how to modernize and improve the sys-
5 tem of insurance regulation in the United States.

6 “(2) CONSIDERATIONS.—The study and report
7 required under paragraph (1) shall be based on and
8 guided by the following considerations:

9 “(A) Systemic risk regulation with respect
10 to insurance.

11 “(B) Capital standards and the relation-
12 ship between capital allocation and liabilities,
13 including standards relating to liquidity and du-
14 ration risk .

15 “(C) Consumer protection for insurance
16 products and practices, including gaps in state
17 regulation.

18 “(D) The degree of national uniformity of
19 state insurance regulation.

20 “(E) The regulation of insurance compa-
21 nies and affiliates on a consolidated basis.

22 “(F) International coordination of insur-
23 ance regulation.

1 “(3) **ADDITIONAL FACTORS.**—The study and
2 report required under paragraph (1) shall also exam-
3 ine the following factors:

4 “(A) The costs and benefits of potential
5 Federal regulation of insurance across various
6 lines of insurance (except health insurance).

7 “(B) The feasibility of regulating only cer-
8 tain lines of insurance at the Federal level,
9 while leaving other lines of insurance to be reg-
10 ulated at the State level.

11 “(C) The ability of any potential Federal
12 regulation or Federal regulators to eliminate or
13 minimize regulatory arbitrage.

14 “(D) The impact that developments in the
15 regulation of insurance in foreign jurisdictions
16 might have on the potential Federal regulation
17 of insurance.

18 “(E) The ability of any potential Federal
19 regulation or Federal regulator to provide ro-
20 bust consumer protection for policyholders.

21 “(F) Such other factors as the Director
22 determines necessary or appropriate, consistent
23 with the principles set forth in paragraph (2).

24 “(4) **REQUIRED RECOMMENDATIONS.**—The
25 study and report required under paragraph (1) shall

1 also contain any legislative, administrative, or regu-
2 latory recommendations, as the Director determines
3 appropriate, to carry out or effectuate the findings
4 set forth in such report.

5 “(5) CONSULTATION.—With respect to the
6 study and report required under paragraph (1), the
7 Director shall consult with the National Association
8 of Insurance Commissioners, consumer organiza-
9 tions, representatives of the insurance industry and
10 policyholders, and other organizations and experts,
11 as appropriate.

12 “(n) USE OF EXISTING RESOURCES.—To carry out
13 this section, the Office may employ personnel, facilities,
14 and any other resource of the Department of the Treasury
15 available to the Secretary.

16 “(o) DEFINITIONS.—In this section and section 314,
17 the following definitions shall apply:

18 “(1) AFFILIATE.—The term ‘affiliate’ means,
19 with respect to an insurer, any person who controls,
20 is controlled by, or is under common control with the
21 insurer.

22 “(2) INSURER.—The term ‘insurer’ means any
23 person engaged in the business of insurance, includ-
24 ing reinsurance.

1 “(3) INTERNATIONAL INSURANCE AGREEMENT
2 ON PRUDENTIAL MEASURES.—The term ‘Inter-
3 national Insurance Agreement on Prudential Meas-
4 ures’ means a written bilateral or multilateral agree-
5 ment entered into between the United States and a
6 foreign government, authority, or regulatory entity
7 regarding prudential measures applicable to the
8 business of insurance or reinsurance.

9 “(4) NON-UNITED STATES INSURER.—The term
10 ‘non-United States insurer’ means an insurer that is
11 organized under the laws of a jurisdiction other than
12 a State, but does not include any United States
13 branch of such an insurer.

14 “(5) OFFICE.—The term ‘Office’ means the Of-
15 fice of National Insurance established by this sec-
16 tion.

17 “(7) STATE INSURANCE MEASURE.—The term
18 ‘State insurance measure’ means any State law, reg-
19 ulation, administrative ruling, bulletin, guideline, or
20 practice relating to or affecting prudential measures
21 applicable to insurance or reinsurance.

22 “(8) STATE INSURANCE REGULATOR.—The
23 term ‘State insurance regulator’ means any State
24 regulatory authority responsible for the supervision
25 of insurers.

1 “(9) UNITED STATES INSURER.—The term
2 ‘United States insurer’ means—

3 “(A) an insurer that is organized under
4 the laws of a State; or

5 “(B) a United States branch of a non-
6 United States insurer.

7 “(p) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated for the Office for each
9 fiscal year such sums as may be necessary.

10 **“SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON**
11 **PRUDENTIAL MEASURES.**

12 “(a) IN GENERAL.—The Secretary of the Treasury
13 is authorized to negotiate and enter into International In-
14 surance Agreements on Prudential Measures on behalf of
15 the United States.

16 “(b) SAVINGS PROVISION.—Nothing in this section or
17 section 313 shall be construed to affect the development
18 and coordination of United States international trade pol-
19 icy or the administration of the United States trade agree-
20 ments program. It is to be understood that the negotiation
21 of International Insurance Agreements on Prudential
22 Measures under such sections is consistent with the re-
23 quirement of this subsection.

24 “(c) CONSULTATION.—The Secretary shall consult
25 with the United States Trade Representative on the nego-

321

1 tiation of International Insurance Agreements on Pruden-
2 tial Measures, including prior to initiating and concluding
3 any such agreements.”.

4 (b) DUTIES OF SECRETARY.—Section 321(a) of title
5 31, United States Code, is amended—

6 (1) in paragraph (7), by striking “; and” and
7 inserting a semicolon;

8 (2) in paragraph (8)(C), by striking the period
9 at the end and inserting “; and”; and

10 (3) by adding at the end the following new
11 paragraph:

12 “(9) advise the President on major domestic
13 and international prudential policy issues in connec-
14 tion with all lines of insurance except health insur-
15 ance.”.

16 (c) CLERICAL AMENDMENT.—The table of sections
17 for subchapter I of chapter 3 of title 31, United States
18 Code, is amended by striking the item relating to section
19 312 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.”.

1 **Subtitle B—State-based Insurance**
2 **Reform**

3 **SEC. 511. SHORT TITLE.**

4 This subtitle may be cited as the “Nonadmitted and
5 Reinsurance Reform Act of 2009”.

6 **SEC. 512. EFFECTIVE DATE.**

7 Except as otherwise specifically provided in this sub-
8 title, this subtitle shall take effect upon the expiration of
9 the 12-month period beginning on the date of the enact-
10 ment of this subtitle.

11 **PART I—NONADMITTED INSURANCE**

12 **SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF**
13 **PREMIUM TAXES.**

14 (a) HOME STATE’S EXCLUSIVE AUTHORITY.—No
15 State other than the home State of an insured may require
16 any premium tax payment for nonadmitted insurance.

17 (b) ALLOCATION OF NONADMITTED PREMIUM
18 TAXES.—

19 (1) IN GENERAL.—The States may enter into a
20 compact or otherwise establish procedures to allocate
21 among the States the premium taxes paid to an in-
22 sured’s home State described in subsection (a).

23 (2) EFFECTIVE DATE.—Except as expressly
24 otherwise provided in such compact or other proce-
25 dures, any such compact or other procedures—

1 (A) if adopted on or before the expiration
2 of the 330-day period that begins on the date
3 of the enactment of this subtitle, shall apply to
4 any premium taxes that, on or after such date
5 of enactment, are required to be paid to any
6 State that is subject to such compact or proce-
7 dures; and

8 (B) if adopted after the expiration of such
9 330-day period, shall apply to any premium
10 taxes that, on or after January 1 of the first
11 calendar year that begins after the expiration of
12 such 330-day period, are required to be paid to
13 any State that is subject to such compact or
14 procedures.

15 (3) REPORT.—Upon the expiration of the 330-
16 day period referred to in paragraph (2), the NAIC
17 may submit a report to the Committee on Financial
18 Services and Committee on the Judiciary of the
19 House of Representatives and the Committee on
20 Banking, Housing, and Urban Affairs of the Senate
21 identifying and describing any compact or other pro-
22 cedures for allocation among the States of premium
23 taxes that have been adopted during such period by
24 any States.

1 (4) **NATIONWIDE SYSTEM.**—The Congress in-
2 tends that each State adopt nationwide uniform re-
3 quirements, forms, and procedures, such as an inter-
4 state compact, that provides for the reporting, pay-
5 ment, collection, and allocation of premium taxes for
6 nonadmitted insurance consistent with this section.

7 (c) **ALLOCATION BASED ON TAX ALLOCATION RE-**
8 **PORT.**—To facilitate the payment of premium taxes
9 among the States, an insured’s home State may require
10 surplus lines brokers and insureds who have independently
11 procured insurance to annually file tax allocation reports
12 with the insured’s home State detailing the portion of the
13 nonadmitted insurance policy premium or premiums at-
14 tributable to properties, risks, or exposures located in each
15 State. The filing of a nonadmitted insurance tax allocation
16 report and the payment of tax may be made by a person
17 authorized by the insured to act as its agent.

18 **SEC. 522. REGULATION OF NONADMITTED INSURANCE BY**
19 **INSURED’S HOME STATE.**

20 (a) **HOME STATE AUTHORITY.**—Except as otherwise
21 provided in this section, the placement of nonadmitted in-
22 surance shall be subject to the statutory and regulatory
23 requirements solely of the insured’s home State.

24 (b) **BROKER LICENSING.**—No State other than an in-
25 sured’s home State may require a surplus lines broker to

1 be licensed in order to sell, solicit, or negotiate non-
2 admitted insurance with respect to such insured.

3 (c) **ENFORCEMENT PROVISION.**—With respect to sec-
4 tion 521 and subsections (a) and (b) of this section, any
5 law, regulation, provision, or action of any State that ap-
6 plies or purports to apply to nonadmitted insurance sold
7 to, solicited by, or negotiated with an insured whose home
8 State is another State shall be preempted with respect to
9 such application.

10 (d) **WORKERS' COMPENSATION EXCEPTION.**—This
11 section may not be construed to preempt any State law,
12 rule, or regulation that restricts the placement of workers'
13 compensation insurance or excess insurance for self-fund-
14 ed workers' compensation plans with a nonadmitted in-
15 surer.

16 **SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-**
17 **BASE.**

18 After the expiration of the 2-year period beginning
19 on the date of the enactment of this subtitle, a State may
20 not collect any fees relating to licensing of an individual
21 or entity as a surplus lines broker in the State unless the
22 State has in effect at such time laws or regulations that
23 provide for participation by the State in the national in-
24 surance producer database of the NAIC, or any other

1 equivalent uniform national database, for the licensure of
2 surplus lines brokers and the renewal of such licenses.

3 **SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
4 **GIBILITY.**

5 A State may not—

6 (1) impose eligibility requirements on, or other-
7 wise establish eligibility criteria for, nonadmitted in-
8 surers domiciled in a United States jurisdiction, ex-
9 cept in conformance with such requirements and cri-
10 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
11 mitted Insurance Model Act, unless the State has
12 adopted nationwide uniform requirements, forms,
13 and procedures developed in accordance with section
14 521(b) of this subtitle that include alternative na-
15 tionwide uniform eligibility requirements; and

16 (2) prohibit a surplus lines broker from placing
17 nonadmitted insurance with, or procuring non-
18 admitted insurance from, a nonadmitted insurer
19 domiciled outside the United States that is listed on
20 the Quarterly Listing of Alien Insurers maintained
21 by the International Insurers Department of the
22 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” means, with respect to a
24 State, an insurer not licensed to engage in the busi-
25 ness of insurance in such State.

1 (12) **QUALIFIED RISK MANAGER.**—The term
2 “qualified risk manager” means, with respect to a
3 policyholder of commercial insurance, a person who
4 meets all of the following requirements:

5 (A) The person is an employee of, or third
6 party consultant retained by, the commercial
7 policyholder.

8 (B) The person provides skilled services in
9 loss prevention, loss reduction, or risk and in-
10 surance coverage analysis, and purchase of in-
11 surance.

12 (C) The person—

13 (i)(I) has a bachelor’s degree or high-
14 er from an accredited college or university
15 in risk management, business administra-
16 tion, finance, economics, or any other field
17 determined by a State insurance commis-
18 sioner or other State regulatory official or
19 entity to demonstrate minimum com-
20 petence in risk management; and

21 (II)(aa) has 3 years of experience in
22 risk financing, claims administration, loss
23 prevention, risk and insurance analysis, or
24 purchasing commercial lines of insurance;
25 or

1 (bb) has 1 of the following designa-
2 tions:

3 (AA) a designation as a Char-
4 tered Property and Casualty Under-
5 writer (in this subparagraph referred
6 to as “CPCU”) issued by the Amer-
7 ican Institute for CPCU/Insurance In-
8 stitute of America;

9 (BB) a designation as an Asso-
10 ciate in Risk Management (ARM)
11 issued by the American Institute for
12 CPCU/Insurance Institute of America;

13 (CC) a designation as Certified
14 Risk Manager (CRM) issued by the
15 National Alliance for Insurance Edu-
16 cation & Research;

17 (DD) a designation as a RIMS
18 Fellow (RF) issued by the Global Risk
19 Management Institute; or

20 (EE) any other designation, cer-
21 tification, or license determined by a
22 State insurance commissioner or other
23 State insurance regulatory official or
24 entity to demonstrate minimum com-
25 petency in risk management;

1 (ii)(I) has at least 7 years of experi-
2 ence in risk financing, claims administra-
3 tion, loss prevention, risk and insurance
4 coverage analysis, or purchasing commer-
5 cial lines of insurance; and

6 (II) has any 1 of the designations
7 specified in subitems (AA) through (EE)
8 of clause (i)(II)(bb);

9 (iii) has at least 10 years of experi-
10 ence in risk financing, claims administra-
11 tion, loss prevention, risk and insurance
12 coverage analysis, or purchasing commer-
13 cial lines of insurance; or

14 (iv) has a graduate degree from an
15 accredited college or university in risk
16 management, business administration, fi-
17 nance, economics, or any other field deter-
18 mined by a State insurance commissioner
19 or other State regulatory official or entity
20 to demonstrate minimum competence in
21 risk management.

22 (13) PREMIUM TAX.—The term “premium tax”
23 means, with respect to surplus lines or independently
24 procured insurance coverage, any tax, fee, assess-
25 ment, or other charge imposed by a government en-

1 tity directly or indirectly based on any payment
2 made as consideration for an insurance contract for
3 such insurance, including premium deposits, assess-
4 ments, registration fees, and any other compensation
5 given in consideration for a contract of insurance.

6 (14) SURPLUS LINES BROKER.—The term “sur-
7 plus lines broker” means an individual, firm, or cor-
8 poration which is licensed in a State to sell, solicit,
9 or negotiate insurance on properties, risks, or expo-
10 sures located or to be performed in a State with
11 nonadmitted insurers.

12 **PART II—REINSURANCE**

13 **SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND** 14 **REINSURANCE AGREEMENTS.**

15 (a) CREDIT FOR REINSURANCE.—If the State of
16 domicile of a ceding insurer is an NAIC-accredited State,
17 or has financial solvency requirements substantially simi-
18 lar to the requirements necessary for NAIC accreditation,
19 and recognizes credit for reinsurance for the insurer’s
20 ceded risk, then no other State may deny such credit for
21 reinsurance.

22 (b) ADDITIONAL PREEMPTION OF
23 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
24 addition to the application of subsection (a), all laws, regu-
25 lations, provisions, or other actions of a State that is not

1 the domiciliary State of the ceding insurer, except those
2 with respect to taxes and assessments on insurance com-
3 panies or insurance income, are preempted to the extent
4 that they—

5 (1) restrict or eliminate the rights of the ceding
6 insurer or the assuming insurer to resolve disputes
7 pursuant to contractual arbitration to the extent
8 such contractual provision is not inconsistent with
9 the provisions of title 9, United States Code;

10 (2) require that a certain State’s law shall gov-
11 ern the reinsurance contract, disputes arising from
12 the reinsurance contract, or requirements of the re-
13 insurance contract;

14 (3) attempt to enforce a reinsurance contract
15 on terms different than those set forth in the rein-
16 surance contract, to the extent that the terms are
17 not inconsistent with this part; or

18 (4) otherwise apply the laws of the State to re-
19 insurance agreements of ceding insurers not domi-
20 ciled in that State.

21 **SEC. 532. REGULATION OF REINSURER SOLVENCY.**

22 (a) DOMICILIARY STATE REGULATION.—If the State
23 of domicile of a reinsurer is an NAIC-accredited State or
24 has financial solvency requirements substantially similar
25 to the requirements necessary for NAIC accreditation,

1 such State shall be solely responsible for regulating the
2 financial solvency of the reinsurer.

3 (b) NONDOMICILIARY STATES.—

4 (1) LIMITATION ON FINANCIAL INFORMATION
5 REQUIREMENTS.—If the State of domicile of a rein-
6 surer is an NAIC-accredited State or has financial
7 solvency requirements substantially similar to the re-
8 quirements necessary for NAIC accreditation, no
9 other State may require the reinsurer to provide any
10 additional financial information other than the infor-
11 mation the reinsurer is required to file with its
12 domiciliary State.

13 (2) RECEIPT OF INFORMATION.—No provision
14 of this section shall be construed as preventing or
15 prohibiting a State that is not the State of domicile
16 of a reinsurer from receiving a copy of any financial
17 statement filed with its domiciliary State.

18 **SEC. 533. DEFINITIONS.**

19 For purposes of this part, the following definitions
20 shall apply:

21 (1) CEDING INSURER.—The term “ceding in-
22 surer” means an insurer that purchases reinsurance.

23 (2) DOMICILIARY STATE.—The terms “State of
24 domicile” and “domiciliary State” means, with re-
25 spect to an insurer or reinsurer, the State in which

1 the insurer or reinsurer is incorporated or entered
2 through, and licensed.

3 (3) REINSURANCE.—The term “reinsurance”
4 means the assumption by an insurer of all or part
5 of a risk undertaken originally by another insurer.

6 (4) REINSURER.—

7 (A) IN GENERAL.—The term “reinsurer”
8 means an insurer to the extent that the in-
9 surer—

10 (i) is principally engaged in the busi-
11 ness of reinsurance;

12 (ii) does not conduct significant
13 amounts of direct insurance as a percent-
14 age of its net premiums; and

15 (iii) is not engaged in an ongoing
16 basis in the business of soliciting direct in-
17 surance.

18 (B) DETERMINATION.—A determination of
19 whether an insurer is a reinsurer shall be made
20 under the laws of the State of domicile in ac-
21 cordance with this paragraph.

22 **PART III—RULE OF CONSTRUCTION**

23 **SEC. 541. RULE OF CONSTRUCTION.**

24 Nothing in this subtitle or amendments to this sub-
25 title shall be construed to modify, impair, or supersede the

1 application of the antitrust laws. Any implied or actual
2 conflict between this subtitle and any amendments to this
3 subtitle and the antitrust laws shall be resolved in favor
4 of the operation of the antitrust laws.

5 **SEC. 542. SEVERABILITY.**

6 If any section or subsection of this subtitle, or any
7 application of such provision to any person or cir-
8 cumstance, is held to be unconstitutional, the remainder
9 of this subtitle, and the application of the provision to any
10 other person or circumstance, shall not be affected.

11 **TITLE VI—IMPROVEMENTS TO**
12 **REGULATION OF BANK HOLD-**
13 **ING COMPANIES AND DEPOSI-**
14 **TORY INSTITUTIONS**

15 **SEC. 601. SHORT TITLE.**

16 This title may be cited as the “Bank and Thrift Hold-
17 ing Company and Depository Institution Regulatory Im-
18 provements Act of 2009”.

19 **SEC. 602. DEFINITION.**

20 In this title—

21 (1) the term “commercial firm” means any en-
22 tity that derived not less than 15 percent of the con-
23 solidated annual gross revenues of the entity, includ-
24 ing all affiliates of the entity, from engaging, on an
25 on-going basis, in activities that are not financial in

1 nature or incidental to activities that are financial in
2 nature, as provided in section 4(k) of the Bank
3 Holding Company Act of 1956 (12 U.S.C. 1843(k)),
4 during not fewer than 3 of the 4 quarters preceding
5 the date on which an application is filed with the
6 Corporation, as described in paragraph (2); and

7 (2) the term “transfer date” has the same
8 meaning as in section 302.

9 **SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF**
10 **CREDIT CARD BANKS, INDUSTRIAL LOAN**
11 **COMPANIES, AND CERTAIN OTHER COMPA-**
12 **NIES UNDER THE BANK HOLDING COMPANY**
13 **ACT OF 1956.**

14 (a) MORATORIUM.—

15 (1) DEFINITIONS.—In this subsection—

16 (A) the term “credit card bank” means an
17 institution described in section 2(c)(2)(F) of the
18 Bank Holding Company Act of 1956 (12
19 U.S.C. 1841(c)(2)(F));

20 (B) the term “trust bank” means an insti-
21 tution described in section 2(c)(2)(D) of the
22 Bank Holding Company Act of 1956 (12
23 U.S.C. 1841(c)(2)(D)); and

24 (C) the term “industrial bank” means an
25 institution described in section 2(c)(2)(H) of

1 the Bank Holding Company Act of 1956 (12
2 U.S.C. 1841(c)(2)(H)).

3 (2) MORATORIUM ON PROVISION OF DEPOSIT
4 INSURANCE.—The Corporation may not approve an
5 application for deposit insurance under section 5 of
6 the Federal Deposit Insurance Act (12 U.S.C. 1815)
7 that is received after November 10, 2009, for an in-
8 dustrial bank, a credit card bank, or a trust bank
9 that is directly or indirectly owned or controlled by
10 a commercial firm.

11 (3) CHANGE IN CONTROL.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), the appropriate Federal
14 banking agency shall disapprove a change in
15 control, as provided in section 7(j) of the Fed-
16 eral Deposit Insurance Act (12 U.S.C. 1817(j)),
17 of an industrial bank, a credit card bank, or a
18 trust bank if the change in control would result
19 in direct or indirect control of the industrial
20 bank, credit card bank, or trust bank by a com-
21 mercial firm.

22 (B) EXCEPTIONS.—Subparagraph (A)
23 shall not apply to a change in control of an in-
24 dustrial bank, credit card bank, or trust bank
25 that—

1 (i) is in danger of default, as deter-
2 mined by the appropriate Federal banking
3 agency; or

4 (ii) results from the merger or whole
5 acquisition of a commercial firm that di-
6 rectly or indirectly controls the industrial
7 bank, credit card bank, or trust bank in a
8 bona fide merger with or acquisition by an-
9 other commercial firm, as determined by
10 the appropriate Federal banking agency.

11 (4) SUNSET.—This subsection shall cease to
12 have effect 3 years after the date of enactment of
13 this Act.

14 (b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
15 OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY
16 ACT OF 1956.—

17 (1) STUDY REQUIRED.—The Comptroller Gen-
18 eral of the United States shall carry out a study to
19 determine whether it is necessary, in order to
20 strengthen the safety and soundness of institutions
21 or the stability of the financial system, to eliminate
22 the exceptions under section 2 of the Bank Holding
23 Company Act of 1956 (12 U.S.C. 1841) for institu-
24 tions described in—

1 (A) section 2(a)(5)(E) of the Bank Hold-
2 ing Company Act of 1956 (12 U.S.C.
3 1841(a)(5)(E));

4 (B) section 2(a)(5)(F) of the Bank Hold-
5 ing Company Act of 1956 (12 U.S.C.
6 1841(a)(5)(F));

7 (C) section 2(c)(2)(D) of the Bank Hold-
8 ing Company Act of 1956 (12 U.S.C.
9 1841(c)(2)(D));

10 (D) section 2(c)(2)(F) of the Bank Hold-
11 ing Company Act of 1956 (12 U.S.C.
12 1841(c)(2)(F));

13 (E) section 2(c)(2)(H) of the Bank Hold-
14 ing Company Act of 1956 (12 U.S.C.
15 1841(c)(2)(H)); and

16 (F) section 2(c)(2)(B) of the Bank Hold-
17 ing Company Act of 1956 (12 U.S.C.
18 1841(c)(2)(B)).

19 (2) CONTENT OF STUDY.—

20 (A) IN GENERAL.—The study required
21 under paragraph (1), with respect to the insti-
22 tutions referenced in each of subparagraphs (A)
23 through (E) of paragraph (1), shall—

24 (i) identify each institution excepted
25 from section 2 of the Bank Holding Com-

1 pany Act of 1956 (12 U.S.C. 1841) under
2 each of the subparagraphs described in
3 subparagraphs (A) through (E) of para-
4 graph (1);

5 (ii) describe the size and location of
6 each institution described in clause (i);

7 (iii) determine whether any holding
8 company of each institution described in
9 clause (i) is a commercial firm;

10 (iv) determine whether each institu-
11 tion described in clause (i) has any affili-
12 ates engaged in primarily financial activi-
13 ties;

14 (v) identify the Federal banking agen-
15 cy responsible for the supervision of each
16 institution described in clause (i) on and
17 after the transfer date;

18 (vi) determine the adequacy of the
19 Federal bank regulatory framework appli-
20 cable to each category of institution de-
21 scribed in clause (i), including any restric-
22 tions (including limitations on affiliate
23 transactions or cross-marketing) that apply
24 to transactions between the institution, the

1 holding company of an institution, and any
2 other affiliate of an institution; and

3 (vii) evaluate the potential con-
4 sequences of subjecting the institutions de-
5 scribed in clause (i) to the requirements of
6 the Bank Holding Company Act of 1956,
7 including with respect to the availability of
8 credit, the stability of the financial system
9 and the economy, the safe and sound oper-
10 ation of each category of institution, the
11 costs to institutions and their holding com-
12 panies, and the impact on activities in
13 which such institutions, and the holding
14 companies of such institutions, may en-
15 gage.

16 (B) SAVINGS ASSOCIATIONS.—With respect
17 to institutions described in paragraph (1)(F),
18 the study required under paragraph (1) shall—

19 (i) determine the adequacy of the
20 Federal bank regulatory framework appli-
21 cable to such institutions, including any re-
22 strictions (including limitations on affiliate
23 transactions or cross-marketing) that apply
24 to transactions between such institutions,
25 the holding company of such institutions,

1 and any other affiliate of such institutions;

2 and

3 (ii) evaluate the potential con-
4 sequences of subjecting the institutions de-
5 scribed in paragraph (1)(F) to the require-
6 ments of the Bank Holding Company Act
7 of 1956, including with respect to the
8 availability of credit, the stability of the fi-
9 nancial system and the economy, the safe
10 and sound operation of such institutions,
11 the costs to institutions and their holding
12 companies, and the impact on activities in
13 which such institutions, and the holding
14 companies of such institutions, may en-
15 gage.

16 (3) REPORT.—Not later than 18 months after
17 the date of enactment of this Act, the Comptroller
18 General shall submit to the Committee on Banking,
19 Housing and Urban Affairs of the Senate and the
20 Committee on Financial Services of the House of
21 Representatives a report on the study required
22 under paragraph (1).

1 **SEC. 604. REPORTS AND EXAMINATIONS OF BANK HOLDING**
2 **COMPANIES; REGULATION OF FUNCTION-**
3 **ALLY REGULATED SUBSIDIARIES.**

4 (a) REPORTS BY BANK HOLDING COMPANIES.—Sec-
5 tions 5(c)(1) of the Bank Holding Company Act of 1956
6 (12 U.S.C. 1844(c)(1)) is amended—

7 (1) by striking subparagraph (B) and inserting
8 the following:

9 “(B) USE OF EXISTING REPORTS.—FIRA
10 shall, to the fullest extent possible, use—

11 “(i) reports that a bank holding com-
12 pany or any subsidiary thereof has been re-
13 quired to provide to other Federal or State
14 regulatory agencies;

15 “(ii) information that is otherwise re-
16 quired to be reported publicly; and

17 “(iii) externally audited financial
18 statements of such bank holding company
19 or subsidiary.”; and

20 (2) by adding at the end the following:

21 “(C) AVAILABILITY.—Upon the request of
22 FIRA, a bank holding company or a subsidiary
23 of a bank holding company shall promptly pro-
24 vide to FIRA any report described in subpara-
25 graph (B).”.

1 (b) EXAMINATIONS OF BANK HOLDING COMPA-
2 NIES.—Section 5(c)(2) of the Bank Holding Company Act
3 of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as
4 follows:

5 “(2) EXAMINATIONS.—

6 “(A) IN GENERAL.—FIRA may make ex-
7 aminations of each bank holding company and
8 each subsidiary of such a company to carry out
9 the purposes of this Act, or any other provision
10 of Federal law that FIRA has specific jurisdic-
11 tion to enforce against such company or sub-
12 sidiary, to prevent evasions thereof, and to
13 monitor compliance by the bank holding com-
14 pany or subsidiary with applicable provisions of
15 law.

16 “(B) FUNCTIONALLY REGULATED SUB-
17 SIDIARIES.—FIRA shall, to the extent possible,
18 use the examination reports made by other Fed-
19 eral or State regulatory authorities relating to
20 bank holding companies and their functionally
21 regulated subsidiaries.”.

22 (c) AUTHORITY TO REGULATE FUNCTIONALLY REG-
23 ULATED SUBSIDIARIES OF BANK HOLDING COMPA-
24 NIES.—The Bank Holding Company Act of 1956 (12

1 U.S.C. 1841 et seq.) is amended by striking section 10A
2 (12 U.S.C. 1848a).

3 (d) ACQUISITIONS OF BANKS.—Section 3(c) of the
4 Bank Holding Company Act of 1956 (12 U.S.C. 1842(e))
5 is amended by adding at the end the following:

6 “(7) FINANCIAL STABILITY.—In every case,
7 FIRA shall take into consideration the extent to
8 which a proposed acquisition, merger, or consolida-
9 tion would result in greater or more concentrated
10 risks to the stability of the United States banking or
11 financial system.”.

12 (e) ACQUISITIONS OF NONBANKS.—

13 (1) NOTICE PROCEDURES.—Section 4(j)(2)(A)
14 of the Bank Holding Company Act of 1956 (12
15 U.S.C. 1843(j)(2)(A)) is amended by striking “or
16 unsound banking practices” and inserting “unsound
17 banking practices, or risk to the stability of the
18 United States banking or financial system”.

19 (2) ACTIVITIES THAT ARE FINANCIAL IN NA-
20 TURE.—Section 4(k)(6)(B) of the Bank Holding
21 Company Act of 1956 (12 U.S.C. 1843(k)(6)(B) is
22 amended to read as follows:

23 “(B) APPROVAL NOT REQUIRED FOR CER-
24 TAIN FINANCIAL ACTIVITIES.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), a financial holding
3 company may commence any activity or ac-
4 quire any company, pursuant to paragraph
5 (4) or any regulation prescribed or order
6 issued under paragraph (5), without prior
7 approval of FIRA.

8 “(ii) EXCEPTION.—A financial hold-
9 ing company may not commence, without
10 the prior approval of FIRA—

11 “(I) a transaction in which the
12 total assets to be acquired by the fi-
13 nancial holding company exceed
14 \$25,000,000,000; or

15 “(II) the acquisition of a savings
16 association, as provided in subsection
17 (j).”.

18 (f) BANK MERGER ACT TRANSACTIONS.—Section
19 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.
20 1828(c)(5)) is amended, in the matter immediately fol-
21 lowing subparagraph (B), by striking “and the conven-
22 ience and needs of the community to be served” and in-
23 serting “the convenience and needs of the community to
24 be served, and the risk to the stability of the United States
25 banking or financial system”.

1 (g) **EFFECTIVE DATE.**—The amendments made by
2 this section shall take effect on the transfer date.

3 **SEC. 605. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
4 **PANIES TO REMAIN WELL CAPITALIZED AND**
5 **WELL MANAGED.**

6 (a) **AMENDMENT.**—Section 4(l)(1) of the Bank Hold-
7 ing Company Act of 1956 (12 U.S.C. 1843(l)(1)) is
8 amended—

9 (1) in subparagraph (B), by striking “and” at
10 the end;

11 (2) by redesignating subparagraph (C) as sub-
12 paragraph (D);

13 (3) by inserting after subparagraph (B) the fol-
14 lowing:

15 “(C) the bank holding company is well
16 capitalized and well managed; and”; and

17 (4) in subparagraph (D)(ii), as so redesignated,
18 by striking “subparagraphs (A) and (B)” and insert-
19 ing “subparagraphs (A), (B), and (C)”.

20 (b) **EFFECTIVE DATE.**—The amendments made by
21 this section shall take effect on the transfer date.

22 **SEC. 606. STANDARDS FOR INTERSTATE ACQUISITIONS.**

23 (a) **ACQUISITION OF BANKS.**—Section 3(d)(1)(A) of
24 the Bank Holding Company Act of 1956 (12 U.S.C.
25 1842(d)(1)(A)) is amended by striking “adequately cap-

1 italized and adequately managed” and inserting “well cap-
2 italized and well managed”.

3 (b) INTERSTATE BANK MERGERS.—Section
4 44(b)(4)(B) of the Federal Deposit Insurance Act (12
5 U.S.C. 1831u(b)(4)(B)) is amended by striking “will con-
6 tinue to be adequately capitalized and adequately man-
7 aged” and inserting “will be well capitalized and well man-
8 aged”.

9 (c) EFFECTIVE DATE.—The amendment made by
10 this section shall take effect on the transfer date.

11 **SEC. 607. ENHANCING EXISTING RESTRICTIONS ON BANK**
12 **TRANSACTIONS WITH AFFILIATES.**

13 (a) AFFILIATE TRANSACTIONS.—Section 23A of the
14 Federal Reserve Act (12 U.S.C. 371c) is amended—

15 (1) in subsection (b)—

16 (A) in paragraph (1), by striking subpara-
17 graph (D) and inserting the following:

18 “(D) any investment fund with respect to
19 which a member bank or affiliate thereof is an
20 investment adviser; and”;

21 (B) in paragraph (7)—

22 (i) in subparagraph (A), by inserting
23 before the semicolon at the end the fol-
24 lowing: “, including a purchase of assets
25 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 to have credit exposure to the af-
16 filiate; 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 that causes a member
21 bank to have credit exposure to the affiliate, to
22 the extent of the potential credit exposure re-
23 sulting from the transaction.”;

24 (2) in subsection (c)—

1 (A) in paragraph (1), by striking “the time
2 of the transaction” and inserting “all times”;

3 (B) by striking paragraph (2);

4 (C) by redesignating paragraphs (3)
5 through (5) as paragraphs (2) through (4), re-
6 spectively; and

7 (D) in paragraph (3), as so redesignated,
8 by inserting “or other debt obligations” after
9 “securities”; and

10 (3) in subsection (f)(2), by striking “if it finds”
11 and all that follows through the end of the para-
12 graph and inserting the following: “if—

13 “(A) FIRA finds the exemption to be in
14 the public interest and consistent with the pur-
15 poses of this section, and notifies the Chair-
16 person of the Federal Deposit Insurance Cor-
17 poration of such finding; and

18 “(B) the Chairperson of the Federal De-
19 posit Insurance Corporation does not object to
20 the finding of FIRA under subparagraph (A),
21 in writing, during the 60-day period beginning
22 on the date of receipt of notice of the finding
23 from FIRA, based on a determination that the
24 exemption presents an unacceptable risk to the
25 Deposit Insurance Fund.”;

1 (b) TRANSACTIONS WITH AFFILIATES.—Section
2 23B(e) of the Federal Reserve Act (12 U.S.C. 371e–1(e))
3 is amended—

4 (1) by striking the undesignated matter fol-
5 lowing subparagraph (B);

6 (2) by redesignating subparagraphs (A) and
7 (B) as clauses (i) and (ii), respectively, and adjust-
8 ing the clause margins accordingly;

9 (3) by redesignating paragraphs (1) and (2) as
10 subparagraphs (A) and (B), respectively, and adjust-
11 ing the subparagraph margins accordingly;

12 (4) by striking “The Board” and inserting the
13 following:

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), if FIRA finds that an exemption or exclu-
16 sion is in the public interest and is consistent with
17 the purposes of this section, and notifies the Chair-
18 person of the Federal Deposit Insurance Corporation
19 of such finding, FIRA”;

20 (5) in paragraph (1)(B)(ii), as so redesignated,
21 by striking the comma at the end and inserting a pe-
22 riod; and

23 (6) by adding at the end the following:

24 “(2) EXCEPTION.—FIRA may not grant an ex-
25 emption or exclusion under this subsection, if, dur-

1 ing the 60-day period beginning on the date of re-
2 ceipt of notice of the finding from FIRA under para-
3 graph (1), the Chairperson of the Federal Deposit
4 Insurance Corporation objects, in writing, to such
5 exemption or exclusion, based on a determination
6 that the exemption presents an unacceptable risk to
7 the Deposit Insurance Fund.”.

8 (c) **EFFECTIVE DATE.**—The amendments made by
9 this section shall take effect 1 year after the date of enact-
10 ment of this Act.

11 **SEC. 608. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**
12 **WITH FINANCIAL SUBSIDIARIES.**

13 (a) **AMENDMENT.**—Section 23A(e) of the Federal Re-
14 serve Act (12 U.S.C. 371c(e)) is amended—

15 (1) by striking paragraph (3); and

16 (2) by redesignating paragraph (4) as para-
17 graph (3).

18 (b) **EFFECTIVE DATE.**—The amendment made by
19 this section shall take effect on the transfer date.

1 **SEC. 609. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
2 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
3 **PURCHASE AGREEMENTS, REVERSE REPUR-**
4 **CHASE AGREEMENTS, AND SECURITIES**
5 **LENDING AND BORROWING TRANSACTIONS.**

6 Section 5200 of the Revised Statutes of the United
7 States (12 U.S.C. 84) is amended—

8 (1) in subsection (b)—

9 (A) in paragraph (1), by striking “shall in-
10 clude” and all that follows through the end of
11 the paragraph and inserting the following:
12 “shall include—

13 “(A) all direct or indirect advances of
14 funds to a person made on the basis of any ob-
15 ligation of that person to repay the funds or re-
16 payable from specific property pledged by or on
17 behalf of the person;

18 “(B) to the extent specified by FIRA, any
19 liability of a national banking association to ad-
20 vance funds to or on behalf of a person pursu-
21 ant to a contractual commitment; and

22 “(C) any credit exposure to a person aris-
23 ing from a derivative transaction, repurchase
24 agreement, reverse repurchase agreement, secu-
25 rities lending transaction, or securities bor-

1 rowing transaction between the national bank-
2 ing association and the person;”;

3 (B) in paragraph (2), by striking the pe-
4 riod at the end and inserting “; and”; and

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

6 “(3) the term ‘derivative transaction’ means
7 any transaction that is a contract, agreement, swap,
8 warrant, note, or option that is based, in whole or
9 in part, on the value of, any interest in, or any
10 quantitative measure or the occurrence of any event
11 relating to, one or more commodities, securities, cur-
12 rencies, interest or other rates, indices, or other as-
13 sets.”; and

14 (2) in subsection (d), by adding at the end the
15 following:

16 “(3) Not later than 1 year after the date of en-
17 actment of this paragraph, the Comptroller of the
18 Currency or FIRA, as the case may be, shall issue
19 final rules to administer and carry out this section,
20 with respect to credit exposures arising from any de-
21 rivative transaction, repurchase agreement, reverse
22 repurchase agreement, securities lending transaction,
23 or securities borrowing transaction.”.

1 **SEC. 610. APPLICATION OF NATIONAL BANK LENDING LIM-**
2 **ITS TO INSURED STATE BANKS.**

3 (a) AMENDMENT.—Section 18 of the Federal Deposit
4 Insurance Act (12 U.S.C. 1828) is amended by adding at
5 the end the following:

6 “(y) APPLICATION OF LENDING LIMITS TO INSURED
7 STATE BANKS.—Section 5200 of the Revised Statutes of
8 the United States (12 U.S.C. 84) shall apply to every in-
9 sured depository institution, in the same manner and to
10 the same extent as if the insured depository institution
11 were a national banking association.”

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall take effect 2 years after the date of en-
14 actment of this Act.

15 **SEC. 611. RESTRICTION ON CONVERSIONS OF TROUBLED**
16 **BANKS.**

17 (a) CONVERSION OF A NATIONAL BANKING ASSOCIA-
18 TION TO A STATE BANK.—The Act entitled “An Act to
19 provide for the conversion of national banking associations
20 into and their merger or consolidation with State banks,
21 and for other purposes.” (12 U.S.C. 214 et seq.) is amend-
22 ed by adding at the end the following:

23 **“SEC. 10. PROHIBITION ON CONVERSION.**

24 “A national banking association may not convert to
25 a State bank or State savings association during any pe-
26 riod in which the national banking association is subject

1 to a cease and desist order issued by, a memorandum of
2 understanding entered into with, or any other enforcement
3 action by the Comptroller of the Currency or FIRA, as
4 the case may be, with respect to a significant supervisory
5 matter.”.

6 (b) **CONVERSION OF A STATE BANK TO A NATIONAL**
7 **BANK.**—Section 5154 of the Revised Statutes of the
8 United States (12 U.S.C. 35) is amended by adding at
9 the end the following: “The Financial Institutions Regu-
10 latory Administration may not approve the conversion of
11 a State bank or State savings association to a national
12 banking association during any period in which the State
13 bank or State savings association is subject to a cease and
14 desist order issued by, a memorandum of understanding
15 entered into with, or any other enforcement action by, a
16 State supervisor with respect to a significant supervisory
17 matter.”.

18 (c) **CONVERSION OF A FEDERAL SAVINGS ASSOCIA-**
19 **TION TO A NATIONAL OR STATE BANK OR STATE SAVINGS**
20 **ASSOCIATION.**—Section 5(i) of the Home Owners’ Loan
21 Act (12 U.S.C. 1464(i)) is amended by adding at the end
22 the following:

23 “(6) **LIMITATION ON CERTAIN CONVERSIONS BY**
24 **FEDERAL SAVINGS ASSOCIATIONS.**—A Federal sav-
25 ings association may not convert to a national bank

1 or State bank or State savings association during
2 any period in which the Federal savings association
3 is subject to a cease and desist order issued by, a
4 memorandum of understanding entered into with, or
5 any other enforcement action by, the Office of Thrift
6 Supervision or FIRA, as the case may be, with re-
7 spect to a significant supervisory matter.”.

8 **SEC. 612. DE NOVO BRANCHING INTO STATES.**

9 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the
10 Revised Statutes of the United States (12 U.S.C.
11 36(g)(1)(A)) is amended to read as follows:

12 “(A) the law of the State in which the
13 branch is located, or is to be located, would per-
14 mit establishment of the branch, if the national
15 bank were a State bank chartered by such
16 State; and”.

17 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i)
18 of the Federal Deposit Insurance Act (12 U.S.C.
19 1828(d)(4)(A)(i)) is amended to read as follows:

20 “(i) the law of the State in which the
21 branch is located, or is to be located, would
22 permit establishment of the branch, if the
23 bank were a State bank chartered by such
24 State; and”.

1 **SEC. 613. LENDING LIMITS TO INSIDERS.**

2 (a) AMENDMENTS.—Section 22(h)(9)(D) of the Fed-
3 eral Reserve Act (12 U.S.C. 375b(9)(D)) is amended—

4 (1) in clause (i), by inserting before the period
5 at the end the following: “, except that a member
6 bank shall be deemed to have extended credit to a
7 person if the member bank has credit exposure to
8 that person arising from a derivative transaction, re-
9 purchase agreement, reverse repurchase agreement,
10 securities lending transaction, or securities bor-
11 rowing transaction between the member bank and
12 that person”; and

13 (2) in clause (ii), by inserting “additional” after
14 “make”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the transfer date.

17 **SEC. 614. LIMITATIONS ON PURCHASES OF ASSETS FROM**
18 **INSIDERS.**

19 (a) AMENDMENT TO THE FEDERAL DEPOSIT INSUR-
20 ANCE ACT.—Section 18 of the Federal Deposit Insurance
21 Act (12 U.S.C. 1828) is amended by adding at the end
22 the following:

23 “(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

24 “(1) IN GENERAL.—An insured depository in-
25 stitution may not purchase an asset from, or sell an
26 asset to, an executive officer, director, or principal

1 shareholder of the insured depository institution, or
2 any related interest of such person (as such terms
3 are defined in section 22(h) of Federal Reserve Act),
4 unless—

5 “(A) the transaction is on market terms;
6 and

7 “(B) if the transaction represents more
8 than 10 percent of the capital stock and surplus
9 of the insured depository institution, the trans-
10 action has been approved in advance by a ma-
11 jority of the members of the board of directors
12 of the insured depository institution who do not
13 have an interest in the transaction.

14 “(2) RULEMAKING.—FIRA may issue such
15 rules as may be necessary to define terms and to
16 carry out the purposes this subsection.”.

17 (b) AMENDMENTS TO THE FEDERAL RESERVE
18 ACT.—Section 22(d) of the Federal Reserve Act (12
19 U.S.C. 375) is amended to read as follows:

20 “(d) [Reserved]”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the transfer date.

1 **SEC. 615. REGULATIONS REGARDING CAPITAL LEVELS OF**
2 **HOLDING COMPANIES.**

3 (a) CAPITAL LEVELS OF BANK HOLDING COMPA-
4 NIES.—Section 5(b) of the Bank Holding Company Act
5 of 1956 (12 U.S.C. 1844(b)) is amended by inserting after
6 “regulations” the following: “(including regulations relat-
7 ing to the capital levels of bank holding companies)”.

8 (b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLD-
9 ING COMPANIES.—Section 10(g)(1) of the Home Owners’
10 Loan Act (12 U.S.C. 1467a(g)(1)) is amended by insert-
11 ing after “orders” the following: “(including regulations
12 relating to capital requirements for savings and loan hold-
13 ing companies)”.

14 (c) INTERMEDIATE HOLDING COMPANIES.—FIRA
15 may require a commercial firm that directly owns or con-
16 trols more than 1 insured depository institution to estab-
17 lish an intermediate holding company to hold the insured
18 depository institutions, in order to provide for the en-
19 hanced supervision of the insured depository institutions.

20 (d) SOURCE OF STRENGTH.—The Federal Deposit
21 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
22 inserting after section 38 (12 U.S.C. 1831o) the following:
23 **“SEC. 38A. SOURCE OF STRENGTH.**

24 **“(a) IN GENERAL.—**FIRA may require any company
25 that directly or indirectly owns or controls an insured de-

1 pository institution to serve as a source of financial
2 strength for such institution.

3 “(b) **REPORTS.**—FIRA may, from time to time, re-
4 quire a company that directly or indirectly owns or con-
5 trols an insured depository institution to submit a report,
6 under oath, for the purposes of—

7 “(1) assessing the ability of such company to
8 comply with the requirement under paragraph (1);
9 and

10 “(2) enforcing the compliance of such company
11 with the requirement under paragraph (1).

12 “(c) **RULES.**—Not later than 1 year after the trans-
13 fer date, as defined in section 302 of the Restoring Amer-
14 ican Financial Stability Act of 2009, FIRA shall issue
15 final rules to carry out this section.

16 “(d) **DEFINITION.**—In this section, the term ‘source
17 of financial strength’ means the ability of a company that
18 directly or indirectly owns or controls an insured deposi-
19 tory institution to provide financial assistance to such in-
20 sured depository institution in the event of financial dis-
21 tress.”.

22 (e) **EFFECTIVE DATE.**—The amendments made by
23 this section shall take effect on the transfer date.

1 **SEC. 616. 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 amendment made by
9 this section shall take effect on the transfer date.

10 **TITLE VII—IMPROVEMENTS TO**
11 **REGULATION OF OVER-THE-**
12 **COUNTER DERIVATIVES MAR-**
13 **KETS**

14 **SEC. 701. SHORT TITLE.**

15 This title may be cited as the “Over-the-Counter De-
16 rivatives Markets Act of 2009”.

17 **SEC. 702. FINDINGS AND PURPOSES.**

18 (a) **FINDINGS.**—Congress finds that—

19 (1) in recent years, the global over-the-counter
20 derivatives market in notional amounts outstanding
21 has grown rapidly, from \$91 trillion in 1998 to \$592
22 trillion in 2008 according to the Bank for Inter-
23 national Settlements;

24 (2) the interconnectedness of the country’s larg-
25 est financial institutions through the unregulated de-
26 rivatives market raised significant concerns about

1 counterparty risk exposures during the recent finan-
2 cial crisis;

3 (3) a substantial amount of American taxpayer
4 money was used to make counterparty payments be-
5 cause there was insufficient margin and capital held
6 by large financial institutions;

7 (4) although derivatives can be used to manage
8 risk, they can also increase leverage and allow exces-
9 sive risk-taking because market participants can
10 take large positions on a relatively small capital
11 base;

12 (5) in the over-the-counter derivatives market,
13 margin requirements are set bilaterally and do not
14 take into account the risk that each trade imposes
15 on the rest of the financial system, thereby allowing
16 systemically important exposures to build up without
17 sufficient capital to mitigate associated risks to
18 American taxpayers and the financial system;

19 (6) in the recent crisis, fears about
20 counterparty risk exposures caused credit markets to
21 freeze, as market participants questioned the viabil-
22 ity of counterparties and the safety of their own as-
23 sets;

24 (7) lack of transparency about counterparty ex-
25 posures and valuation of derivatives positions made

1 it more difficult for regulators to respond to the cri-
2 sis and made resolution of these positions more ex-
3 pensive for the taxpayer;

4 (8) bilaterally-executed derivatives contracts can
5 provide key benefits to certain market participants
6 and should be permitted under comprehensive regu-
7 lation, but all derivatives activities should be accom-
8 panied by appropriate risk management and pruden-
9 tial standards;

10 (9) the derivatives market suffers from a lack
11 of reliable and accurate transaction information that
12 is available to the public, investors, market partici-
13 pants, and regulators, hampering surveillance and
14 oversight of such markets;

15 (10) clearing more derivatives through well-reg-
16 ulated central counterparties will benefit the public
17 by reducing costs and risks to American taxpayers,
18 the financial system, and market participants;

19 (11) trading more derivatives on regulated ex-
20 changes should be encouraged because it will result
21 in more price transparency, efficiency in execution,
22 and liquidity; and

23 (12) the Group of 20 nations agreed that—

24 (A) all standardized over-the-counter deriv-
25 ative contracts should be traded on exchanges

1 or electronic trading platforms, where appro-
2 priate, and cleared through central counterpar-
3 ties by the end of calendar year 2012 at the lat-
4 est;

5 (B) over-the-counter derivative contracts
6 should be reported to trade repositories; and

7 (C) non-centrally cleared contracts should
8 be subject to higher capital requirements.

9 (b) PURPOSES.—The purposes of this title are—

10 (1) to establish well-regulated markets for de-
11 rivatives to increase transparency and reduce costs
12 and risks to American taxpayers, the financial sys-
13 tem, and market participants; and

14 (2) to promote the public interest, the protec-
15 tion of investors, the protection of market partici-
16 pants, and the maintenance of fair and orderly mar-
17 kets to assure—

18 (A) the prompt and accurate clearance and
19 settlement of transactions in derivatives that
20 can be cleared through a central counterparty;

21 (B) the prompt and accurate reporting of
22 transactions to regulators and trade reposi-
23 tories;

24 (C) the availability to the public, investors,
25 market participants, and regulators of reliable

1 and accurate quotation and transaction infor-
2 mation in derivatives;

3 (D) economically efficient execution of
4 transactions in swaps and security-based swaps;
5 and

6 (E) fair competition among markets in the
7 trading of swaps and security-based swaps.

8 **Subtitle A—Regulation of Swap** 9 **Markets**

10 **SEC. 711. DEFINITIONS.**

11 (a) AMENDMENTS TO DEFINITIONS IN THE COM-
12 MODITY EXCHANGE ACT.—Section 1a of the Commodity
13 Exchange Act (7 U.S.C. 1a) is amended—

14 (1) by redesignating paragraphs (9) through
15 (34) as paragraphs (10) through (35), respectively;

16 (2) by adding after paragraph (8) the following:

17 “(9) DERIVATIVE.—The term ‘derivative’
18 means—

19 “(A) a contract of sale of a commodity for
20 future delivery; or

21 “(B) a swap.”;

22 (3) by redesignating paragraph (35) (as redес-
23 igned by paragraph (1)) as paragraph (36);

24 (4) by adding after paragraph (34) (as so re-
25 designated) the following:

1 “(35) SWAP.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), the term ‘swap’ means any
4 agreement, contract, or transaction that—

5 “(i) is a put, call, cap, floor, collar, or
6 similar option of any kind for the purchase
7 or sale of, or based on the value of, 1 or
8 more interest or other rates, currencies,
9 commodities, securities, instruments of in-
10 debtedness, indices, quantitative measures,
11 or other financial or economic interests or
12 property of any kind;

13 “(ii) provides for any purchase, sale,
14 payment, or delivery (other than a dividend
15 on an equity security) that is dependent on
16 the occurrence, nonoccurrence, or the ex-
17 tent of the occurrence of an event or con-
18 tingency associated with a potential finan-
19 cial, economic, or commercial consequence;

20 “(iii) provides on an executory basis
21 for the exchange, on a fixed or contingent
22 basis, of 1 or more payments based on the
23 value or level of 1 or more interest or other
24 rates, currencies, commodities, securities,
25 instruments of indebtedness, indices, quan-

1 titative measures, or other financial or eco-
2 nomic interests or property of any kind, or
3 any interest therein or based on the value
4 thereof, and that transfers, as between the
5 parties to the transaction, in whole or in
6 part, the financial risk associated with a
7 future change in any such value or level
8 without also conveying a current or future
9 direct or indirect ownership interest in an
10 asset (including any enterprise or invest-
11 ment pool) or liability that incorporates the
12 financial risk so transferred, including any
13 agreement, contract, or transaction com-
14 monly known as an interest rate swap, a
15 rate floor, rate cap, rate collar, cross-cur-
16 rency rate swap, basis swap, currency
17 swap, total return swap, equity index swap,
18 equity swap, debt index swap, debt swap,
19 credit spread, credit default swap, credit
20 swap, weather swap, energy swap, metal
21 swap, agricultural swap, emissions swap,
22 or commodity swap;

23 “(iv) is an agreement, contract, or
24 transaction that is, or in the future be-

1 comes, commonly known to the trade as a
2 swap; or

3 “(v) is any combination or permuta-
4 tion of, or option on, any agreement, con-
5 tract, or transaction described in any of
6 clauses (i) through (iv).

7 “(B) EXCLUSIONS.—The term ‘swap’ does
8 not include—

9 “(i) any contract of sale of a com-
10 modity for future delivery or security fu-
11 tures product traded on or subject to the
12 rules of any board of trade designated as
13 a contract market under section 5 or 5f;

14 “(ii) any sale of a nonfinancial com-
15 modity or any security for deferred ship-
16 ment or delivery, so long as such trans-
17 action is 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;

23 “(iv) any put, call, straddle, option, or
24 privilege relating to foreign currency en-
25 tered into on a national securities exchange

1 registered pursuant to section 6(a) of the
2 Securities Exchange Act of 1934 (15
3 U.S.C. 78f(a));

4 “(v) any agreement, contract, or
5 transaction providing for the purchase or
6 sale of 1 or more securities on a fixed
7 basis;

8 “(vi) any agreement, contract, or
9 transaction providing for the purchase or
10 sale of 1 or more securities on a contingent
11 basis, unless such agreement, contract, or
12 transaction predicates such purchase or
13 sale on the occurrence of a bona fide con-
14 tingency that might reasonably be expected
15 to affect or be affected by the creditworthi-
16 ness of a party other than a party to the
17 agreement, contract, or transaction;

18 “(vii) any note, bond, or evidence of
19 indebtedness that is a security as defined
20 in section 2(a)(1) of the Securities Act of
21 1933 (15 U.S.C. 77b(a)(1)); or

22 “(viii) any agreement, contract, or
23 transaction that is—

24 “(I) based on a security; and

1 “(II) entered into directly or
2 through an underwriter, that term is
3 as defined in section 2(a)(11) of the
4 Securities Act of 1933 (15 U.S.C.
5 77b(a)(11)), by the issuer of such se-
6 curity for the purposes of raising cap-
7 ital, unless such agreement, contract,
8 or transaction is entered into to man-
9 age a risk associated with capital rais-
10 ing;

11 “(ix) any foreign exchange swap;

12 “(x) any foreign exchange forward;

13 “(xi) any agreement, contract, or
14 transaction a counterparty of which is a
15 Federal Reserve bank, the United States
16 Government, or an agency of the United
17 States Government that is expressly
18 backed by the full faith and credit of the
19 United States; and

20 “(xii) any security-based swap, other
21 than a security-based swap as described in
22 paragraph 38(C).

23 “(C) **RULE OF CONSTRUCTION REGARDING**
24 **MASTER AGREEMENTS.**—The term ‘swap’ shall
25 be construed to include a master agreement

1 that provides for an agreement, contract, or
2 transaction that is a swap pursuant to subpara-
3 graph (A), together with all supplements to any
4 such master agreement, without regard to
5 whether the master agreement contains an
6 agreement, contract, or transaction that is not
7 a swap pursuant to subparagraph (A), except
8 that the master agreement shall be considered
9 to be a swap only with respect to each agree-
10 ment, contract, or transaction under the master
11 agreement that is a swap pursuant to subpara-
12 graph (A).”;

13 (5) in paragraph (13) (as so redesignated)—

14 (A) in subparagraph (A)—

15 (i) in clause (ii), by striking “deter-
16 mined by the Commission” and inserting
17 “determined jointly by the Commission
18 and the Securities and Exchange Commis-
19 sion”;

20 (ii) in clause (v)—

21 (I) in subclause (I)—

22 (aa) by inserting “net” after
23 “total”; and

24 (bb) by inserting “or” after
25 the semicolon;

1 (II) in subclause (II), by striking
2 “the obligations” and all that follows
3 through “\$1,000,000; and” and in-
4 serting the following:

5 “(II) that—
6 “(aa) has total net assets
7 exceeding \$5,000,000; and”;

8 (iii) in clause (vii), by striking “except
9 that” and all that follows through “section
10 2(c)(2)(B)(ii);” and inserting the following:
11 “except that such term does not include a
12 State or an entity, political subdivision, in-
13 strumentality, agency, or department re-
14 ferred to in subclause (I) or (III) of this
15 clause unless the State, entity, political
16 subdivision, instrumentality, agency, or de-
17 partment owns and invests on a discre-
18 tionary basis \$50,000,000 or more in in-
19 vestments, provided that, with respect to
20 any State or entity, political subdivision,
21 instrumentality, agency or department of a
22 State, such amount is exclusive of any pro-
23 ceeds from any offering of municipal secu-
24 rities as defined in section 3(a)(29) of the

1 Securities Exchange Act of 1934 (15
2 U.S.C. 78c(a)(29));” and

3 (iv) in clause (xi), by striking “total
4 assets in an amount” and inserting
5 “amounts invested on a discretionary
6 basis”;

7 (v) in clause (xi), by striking “an indi-
8 vidual” and all that follows through “of—
9 ” and inserting “a natural person who—”;
10 and

11 (vi) in clause (xi)—

12 (I) in subclause (I), by inserting
13 “owns and invests on a discretionary
14 basis in excess of” before
15 “\$10,000,000”; and

16 (II) in subclause (II), by insert-
17 ing “owns and invests on a discre-
18 tionary basis in excess of” before
19 “\$5,000,000”; and

20 (B) in subparagraph (C), by striking “de-
21 termines” and inserting “and the Securities and
22 Exchange Commission may further jointly de-
23 termine”;

24 (6) in paragraph (30) (as so redesignated)—

1 (A) by redesignating subparagraph (E) as
2 subparagraph (G);

3 (B) in subparagraph (D), by striking
4 “and”; and

5 (C) by inserting after subparagraph (D)
6 the following:

7 “(E) an alternative swap execution facility
8 registered under section 5h;

9 “(F) a swap repository; and”; and

10 (7) by adding after paragraph (36) (as so re-
11 designated) the following:

12 “(37) BOARD.—The term ‘Board’ means the
13 Board of Governors of the Federal Reserve System.

14 “(38) SECURITY-BASED SWAP.—The term ‘se-
15 curity-based swap’ has the same meaning as in sec-
16 tion 3(a)(68) of the Securities Exchange Act of
17 1934 (15 U.S.C. 78c(a)(68)).

18 “(39) SWAP DEALER.—

19 “(A) IN GENERAL.—The term ‘swap deal-
20 er’ means any person engaged in the business
21 of buying and selling swaps for such person’s
22 own account, through a broker or otherwise.

23 “(B) EXCEPTION.—The term ‘swap dealer’
24 does not include a person that buys or sells
25 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 “(40) MAJOR SWAP PARTICIPANT.—

4 “(A) IN GENERAL.—The term ‘major swap
5 participant’ means any person—

6 “(i) who is not a swap dealer; and

7 “(ii) whose outstanding swaps create
8 net counterparty credit exposures (current
9 or potential future exposures) to other
10 market participants that would expose
11 those other market participants to signifi-
12 cant credit losses in the event of the per-
13 son’s default.

14 “(41) MAJOR SECURITY-BASED SWAP PARTICI-
15 PANT.—The term ‘major security-based swap partici-
16 pant’ has the same meaning as in section 3(a)(67)
17 of the Securities Exchange Act of 1934 (15 U.S.C.
18 78c(a)(67)).

19 “(42) APPROPRIATE FEDERAL BANKING AGEN-
20 CY.—The term ‘appropriate Federal banking agency’
21 has the same meaning as in section 3 of the Federal
22 Deposit Insurance Act (12 U.S.C. 1813).

23 “(43) FIRA.—The term ‘FIRA’ means the Fi-
24 nancial Institutions Regulatory Administration.

1 “(44) SECURITY-BASED SWAP DEALER.—The
2 term ‘security-based swap dealer’ has the same
3 meaning as in section 3(a)(71) of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78c(a)(71)).

5 “(45) GOVERNMENT SECURITY.—The term
6 ‘government security’ has the same meaning as in
7 section 3(a)(42) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78c(a)(42)).

9 “(46) FOREIGN EXCHANGE FORWARD.—The
10 term ‘foreign exchange forward’ means a transaction
11 that solely involves the exchange of 2 different cur-
12 rencies on a specific future date at a fixed rate
13 agreed at the inception of the contract.

14 “(47) FOREIGN EXCHANGE SWAP.—The term
15 ‘foreign exchange swap’ means a transaction that
16 solely involves the exchange of 2 different currencies
17 on a specific date at a fixed rate agreed at the incep-
18 tion of the contract, and a reverse exchange of the
19 same 2 currencies at a date further in the future
20 and at a fixed rate agreed at the inception of the
21 contract.

22 “(48) PERSON ASSOCIATED WITH A SECURITY-
23 BASED SWAP DEALER OR MAJOR SECURITY-BASED
24 SWAP PARTICIPANT.—The term ‘person associated
25 with a security-based swap dealer or major security-

1 based swap participant’ has the same meaning as in
2 section 3(a)(70) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78c(a)(70)).

4 “(49) PERSON ASSOCIATED WITH A SWAP
5 DEALER OR MAJOR SWAP PARTICIPANT.—The term
6 ‘person associated with a swap dealer or major swap
7 participant’ or ‘associated person of a swap dealer or
8 major swap participant’ means—

9 “(A) any partner, officer, director, or
10 branch manager of such swap dealer or major
11 swap participant (or any person occupying a
12 similar status or performing similar functions);

13 “(B) any person directly or indirectly con-
14 trolling, controlled by, or under common control
15 with such swap dealer or major swap partici-
16 pant; or

17 “(C) any employee of such swap dealer or
18 major swap participant, except that any person
19 associated with a swap dealer or major swap
20 participant whose functions are solely clerical or
21 ministerial shall not be included in the meaning
22 of such term other than for purposes of section
23 4s(b)(6) of this Act.

24 “(50) SWAP REPOSITORY.—The term ‘swap re-
25 pository’ means any person that collects, calculates,

1 processes, or prepares information with respect to
2 transactions or positions in swaps or security-based
3 swaps.”.

4 (b) **JOINT RULEMAKING ON FURTHER DEFINITION**
5 **OF TERMS.—**

6 (1) **IN GENERAL.—**The Commodity Futures
7 Trading Commission and the Securities and Ex-
8 change Commission shall jointly adopt a rule or
9 rules further defining the terms “swap”, “security-
10 based swap”, “swap dealer”, “security-based swap
11 dealer”, “major swap participant”, “major security-
12 based swap participant”, and “eligible contract par-
13 ticipant” not later than 180 days after the effective
14 date of this title.

15 (2) **PREVENTION OF EVASIONS.—**The Com-
16 modity Futures Trading Commission and the Securi-
17 ties and Exchange Commission may jointly prescribe
18 rules defining the term “swap” or “security-based
19 swap” to include transactions that have been struc-
20 tured to evade this title.

21 (c) **JOINT RULEMAKING UNDER THIS TITLE.—**

22 (1) **UNIFORM RULES.—**Rules and regulations
23 prescribed jointly under this title by the Commodity
24 Futures Trading Commission and the Securities and
25 Exchange Commission shall be uniform.

1 (2) AGENCY FOR FINANCIAL STABILITY.—In
2 the event that the Commodity Futures Trading
3 Commission and the Securities and Exchange Com-
4 mission fail to jointly prescribe uniform rules and
5 regulations under any provision of this title in a
6 timely manner, the Agency for Financial Stability, in
7 consultation with the Commodity Futures Trading
8 Commission and the Securities and Exchange Com-
9 mission, shall prescribe rules and regulations under
10 such provision. A rule prescribed by the Agency for
11 Financial Stability shall be enforced as if prescribed
12 jointly by the Commodity Futures Trading Commis-
13 sion and the Securities and Exchange Commission
14 and shall remain in effect until the Agency for Fi-
15 nancial Stability rescinds the rule or until the effec-
16 tive date of a corresponding rule prescribed jointly
17 by the Commodity Futures Trading Commission and
18 the Securities and Exchange Commission in accord-
19 ance with this section, whichever is later.

20 (3) DEADLINE.—The Agency for Financial Sta-
21 bility shall adopt rules and regulations under para-
22 graph (2) within 180 days of the time that the Com-
23 modity Futures Trading Commission and the Securi-
24 ties and Exchange Commission failed to adopt uni-
25 form rules and regulations.

1 (4) TREATMENT OF SIMILAR PRODUCTS.—In
2 adopting joint rules and regulations under this title,
3 the Commodity Futures Trading Commission and
4 the Securities and Exchange Commission shall treat
5 functionally or economically similar products simi-
6 larly.

7 (5) TREATMENT OF DISSIMILAR PRODUCTS.—
8 Nothing in this title shall be construed to require
9 the Commodity Futures Trading Commission and
10 the Securities and Exchange Commission to adopt
11 joint rules that treat functionally or economically
12 different products identically.

13 (6) JOINT INTERPRETATION.—Any interpreta-
14 tion of, or guidance regarding, a provision of this
15 title, shall be effective only if issued jointly by the
16 Commodity Futures Trading Commission and the
17 Securities and Exchange Commission if this title re-
18 quires the Commodity Futures Trading Commission
19 and the Securities and Exchange Commission to
20 issue joint regulations to implement the provision.

21 (d) EXEMPTIONS.—Section 4(c)(1) of the Commodity
22 Exchange Act (7 U.S.C. 6(c)(1)) is amended by adding
23 at the end the following: “The Commission shall not have
24 the authority to grant exemptions from the swap-related
25 provisions of the Over-the-Counter Derivatives Markets

1 Act of 2009, except as expressly authorized under the pro-
2 visions of that Act.”.

3 **SEC. 712. JURISDICTION.**

4 (a) **EXCLUSIVE JURISDICTION.**—The first sentence
5 of section 2(a)(1)(A) of the Commodity Exchange Act (7
6 U.S.C. 2(a)(1)(A)) is amended—

7 (1) by inserting “the Over-the-Counter Deriva-
8 tives Markets Act of 2009 and” after “otherwise
9 provided in”;

10 (2) by striking “subsections (e) through (i)”
11 and inserting “subsections (c) and (f)”;

12 (3) by striking “involving contracts of sale” and
13 inserting “involving swaps, or contracts of sale”.

14 (b) **ADDITIONS.**—Section 2(c)(2)(A) of the Com-
15 modity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

16 (1) in clause (i), by striking “or”;

17 (2) by redesignating clause (ii) as clause (iii);
18 and

19 (3) by inserting after clause (i) the following:

20 “(ii) a swap; or”.

21 (c) **LIMITATION.**—Section 2 of the Commodity Ex-
22 change Act (7 U.S.C. 2) is amended by amending sub-
23 section (g) to read as follows:

24 “(g) **EXCLUSION FOR SECURITIES.**—Notwith-
25 standing any other provision of law, the Over-the-Counter

1 Derivatives Markets Act of 2009 shall not apply to, and
2 the Commodity Futures Trading Commission shall have
3 no jurisdiction under such Act (or any amendments to the
4 Commodity Exchange Act made by such Act) with respect
5 to, any security other than a security-based swap.”.

6 **SEC. 713. CLEARING.**

7 (a) **CLEARING REQUIREMENT.**—

8 (1) **REPEALS.**—Subsections (d), (e), and (h) of
9 section 2 of the Commodity Exchange Act (7 U.S.C.
10 2(d), 2(e), and 2(h)) are repealed.

11 (2) **APPLICABILITY.**—Section 2 of the Com-
12 modity Exchange Act (7 U.S.C. 2) is further amend-
13 ed by inserting after subsection (c) the following:

14 “(d) **SWAPS.**—Nothing in this Act, other than sub-
15 sections (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(G), (f), (g),
16 and (j), sections 4a, 4b, 4b–1, 4c(a), 4c(b), 4o, 4r, 4s,
17 4t, 4u, 5, 5b, 5c, 5h, 6(c), 6(d), 6e, 6d, 8, 8a, 9, 12(e)(2),
18 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provi-
19 sions of this Act as are applicable by their terms to reg-
20 istered entities and Commission registrants, governs or
21 applies to a swap.

22 “(e) **LIMITATION ON PARTICIPATION.**—It shall be
23 unlawful for any person, other than an eligible contract
24 participant, to enter into a swap unless the swap is en-

1 tered into on or subject to the rules of a board of trade
2 designated as a contract market under section 5.”.

3 (3) CLEARING REQUIREMENT.—Section 2 of
4 the Commodity Exchange Act (7 U.S.C. 2) is fur-
5 ther amended by adding at the end the following:

6 “(j) CLEARING REQUIREMENT.—

7 “(1) SUBMISSION.—

8 “(A) IN GENERAL.—Except as provided in
9 paragraph (9), any person who is a party to a
10 swap shall submit such swap for clearing to a
11 derivatives clearing organization that is reg-
12 istered under this Act.

13 “(B) REQUIRED CONDITIONS.—The rules
14 of a derivatives clearing organization described
15 in subparagraph (A) shall—

16 “(i) prescribe that all swaps with the
17 same terms and conditions are fungible
18 and may be offset with each other; and

19 “(ii) provide for nondiscriminatory
20 clearing of a swap executed on or through
21 the rules of an unaffiliated designated con-
22 tract market or an alternative swap execu-
23 tion facility.

24 “(2) COMMISSION APPROVAL.—

1 “(A) IN GENERAL.—A derivatives clearing
2 organization shall submit to the Commission for
3 prior approval any group, category, type, or
4 class of swaps, that the derivatives clearing or-
5 ganization seeks to accept for clearing, which
6 submission the Commission shall make available
7 to the public.

8 “(B) DEADLINE.—The Commission shall
9 take final action on a request submitted pursu-
10 ant to subparagraph (A) not later than 90 days
11 after submission of the request, unless the de-
12 rivatives clearing organization submitting the
13 request agrees to an extension of the time limi-
14 tation established under this subparagraph.

15 “(C) APPROVAL.—The Commission shall
16 approve, unconditionally or subject to such
17 terms and conditions as the Commission deter-
18 mines to be appropriate, any request submitted
19 pursuant to subparagraph (A) if the Commis-
20 sion finds that the request is consistent with
21 section 5b(c)(2). The Commission shall approve
22 any such request if the Commission does not
23 make such finding.

24 “(D) RULES.—Not later than 180 days
25 after the date of the enactment of the Over-the-

1 Counter Derivatives Markets Act of 2009, the
2 Commission shall adopt rules for a derivatives
3 clearing organization's submission for approval,
4 pursuant to this paragraph, of a swap, or a
5 group, category, type or class of swaps, that the
6 derivative clearing organization seeks to accept
7 for clearing.

8 “(3) STAY OF CLEARING REQUIREMENT.—At
9 any time after issuance of an approval pursuant to
10 paragraph (2):

11 “(A) REVIEW PROCESS.—The Commission,
12 on application of a counterparty to a swap or
13 on its own initiative, may stay the clearing re-
14 quirement of paragraph (1) until the Commis-
15 sion completes a review of the terms of the
16 swap (or the group, category, type, or class of
17 swaps) and the clearing arrangement.

18 “(B) DEADLINE.—The Commission shall
19 complete a review undertaken pursuant to sub-
20 paragraph (A) not later than 90 days after
21 issuance of the stay, unless the derivatives
22 clearing organization that clears the swap, or
23 group, category, type or class of swaps, agrees
24 to an extension of the time limitation estab-
25 lished under this subparagraph.

1 “(C) DETERMINATION.—Upon completion
2 of the review undertaken pursuant to subpara-
3 graph (A)—

4 “(i) the Commission may determine,
5 unconditionally or subject to such terms
6 and conditions as the Commission deter-
7 mines to be appropriate, that the swap, or
8 group, category, type, or class of swaps,
9 must be cleared pursuant to this sub-
10 section if the Commission finds that such
11 clearing—

12 “(I) is consistent with section
13 5b(c)(2); and

14 “(II) is otherwise in the public
15 interest, for the protection of inves-
16 tors, and consistent with the purposes
17 of this title;

18 “(ii) the Commission may determine
19 that the clearing requirement of paragraph
20 (1) shall not apply to the swap, or group,
21 category, type, or class of swaps; or

22 “(iii) if a determination is made that
23 the clearing requirement of paragraph (1)
24 shall no longer apply, then it shall still be

1 permissible to clear such swap, or group,
2 category, type, or class of swaps.

3 “(D) RULES.—Not later than 180 days
4 after the date of the enactment of the Over-the-
5 Counter Derivatives Markets Act of 2009, the
6 Commission shall adopt rules for reviewing,
7 pursuant to this paragraph, a derivatives clear-
8 ing organization’s clearing of a swap, or a
9 group, category, type, or class of swaps, that
10 the Commission has accepted for clearing.

11 “(4) SWAPS REQUIRED TO BE ACCEPTED FOR
12 CLEARING.—

13 “(A) RULEMAKING.—Within 180 days of
14 the date of enactment of the Over-the-Counter
15 Derivatives Markets Act of 2009, the Commis-
16 sion and the Securities and Exchange Commis-
17 sion shall jointly adopt rules to further identify
18 swaps, or any group, category, type, or class of
19 swaps, that although not submitted for approval
20 under paragraph (2) but the Commission and
21 Securities Exchange Commission deem should
22 be accepted for clearing. In adopting such rules,
23 the Commission and the Securities and Ex-
24 change Commission shall take into account the
25 following factors:

1 “(i) The extent to which any of the
2 terms of the swap, including price, are dis-
3 seminated to third parties or are ref-
4 erenced in other agreements, contracts, or
5 transactions.

6 “(ii) The volume of transactions in
7 the swap.

8 “(iii) The extent to which the terms of
9 the swap are similar to the terms of other
10 agreements, contracts, or transactions that
11 are centrally cleared.

12 “(iv) Whether any differences in the
13 terms of the swap, compared to other
14 agreements, contracts, or transactions that
15 are centrally cleared, are of economic sig-
16 nificance.

17 “(v) Whether a derivatives clearing
18 organization is prepared to clear the swap
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 and the Securities and Exchange
24 Commission determine to be appropriate.

1 “(B) OTHER DESIGNATIONS.—The Com-
2 mission may separately designate a particular
3 swap or class of swaps as subject to the clear-
4 ing requirement in paragraph (1), taking into
5 account the factors described in clauses (i)
6 through (vi) of subparagraph (A) and the joint
7 rules adopted under such subparagraph.

8 “(5) PREVENTION OF EVASION.—The Commis-
9 sion and the Securities and Exchange Commission
10 shall have authority to prescribe rules under this
11 subsection, or issue interpretations of such rules, as
12 necessary to prevent evasions of this title provided
13 that any such rules or interpretations shall be issued
14 jointly to be effective.

15 “(6) REQUIRED REPORTING.—

16 “(A) BOTH COUNTERPARTIES.—Both
17 counterparties to a swap that is not accepted
18 for clearing by any derivatives clearing organi-
19 zation shall report such a swap either to a reg-
20 istered swap repository described in section 21
21 or, if there is no repository that would accept
22 the swap, to the Commission pursuant to sec-
23 tion 4r.

24 “(B) TIMING.—Counterparties to a swap
25 shall submit the reports required under sub-

1 paragraph (A) within such time period as the
2 Commission may by rule or regulation pre-
3 scribe.

4 “(7) **TRANSITION RULES.**—Rules adopted by
5 the Commission under this section shall provide for
6 the reporting of data, as follows:

7 “(A) Swaps that were entered into before
8 the date of enactment of the Over-the-Counter
9 Derivatives Markets Act of 2009 shall be re-
10 ported to a registered swap repository or the
11 Commission not later than the later of —

12 “(i) 180 days after the effective date
13 of the Over-the-Counter Derivatives Mar-
14 kets Act of 2009; or

15 “(ii) such other time after entering
16 into the swap as the Commission may pre-
17 scribe by rule or regulation.

18 “(B) Swaps that were entered into on or
19 after the date of enactment of the Over-the-
20 Counter Derivatives Markets Act of 2009 shall
21 be reported to a registered swap repository or
22 the Commission not later than the later of—

23 “(i) 90 days after the effective date of
24 the Over-the-Counter Derivatives Markets
25 Act of 2009; or

1 “(ii) such other time after entering
2 into the swap as the Commission may pre-
3 scribe by rule or regulation.

4 “(8) TRADE EXECUTION.—

5 “(A) IN GENERAL.—With respect to trans-
6 actions involving swaps subject to the clearing
7 requirement of paragraph (1), counterparties
8 shall—

9 “(i) execute the transaction on a
10 board of trade designated as a contract
11 market under section 5; or

12 “(ii) execute the transaction on an al-
13 ternative swap execution facility registered
14 under section 5h.

15 “(B) EXCEPTION.—The requirements of
16 clauses (i) and (ii) of subparagraph (A) shall
17 not apply if no board of trade or alternative
18 swap execution facility makes the swap avail-
19 able to trade.

20 “(9) EXEMPTIONS.—

21 “(A) IN GENERAL.—The Commission by
22 rule or order, as the Commission deems nec-
23 essary or appropriate in the public interest,
24 may conditionally or unconditionally exempt a
25 swap from the requirements of paragraphs (1)

1 and (8), and any rules issued under this sub-
2 section, if—

3 “(i) no derivatives clearing organiza-
4 tion registered under this Act will accept
5 the swap for clearing; or

6 “(ii) 1 of the counterparties to the
7 swap—

8 “(I) is not a swap dealer or
9 major swap participant; and

10 “(II) does not meet the eligibility
11 requirements of any derivatives clear-
12 ing organization that clears the swap.

13 “(B) PRIOR CONSULTATION WITH THE SE-
14 CURITIES AND EXCHANGE COMMISSION AND
15 AGENCY FOR FINANCIAL STABILITY.—

16 “(i) CONSULTATION.—Before acting
17 by rule or order to exempt a swap, or any
18 group, category, type, or class of swaps
19 from any requirement or rule under this
20 section, the Commission shall consult with,
21 and consider the views of, the Securities
22 and Exchange Commission and the Agency
23 for Financial Stability concerning whether
24 such exemption is necessary and appro-

1 p r i a t e f o r t h e r e d u c t i o n o f s y s t e m i c r i s k
2 a n d i n t h e p u b l i c i n t e r e s t .

3 “(ii) P R O H I B I T I O N O N I S S U A N C E . —
4 N o t l a t e r t h a n 4 5 d a y s p r i o r t o i s s u i n g a n y
5 e x e m p t i o n u n d e r t h i s p a r a g r a p h , t h e C o m -
6 m i s s i o n s h a l l s e n d a n o t i c e t o t h e S e c u r i -
7 t i e s a n d E x c h a n g e C o m m i s s i o n a n d t h e
8 A g e n c y f o r F i n a n c i a l S t a b i l i t y d e s c r i b i n g
9 s u c h e x e m p t i o n . I f e i t h e r t h e S e c u r i t i e s
10 a n d E x c h a n g e C o m m i s s i o n o r t h e A g e n c y
11 f o r F i n a n c i a l S t a b i l i t y i s s u e s a f i n d i n g
12 u n d e r c l a u s e (i) t h a t s u c h a n e x e m p t i o n
13 d o e s n o t m e e t t h e s t a n d a r d d e s c r i b e d i n
14 c l a u s e (i) , t h e C o m m i s s i o n m a y n o t i s s u e
15 s u c h e x e m p t i o n .

16 “(iii) D E A D L I N E . — A n y f i n d i n g b y t h e
17 S e c u r i t i e s a n d E x c h a n g e C o m m i s s i o n o r
18 t h e A g e n c y f o r F i n a n c i a l S t a b i l i t y s h a l l b e
19 m a d e a n d p r o v i d e d i n w r i t i n g t o t h e C o m -
20 m i s s i o n n o t l a t e r t h a n 4 5 d a y s a f t e r t h e
21 d a t e o f r e c e i p t o f n o t i c e o f a p r o p o s e d e x -
22 e m p t i o n b y t h e C o m m i s s i o n .

23 “(iv) N O N D E L E G A T I O N . — A c t i o n b y
24 t h e S e c u r i t i e s a n d E x c h a n g e C o m m i s s i o n

1 or the Agency for Financial Stability under
2 this subparagraph may not be delegated.

3 “(C) REQUESTED CLEARANCE.—If any
4 party to a swap that is exempt from the clear-
5 ing requirements of paragraph (1) requests that
6 such swap be cleared by a derivatives clearing
7 organization, and a derivatives clearing organi-
8 zation registered under this Act will accept such
9 swap for clearing, then—

10 “(i) the exemption shall not apply;

11 and

12 “(ii) the swap shall be cleared by such
13 organization.”.

14 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

15 (1) IN GENERAL.—Subsections (a) and (b) of
16 section 5b of the Commodity Exchange Act (7
17 U.S.C. 7a–1) are amended to read as follows:

18 “(a) REGISTRATION REQUIREMENT.—It shall be un-
19 lawful for a derivatives clearing organization, unless reg-
20 istered with the Commission, directly or indirectly to make
21 use of the mails or any means or instrumentality of inter-
22 state commerce to perform the functions of a derivatives
23 clearing organization described in section 1a(10) with re-
24 spect to—

1 “(1) a contract of sale of a commodity for fu-
2 ture delivery (or option on such a contract) or option
3 on a commodity, in each case unless the contract or
4 option is—

5 “(A) excluded from this Act by section
6 2(a)(1)(C)(i), 2(c), or 2(f); or

7 “(B) a security futures product cleared by
8 a clearing agency registered with the Securities
9 and Exchange Commission under the Securities
10 Exchange Act of 1934 (15 U.S.C. 78a et seq.);
11 or

12 “(2) a swap.

13 “(b) VOLUNTARY REGISTRATION.—

14 “(1) DERIVATIVES CLEARING ORGANIZA-
15 TIONS.—A person that clears agreements, contracts,
16 or transactions that are not required to be cleared
17 under this Act may register with the Commission as
18 a derivatives clearing organization.

19 “(2) CLEARING AGENCIES.—A derivatives clear-
20 ing organization may clear security-based swaps that
21 are required to be cleared by a person who is reg-
22 istered as a clearing agency under the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78a et seq.).”.

1 (2) **REQUIRED REGISTRATION.**—Section 5b of
2 the Commodity Exchange Act (7 U.S.C. 7a–1) is
3 amended by adding at the end the following:

4 “(g) **REQUIRED REGISTRATION FOR BANKS AND**
5 **CLEARING AGENCIES.**—A person that is required to be
6 registered as a derivatives clearing organization under this
7 section shall register with the Commission regardless of
8 whether the person is also a bank or a clearing agency
9 registered with the Securities and Exchange Commission
10 under the Securities Exchange Act of 1934 (15 U.S.C.
11 78a et seq.).

12 “(h) **HARMONIZATION OF RULES.**—Not later than
13 180 days after the effective date of the Over-the-Counter
14 Derivatives Markets Act of 2009, the Commission and the
15 Securities and Exchange Commission shall jointly adopt
16 uniform rules governing—

17 “(1) the clearing and settlement of swaps, as
18 well as persons that are registered as derivatives
19 clearing organizations for swaps under this sub-
20 section; and

21 “(2) the clearing and settlement of security-
22 based swaps, as well as persons that are registered
23 as clearing agencies for security-based swaps under
24 the Securities Exchange Act of 1934 (15 U.S.C. 78a
25 et seq.).

1 “(i) CONSULTATION.—The Commission and the Se-
2 curities and Exchange Commission shall consult with the
3 appropriate Federal banking agencies prior to adopting
4 rules under this section with respect to swaps.

5 “(j) EXEMPTIONS.—The Commission may exempt,
6 conditionally or unconditionally, a derivatives clearing or-
7 ganization from registration under this section for the
8 clearing of swaps if the Commission finds that such de-
9 rivatives clearing organization is subject to comparable,
10 comprehensive supervision and regulation on a consoli-
11 dated basis by the Securities and Exchange Commission,
12 the Financial Institutions Regulatory Administration, or
13 the appropriate governmental authorities in the organiza-
14 tion’s home country.

15 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

16 “(1) IN GENERAL.—Each derivatives clearing
17 organization shall designate an individual to serve as
18 a compliance officer.

19 “(2) DUTIES.—The compliance officer shall
20 perform the following duties:

21 “(A) Report directly to the board or to the
22 senior officer of the derivatives clearing organi-
23 zation.

1 “(B) Review the compliance of the deriva-
2 tives clearing organization with the core prin-
3 ciples established in section 5b(c)(2).

4 “(C) Consult with the board of the deriva-
5 tives clearing organization, a body performing a
6 function similar to that of a board, or the sen-
7 ior officer of the derivatives clearing organiza-
8 tion, to resolve any conflicts of interest that
9 may arise.

10 “(D) Administering the policies and proce-
11 dures of the derivatives clearing organization
12 required to be established pursuant to this sec-
13 tion;

14 “(E) Ensuring compliance with this Act
15 and the rules and regulations issued there-
16 under, including rules prescribed by the Com-
17 mission pursuant to this section.

18 “(F) Establishing procedures for remedi-
19 ation of noncompliance issues found during
20 compliance office reviews, lookbacks, internal or
21 external audit findings, self-reported errors, or
22 through validated complaints. Procedures to be
23 established under this subparagraph include
24 procedures related to the handling, manage-

1 ment response, remediation, retesting, and clos-
2 ing of noncompliance issues.

3 “(3) ANNUAL REPORTS REQUIRED.—

4 “(A) IN GENERAL.—The compliance offi-
5 cer shall annually prepare and sign a report on
6 the compliance of the derivatives clearing orga-
7 nization with this Act and the policies and pro-
8 cedures of the organization, including the code
9 of ethics and conflict of interest policies of the
10 organization, in accordance with rules pre-
11 scribed by the Commission.

12 “(B) SUBMISSION.—The compliance report
13 required under subparagraph (A) shall accom-
14 pany the financial reports of the derivatives
15 clearing organization that are required to be
16 furnished to the Commission pursuant to this
17 section and shall include a certification that,
18 under penalty of law, the report is accurate and
19 complete.”.

20 (3) CORE PRINCIPALS.—Section 5b(c)(2) of the
21 Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)) is
22 amended to read as follows:

23 “(2) CORE PRINCIPLES FOR DERIVATIVES
24 CLEARING ORGANIZATIONS.—

25 “(A) COMPLIANCE.—

1 “(i) IN GENERAL.—To be registered
2 and to maintain registration as a deriva-
3 tives clearing organization, a derivatives
4 clearing organization shall comply with the
5 core principles established in this para-
6 graph and any requirement that the Com-
7 mission may impose by rule or regulation
8 pursuant to section 8a(5).

9 “(ii) REASONABLE DISCRETION.—Ex-
10 cept where the Commission determines
11 otherwise by rule or regulation, a deriva-
12 tives clearing organization shall have rea-
13 sonable discretion in establishing the man-
14 ner in which it complies with the core prin-
15 ciples established in this paragraph.

16 “(B) FINANCIAL RESOURCES.—

17 “(i) IN GENERAL.—Each derivatives
18 clearing organization shall have adequate
19 financial, operational, and managerial re-
20 sources to discharge its responsibilities.

21 “(ii) MINIMUM RESOURCES.—The fi-
22 nancial resources of each derivatives clear-
23 ing organization shall, at a minimum, ex-
24 ceed the total amount that would—

1 “(I) enable the organization to
2 meet its financial obligations to its
3 members and participants notwith-
4 standing a default by the member or
5 participant creating the largest finan-
6 cial exposure for that in extreme but
7 plausible market conditions; and

8 “(II) enable the organization to
9 cover its operating costs for a period
10 of 1 year, calculated on a rolling
11 basis.

12 “(C) PARTICIPANT AND PRODUCT ELIGI-
13 BILITY.—

14 “(i) STANDARDS.—Each derivatives
15 clearing organization shall establish—

16 “(I) appropriate admission and
17 continuing eligibility standards (in-
18 cluding sufficient financial resources
19 and operational capacity to meet obli-
20 gations arising from participation in
21 the derivatives clearing organization)
22 for members of and participants in
23 the organization; and

24 “(II) appropriate standards for
25 determining eligibility of agreements,

1 contracts, or transactions submitted
2 to the organization for clearing.

3 “(ii) ONGOING VERIFICATION.—Each
4 derivatives clearing organization shall have
5 procedures in place to verify that its par-
6 ticipation and membership requirements
7 are met on an ongoing basis.

8 “(iii) FAIR STANDARDS.—Each de-
9 rivatives clearing organization’s participa-
10 tion and membership requirements shall be
11 objective, publicly disclosed, and permit
12 fair and open access.

13 “(D) RISK MANAGEMENT.—

14 “(i) IN GENERAL.—Each derivatives
15 clearing organization shall have the ability
16 to manage the risks associated with dis-
17 charging the responsibilities of a deriva-
18 tives clearing organization through the use
19 of appropriate tools and procedures.

20 “(ii) CREDIT EXPOSURE.—Each de-
21 rivatives clearing organization shall meas-
22 ure its credit exposures to its members and
23 participants at least once each business
24 day and shall monitor such exposures
25 throughout the business day.

1 “(i) complete money settlements on a
2 timely basis, and not less than once each
3 business day;

4 “(ii) employ money settlement ar-
5 rangements that eliminate or strictly limit
6 the exposure of the organization to settle-
7 ment bank risks, such as credit and liquid-
8 ity risks from the use of banks to effect
9 money settlements;

10 “(iii) ensure money settlements are
11 final when effected;

12 “(iv) maintain an accurate record of
13 the flow of funds associated with each
14 money settlement;

15 “(v) have the ability to comply with
16 the terms and conditions of any permitted
17 netting or offset arrangements with other
18 clearing organizations;

19 “(vi) for physical settlements, estab-
20 lish rules that clearly state the obligations
21 of the organization with respect to physical
22 deliveries; and

23 “(vii) identify and manage the risks
24 from the obligations described under clause
25 (vi).

1 “(F) TREATMENT OF FUNDS.—

2 “(i) SAFETY OF FUNDS.—Each de-
3 rivatives clearing organization shall have
4 standards and procedures designed to pro-
5 tect and ensure the safety of member and
6 participant funds and assets.

7 “(ii) HOLDING OF FUNDS.—Each de-
8 rivatives clearing organization shall hold
9 member and participant funds and assets
10 in a manner whereby risk of loss or of
11 delay in the organization’s access to the
12 assets and funds is minimized.

13 “(iii) MINIMIZING RISKS.—Assets and
14 funds invested by a derivatives clearing or-
15 ganization shall be held in instruments
16 with minimal credit, market, and liquidity
17 risks.

18 “(G) DEFAULT RULES AND PROCE-
19 DURES.—

20 “(i) INSOLVENCY ISSUES.—Each de-
21 rivatives clearing organization shall have
22 rules and procedures designed to allow for
23 the efficient, fair, and safe management of
24 events when members or participants be-

1 come insolvent or otherwise default on
2 their obligations to the organization.

3 “(ii) **DEFAULT PROCEDURES.**—The
4 default procedures of each derivatives
5 clearing organization shall be clearly stat-
6 ed, and shall ensure that the organization
7 can take timely action to contain losses
8 and liquidity pressures and to continue
9 meeting its obligations.

10 “(iii) **PUBLIC AVAILABILITY.**—The de-
11 fault procedures of each derivatives clear-
12 ing organization shall be publicly available.

13 “(H) **ENFORCEMENT.**—Each derivatives
14 clearing organization shall—

15 “(i) maintain adequate arrangements
16 and resources for the effective—

17 “(I) monitoring and enforcement
18 of compliance with the rules of the or-
19 ganization; and

20 “(II) resolution of disputes; and

21 “(ii) have the authority and ability to
22 discipline, limit, suspend, or terminate the
23 activities of a member or participant for
24 violations of the rules of the organization.

1 “(I) SYSTEM SAFEGUARDS.—Each deriva-
2 tives clearing organization shall—

3 “ (i) establish and maintain a program
4 of risk analysis and oversight to identify
5 and minimize sources of operational risk
6 through the development of appropriate
7 controls and procedures, and the develop-
8 ment of automated systems, that are reli-
9 able, secure, and have adequate scalable
10 capacity;

11 “(ii) establish and maintain emer-
12 gency procedures, backup facilities, and a
13 plan for disaster recovery that allows for
14 the timely recovery and resumption of op-
15 erations and the fulfillment of the respon-
16 sibilities and obligations of the organiza-
17 tion; and

18 “(iii) periodically conduct tests to
19 verify that backup resources are sufficient
20 to ensure daily processing, clearing, and
21 settlement.

22 “(J) REPORTING.—Each derivatives clear-
23 ing organization shall provide to the Commis-
24 sion all information necessary for the Commis-
25 sion to conduct oversight of the organization.

1 “(K) RECORDKEEPING.—Each derivatives
2 clearing organization shall maintain for a pe-
3 riod of 5 years records of all activities related
4 to the business of the organization as a deriva-
5 tives clearing organization in a form and man-
6 ner acceptable to the Commission.

7 “(L) PUBLIC INFORMATION.—

8 “(i) IN GENERAL.—Each derivatives
9 clearing organization shall provide market
10 participants with sufficient information to
11 identify and evaluate accurately the risks
12 and costs associated with using the serv-
13 ices of the organization.

14 “(ii) AVAILABILITY OF RULES.—Each
15 derivatives clearing organization shall
16 make information concerning the rules and
17 operating procedures governing the clear-
18 ing and settlement systems (including de-
19 fault procedures) of the organization avail-
20 able to market participants.

21 “(iii) ADDITIONAL DISCLOSURES.—
22 Each derivatives clearing organization shall
23 disclose publicly, and to the Commission,
24 information concerning—

1 “(I) the terms and conditions of
2 contracts, agreements, and trans-
3 actions cleared and settled by the or-
4 ganization;

5 “(II) clearing and other fees that
6 the organization charges its members
7 and participants;

8 “(III) the margin-setting method-
9 ology and the size and composition of
10 the financial resource package of the
11 organization;

12 “(IV) other information relevant
13 to participation in the settlement and
14 clearing activities of the organization;
15 and

16 “(V) daily settlement prices, vol-
17 ume, and open interest for all con-
18 tracts settled or cleared by the organi-
19 zation.

20 “(M) INFORMATION-SHARING.—Each de-
21 rivatives clearing organization shall—

22 “(i) enter into and abide by the terms
23 of all appropriate and applicable domestic
24 and international information-sharing
25 agreements; and

1 “(ii) use relevant information obtained
2 from the agreements in carrying out the
3 risk management program of the organiza-
4 tion.

5 “(N) ANTITRUST CONSIDERATIONS.—Un-
6 less appropriate to achieve the purposes of this
7 chapter, a derivatives clearing organization
8 shall avoid—

9 “(i) adopting any rule or taking any
10 action that results in any unreasonable re-
11 straint of trade; or

12 “(ii) imposing any material anti-
13 competitive burden.

14 “(O) GOVERNANCE FITNESS STAND-
15 ARDS.—

16 “(i) TRANSPARENCY.—Each deriva-
17 tives clearing organization shall establish
18 governance arrangements that are trans-
19 parent in order to fulfill public interest re-
20 quirements and to support the objectives of
21 owners and participants.

22 “(ii) FITNESS STANDARDS.—Each de-
23 rivatives clearing organization shall estab-
24 lish and enforce appropriate fitness stand-
25 ards for directors, members of any discipli-

1 nary committee, and members of the orga-
2 nization, and any other persons with direct
3 access to the settlement or clearing activi-
4 ties of the organization, including any par-
5 ties affiliated with any of the persons de-
6 scribed in this clause.

7 “(P) CONFLICTS OF INTEREST.—Each de-
8 rivatives clearing organization shall establish
9 and enforce rules to minimize conflicts of inter-
10 est in the decision-making process of the orga-
11 nization and establish a process for resolving
12 such conflicts of interest.

13 “(Q) COMPOSITION OF THE BOARDS.—
14 Each derivatives clearing organization shall en-
15 sure that the composition of the governing
16 board or committee 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 its activities.”.

22 (4) REPORTING.—Section 5b of the Commodity
23 Exchange Act (7 U.S.C. 7a–1) is further amended
24 by adding after subsection (j), as added by this sec-
25 tion, the following:

1 “(k) REPORTING.—

2 “(1) TRANSPARENCY.—

3 “(A) IN GENERAL.—A derivatives clearing
4 organization that clears swaps shall provide to
5 the Commission and any swap repository des-
6 ignated by the Commission all information de-
7 termined by the Commission to be necessary to
8 perform its responsibilities under this Act.

9 “(B) DATA COLLECTION REQUIRE-
10 MENTS.—The Commission shall adopt data col-
11 lection and maintenance requirements for swaps
12 cleared by derivatives clearing organizations
13 that are comparable to the corresponding re-
14 quirements for swaps accepted by swap reposi-
15 tories and swaps traded on alternative swap
16 execution facilities.

17 “(C) REPORTS ON SECURITY-BASED SWAP
18 AGREEMENTS TO BE SHARED WITH THE SECU-
19 RITIES AND EXCHANGE COMMISSION.—A de-
20 rivatives clearing organization that clears secu-
21 rity-based swap agreements (as defined in sec-
22 tion 3(a)(76) of the Securities Exchange Act)
23 shall, upon request for the protection of inves-
24 tors and in the public interest, make available
25 to the Securities and Exchange Commission all

1 information relating to such security-based
2 swap agreements.

3 “(D) SHARING OF INFORMATION.—Subject
4 to section 8, the Commission shall share such
5 information, upon request, with the Board, the
6 Securities and Exchange Commission, the ap-
7 propriate Federal banking agencies, the Agency
8 for Financial Stability, and the Department of
9 Justice or to other persons the Commission
10 deems appropriate, including foreign financial
11 supervisors (including foreign futures authori-
12 ties), foreign central banks, and foreign min-
13 istries.

14 “(2) PUBLIC INFORMATION.—A derivatives
15 clearing organization that clears swaps shall provide
16 to the Commission, or its designee, such information
17 as is required by, and in a form and at a frequency
18 to be determined by, the Commission, in order to
19 comply with the public reporting requirements con-
20 tained in section 8(j).”.

21 (5) TECHNICAL CHANGE.—Section 8(e) of the
22 Commodity Exchange Act (7 U.S.C. 12(e)) is
23 amended in the last sentence—

1 (A) by inserting “, central bank and min-
2 istries,” after “department” each place that
3 term appears; and

4 (B) by striking “futures authority.” and
5 inserting “futures authority.”.

6 (c) **LEGAL CERTAINTY FOR IDENTIFIED BANKING**
7 **PRODUCTS.—**

8 (1) **REPEAL.—**Sections 402(d), 404, 407,
9 408(b), and 408(c)(2) of the Legal Certainty for
10 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,
11 27e, 27f(b), and 27f(c)(2)) are repealed.

12 (2) **LEGAL CERTAINTY.—**Section 403 of the
13 Legal Certainty for Bank Products Act of 2000 (7
14 U.S.C. 27a) is amended to read as follows:

15 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

16 “(a) **EXCLUSION.—**Except as provided in subsections
17 (b) or (c), neither of the Commodity Exchange Act, nor
18 the Securities Act of 1933, nor the Securities Exchange
19 Act of 1934 shall apply to, and the Commodity Futures
20 Trading Commission and the Securities and Exchange
21 Commission shall not exercise regulatory authority under
22 such statutes with respect to, an identified banking prod-
23 uct.

24 “(b) **EXCEPTION.—**An appropriate Federal banking
25 agency may except an identified banking product or a

1 bank under the jurisdiction of such agency from the exclu-
2 sion in subsection (a) if the agency determines, in con-
3 sultation with the Commodity Futures Trading Commis-
4 sion and the Securities and Exchange Commission, that
5 the product—

6 “(1) would meet the definition of swap in sec-
7 tion 1a(35) of the Commodity Exchange Act (7
8 U.S.C. 1a(35)) or security-based swap in section
9 1a(38) of the Commodity Exchange Act(7 U.S.C.
10 1a(38)); and

11 “(2) has become known to the trade as a swap
12 or security-based swap, or otherwise has been struc-
13 tured as an identified banking product for the pur-
14 pose of evading the provisions of the Commodity Ex-
15 change Act (7 U.S.C. 1 et seq.), the Securities Act
16 of 1933 (15 U.S.C. 77a et seq.), or the Securities
17 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

18 “(c) **ADDITIONAL EXCEPTIONS.**—The exclusion in
19 subsection (a) shall not apply to an identified banking
20 product that—

21 “(1) is a product of a bank that is not under
22 the regulatory jurisdiction of an appropriate Federal
23 banking agency;

24 “(2) is a swap, or satisfies all the requirements
25 for a swap, as such term and requirements are es-

1 established in section 1(a)(35) of the Commodity Ex-
2 change Act;

3 “(3) is a security-based swap, or satisfies all
4 the requirements for a security-based swap, as such
5 term and requirements are established in section
6 3(a)(68) of the Securities Exchange Act of 1934; or

7 “(4) has—

8 “(A) become known to the trade as a swap
9 or security-based swap; or

10 “(B) been structured as an identified
11 banking product for the purpose of evading the
12 provisions of the Commodity Exchange Act (7
13 U.S.C. 1 et seq.), the Securities Act of 1933
14 (15 U.S.C. 77a et seq.), or the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78a et seq.).”.

16 **SEC. 714. PUBLIC REPORTING OF AGGREGATE SWAP DATA.**

17 Section 8 of the Commodity Exchange Act (7 U.S.C.
18 12) is amended by adding at the end the following:

19 “(j) **PUBLIC REPORTING OF AGGREGATE SWAP**
20 **DATA.—**

21 “(1) **IN GENERAL.—**The Commission, or a per-
22 son designated by the Commission pursuant to para-
23 graph (2), shall make available to the public, in a
24 manner that does not disclose the business trans-
25 actions and market positions of any person, aggre-

1 gate data on swap trading volumes and positions
2 from the sources set forth in paragraph (3).

3 “(2) DESIGNEE OF THE COMMISSION.—The
4 Commission may designate a derivatives clearing or-
5 ganization or a swap repository to carry out the
6 public reporting described in paragraph (1).

7 “(3) SOURCES OF INFORMATION.—The sources
8 of the information to be publicly reported as de-
9 scribed in paragraph (1) are—

10 “(A) derivatives clearing organizations
11 pursuant to section 5b(k)(2);

12 “(B) swap repositories pursuant to section
13 21(c)(3); and

14 “(C) reports received by the Commission
15 pursuant to section 4r.”.

16 **SEC. 715. SWAP REPOSITORIES.**

17 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
18 is amended by inserting after section 20 the following:

19 **“SEC. 21. SWAP REPOSITORIES.**

20 “(a) REGISTRATION REQUIREMENT.—

21 “(1) IN GENERAL.—A person may register as a
22 swap repository by filing with the Commission an
23 application in such form as the Commission, by rule,
24 may prescribe, containing the rules of the swap re-
25 pository and such other information and documenta-

1 tion as the Commission, by rule, may prescribe as
2 necessary or appropriate in the public interest, for
3 the protection of investors, or in the furtherance of
4 the purposes of this section.

5 “(2) INSPECTION AND EXAMINATION.—Reg-
6 istered swap repositories shall be subject to inspec-
7 tion and examination by any representative of the
8 Commission.

9 “(3) SHARING OF INFORMATION WITH SECURI-
10 TIES AND EXCHANGE COMMISSION.—Registered
11 swap repositories shall make available to the Securi-
12 ties and Exchange Commission, upon request, all in-
13 formation relating to security-based swap agree-
14 ments that are maintained by such swap repository.

15 “(b) STANDARD SETTING.—

16 “(1) DATA IDENTIFICATION.—The Commission
17 shall prescribe standards that specify the data ele-
18 ments for each swap that shall be collected and
19 maintained by each registered swap repository.

20 “(2) DATA COLLECTION AND MAINTENANCE.—
21 The Commission shall prescribe data collection and
22 data maintenance standards for swap repositories.

23 “(3) COMPARABILITY.—The standards pre-
24 scribed by the Commission under this subsection
25 shall be comparable to the data standards imposed

1 by the Commission on derivatives clearing organiza-
2 tions that clear swaps.

3 “(c) DUTIES.—A swap repository shall—

4 “(1) accept data prescribed by the Commission
5 for each swap under subsection (b);

6 “(2) maintain such data in such form and man-
7 ner and for such period as may be required by the
8 Commission;

9 “(3) provide to the Commission, or its designee,
10 such information as is required by, and in a form
11 and at a frequency to be determined by, the Com-
12 mission, in order to comply with the public reporting
13 requirements contained in section 8(j); and

14 “(4) make available, on a confidential basis
15 pursuant to section 8, all data obtained by the swap
16 repository, including individual counterparty trade
17 and position data, to the Commission, the appro-
18 priate Federal banking agencies, the Agency for Fi-
19 nancial Stability, the Securities and Exchange Com-
20 mission, and the Department of Justice or to other
21 persons the Commission deems appropriate, includ-
22 ing foreign financial supervisors (including foreign
23 futures authorities), foreign central banks, and for-
24 eign ministries.

1 “(d) **REQUIRED REGISTRATION FOR SECURITY-**
2 **BASED SWAP REPOSITORIES.**—Any person that is re-
3 quired to be registered as a swap repository under this
4 section shall register with the Commission regardless of
5 whether that person also is registered with the Securities
6 and Exchange Commission as a security-based swap re-
7 pository.

8 “(e) **HARMONIZATION OF RULES.**—Not later than
9 180 days after the effective date of the Over-the-Counter
10 Derivatives Markets Act of 2009, the Commission and the
11 Securities and Exchange Commission shall jointly adopt
12 uniform rules governing persons that are registered under
13 this section and persons that are registered as security-
14 based swap repositories under the Securities Exchange
15 Act of 1934 (15 U.S.C. 78a et seq.), including uniform
16 rules that specify the data elements that shall be collected
17 and maintained by each repository.

18 “(f) **EXEMPTIONS.**—The Commission may exempt,
19 conditionally or unconditionally, a swap repository from
20 the requirements of this section if the Commission finds
21 that such swap repository is subject to comparable, com-
22 prehensive supervision and regulation on a consolidated
23 basis by the Securities and Exchange Commission, the Fi-
24 nancial Institutions Regulatory Administration, or the ap-

1 appropriate governmental authorities in the organization’s
2 home country.”.

3 **SEC. 716. REPORTING AND RECORDKEEPING.**

4 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
5 is amended by inserting after section 4q the following:

6 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**
7 **SWAPS.**

8 “(a) IN GENERAL.—Any person who enters into a
9 swap shall satisfy the reporting requirements of subsection
10 (b), if such person—

11 “(1) did not clear the swap in accordance with
12 section 2(j)(1); and

13 “(2) did not have data regarding the swap ac-
14 cepted by a swap repository in accordance with rules
15 (including timeframes) adopted by the Commission
16 under section 21.

17 “(b) REPORTS.—Any person described in subsection
18 (a) shall—

19 “(1) make such reports in such form and man-
20 ner and for such period as the Commission shall pre-
21 scribe by rule or regulation regarding the swaps held
22 by the person; and

23 “(2) keep books and records pertaining to the
24 swaps held by the person in such form and manner
25 and for such period as may be required by the Com-

1 mission, which books and records shall be open to
2 inspection by any representative of the Commission,
3 an appropriate Federal banking agency, the Securi-
4 ties and Exchange Commission, the Agency for Fi-
5 nancial Stability, and the Department of Justice.

6 “(c) IDENTICAL DATA.—In adopting rules under this
7 section, the Commission shall require persons described in
8 subsection (a) to report the same or a more comprehensive
9 set of data than the Commission requires swap reposi-
10 tories to collect under section 21.”.

11 **SEC. 717. REGISTRATION AND REGULATION OF SWAP DEAL-**
12 **ERS AND MAJOR SWAP PARTICIPANTS.**

13 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
14 is amended by inserting after section 4r (as added by sec-
15 tion 716) the following:

16 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
17 **ERS AND MAJOR SWAP PARTICIPANTS.**

18 “(a) REGISTRATION.—It shall be unlawful for any
19 person—

20 “(1) to act as a swap dealer unless such person
21 is registered as a swap dealer with the Commission;
22 and

23 “(2) to act as a major swap participant unless
24 such person shall have registered as a major swap
25 participant with the Commission.

1 “(b) REQUIREMENTS.—

2 “(1) IN GENERAL.—A person shall register as
3 a swap dealer or major swap participant by filing a
4 registration application with the Commission.

5 “(2) CONTENTS.—The application required
6 under paragraph (1) shall be made in such form and
7 manner as prescribed by the Commission, giving any
8 information and facts as the Commission may deem
9 necessary concerning the business in which the ap-
10 plicant is or will be engaged. Such person, when reg-
11 istered as a swap dealer or major swap participant,
12 shall continue to report and furnish to the Commis-
13 sion such information pertaining to such person’s
14 business as the Commission may require.

15 “(3) EXPIRATION.—Each registration shall ex-
16 pire at such time as the Commission may by rule or
17 regulation prescribe.

18 “(4) RULES.—Except as provided in sub-
19 sections (c), (d), and (e), the Commission may pre-
20 scribe rules applicable to swap dealers and major
21 swap participants, including rules that limit the ac-
22 tivities of swap dealers and major swap participants.

23 “(5) TRANSITION.—Rules adopted under this
24 section shall provide for the registration of swap
25 dealers and major swap participants not later than

1 1 year after the effective date of the Over-the-
2 Counter Derivatives Markets Act of 2009.

3 “(6) STATUTORY DISQUALIFICATION.—Except
4 to the extent otherwise specifically provided by rule,
5 regulation, or order, it shall be unlawful for a swap
6 dealer or a major swap participant to permit any
7 person associated with a swap dealer or a major
8 swap participant who is subject to a statutory dis-
9 qualification to effect or be involved in effecting
10 swaps on behalf of such swap dealer or major swap
11 participant, if such swap dealer or major swap par-
12 ticipant knew, or in the exercise of reasonable care
13 should have known, of such statutory disqualifica-
14 tion.

15 “(c) DUAL REGISTRATION.—

16 “(1) SWAP DEALER.—Any person that is re-
17 quired to be registered as a swap dealer under this
18 section shall register with the Commission regardless
19 of whether that person also is a bank or is registered
20 with the Securities and Exchange Commission as a
21 security-based swap dealer.

22 “(2) MAJOR SWAP PARTICIPANT.—Any person
23 that is required to be registered as a major swap
24 participant under this section shall register with the
25 Commission regardless of whether that person also

1 is a bank or is registered with the Securities and
2 Exchange Commission as a major security-based
3 swap participant.

4 “(d) **JOINT RULES.**—

5 “(1) **IN GENERAL.**—Not later than 180 days
6 after the effective date of the Over-the-Counter De-
7 rivatives Markets Act of 2009, the Commission and
8 the Securities and Exchange Commission shall joint-
9 ly adopt uniform rules for persons that are reg-
10 istered—

11 “(A) as swap dealers or major swap par-
12 ticipants under this section; and

13 “(B) as security-based swap dealers or
14 major security-based swap participants under
15 the Securities Exchange Act of 1934 (15
16 U.S.C. 78a et seq.).

17 “(2) **EXCEPTION FOR PRUDENTIAL REQUIRE-**
18 **MENTS.**—The Commission and the Securities and
19 Exchange Commission shall not prescribe rules im-
20 posing prudential requirements (including activity
21 restrictions) on swap dealers, major swap partici-
22 pants, security-based swap dealers, or major secu-
23 rity-based swap participants for which the Financial
24 Institutions Regulatory Administration is the pri-
25 mary financial regulatory agency. This provision

1 shall not be construed as limiting the authority of
2 the Commission and the Securities and Exchange
3 Commission to prescribe appropriate business con-
4 duct, reporting, and recordkeeping requirements to
5 protect investors.

6 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

7 “(1) IN GENERAL.—

8 “(A) BANK SWAP DEALERS AND MAJOR
9 SWAP PARTICIPANTS.—Each registered swap
10 dealer and major swap participant for which
11 the Financial Institutions Regulatory Adminis-
12 tration is the primary financial regulatory agen-
13 cy shall meet such minimum capital require-
14 ments and minimum initial and variation mar-
15 gin requirements as FIRA shall by rule or regu-
16 lation prescribe to help ensure the safety and
17 soundness of the swap dealer or major swap
18 participant.

19 “(B) NONBANK SWAP DEALERS AND
20 MAJOR SWAP PARTICIPANTS.—Each registered
21 swap dealer and major swap participant for
22 which the Financial Institutions Regulatory Ad-
23 ministration is not the primary financial regu-
24 latory agency shall meet such minimum capital
25 requirements and minimum initial and variation

1 margin requirements as the Commission and
2 the Securities and Exchange Commission shall
3 by rule or regulation jointly prescribe to help
4 ensure the safety and soundness of the swap
5 dealer or major swap participant.

6 “(2) JOINT RULES.—

7 “(A) BANK SWAP DEALERS AND MAJOR
8 SWAP PARTICIPANTS.—Within 180 days of the
9 date of the enactment of the Over-the-Counter
10 Derivatives Markets Act of 2009, the Financial
11 Institutions Regulatory Administration, in con-
12 sultation with the Commission and the Securi-
13 ties and Exchange Commission, shall jointly
14 adopt rules imposing capital and margin re-
15 quirements under this subsection for swap deal-
16 ers and major swap participants for which
17 FIRA is the primary regulatory agency.

18 “(B) NONBANK SWAP DEALERS AND
19 MAJOR SWAP PARTICIPANTS.—Within 180 days
20 of the date of the enactment of the Over-the-
21 Counter Derivatives Markets Act of 2009, the
22 Commission and the Securities and Exchange
23 Commission, in consultation with the Financial
24 Institutions Regulatory Administration, shall
25 jointly adopt rules imposing capital and margin

1 requirements under this subsection for swap
2 dealers and major swap participants for which
3 FIRA is not the primary financial regulatory
4 agency.

5 “(3) CAPITAL.—

6 “(A) BANK SWAP DEALERS AND MAJOR
7 SWAP PARTICIPANTS.—In setting capital re-
8 quirements under this subsection for swap deal-
9 ers and major swap participants for which the
10 Financial Institutions Regulatory Authority is
11 the primary financial regulatory agency, the Fi-
12 nancial Institutions Regulatory Administration
13 shall impose—

14 “(i) a capital requirement that is
15 greater than zero for swaps that are
16 cleared by a derivatives clearing organiza-
17 tion; 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 centrally cleared,
22 substantially higher capital requirements
23 for swaps that are not cleared by a reg-
24 istered derivatives clearing organization
25 than for swaps that are centrally cleared.

1 “(B) NONBANK SWAP DEALERS AND
2 MAJOR SWAP PARTICIPANTS.—Capital require-
3 ments set by the Commission and the Securities
4 and Exchange Commission under this sub-
5 section shall be as strict as or stricter than the
6 capital requirements set by the Financial Insti-
7 tutions Regulatory Administration under this
8 subsection.

9 “(C) BANK HOLDING COMPANIES.—Capital
10 requirements set by the Financial Institutions
11 Regulatory Administration for swaps of bank
12 holding companies on a consolidated basis shall
13 be as strict as or stricter than the capital re-
14 quirements for bank swap dealers and major
15 swap participants set by FIRA under this sub-
16 section.

17 “(D) RULE OF CONSTRUCTION.—

18 “(i) IN GENERAL.—Nothing in this
19 section shall limit, or be construed to limit,
20 the authority—

21 “(I) of the Commission to set fi-
22 nancial responsibility rules for a fu-
23 tures commission merchant or intro-
24 ducing broker registered pursuant to
25 section 4f(a) of this title (except for

1 section 4f(a)(3) thereof) in accordance
2 with section 4f(b) of this title; or

3 “(II) the Securities and Ex-
4 change Commission to set financial
5 responsibility rules for a broker or
6 dealer registered pursuant to section
7 15(b) of the Securities Exchange Act
8 of 1934 (except for section 15(b)(11)
9 thereof) in accordance with section
10 15(c)(3) of the Securities and Ex-
11 change Act of 1934.

12 “(ii) FUTURES COMMISSION MER-
13 CHANTS AND OTHER DEALERS.—A futures
14 commission merchant, introducing broker,
15 broker, or dealer shall maintain sufficient
16 capital to comply with the stricter of any
17 applicable capital requirements to which
18 such merchant, introducing broker, broker,
19 or dealer is subject to under this title or
20 the Securities and Exchange Act of 1934.

21 “(4) MARGIN.—

22 “(A) BANK SWAP DEALERS AND MAJOR
23 SWAP PARTICIPANTS.—

24 “(i) IN GENERAL.—The Financial In-
25 stitutions Regulatory Administration shall

1 impose both initial and variation margin
2 requirements under this subsection for
3 swap dealers and major swap participants
4 for which the Financial Institutions Regu-
5 latory Authority is the primary financial
6 regulatory agency on all swaps that are not
7 cleared by a registered derivatives clearing
8 organization.

9 “(ii) EXEMPTION.—The Financial In-
10 stitutions Regulatory Administration by
11 rule or order, as FIRA deems necessary or
12 appropriate in the public interest, may
13 conditionally or unconditionally exempt a
14 swap dealer or major swap participant for
15 which FIRA is the primary financial regu-
16 latory agency from the requirements of
17 this subsection and the rules issued under
18 this subsection with regard to any swap in
19 which 1 of the counterparties is—

20 “(I) not a swap dealer, major
21 swap participant, security-based swap
22 dealer, or a major security-based swap
23 participant;

1 “(II) using the swap as part of
2 an effective hedge under generally ac-
3 cepted accounting principles; and

4 “(III) predominantly engaged in
5 activities that are not financial in na-
6 ture, as defined in section 4(k) of the
7 Bank Holding Company Act of 1956
8 (12 U.S.C. 1843(k)).

9 “(iii) **PRIOR CONSULTATION WITH**
10 **AGENCY FOR FINANCIAL STABILITY, THE**
11 **COMMISSION, AND THE SECURITIES EX-**
12 **CHANGE COMMISSION.—**

13 “(I) **CONSULTATION.—**Before
14 acting by rule or order to exempt a
15 swap from any requirement or rule
16 under this subsection, the Financial
17 Institutions Regulatory Administra-
18 tion shall consult with, and consider
19 the views of, the Agency for Financial
20 Stability, the Commission, and the Se-
21 curities and Exchange Commission
22 concerning whether such exemption is
23 necessary and appropriate for the re-
24 duction of systemic risk and in the
25 public interest.

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1 “(II) PROHIBITION ON
2 ISSUANCE.—Not later than 45 days
3 prior to issuing any exemption under
4 this subparagraph, the Financial In-
5 stitutions Regulatory Administration
6 shall send a notice to the Agency for
7 Financial Stability describing such ex-
8 emption. If the Agency for Financial
9 Stability issues a finding under sub-
10 clause (I) that such an exemption
11 does not meet the standard described
12 in subclause (I), FIRA may not issue
13 such exemption.

14 “(III) DEADLINE.—Any finding
15 by the Agency for Financial Stability
16 shall be made and provided in writing
17 to the Financial Institutions Regu-
18 latory Administration not later than
19 45 days after the date of receipt of
20 notice of a proposed exemption by the
21 Financial Institutions Regulatory Ad-
22 ministration.

23 “(IV) NONDELEGATION.—Ac-
24 tions by the Agency for Financial Sta-

1 bility under this clause may not be
2 delegated.

3 “(B) NONBANK SWAP DEALERS AND
4 MAJOR SWAP PARTICIPANTS.—

5 “(i) IN GENERAL.—Margin require-
6 ments for swaps set by the Commission
7 and the Securities and Exchange Commis-
8 sion under this subsection shall be as strict
9 as or stricter than margin requirements for
10 swaps set by the Financial Institutions
11 Regulatory Administration.

12 “(ii) EXEMPTION.—The Commission
13 by rule or order, as the Commission deems
14 necessary or appropriate in the public in-
15 terest, may conditionally or unconditionally
16 exempt a swap from the requirements of
17 this subparagraph and the rules issued
18 under this subparagraph with regard to
19 any swap in which 1 of the counterparties
20 is—

21 “(I) not a swap dealer, major
22 swap participant, security-based swap
23 dealer, or a major security-based swap
24 participant;

1 “(II) using the swap as part of
2 an effective hedge under generally ac-
3 cepted accounting principles; and

4 “(III) predominantly engaged in
5 activities that are not financial in na-
6 ture, as defined in section 4(k) of the
7 Bank Holding Company Act of 1956
8 (12 U.S.C. 1843(k)).

9 “(iii) **PRIOR CONSULTATION WITH**
10 **THE SECURITIES AND EXCHANGE COMMIS-**
11 **SION AND AGENCY FOR FINANCIAL STA-**
12 **BILITY.—**

13 “(I) **CONSULTATION.—**Before
14 acting by rule or order to exempt a
15 swap, or any group, category, type, or
16 class of swaps from any requirement
17 or rule under this section, the Com-
18 mission shall consult with, and con-
19 sider the views of, the Securities and
20 Exchange Commission and the Agency
21 for Financial Stability concerning
22 whether such exemption is necessary
23 and appropriate for the reduction of
24 systemic risk and in the public inter-
25 est.

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1 “(II) PROHIBITION ON
2 ISSUANCE.—Not later than 45 days
3 prior to issuing any exemption under
4 this paragraph, the Commission shall
5 send a notice to the Securities and
6 Exchange Commission and the Agency
7 for Financial Stability describing such
8 exemption. If either the Securities and
9 Exchange Commission or the Agency
10 for Financial Stability issues a finding
11 under clause (i) that such an exemp-
12 tion does not meet the standard de-
13 scribed in clause (i), the Commission
14 may not issue such exemption.

15 “(III) DEADLINE.—Any finding
16 by the Securities and Exchange Com-
17 mission or the Agency for Financial
18 Stability shall be made and provided
19 in writing to the Commission not later
20 than 45 days after the date of receipt
21 of notice of a proposed exemption by
22 the Commission.

23 “(IV) NONDELEGATION.—Action
24 by the Securities and Exchange Com-
25 mission or the Agency for Financial

1 Stability under this subparagraph
2 may not be delegated.

3 “(5) MARGIN REQUIREMENTS.—In prescribing
4 margin requirements under this subsection, the Fi-
5 nancial Institutions Regulatory Administration, the
6 Commission, and the Securities Exchange Commis-
7 sion may permit the use of noncash collateral, as
8 FIRA, the Commission, or the Securities Exchange
9 Commission determines to be consistent with—

10 “(A) preserving the financial integrity of
11 markets trading swaps; and

12 “(B) preventing systemic risk.

13 “(6) REQUESTED MARGIN.—If any party to a
14 swap that is exempt from the margin requirements
15 of paragraph (4)(A)(i) pursuant to the provisions of
16 paragraph (4)(A)(ii) requests that such swap be
17 margined, then—

18 “(A) the exemption shall not apply; and

19 “(B) the counterparty to such swap shall
20 provide the requested margin.

21 “(f) REPORTING AND RECORDKEEPING.—

22 “(1) IN GENERAL.—Each registered swap deal-
23 er and major swap participant—

24 “(A) shall make such reports as are pre-
25 scribed by the Commission by rule or regulation

1 regarding the transactions and positions and fi-
2 nancial condition of such dealer or participant;

3 “(B) for which—

4 “(i) the Financial Institutions Regu-
5 latory Administration is the primary finan-
6 cial regulatory agency shall keep books and
7 records of all activities related to its busi-
8 ness as a swap dealer or major swap par-
9 ticipant in such form and manner and for
10 such period as may be prescribed by the
11 Commission by rule or regulation; and

12 “(ii) the Financial Institutions Regu-
13 latory Administration is not the primary fi-
14 nancial regulatory agency shall keep books
15 and records in such form and manner and
16 for such period as may be prescribed by
17 the Commission by rule or regulation; and

18 “(C) shall keep such books and records
19 open to inspection and examination by any rep-
20 resentative of the Commission.

21 “(2) RULES.—Within 1 year of the date of the
22 enactment of the Over-the-Counter Derivatives Mar-
23 kets Act of 2009, the Commission and the Securities
24 and Exchange Commission, in consultation with the
25 appropriate Federal banking agencies, shall jointly

1 adopt rules governing reporting and recordkeeping
2 for swap dealers, major swap participants, security-
3 based swap dealers, and major security-based swap
4 participants.

5 “(g) DAILY TRADING RECORDS.—

6 “(1) IN GENERAL.—Each registered swap deal-
7 er and major swap participant shall, for such period
8 as may be prescribed by the Commission by rule or
9 regulation, maintain daily trading records of that
10 dealer’s or participant’s—

11 “(A) swaps and all related records (includ-
12 ing related cash or forward transactions); and

13 “(B) recorded communications, including
14 the electronic mail, instant messages, and re-
15 cordings of telephone calls.

16 “(2) INFORMATION REQUIREMENTS.—The daily
17 trading records required to be maintained under
18 paragraph (1) shall include such information as the
19 Commission shall prescribe by rule or regulation.

20 “(3) CUSTOMER RECORDS.—Each registered
21 swap dealer and major swap participant shall main-
22 tain daily trading records for each customer or
23 counterparty in such manner and form as to be
24 identifiable with each swap transaction.

25 “(4) AUDIT TRAIL.—

1 “(A) MAINTENANCE OF AUDIT TRAIL.—

2 Each registered swap dealer and major swap
3 participant shall maintain a complete audit trail
4 for conducting comprehensive and accurate
5 trade reconstructions.

6 “(B) PERMISSIBLE COMPLIANCE BY ENTI-

7 TY OTHER THAN DEALER OR PARTICIPANT.—A
8 registered swap repository may, at the request
9 of a registered swap dealer or major swap par-
10 ticipant, satisfy the requirement of subpara-
11 graph (A) on behalf of such registered swap
12 dealer or major swap participant.

13 “(5) RULES.—Within 1 year of the date of the
14 enactment of the Over-the-Counter Derivatives Mar-
15 kets Act of 2009, the Commission and the Securities
16 and Exchange Commission, in consultation with the
17 appropriate Federal banking agencies, shall jointly
18 adopt rules governing daily trading records for swap
19 dealers, major swap participants, security-based
20 swap dealers, and major security-based swap partici-
21 pants.

22 “(h) BUSINESS CONDUCT STANDARDS.—

23 “(1) IN GENERAL.—Each registered swap deal-
24 er and major swap participant shall conform with
25 such business conduct standards as may be pre-

1 scribed by the Commission by rule or regulation, in-
2 cluding any standards addressing—

3 “(A) fraud, manipulation, and other abu-
4 sive practices involving swaps (including swaps
5 that are offered but not entered into);

6 “(B) diligent supervision of its business as
7 a swap dealer;

8 “(C) adherence to all applicable position
9 limits; and

10 “(D) such other matters as the Commis-
11 sion shall determine to be necessary or appro-
12 priate.

13 “(2) BUSINESS CONDUCT REQUIREMENTS.—
14 Business conduct requirements adopted by the Com-
15 mission pursuant to paragraph (1) 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; and

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;

12 “(C) establish a standard of conduct for a
13 swap dealer or major swap participant to com-
14 municate in a fair and balanced manner based
15 on principles of fair dealing and good faith;

16 “(D) establish a standard of conduct for a
17 swap dealer or major swap participant, with re-
18 spect to a counterparty that is an eligible con-
19 tract participant within the meaning of sub-
20 clause (I) or (II) of clause (vii) of section
21 1a(13) of this Act, to have a reasonable basis
22 to believe that the counterparty has an inde-
23 pendent representative that—

24 “(i) has sufficient knowledge to evalu-
25 ate the transaction and risks;

1 “(ii) is not subject to a statutory dis-
2 qualification;

3 “(iii) is independent of the swap deal-
4 er or major swap participant;

5 “(iv) undertakes a duty to act in the
6 best interests of the counterparty it rep-
7 resents;

8 “(v) makes appropriate disclosures;
9 and

10 “(vi) will provide written representa-
11 tions to the eligible contract participant re-
12 garding fair pricing and the appropriate-
13 ness of the transaction; and

14 “(E) establish such other standards and
15 requirements as the Commission may determine
16 are necessary or appropriate in the public inter-
17 est, for the protection of investors, or otherwise
18 in furtherance of the purposes of this title.

19 “(3) RULES.—Not later than 1 year after the
20 date of enactment of the Over-the-Counter Deriva-
21 tives Markets Act of 2009, the Commission and the
22 Securities and Exchange Commission, in consulta-
23 tion with the appropriate Federal banking agencies,
24 shall jointly prescribe rules under this subsection
25 governing business conduct standards for swap deal-

1 ers, major swap participants, security-based swap
2 dealers, and major security-based swap participants.

3 “(i) DOCUMENTATION AND BACK OFFICE STAND-
4 ARDS.—

5 “(1) IN GENERAL.—Each registered swap deal-
6 er and major swap participant shall conform with
7 standards, as may be prescribed by the Commission
8 by rule or regulation, addressing timely and accurate
9 confirmation, processing, netting, documentation,
10 and valuation of all swaps.

11 “(2) RULES.—Not later than 1 year after the
12 date of the enactment of the Over-the-Counter De-
13 rivatives Markets Act of 2009, the Commission and
14 the Securities and Exchange Commission, in con-
15 sultation with the appropriate Federal banking agen-
16 cies, shall adopt rules governing documentation and
17 back office standards for swap dealers, major swap
18 participants, security-based swap dealers, and major
19 security-based swap participants.

20 “(j) DEALER RESPONSIBILITIES.—Each registered
21 swap dealer and major swap participant shall, at all times,
22 comply with the following requirements:

23 “(1) MONITORING OF TRADING.—The swap
24 dealer or major swap participant shall monitor its

1 trading in swaps to prevent violations of applicable
2 position limits.

3 “(2) DISCLOSURE OF GENERAL INFORMA-
4 TION.—The swap dealer or major swap participant
5 shall disclose to the Commission and to the Finan-
6 cial Institutions Regulatory Administration informa-
7 tion concerning—

8 “(A) terms and conditions of its swaps;

9 “(B) swap trading operations, mechanisms,
10 and practices;

11 “(C) financial integrity protections relating
12 to swaps; and

13 “(D) other information relevant to its trad-
14 ing in swaps.

15 “(3) ABILITY TO OBTAIN INFORMATION.—The
16 swap dealer or major swap participant shall—

17 “(A) establish and enforce internal systems
18 and procedures to obtain any necessary infor-
19 mation to perform any of the functions de-
20 scribed in this section; and

21 “(B) provide the information to the Com-
22 mission and to the Financial Institutions Regu-
23 latory Administration upon request.

1 “(4) 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 assure 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 are separated by appropriate informa-
9 tional partitions within the firm from the re-
10 view, pressure, or oversight of those whose in-
11 volvement in trading or clearing activities might
12 potentially bias their judgment or supervision;
13 and

14 “(B) address such other issues as the
15 Commission determines appropriate.

16 “(5) ANTITRUST CONSIDERATIONS.—Unless
17 necessary or appropriate to achieve the purposes of
18 this Act, a swap dealer or major swap participant
19 shall avoid—

20 “(A) adopting any processes or taking any
21 actions that result in any unreasonable re-
22 straints of trade; or

23 “(B) imposing any material anticompeti-
24 tive burden on trading.

1 “(k) RULES.—The Commission, the Securities and
2 Exchange Commission, and the Financial Institutions
3 Regulatory Administration shall consult with each other
4 prior to adopting any rules under the Over-the-Counter
5 Derivatives Markets Act of 2009.”.

6 **SEC. 718. SEGREGATION OF ASSETS HELD AS COLLATERAL**
7 **IN SWAP TRANSACTIONS.**

8 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
9 is amended by inserting after section 4s (as added by sec-
10 tion 717) the following:

11 **“SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL**
12 **IN SWAP TRANSACTIONS.**

13 “(a) CLEARED SWAPS.—A swap dealer, futures com-
14 mission merchant, or derivatives clearing organization by
15 or through which funds or other property are held to mar-
16 gin, guarantee, or secure the obligations of a counterparty
17 under a swap to be cleared by or through a derivatives
18 clearing organization shall segregate, maintain, and use
19 the funds or other property for the benefit of the
20 counterparty, in accordance with such rules and regula-
21 tions as the Commission shall prescribe for nonbank swap
22 dealers, futures commission merchants, or derivatives
23 clearing organizations, or the Financial Institutions Regu-
24 latory Administration shall prescribe for bank swap deal-

1 ers. Any such funds or other property shall be treated as
2 customer property under this Act.

3 “(b) OTHER SWAPS.—At the request of a swap
4 counterparty who provides funds or other property to a
5 swap dealer to margin, guarantee, or secure the obliga-
6 tions of the counterparty under a swap between the
7 counterparty and the swap dealer that is not submitted
8 for clearing to a derivatives clearing organization, the
9 swap dealer shall segregate the funds or other property
10 for the benefit of the counterparty, and maintain the funds
11 or other property in an account which is carried by an
12 independent third-party custodian and designated as a
13 segregated account for the counterparty, in accordance
14 with such rules and regulations as the Commission shall
15 prescribe for nonbank swap dealers, futures commission
16 merchants, or derivatives clearing organizations, or the Fi-
17 nancial Institutions Regulatory Administration shall pre-
18 scribe for bank swap dealers. This subsection shall not be
19 interpreted to preclude commercial arrangements regard-
20 ing the investment of the segregated funds or other prop-
21 erty and the related allocation of gains and losses resulting
22 from any such investment, provided, however, that the
23 segregated funds or other property under this subsection
24 may be invested only in such investments as the Commis-

1 sion or the Financial Institutions Regulatory Administra-
2 tion, as applicable, permits by rule or regulation.”.

3 **SEC. 719. CONFLICTS OF INTEREST.**

4 Section 4d of the Commodity Exchange Act (7 U.S.C.
5 6d) is amended by—

6 (1) redesignating subsection (c) as subsection
7 (d); and

8 (2) inserting after subsection (b) the following:

9 “(c) CONFLICTS OF INTEREST.—The Commission
10 shall require that futures commission merchants and in-
11 troducing brokers implement conflict of interest systems
12 and procedures that—

13 “(1) establish structural and institutional safe-
14 guards to assure that the activities of any person
15 within the firm relating to research or analysis of
16 the price or market for any commodity are separated
17 by appropriate informational partitions within the
18 firm from the review, pressure, or oversight of those
19 whose involvement in trading or clearing activities
20 might potentially bias their judgment or supervision;
21 and

22 “(2) address such other issues as the Commis-
23 sion determines appropriate.”.

1 **SEC. 720. ALTERNATIVE SWAP EXECUTION FACILITIES.**

2 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
3 is amended by inserting after section 5g the following:

4 **“SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.**

5 “(a) REGISTRATION.—

6 “(1) IN GENERAL.—No person may operate a
7 facility for the trading of swaps unless the facility is
8 registered as an alternative swap execution facility
9 under this section or as a designated contract mar-
10 ket registered under this Act.

11 “(2) DUAL REGISTRATION.—Any person that is
12 required to be registered as an alternative swap exe-
13 cution facility under this section shall register with
14 the Commission regardless of whether that person
15 also is registered with the Securities and Exchange
16 Commission as an alternative swap execution facil-
17 ity.

18 “(b) REQUIREMENTS FOR TRADING.—An alternative
19 swap execution facility that is registered under subsection
20 (a) may trade any swap.

21 “(c) TRADING BY CONTRACT MARKETS.—A board of
22 trade that operates a contract market shall, to the extent
23 that the board of trade also operates an alternative swap
24 execution facility and uses the same electronic trade execu-
25 tion system for trading on the contract market and the
26 alternative swap execution facility, identify whether the

1 electronic trading is taking place on the contract market
2 or the alternative swap execution facility.

3 “(d) **CRITERIA FOR REGISTRATION.**—

4 “(1) **IN GENERAL.**—To be registered as an al-
5 ternative swap execution facility, the facility shall be
6 required to demonstrate to the Commission that
7 such facility meets the criteria established under this
8 section.

9 “(2) **DETERRENCE OF ABUSES.**—Each alter-
10 native swap execution facility shall establish and en-
11 force trading and participation rules that will deter
12 abuses and have the capacity to detect, investigate,
13 and enforce those rules, including—

14 “(A) means to obtain information nec-
15 essary to perform the functions required under
16 this section; or

17 “(B) means to—

18 “(i) provide market participants with
19 impartial access to the market; and

20 “(ii) capture information that may be
21 used in establishing whether any violations
22 of this section have occurred.

23 “(3) **TRADING PROCEDURES.**—Each alternative
24 swap execution facility shall establish and enforce
25 rules or terms and conditions defining, or specifica-

1 tions detailing, trading procedures to be used in en-
2 tering and executing orders traded on or through its
3 facilities.

4 “(4) FINANCIAL INTEGRITY OF TRANS-
5 ACTIONS.—Each alternative swap execution facility
6 shall establish and enforce rules and procedures for
7 ensuring the financial integrity of swaps entered on
8 or through its facilities, including the clearance and
9 settlement of the swaps pursuant to section 2(j)(1).

10 “(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP
11 EXECUTION FACILITIES.—

12 “(1) COMPLIANCE.—

13 “(A) IN GENERAL.—To maintain its reg-
14 istration as an alternative swap execution facil-
15 ity, the facility shall comply with the core prin-
16 ciples established in this subsection and any re-
17 quirement that the Commission may impose by
18 rule or regulation pursuant to section 8a(5).

19 “(B) REASONABLE DISCRETION.—Except
20 where the Commission determines otherwise by
21 rule or regulation, the facility shall have reason-
22 able discretion in establishing the manner in
23 which it complies with the core principles estab-
24 lished in this subsection.

1 “(2) COMPLIANCE WITH RULES.—Each alter-
2 native swap execution facility shall monitor and en-
3 force compliance with any of the rules of the facility,
4 including the terms and conditions of the swaps
5 traded on or through the facility and any limitations
6 on access to the facility.

7 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
8 NIPULATION.—Each alternative swap execution facil-
9 ity shall permit trading only in swaps that are not
10 readily susceptible to manipulation.

11 “(4) MONITORING OF TRADING.—Each alter-
12 native swap execution facility shall monitor trading
13 in swaps to prevent manipulation, price distortion,
14 and disruptions of the delivery or cash settlement
15 process through surveillance, compliance, and dis-
16 ciplinary practices and procedures, including meth-
17 ods for conducting real-time monitoring of trading
18 and comprehensive and accurate trade reconstruc-
19 tions.

20 “(5) ABILITY TO OBTAIN INFORMATION.—Each
21 alternative swap execution facility shall—

22 “(A) establish and enforce rules that will
23 allow the facility to obtain any necessary infor-
24 mation to perform any of the functions de-
25 scribed in this subsection;

1 “(B) provide the information to the Com-
2 mission upon request; and

3 “(C) have the capacity to carry out such
4 international information-sharing agreements as
5 the Commission may require.

6 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

7 “(A) IN GENERAL.—To reduce the poten-
8 tial threat of market manipulation or conges-
9 tion, especially during trading in the delivery
10 month, and to eliminate or prevent excessive
11 speculation as described in section 4a(a), an al-
12 ternative swap execution facility shall adopt for
13 each of its contracts, where necessary and ap-
14 propriate, position limitations or position ac-
15 countability for speculators.

16 “(B) FOR CERTAIN CONTRACTS.—For any
17 contract that is subject to a position limitation
18 established by the Commission pursuant to sec-
19 tion 4a(a), an alternative swap execution facil-
20 ity shall set its position limitation at a level no
21 higher than the Commission limitation.

22 “(7) EMERGENCY AUTHORITY.—Each alter-
23 native swap execution facility shall adopt rules to
24 provide for the exercise of emergency authority, in
25 consultation or cooperation with the Commission,

1 where necessary and appropriate, including the au-
2 thority—

3 “(A) to liquidate or transfer open positions
4 in any swap; or

5 “(B) to suspend or curtail trading in a
6 swap.

7 “(8) **TIMELY PUBLICATION OF TRADING INFOR-**
8 **MATION.**—Each alternative swap execution facility
9 shall make public timely information on price, trad-
10 ing volume, and other trading data on swaps to the
11 extent prescribed by the Commission.

12 “(9) **RECORDKEEPING AND REPORTING.**—

13 “(A) **IN GENERAL.**—Each alternative swap
14 execution facility shall—

15 “(i) maintain records of all activities
16 related to the business of the facility, in-
17 cluding a complete audit trail, in a form
18 and manner acceptable to the Commission
19 for a period of 5 years;

20 “(ii) report to the Commission all in-
21 formation determined by the Commission
22 to be necessary or appropriate for the
23 Commission to perform its responsibilities
24 under this Act in a form and manner ac-
25 ceptable to the Commission; and

1 “(iii) make available to the Securities
2 and Exchange Commission, upon request,
3 all information, including a complete audit
4 trail, relating to transactions in security-
5 based swap agreements (as such term is
6 defined in section 3(a)(76) of the Securi-
7 ties Exchange Act of 1934).

8 “(B) DATA COLLECTION REQUIRE-
9 MENTS.—The Commission shall adopt data col-
10 lection and reporting requirements for alter-
11 native swap execution facilities that are com-
12 parable to corresponding requirements for de-
13 rivatives clearing organizations and swap re-
14 positories.

15 “(10) ANTITRUST CONSIDERATIONS.—Unless
16 necessary or appropriate to achieve the purposes of
17 this Act, an alternative swap execution facility shall
18 avoid—

19 “(A) adopting any rules or taking any ac-
20 tions that result in any unreasonable restraints
21 of trade; or

22 “(B) imposing any material anticompeti-
23 tive burden on trading on the swap execution
24 facility.

1 “(11) CONFLICTS OF INTEREST.—Each alter-
2 native swap execution facility shall—

3 “(A) establish and enforce rules to mini-
4 mize conflicts of interest in its decision-making
5 process; and

6 “(B) establish a process for resolving any
7 conflicts of interest.

8 “(12) DESIGNATION OF COMPLIANCE OFFI-
9 CER.—

10 “(A) IN GENERAL.—Each alternative swap
11 execution facility shall designate an individual
12 to serve as a compliance officer.

13 “(B) DUTIES.—The compliance officer
14 shall perform the following duties:

15 “(i) Report directly to the board or to
16 the senior officer of the facility.

17 “(ii) Review the compliance of the fa-
18 cility with the core principles established in
19 this subsection.

20 “(iii) Consult with the board of the
21 facility, a body performing a function simi-
22 lar to that of a board, or the senior officer
23 of the facility, to resolve any conflicts of
24 interest that may arise.

1 “(iv) Administering the policies and
2 procedures of the facility required to be es-
3 tablished pursuant to this section.

4 “(v) Ensuring compliance with com-
5 modity laws and the rules and regulations
6 issued thereunder, including any rules pre-
7 scribed by the Commission pursuant to
8 this section.

9 “(vi) Establishing procedures for re-
10 mediation of noncompliance issues found
11 during compliance office reviews,
12 lookbacks, internal or external audit find-
13 ings, self-reported errors, or through vali-
14 dated complaints. Procedures to be estab-
15 lished under this paragraph include proce-
16 dures related to the handling, management
17 response, remediation, retesting, and clos-
18 ing of noncompliance issues.

19 “(C) ANNUAL REPORTS REQUIRED.—

20 “(i) IN GENERAL.—The compliance
21 officer shall annually prepare and sign a
22 report on the compliance of the alternative
23 swap execution facility with the commodity
24 laws and the policies and procedures of the
25 facility, including the code of ethics and

1 conflict of interest policies of the facility,
2 in accordance with rules prescribed by the
3 Commission.

4 “(ii) SUBMISSION.—The compliance
5 report required under clause (i) shall ac-
6 company the financial reports of the alter-
7 native swap execution facility that are re-
8 quired to be furnished to the Commission
9 pursuant to this section and shall include
10 a certification that, under penalty of law,
11 the report is accurate and complete.

12 “(f) EXEMPTIONS.—The Commission may exempt,
13 conditionally or unconditionally, an alternative swap exe-
14 cution facility from registration under this section if the
15 Commission finds that such facility is subject to com-
16 parable, comprehensive supervision and regulation on a
17 consolidated basis by the Securities and Exchange Com-
18 mission, the Financial Institutions Regulatory Adminis-
19 tration, or the appropriate governmental authorities in the
20 organization’s home country.

21 “(g) HARMONIZATION OF RULES.—Within 180 days
22 of the date of the enactment of the Over-the-Counter De-
23 rivatives Markets Act of 2009, the Commission and the
24 Securities and Exchange Commission shall jointly pre-
25 scribe rules governing the regulation of alternative swap

1 execution facilities under this section and section 3C of
2 the Securities Exchange Act of 1934.”

3 **SEC. 721. DERIVATIVES TRANSACTION EXECUTION FACILI-**
4 **TIES AND EXEMPT BOARDS OF TRADE.**

5 Sections 5a and 5d of the Commodity Exchange Act
6 (7 U.S.C. 7a and 7a-3) are repealed.

7 **SEC. 722. DESIGNATED CONTRACT MARKETS.**

8 (a) EXECUTION OF TRANSACTIONS.—Section 5(d) of
9 the Commodity Exchange Act (7 U.S.C. 7(d)) is amended
10 by amending paragraph (9) to read as follows:

11 “(9) EXECUTION OF TRANSACTIONS.—

12 “(A) OPEN MARKET.—The board of trade
13 shall provide a competitive, open, and efficient
14 market and mechanism for executing trans-
15 actions that protects the price discovery process
16 of trading in the board of trade’s centralized
17 market.

18 “(B) PERMISSIBLE TRANSACTIONS.—The
19 rules may authorize, for bona fide business pur-
20 poses—

21 “(i) transfer trades or office trades;

22 “(ii) an exchange of—

23 “(I) futures in connection with a
24 cash commodity transaction;

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1 “(II) futures for cash commod-
2 ities; or

3 “(III) futures for swaps; or

4 “(iii) a futures commission merchant,
5 acting as principal or agent, to enter into
6 or confirm the execution of a contract for
7 the purchase or sale of a commodity for fu-
8 ture delivery if the contract is reported, re-
9 corded, or cleared in accordance with the
10 rules of the contract market or a deriva-
11 tives clearing organization.”.

12 (b) **ADDITIONAL PRINCIPLES.**—Section 5(d) of the
13 Commodity Exchange Act (7 U.S.C. 7(d)) is amended by
14 adding at the end the following:

15 “(19) **FINANCIAL RESOURCES.**—The board of
16 trade shall have adequate financial, operational, and
17 managerial resources to discharge the responsibil-
18 ities of a contract market. For the board of trade’s
19 financial resources to be considered adequate, their
20 value shall exceed the total amount that would en-
21 able the contract market to cover its operating costs
22 for a period of 1 year, calculated on a rolling basis.

23 “(20) **SYSTEM SAFEGUARDS.**—The board of
24 trade shall—

1 “(A) establish and maintain a program of
2 risk analysis and oversight to identify and mini-
3 mize sources of operational risk through the de-
4 velopment of appropriate controls and proce-
5 dures, and the development of automated sys-
6 tems, that are reliable, secure, and give ade-
7 quate scalable capacity;

8 “(B) establish and maintain emergency
9 procedures, backup facilities, and a plan for dis-
10 aster recovery that allow for the timely recovery
11 and resumption of operations and the fulfill-
12 ment of the board of trade’s responsibilities and
13 obligations; and

14 “(C) periodically conduct tests to verify
15 that back-up resources are sufficient to ensure
16 continued order processing and trade matching,
17 price reporting, market surveillance, and main-
18 tenance of a comprehensive and accurate audit
19 trail.”.

20 **SEC. 723. MARGIN.**

21 Section 8a of the Commodity Exchange Act (7 U.S.C.
22 12a) is amended in paragraph (7)(C), by striking “, ex-
23 cepting the setting of levels of margin”.

1 **SEC. 724. POSITION LIMITS.**

2 (a) EXCESSIVE SPECULATION.—Section 4a(a) of the
3 Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

4 (1) by inserting “(1)” after “(a)”;

5 (2) in the first sentence, by striking “on elec-
6 tronic trading facilities with respect to a significant
7 price discovery contract” and inserting “swaps that
8 perform or affect a significant price discovery func-
9 tion with respect to regulated markets”;

10 (3) in the second sentence, by—

11 (A) inserting “, including any group or
12 class of traders,” after “held by any person”;

13 and

14 (B) striking “on an electronic trading fa-
15 cility with respect to a significant price dis-
16 covery contract,” and inserting “swaps that
17 perform or affect a significant price discovery
18 function with respect to regulated markets,”;

19 and

20 (4) inserting at the end the following:

21 “(2) AGGREGATE POSITION LIMITS.—The Com-
22 mission may, by rule or regulation, establish limits
23 (including related hedge exemption provisions) on
24 the aggregate number or amount of positions in con-
25 tracts based upon the same underlying commodity
26 (as defined by the Commission) that may be held by

1 any person, including any group or class of traders,
2 for each month across—

3 “(A) contracts listed by designated con-
4 tract markets;

5 “(B) contracts traded on a foreign board
6 of trade that provides members or other partici-
7 pants located in the United States with direct
8 access to its electronic trading and order
9 matching system; and

10 “(C) swap contracts that perform or affect
11 a significant price discovery function with re-
12 spect to regulated markets.

13 “(3) SIGNIFICANT PRICE DISCOVERY FUNC-
14 TION.—In making a determination under paragraph
15 (2) whether a swap performs or affects a significant
16 price discovery function with respect to regulated
17 markets, the Commission shall consider, as appro-
18 priate the following:

19 “(A) PRICE LINKAGE.—The extent to
20 which the swap uses or otherwise relies on a
21 daily or final settlement price, or other major
22 price parameter, of another contract traded on
23 a regulated market based upon the same under-
24 lying commodity, to value a position, transfer or

1 convert a position, financially settle a position,
2 or close out a position.

3 “(B) **ARBITRAGE.**—The extent to which
4 the price for the swap is sufficiently related to
5 the price of another contract traded on a regu-
6 lated market based upon the same underlying
7 commodity so as to permit market participants
8 to effectively arbitrage between the markets by
9 simultaneously maintaining positions or exe-
10 cuting trades in the swaps on a frequent and
11 recurring basis.

12 “(C) **MATERIAL PRICE REFERENCE.**—The
13 extent to which, on a frequent and recurring
14 basis, bids, offers, or transactions in a contract
15 traded on a regulated market are directly based
16 on, or are determined by referencing, the price
17 generated by the swap.

18 “(D) **MATERIAL LIQUIDITY.**—The extent
19 to which the volume of swaps being traded in
20 the commodity is sufficient to have a material
21 effect on another contract traded on a regulated
22 market.

23 “(E) **OTHER MATERIAL FACTORS.**—Such
24 other material factors as the Commission speci-
25 fies by rule or regulation as relevant to deter-

1 trade shall have” and inserting “Except where the Com-
2 mission otherwise determines by rule or regulation pursu-
3 ant to section 8a(5), the board of trade shall have”.

4 (b) Section 5b(c)(2)(A) of the Commodity Exchange
5 Act (7 U.S.C. 7a-1(c)(2)(A)) is amended by striking “The
6 applicant shall have” and inserting “Except where the
7 Commission otherwise determines by rule or regulation
8 pursuant to section 8a(5), the applicant shall have”.

9 (c) Section 5c(a) of the Commodity Exchange Act (7
10 U.S.C. 7a-2(a)) is amended—

11 (1) in paragraph (1), by striking “5a(d) and
12 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”; and

13 (2) in paragraph (2), by striking “shall not”
14 and inserting “may”.

15 (d) Section 5c(c)(1) of the Commodity Exchange Act
16 (7 U.S.C. 7a-2(c)(1)) is amended—

17 (1) by striking “(1) IN GENERAL.—Subject to”
18 and inserting the following:

19 “(1) IN GENERAL.—

20 “(A) Subject to”; and

21 (2) by adding at the end the following:

22 “(B) Unless section 805(e) of the Pay-
23 ment, Clearing, and Settlement Supervision Act
24 of 2009 applies, the new contract or instrument
25 or clearing of the new contract or instrument,

1 new rule, or rule amendment shall become ef-
2 fective, pursuant to the registered entity's cer-
3 tification, 10 business days after the Commis-
4 sion's receipt of the certification (or such short-
5 er period as may be determined by the Commis-
6 sion by rule or regulation) unless the Commis-
7 sion notifies the registered entity within such
8 time that the Commission is staying the certifi-
9 cation because there exist novel or complex
10 issues that require additional time to analyze,
11 an inadequate explanation by the submitting
12 registered entity, or a potential inconsistency
13 with this Act (including regulations under this
14 Act).

15 “(C) A notification by the Commission
16 pursuant to subparagraph (B) shall stay the
17 certification of the new contract or instrument
18 or clearing of the new contract or instrument,
19 new rule or new amendment for up to an addi-
20 tional 90 days from the date of such notifica-
21 tion.”.

22 (e) Section 5c(d) of the Commodity Exchange Act (7
23 U.S.C. 7a-2(d)) is repealed.

1 **SEC. 726. FOREIGN BOARDS OF TRADE.**

2 (a) TECHNICAL AMENDMENT.—Section 4(b) of the
3 Commodity Exchange Act (7 U.S.C. 6(b)) is amended in
4 the third sentence by striking “No rule or regulation” and
5 inserting “Except as provided in paragraphs (1) and (2),
6 no rule or regulation”.

7 (b) REGISTRATION.—Section 4(b) of the Commodity
8 Exchange Act (7 U.S.C. 6(b)) is further amended by in-
9 serting before “The Commission” the following:

10 “(1) REGISTRATION.—The Commission may
11 adopt rules and regulations requiring registration
12 with the Commission for a foreign board of trade
13 that provides the members of the foreign board of
14 trade or other participants located in the United
15 States direct access to the electronic trading and
16 order matching system of the foreign board of trade,
17 including rules and regulations prescribing proce-
18 dures and requirements applicable to the registration
19 of such foreign boards of trade. For purposes of this
20 paragraph, ‘direct access’ refers to an explicit grant
21 of authority by a foreign board of trade to an identi-
22 fied member or other participant located in the
23 United States to enter trades directly into the trade
24 matching system of the foreign board of trade.

25 “(2) LINKED CONTRACTS.—It shall be unlawful
26 for a foreign board of trade to provide to the mem-

1 sions) adopted by the registered entity for
2 the 1 or more contracts against which the
3 agreement, contract, or transaction traded
4 on the foreign board of trade settles;

5 “(ii) has the authority to require or
6 direct market participants to limit, reduce,
7 or liquidate any position the foreign board
8 of trade (or the foreign futures authority
9 that oversees the foreign board of trade)
10 determines to be necessary to prevent or
11 reduce the threat of price manipulation,
12 excessive speculation as described in sec-
13 tion 4a, price distortion, or disruption of
14 delivery or the cash settlement process;

15 “(iii) agrees to promptly notify the
16 Commission, with regard to the agreement,
17 contract, or transaction that settles against
18 any price (including the daily or final set-
19 tlement price) of 1 or more contracts listed
20 for trading on a registered entity, of any
21 change regarding—

22 “(I) the information that the for-
23 eign board of trade will make publicly
24 available;

1 “(II) the position limits that the
2 foreign board of trade or foreign fu-
3 tures authority will adopt and enforce;

4 “(III) the position reductions re-
5 quired to prevent manipulation, exces-
6 sive speculation as described in sec-
7 tion 4a, price distortion, or disruption
8 of delivery or the cash settlement
9 process; and

10 “(IV) any other area of interest
11 expressed by the Commission to the
12 foreign board of trade or foreign fu-
13 tures authority;

14 “(iv) provides information to the
15 Commission regarding large trader posi-
16 tions in the agreement, contract, or trans-
17 action that is comparable to the large trad-
18 er position information collected by the
19 Commission for the 1 or more contracts
20 against which the agreement, contract, or
21 transaction traded on the foreign board of
22 trade settles; and

23 “(v) provides the Commission with in-
24 formation necessary to publish reports on
25 aggregate trader positions for the agree-

1 ment, contract, or transaction traded on
2 the foreign board of trade that are com-
3 parable to such reports on aggregate trad-
4 er positions for the 1 or more contracts
5 against which the agreement, contract, or
6 transaction traded on the foreign board of
7 trade settles.

8 “(3) EXISTING FOREIGN BOARDS OF TRADE.—
9 Paragraphs (1) and (2) shall not be effective with
10 respect to any foreign board of trade to which the
11 Commission has granted direct access permission be-
12 fore the date of the enactment of this subsection
13 until the date that is 180 days after such date of en-
14 actment.

15 “(4) PERSONS LOCATED IN THE UNITED
16 STATES.—”.

17 (c) LIABILITY OF REGISTERED PERSONS TRADING
18 ON A FOREIGN BOARD OF TRADE.—

19 (1) Section 4(a) of the Commodity Exchange
20 Act (7 U.S.C. 6(a)) is amended by inserting “or by
21 subsection (f)” after “Unless exempted by the Com-
22 mission pursuant to subsection (c)”.

23 (2) Section 4 of the Commodity Exchange Act
24 (7 U.S.C. 6) is further amended by adding at the
25 end the following:

1 “(f) **ADDITIONAL EXEMPTION.**—A person registered
2 with the Commission, or exempt from registration by the
3 Commission, under this Act may not be found to have vio-
4 lated subsection (a) with respect to a transaction in, or
5 in connection with, a contract of sale of a commodity for
6 future delivery if the person has reason to believe that the
7 transaction and the contract is made on or subject to the
8 rules of a foreign board of trade that has complied with
9 paragraphs (1) and (2) of subsection (b).”.

10 (d) **CONTRACT ENFORCEMENT FOR FOREIGN FU-**
11 **TURES CONTRACTS.**—Section 22(a) of the Commodity Ex-
12 change Act (7 U.S.C. 25(a)) is amended by adding at the
13 end the following:

14 “(5) **CONTRACT ENFORCEMENT FOR FOREIGN**
15 **FUTURES CONTRACTS.**—A contract of sale of a com-
16 modity for future delivery traded or executed on or
17 through the facilities of a board of trade, exchange,
18 or market located outside the United States for pur-
19 poses of section 4(a) shall not be void, voidable, or
20 unenforceable, and a party to such a contract shall
21 not be entitled to rescind or recover any payment
22 made with respect to the contract, based on the fail-
23 ure of the foreign board of trade to comply with any
24 provision of this Act.”.

1 **SEC. 727. LEGAL CERTAINTY FOR SWAPS.**

2 Section 22(a)(4) of the Commodity Exchange Act (7
3 U.S.C. 25(a)(4)) is amended to read as follows:

4 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
5 GIBLE COUNTERPARTIES.—

6 “(A) HYBRIDS.—No hybrid instrument
7 sold to any investor shall be void, voidable, or
8 unenforceable, and no party to such hybrid in-
9 strument shall be entitled to rescind, or recover
10 any payment made with respect to, such a hy-
11 brid instrument under this section or any other
12 provision of Federal or State law, based solely
13 on the failure of the hybrid instrument to com-
14 ply with the terms or conditions of section 2(f)
15 or regulations of the Commission.

16 “(B) AGREEMENTS BETWEEN CONTRACT
17 PARTICIPANTS.—No agreement, contract, or
18 transaction between eligible contract partici-
19 pants or persons reasonably believed to be eligi-
20 ble contract participants shall be void, voidable,
21 or unenforceable, and no party thereto shall be
22 entitled to rescind, or recover any payment
23 made with respect to, such agreement, contract,
24 or transaction under this section or any other
25 provision of Federal or State law, based solely
26 on the failure of the agreement, contract, or

1 transaction to meet the definition of a swap set
2 forth in section 1a or to be cleared pursuant to
3 section 2(j)(1).”.

4 **SEC. 728. FDICIA AMENDMENTS.**

5 Sections 408 and 409 of the Federal Deposit Insur-
6 ance Corporation Improvement Act of 1991 (12 U.S.C.
7 4421-4422) are hereby repealed.

8 **SEC. 729. PRIMARY ENFORCEMENT AUTHORITY.**

9 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
10 is amended by adding the following new section after sec-
11 tion 4b:

12 **“SEC. 4b-1. PRIMARY ENFORCEMENT AUTHORITY.**

13 “(a) COMMODITIES FUTURES TRADING COMMIS-
14 SION.—Except as provided in subsections (b), (c), and (d),
15 the Commission shall have primary authority to enforce
16 the provisions of subtitle A of the Over-the-Counter De-
17 rivatives Markets Act of 2009 with respect to any person.

18 “(b) FIRA.—The Financial Institutions Regulatory
19 Administration shall have exclusive authority to enforce
20 the provisions of section 4s(e) and other prudential re-
21 quirements of this Act with respect to banks, and branches
22 or agencies of foreign banks that are swap dealers or
23 major swap participants.

24 “(c) REFERRAL.—If the Financial Institutions Regu-
25 latory Administration has cause to believe that a swap

1 dealer or major swap participant for which FIRA is the
2 primary financial regulatory agency may have engaged in
3 conduct that constitutes a violation of the nonprudential
4 requirements of section 4s or rules adopted by the Com-
5 mission thereunder, the Financial Institutions Regulatory
6 Administration may recommend in writing to the Commis-
7 sion that the Commission initiate an enforcement pro-
8 ceeding as authorized under this Act. The recommenda-
9 tion shall be accompanied by a written explanation of the
10 concerns giving rise to the recommendation.

11 “(d) **BACKSTOP ENFORCEMENT AUTHORITY.**—If the
12 Commission does not initiate an enforcement proceeding
13 before the end of the 90-day period beginning on the date
14 on which the Commission receives a recommendation
15 under subsection (c), the Financial Institutions Regu-
16 latory Administration may initiate an enforcement pro-
17 ceeding as permitted under Federal law.”.

18 **SEC. 730. ENFORCEMENT.**

19 (a) Section 4b(a)(2) of the Commodity Exchange Act
20 (7 U.S.C. 6b(a)(2)) is amended by striking “or other
21 agreement, contract, or transaction subject to paragraphs
22 (1) and (2) of section 5a(g),” and inserting “or swap,”.

23 (b) Section 4b(b) of the Commodity Exchange Act
24 (7 U.S.C. 6b(b)) is amended by striking “or other agree-

1 ment, contract or transaction subject to paragraphs (1)
2 and (2) of section 5a(g),” and inserting “or swap,”.

3 (c) Section 4c(a) of the Commodity Exchange Act (7
4 U.S.C. 6c(a)) is amended by inserting “or swap” before
5 “if the transaction is used or may be used”.

6 (d) Section 9(a)(2) of the Commodity Exchange Act
7 (7 U.S.C. 13(a)(2)) is amended by inserting “or of any
8 swap,” before “or to corner”.

9 (e) Section 9(a)(4) of the Commodity Exchange Act
10 (7 U.S.C. 13(a)(4)) is amended by inserting “swap reposi-
11 tory,” before “or futures association”.

12 (f) Section 9(e)(1) of the Commodity Exchange Act
13 (7 U.S.C. 13(e)(1)) is amended—

14 (1) by inserting “swap repository,” before “or
15 registered futures association”; and

16 (2) by inserting “, or swaps,” before “on the
17 basis”.

18 (g) Section 8(b) of the Federal Deposit Insurance Act
19 (12 U.S.C. 1818(b)) is amended—

20 (1) by redesignating paragraphs (6), (7), (8),
21 (9), and (10) as paragraphs (7), (8), (9), (10), and
22 (11), respectively; and

23 (2) by inserting after paragraph (5), the fol-
24 lowing:

1 person that is not an eligible contract
2 participant or eligible commercial en-
3 tity; and

4 “(II) entered into, or offered
5 (even if not entered into), on a lever-
6 aged or margined basis, or financed
7 by the offeror, the counterparty, or a
8 person acting in concert with the of-
9 feror or counterparty on a similar
10 basis.

11 “(ii) Clause (i) shall not apply to—

12 “(I) an agreement, contract, or
13 transaction described in paragraph (1)
14 or subparagraphs (A), (B), or (C), in-
15 cluding any agreement, contract, or
16 transaction specifically excluded from
17 subparagraph (A), (B), or (C);

18 “(II) any security;

19 “(III) a contract of sale that—

20 “(aa) results in actual deliv-
21 ery within 28 days or such other
22 period as the Commission may
23 determine by rule or regulation
24 based upon the typical commer-
25 cial practice in cash or spot mar-

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1 kets for the commodity involved;

2 or

3 “(bb) creates an enforceable
4 obligation to deliver between a
5 seller and a buyer that have the
6 ability to deliver and accept deliv-
7 ery, respectively, in connection
8 with their line of business;

9 “(IV) an agreement, contract, or
10 transaction that is listed on a national
11 securities exchange registered under
12 section 6(a) of the Securities Ex-
13 change Act of 1934 (15 U.S.C.
14 78f(a)); or

15 “(V) an identified banking prod-
16 uct, as defined in section 402(b) of
17 the Legal Certainty for Bank Prod-
18 ucts Act of 2000 (7 U.S.C. 27(b)).

19 “(iii) Sections 4(a), 4(b), and 4b shall
20 apply to any agreement, contract or trans-
21 action described in clause (i), that is not
22 excluded from clause (i) by clause (ii), as
23 if the agreement, contract, or transaction
24 were a contract of sale of a commodity for
25 future delivery.

1 “(iv) This subparagraph shall not be
2 construed to limit any jurisdiction that the
3 Commission may otherwise have under any
4 other provision of this Act over an agree-
5 ment, contract, or transaction that is a
6 contract of sale of a commodity for future
7 delivery.

8 “(v) This subparagraph shall not be
9 construed to limit any jurisdiction that the
10 Commission or the Securities and Ex-
11 change Commission may otherwise have
12 under any other provisions of this Act with
13 respect to security futures products and
14 persons effecting transactions in security
15 futures products.

16 “(vi) For the purposes of this sub-
17 paragraph, an agricultural producer, pack-
18 er, or handler shall be considered an eligi-
19 ble commercial entity for any agreement,
20 contract, or transaction for a commodity in
21 connection with its line of business.”.

22 **SEC. 732. LARGE SWAP TRADER REPORTING.**

23 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
24 is amended by adding after section 4t (as added by section
25 718) the following:

1 **“SEC. 4u. LARGE SWAP TRADER REPORTING.**

2 “(a) PROHIBITION.—It shall be unlawful for any per-
3 son to enter into any swap if—

4 “(1) such person shall directly or indirectly
5 enter into such swaps during any 1 day in an
6 amount equal to or in excess of such amount as
7 shall be fixed from time to time by the Commission;
8 and

9 “(2) such person shall directly or indirectly
10 have or obtain a position in such swaps equal to or
11 in excess of such amount as shall be fixed from time
12 to time by the Commission, unless—

13 “(A) such person files or causes to be filed
14 with the properly designated officer of the Com-
15 mission such reports regarding any transactions
16 or positions described in paragraph (1) and this
17 paragraph as the Commission may by rule or
18 regulation require; and

19 “(B) in accordance with the rules and reg-
20 ulations of the Commission, such person shall
21 keep books and records of—

22 “(i) all such swaps and any trans-
23 actions and positions in any related com-
24 modity traded on or subject to the rules of
25 any board of trade; and

1 “(ii) cash or spot transactions in, in-
2 ventories of, and purchase and sale com-
3 mitments of, such a commodity.

4 “(b) **RECORDKEEPING.**—Any books and records re-
5 quired to be kept under subsection (a) shall—

6 “(1) show complete details concerning all trans-
7 actions and positions as the Commission may by rule
8 or regulation prescribe;

9 “(2) be open at all times to inspection and ex-
10 amination by any representative of the Commission;
11 and

12 “(3) be open at all times to inspection and ex-
13 amination by the Securities and Exchange Commis-
14 sion, to the extent such books and records relate to
15 transactions in security-based swap agreements (as
16 that term is defined in section 3(a)(76) of the Secu-
17 rities Exchange Act of 1934).

18 “(c) **RULE OF CONSTRUCTION.**—For the purpose of
19 this section, the swaps, futures, and cash or spot trans-
20 actions and positions of any person shall include such
21 transactions and positions of any persons directly or indi-
22 rectly controlled by such person.

23 “(d) **CONSIDERATIONS.**—In making a determination
24 under this section whether a swap performs or affects a
25 significant price discovery function with respect to regu-

1 lated markets, the Commission shall consider the factors
2 set forth in section 4a(a)(3).”.

3 **SEC. 733. OTHER AUTHORITY.**

4 Unless otherwise provided by its terms, this subtitle
5 does not divest any appropriate Federal banking agency,
6 the Commission, the Securities and Exchange Commis-
7 sion, or other Federal or State agency, of any authority
8 derived from any other applicable law.

9 **SEC. 734. ANTITRUST.**

10 Nothing in the amendments made by this subtitle
11 shall be construed to modify, impair, or supersede the op-
12 eration of any of the antitrust laws. For purposes of this
13 subtitle, the term “antitrust laws” has the same meaning
14 given such term in subsection (a) of the first section of
15 the Clayton Act, except that such term includes section
16 5 of the Federal Trade Commission Act to the extent that
17 such section 5 applies to unfair methods of competition.

18 **Subtitle B—Regulation of Security-**
19 **Based Swap Markets**

20 **SEC. 751. DEFINITIONS UNDER THE SECURITIES EX-**
21 **CHANGE ACT OF 1934.**

22 Section 3(a) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78c(a)) is amended—

24 (1) in subparagraphs (A) and (B) of paragraph
25 (5), by inserting “(but not security-based swaps,

1 other than security-based swaps with or for persons
2 that are not eligible contract participants)” after
3 “securities” each place that term appears;

4 (2) in paragraph (10), by inserting “security-
5 based swap,” after “security future,”;

6 (3) in paragraph (13), by adding at the end the
7 following: “For security-based swaps, such terms in-
8 clude the execution, termination (prior to its sched-
9 uled maturity date), assignment, exchange, or simi-
10 lar transfer or conveyance of, or extinguishing of
11 rights or obligations under, a security-based swap,
12 as the context may require.”;

13 (4) in paragraph (14), by adding at the end the
14 following: “For security-based swaps, such terms in-
15 clude the execution, termination (prior to its sched-
16 uled maturity date), assignment, exchange, or simi-
17 lar transfer or conveyance of, or extinguishing of
18 rights or obligations under, a security-based swap,
19 as the context may require.”;

20 (5) in paragraph (39)—

21 (A) by striking “or government securities
22 dealer” and inserting “government securities
23 dealer, security-based swap dealer, or major se-
24 curity-based swap participant” each place that
25 term appears; and

1 (B) in subparagraph (B)(i)(II), by insert-
2 ing “security-based swap dealer, major security-
3 based swap participant,” after “government se-
4 curities dealer,”; and

5 (6) by adding at the end the following:

6 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The
7 term ‘eligible contract participant’ has the same
8 meaning as in section 1a(13) of the Commodity Ex-
9 change Act (7 U.S.C. 1a(13)).

10 “(66) MAJOR SWAP PARTICIPANT.—The term
11 ‘major swap participant’ has the same meaning as in
12 section 1a(40) of the Commodity Exchange Act (7
13 U.S.C. 1a(40)).

14 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
15 PANT.—

16 “(A) IN GENERAL.—The term ‘major secu-
17 rity-based swap participant’ means any per-
18 son—

19 “(i) who is not a security-based swap
20 dealer; and

21 “(ii) whose outstanding security-based
22 swaps create net counterparty credit expo-
23 sures (current or potential future expo-
24 sures) to other market participants that
25 would expose those other market partici-

1 pants to significant credit losses in the
2 event of the person's default.

3 “(68) SECURITY-BASED SWAP.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the term ‘security-based
6 swap’ means any agreement, contract, or trans-
7 action that would be a swap under section
8 1a(35) of the Commodity Exchange Act (7
9 U.S.C. 1a(35))(without regard to paragraph
10 (35)(B)(xii) of such section), and that is based
11 on—

12 “(i) an index that is a narrow-based
13 security index, including any interest
14 therein or based on the value thereof;

15 “(ii) a single security or loan, includ-
16 ing any interest therein or based on the
17 value thereof; or

18 “(iii) the occurrence, nonoccurrence,
19 or extent of the occurrence of an event re-
20 lating to a single issuer of a security or the
21 issuers of securities in a narrow-based se-
22 curity index, provided that such event di-
23 rectly affects the financial statements, fi-
24 nancial condition, or financial obligations
25 of the issuer.

1 “(B) **EXCLUSION.**—The term ‘security-
2 based swap’ does not include any agreement,
3 contract, or transaction that meets the defini-
4 tion of security-based swap only because such
5 agreement, contract, or transaction references
6 or is based upon a government security.

7 “(C) **MIXED SWAP.**—

8 “(i) **IN GENERAL.**—The term ‘secu-
9 rity-based swap’ includes any agreement,
10 contract, or transaction that is as de-
11 scribed in subparagraph (A) and also is
12 based on—

13 “(I) the value of 1 or more inter-
14 est or other rates, currencies, com-
15 modities, instruments of indebtedness,
16 indices, quantitative measures, other
17 financial or economic interest or prop-
18 erty of any kind (other than securities
19 or any other financial or economic in-
20 terest or property described in sub-
21 paragraph (A) or a narrow-based se-
22 curity index); or

23 “(II) the occurrence, nonoccur-
24 rence, or the extent of the occurrence
25 of an event or contingency associated

1 with a potential financial, economic,
2 or commercial consequence (other
3 than an event or contingency de-
4 scribed in subparagraph (A)(iii)).

5 “(ii) **RULE OF CONSTRUCTION.**—A se-
6 curity-based swap shall not constitute, nor
7 shall be construed to constitute, a mixed
8 swap solely because the obligations or
9 rights of 1 party to the swap agreement
10 are defined by reference to 1 or more in-
11 terest rates or currencies.

12 “(D) **RULE OF CONSTRUCTION REGARDING**
13 **MASTER AGREEMENTS.**—The term ‘security-
14 based swap’ shall be construed to include a
15 master agreement that provides for an agree-
16 ment, contract, or transaction that is a secu-
17 rity-based swap pursuant to subparagraph (A),
18 together with all supplements to any such mas-
19 ter agreement, without regard to whether the
20 master agreement contains an agreement, con-
21 tract, or transaction that is not a security-based
22 swap pursuant to subparagraph (A), except
23 that the master agreement shall be considered
24 to be a security-based swap only with respect to
25 each agreement, contract, or transaction under

1 the master agreement that is a security-based
2 swap pursuant to subparagraph (A).

3 “(69) SWAP.—The term ‘swap’ has the same
4 meaning as in section 1a(35) of the Commodity Ex-
5 change Act (7 U.S.C. 1a(35)).

6 “(70) PERSON ASSOCIATED WITH A SECURITY-
7 BASED SWAP DEALER OR MAJOR SECURITY-BASED
8 SWAP PARTICIPANT.—The term ‘person associated
9 with a security-based swap dealer or major security-
10 based swap participant’ or ‘associated person of a
11 security-based swap dealer or major security-based
12 swap participant’ means—

13 “(A) any partner, officer, director, or
14 branch manager of such security-based swap
15 dealer or major security-based swap participant
16 (or any person occupying a similar status or
17 performing similar functions);

18 “(B) any person directly or indirectly con-
19 trolling, controlled by, or under common control
20 with such security-based swap dealer or major
21 security-based swap participant; or

22 “(C) any employee of such security-based
23 swap dealer or major security-based swap par-
24 ticipant, except that any person associated with
25 a security-based swap dealer or major security-

1 based swap participant whose functions are
2 solely clerical or ministerial shall not be in-
3 cluded in the meaning of such term other than
4 for purposes of section 15F(e)(2).

5 “(71) SECURITY-BASED SWAP DEALER.—

6 “(A) IN GENERAL.—The term ‘security-
7 based swap dealer’ means any person engaged
8 in the business of buying and selling security-
9 based swaps for such person’s own account,
10 through a broker or otherwise.

11 “(B) EXCEPTION.—The term ‘security-
12 based swap dealer’ does not include a person
13 that buys or sells security-based swaps for such
14 person’s own account, either individually or in
15 a fiduciary capacity, but not as a part of a reg-
16 ular business.

17 “(72) APPROPRIATE FEDERAL BANKING AGEN-
18 CY.—The term ‘appropriate Federal banking agency’
19 has the same meaning as in section 3 of the Federal
20 Deposit Insurance Act (12 U.S.C. 1813).

21 “(73) BOARD.—The term ‘Board’ means the
22 Board of Governors of the Federal Reserve System.

23 “(74) FIRA.—The term ‘FIRA’ means the Fi-
24 nancial Institutions Regulatory Administration.

1 “(75) SWAP DEALER.—The term ‘swap dealer’
2 has the same meaning as in section 1a(39) of the
3 Commodity Exchange Act (7 U.S.C. 1a(39)).

4 “(76) SECURITY-BASED SWAP AGREEMENT.—

5 “(A) IN GENERAL.—For purposes of sec-
6 tions 9, 10, 10B, 16, 20, and 21A of this Act,
7 and section 17 of the Securities Act of 1933,
8 the term ‘security-based swap agreement’
9 means a swap agreement as defined in section
10 206A of the Gramm-Leach-Bliley Act (15
11 U.S.C. 78c note) of which a material term is
12 based on the price, yield, value, or volatility of
13 any security or any group or index of securities,
14 or any interest therein.

15 “(B) EXCLUSIONS.—The term ‘security-
16 based swap agreement’ does not include any se-
17 curity-based swap.”.

18 **SEC. 752. REPEAL OF PROHIBITION ON REGULATION OF SE-**

19 **CURITY-BASED SWAPS.**

20 (a) REPEAL.—Sections 206B and 206C of the
21 Gramm-Leach-Bliley Act (15 U.S.C. 78c note) are hereby
22 repealed.

23 (b) CONFORMING AMENDMENTS TO GRAMM-LEACH-
24 BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley
25 Act (15 U.S.C. 78c note) is amended in the material pre-

1 ceding paragraph (1), by striking “Except as” and all that
2 follows through “that—” and inserting the following: “Ex-
3 cept as provided in subsection (b), as used in this section,
4 the term ‘swap agreement’ means any agreement, con-
5 tract, or transaction that—”

6 (c) CONFORMING AMENDMENTS TO THE SECURITIES
7 ACT OF 1933.—

8 (1) Section 2A(b) of the Securities Act of 1933
9 (15 U.S.C. 77b–1) is amended—

10 (A) by striking subsection (a) and reserv-
11 ing the subsection; and

12 (B) in subsection (b)—

13 (i) by striking “(as defined in section
14 206B of the Gramm-Leach-Bliley Act)”
15 each place that term appears; and

16 (ii) by striking paragraph (1); and

17 (iii) by redesignating paragraphs (2),
18 (3), and (4) as paragraphs (1), (2), and
19 (3), respectively.

20 (2) Section 17 of the Securities Act of 1933 (15
21 U.S.C. 77q) is amended—

22 (A) in subsection (a), by striking “206B of
23 the Gramm-Leach-Bliley Act” and inserting
24 “3(a)(76) of the Securities Exchange Act of
25 1934”; and

1 (B) in subsection (d), by striking “206B of
2 the Gramm-Leach-Bliley Act” and inserting
3 “3(a)(76) of the Securities Exchange Act of
4 1934”.

5 (d) CONFORMING AMENDMENTS TO THE SECURITIES
6 EXCHANGE ACT OF 1934.—The Securities Exchange Act
7 of 1934 (15 U.S.C. 78a et seq.) is amended—

8 (1) in section 3A (15 U.S.C. 78c–1)—

9 (A) by striking “(as defined in section
10 206B of the Gramm-Leach-Bliley Act)” each
11 place that term appears;

12 (B) by striking subsection (a) and reserv-
13 ing the subsection; and

14 (C) in subsection (b)—

15 (i) by striking paragraph (1);

16 (ii) by redesignating paragraphs (2),
17 (3), and (4) as paragraphs (1), (2), and
18 (3), respectively; and

19 (iii) in paragraph (2) (as so redesign-
20 ated), by inserting “or section 9(j) with
21 respect to rulemaking authority to prevent
22 fraudulent, deceptive, or manipulative
23 practices” after “reporting requirements”;

1 (2) in section 9(a) (15 U.S.C. 78i(a)), by strik-
2 ing paragraphs (2) through (5) and inserting the
3 following:

4 “(2) To effect, alone or with 1 or more other
5 persons, a series of transactions in any security reg-
6 istered on a national securities exchange or in con-
7 nection with any security-based swap or security-
8 based swap agreement with respect to such security
9 creating actual or apparent active trading in such
10 security, or raising or depressing the price of such
11 security, for the purpose of inducing the purchase or
12 sale of such security by others.

13 “(3) If a dealer, broker, security-based swap
14 dealer, major security-based swap participant, or
15 other person selling or offering for sale or pur-
16 chasing or offering to purchase the security or secu-
17 rity-based swap or security based-swap agreement
18 with respect to such security to induce the purchase
19 or sale of any security registered on a national secu-
20 rities exchange or any security-based swap or secu-
21 rity-based swap agreement with respect to such se-
22 curity by the circulation or dissemination in the or-
23 dinary course of business of information to the effect
24 that the price of any such security will or is likely
25 to rise or fall because of market operations of any

1 1 or more persons conducted for the purpose of rais-
2 ing or depressing the price of such security.

3 “(4) If a dealer, broker, security-based swap
4 dealer, major security-based swap participant, or
5 other person selling or offering for sale or pur-
6 chasing or offering to purchase the security or a se-
7 curity-based swap or security-based swap agreement
8 with respect to such security, to make, regarding
9 any security registered on a national securities ex-
10 change or any security-based swap or security-based
11 swap agreement with respect to such security, for
12 the purpose of inducing the purchase or sale of such
13 security or such security-based swap or security-
14 based swap agreement, any statement which was at
15 the time and in the light of the circumstances under
16 which it was made, false or misleading with respect
17 to any material fact, and which he or she knew or
18 had reasonable ground to believe was so false or
19 misleading.

20 “(5) For a consideration, received directly or
21 indirectly from a dealer, broker, security-based swap
22 dealer, major security-based swap participant, or
23 other person selling or offering for sale or pur-
24 chasing or offering to purchase the security or secu-
25 rity-based swap agreement with respect to such se-

1 security, to induce the purchase of any security reg-
2 istered on a national securities exchange or any se-
3 curity-based swap or security-based swap agreement
4 with respect to such security by the circulation or
5 dissemination of information to the effect that the
6 price of any such security will or is likely to rise or
7 fall because of the market operations of any 1 or
8 more persons conducted for the purpose of raising or
9 depressing the price of such security.”;

10 (3) in section 9(i) (15 U.S.C. 78i(i)), by strik-
11 ing “(as defined in section 206B of the Gramm-
12 Leach-Bliley Act)”;

13 (4) in section 10 (15 U.S.C. 78j), by striking
14 “(as defined in section 206B of the Gramm-Leach-
15 Bliley Act)” each place that term appears;

16 (5) in section 15(c)(1) (15 U.S.C. 78o(c)(1))—

17 (A) in subparagraph (A), by striking “, or
18 any security-based swap agreement (as defined
19 in section 206B of the Gramm-Leach-Bliley
20 Act),”; and

21 (B) in subparagraphs (B) and (C), by
22 striking “agreement (as defined in section 206B
23 of the Gramm-Leach-Bliley Act)” each place
24 that term appears;

1 (6) in section 15(i) (15 U.S.C. 78o(i)), as
2 added by section 303(f) of the Commodity Futures
3 Modernization Act of 2000 (Public Law 106–554;
4 114 Stat. 2763A–455)), by striking “(as defined in
5 section 206B of the Gramm-Leach-Bliley Act)”;

6 (7) in section 16 (15 U.S.C. 78p)—

7 (A) in subsection (a)(2)(C), by striking
8 “(as defined in section 206(b) of the Gramm-
9 Leach-Bliley Act)” and inserting “or a security-
10 based swap”;

11 (B) in subsection (a)(3)(B), by inserting
12 “or security-based swaps” after “security-based
13 swap agreements”;

14 (C) in subsection (b)—

15 (i) by striking “(as defined in section
16 206B of the Gramm-Leach-Bliley Act)”
17 each place that term appears; and

18 (ii) inserting “or a security-based
19 swap” after “security-based swap agree-
20 ment” each place that term appears; and

21 (D) in subsection (g), by striking “(as de-
22 fined in section 206B of the Gramm-Leach-Bli-
23 ley Act)”;

24 (8) in section 20 (15 U.S.C. 78t)—

1 (A) in subsection (d), by striking “(as de-
2 fined in section 206B of the Gramm-Leach-Bli-
3 ley Act)”; and

4 (B) in subsection (f), by striking “(as de-
5 fined in section 206B of the Gramm-Leach-Bli-
6 ley Act)”; and

7 (9) in section 21A (15 U.S.C. 78u-1)—

8 (A) in subsection (a)(1), by striking “(as
9 defined in section 206B of the Gramm-Leach-
10 Bliley Act)”; and

11 (B) in subsection (g), by striking “(as de-
12 fined in section 206B of the Gramm-Leach-Bli-
13 ley Act)”.

14 **SEC. 753. AMENDMENTS TO THE SECURITIES EXCHANGE**
15 **ACT OF 1934.**

16 (a) **CLEARING FOR SECURITY-BASED SWAPS.**—The
17 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
18 is amended by adding the following section after section
19 3A:

20 **“SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.**

21 **“(a) CLEARING REQUIREMENT.—**

22 **“(1) SUBMISSION.—**

23 **“(A) IN GENERAL.—**Except as provided in
24 paragraph (8), any person who is a party to a
25 security-based swap shall submit such security-

1 based swap for clearing to a clearing agency
2 registered under section 17A of this Act.

3 “(B) REQUIRED CONDITIONS.—The rules
4 of a clearing agency described in subparagraph
5 (A) shall—

6 “(i) prescribe that all security-based
7 swaps with the same terms and conditions
8 are fungible and may be offset with each
9 other; and

10 “(ii) provide for nondiscriminatory
11 clearing of a security-based swap executed
12 on or through the rules of an unaffiliated
13 national securities exchange or an alter-
14 native swap execution facility.

15 “(2) COMMISSION APPROVAL.—

16 “(A) IN GENERAL.—A clearing agency
17 shall submit to the Commission for prior ap-
18 proval any group, category, type, or class of se-
19 curity-based swaps, that the clearing agency
20 seeks to accept for clearing, which submission
21 the Commission shall make available to the
22 public.

23 “(B) DEADLINE.—The Commission shall
24 take final action on a request submitted pursu-
25 ant to subparagraph (A) not later than 90 days

1 after submission of the request, unless the
2 clearing agency submitting the request agrees
3 to an extension of the time limitation estab-
4 lished under this subparagraph.

5 “(C) APPROVAL.—The Commission shall
6 approve, unconditionally or subject to such
7 terms and conditions as the Commission deter-
8 mines to be appropriate, any request submitted
9 pursuant to subparagraph (A) if the Commis-
10 sion finds that the request is consistent with
11 the requirements of section 17A. The Commis-
12 sion shall approve any such request if the Com-
13 mission does not make such finding.

14 “(D) RULES.—Not later than 180 days
15 after the date of the enactment of the Over-the-
16 Counter Derivatives Markets Act of 2009, the
17 Commission shall adopt rules for a clearing
18 agency’s submission for approval, pursuant to
19 this paragraph, of a security-based swap, or a
20 group, category, type or class of security-based
21 swaps, that the clearing agency seeks to accept
22 for clearing.

23 “(3) STAY OF CLEARING REQUIREMENT.—At
24 any time after issuance of an approval pursuant to
25 paragraph (2):

1 “(A) REVIEW PROCESS.—The Commission,
2 on application of a counterparty to a security-
3 based swap or on its own initiative, may stay
4 the clearing requirement of paragraph (1) until
5 the Commission completes a review of the terms
6 of the security-based swap (or the group, cat-
7 egory, type, or class of security-based swaps)
8 and the clearing arrangement.

9 “(B) DEADLINE.—The Commission shall
10 complete a review undertaken pursuant to sub-
11 paragraph (A) not later than 90 days after
12 issuance of the stay, unless the clearing agency
13 that clears the security-based swap, or group,
14 category, type or class of security-based swaps,
15 agrees to an extension of the time limitation es-
16 tablished under this subparagraph.

17 “(C) DETERMINATION.—Upon completion
18 of the review undertaken pursuant to subpara-
19 graph (A)—

20 “(i) the Commission may determine,
21 unconditionally or subject to such terms
22 and conditions as the Commission deter-
23 mines to be appropriate, that the security-
24 based swap, or group, category, type, or
25 class of security-based swaps, must be

1 cleared pursuant to this subsection if the
2 Commission finds that such clearing—

3 “(I) is consistent with the re-
4 quirements of section 17A; and

5 “(II) is otherwise in the public
6 interest, for the protection of inves-
7 tors, and consistent with the purposes
8 of this title;

9 “(ii) the Commission may determine
10 that the clearing requirement of paragraph
11 (1) shall not apply to the security-based
12 swap, or group, category, type, or class of
13 security-based swaps; or

14 “(iii) if a determination is made that
15 the clearing requirement of paragraph (1)
16 shall no longer apply, then it shall still be
17 permissible to clear such security-based
18 swap, or group, category, type, or class of
19 security-based swaps.

20 “(D) RULES.—Not later than 180 days
21 after the date of the enactment of the Over-the-
22 Counter Derivatives Markets Act of 2009, the
23 Commission shall adopt rules for reviewing,
24 pursuant to this paragraph, a clearing agency’s
25 clearing of a security-based swap, or a group,

1 category, type, or class of security-based swaps,
2 the Commission has accepted for clearing.

3 “(4) SECURITY-BASED SWAPS REQUIRED TO BE
4 ACCEPTED FOR CLEARING.—

5 “(A) RULEMAKING.—Within 180 days of
6 the date of enactment of the Over-the-Counter
7 Derivatives Markets Act of 2009, the Commis-
8 sion and the Commodity Futures Trading Com-
9 mission shall jointly adopt rules to further iden-
10 tify security-based swaps, or any group, cat-
11 egory, type, or class of security-based swaps,
12 that although not submitted for approval under
13 paragraph (2) but the Commission and Com-
14 modities Futures Trading Commission deem
15 should be accepted for clearing. In adopting
16 such rules, the Commission and the Commodity
17 Futures Trading Commission shall take into ac-
18 count the following factors:

19 “(i) The extent to which any of the
20 terms of the security-based swap, including
21 price, are disseminated to third parties or
22 are referenced in other agreements, con-
23 tracts, or transactions.

24 “(ii) The volume of transactions in
25 the security-based swap.

1 “(iii) The extent to which the terms of
2 the security-based swap are similar to the
3 terms of other agreements, contracts, or
4 transactions that are centrally cleared.

5 “(iv) Whether any differences in the
6 terms of the security-based swap, com-
7 pared to other agreements, contracts, or
8 transactions that are centrally cleared, are
9 of economic significance.

10 “(v) Whether a clearing agency is pre-
11 pared to clear the security-based swap and
12 such clearing agency has in place effective
13 risk management systems.

14 “(vi) Any other factors the Commis-
15 sion and the Securities and Exchange
16 Commission determine to be appropriate.

17 “(B) OTHER DESIGNATIONS.—The Com-
18 mission may separately designate a particular
19 security-based swap or class of security-based
20 swaps as subject to the clearing requirement in
21 paragraph (1), taking into account the factors
22 established in clauses (i) through (vi) of sub-
23 paragraph (A) and the joint rules adopted in
24 such subparagraph.

1 “(5) PREVENTION OF EVASION.—The Commis-
2 sion shall have authority to prescribe rules under
3 this section, or issue interpretations of such rules, as
4 necessary to prevent evasions of this section.

5 “(6) REQUIRED REPORTING.—

6 “(A) BOTH COUNTERPARTIES.—Both
7 counterparties to a security-based swap that is
8 not accepted for clearing by any clearing agency
9 shall report such a security-based swap either
10 to a registered security-based swap repository
11 described in section 13(n) or, if there is no re-
12 pository that would accept the security-based
13 swap, to the Commission pursuant to section
14 13A.

15 “(B) TIMING.—Counterparties to a secu-
16 rity-based swap shall submit the reports re-
17 quired under subparagraph (A) within such
18 time period as the Commission may by rule or
19 regulation prescribe.

20 “(7) TRANSITION RULES.—Rules adopted by
21 the Commission under this section shall provide for
22 the reporting of data, as follows:

23 “(A) Security-based swaps that were en-
24 tered into before the date of enactment of the
25 Over-the-Counter Derivatives Markets Act of

1 2009 shall be reported to a registered security-
2 based swap repository or the Commission not
3 later than the later of—

4 “(i) 180 days after the effective date
5 of the Over-the-Counter Derivatives Mar-
6 kets Act of 2009; or

7 “(ii) such other time after entering
8 into the security-based swap as the Com-
9 mission may prescribe by rule or regula-
10 tion.

11 “(B) Security-based swaps that were en-
12 tered into on or after the date of enactment of
13 the Over-the-Counter Derivatives Markets Act
14 of 2009 shall be reported to a registered secu-
15 rity-based swap repository or the Commission
16 not later than the later of—

17 “(i) 90 days after the effective date of
18 the Over-the-Counter Derivatives Markets
19 Act of 2009; or

20 “(ii) such other time after entering
21 into the swap as the Commission may pre-
22 scribe by rule or regulation.

23 “(8) TRADE EXECUTION.—

24 “(A) IN GENERAL.—With respect to trans-
25 actions involving security-based swaps subject

1 to the clearing requirement of paragraph (1),
2 counterparties shall—

3 “(i) execute the transaction on an ex-
4 change; or

5 “(ii) execute the transaction on an al-
6 ternative swap execution facility registered
7 under section 3C.

8 “(B) EXCEPTION.—The requirements of
9 clauses (i) and (ii) of subparagraph (A) shall
10 not apply if no exchange or alternative swap
11 execution facility makes the swap available to
12 trade.

13 “(9) EXEMPTIONS.—

14 “(A) IN GENERAL.—The Commission by
15 rule or order, as the Commission deems nec-
16 essary or appropriate in the public interest,
17 may conditionally or unconditionally exempt a
18 security-based swap from the requirements of
19 paragraphs (1) and (8), and any rules issued
20 under this subsection, if—

21 “(i) no clearing agency registered
22 under this Act will accept the security-
23 based swap for clearing; or

24 “(ii) 1 of the counterparties to the se-
25 curity-based swap—

1 modity Futures Trading Commission and
2 the Agency for Financial Stability describ-
3 ing such exemption. If either the Com-
4 modity Futures Trading Commission or
5 the Agency for Financial Stability issues a
6 finding under clause (i) that such an ex-
7 emption does not meet the standard de-
8 scribed in clause (i), the Commission may
9 not issue such exemption.

10 “(iii) DEADLINE.—Any finding by the
11 Commodity Futures Trading Commission
12 or the Agency for Financial Stability shall
13 be made and provided in writing to the
14 Commission not later than 45 days after
15 the date of receipt of notice of a proposed
16 exemption by the Commission.

17 “(iv) NONDELEGATION.—Action by
18 the Commodity Futures Trading Commis-
19 sion or the Agency for Financial Stability
20 under this subparagraph may not be dele-
21 gated.

22 “(C) REQUESTED CLEARANCE.—If any
23 party to a security-based swap that is exempt
24 from the clearing requirements of paragraph
25 (1) requests that such security-based swap be

1 cleared by a clearing agency, and a clearing
2 agency registered under this Act will accept
3 such security-based swap for clearing, then—

4 “(i) the exemption shall not apply;

5 and

6 “(ii) the swap shall be cleared by such
7 agency.

8 “(10) RELATIONSHIP TO DERIVATIVES CLEAR-
9 ING ORGANIZATIONS.—A clearing agency may clear
10 swaps that are required to be cleared by a person
11 who is registered as a derivatives clearing organiza-
12 tion under the Commodity Exchange Act (7 U.S.C.
13 1 et seq.).

14 “(11) REQUIRED REGISTRATION FOR BANKS
15 AND CLEARING AGENCIES.—A person that is re-
16 quired to be registered as a clearing agency under
17 this title shall register with the Commission regard-
18 less of whether the person is also a bank or a deriva-
19 tives clearing organization registered with the Com-
20 modity Futures Trading Commission under the
21 Commodity Exchange Act (7 U.S.C. 1 et seq.).

22 “(b) REPORTING.—

23 “(1) TRANSPARENCY.—

24 “(A) IN GENERAL.—A clearing agency that
25 clears security-based swaps shall provide to the

1 Commission and any security-based swap repos-
2 itory designated by the Commission all informa-
3 tion determined by the Commission to be nec-
4 essary to perform its responsibilities under this
5 Act.

6 “(B) DATA COLLECTION REQUIRE-
7 MENTS.—The Commission shall adopt data col-
8 lection and maintenance requirements for secu-
9 rity-based swaps cleared by clearing agencies
10 that are comparable to the corresponding re-
11 quirements for security-based swaps accepted
12 by security-based swap repositories and secu-
13 rity-based swaps traded on alternative swap
14 execution facilities.

15 “(C) SHARING OF INFORMATION.—The
16 Commission shall share such information, upon
17 request, with the Board, the Commodity Fu-
18 tures Trading Commission, the appropriate
19 Federal banking agencies, the Agency for Fi-
20 nancial Stability, and the Department of Jus-
21 tice or to other persons the Commission deems
22 appropriate, including foreign financial super-
23 visors (including foreign futures authorities),
24 foreign central banks, and foreign ministries.

1 “(2) PUBLIC INFORMATION.—A clearing agency
2 that clears security-based swaps shall provide to the
3 Commission, or its designee, such information as is
4 required by, and in a form and at a frequency to be
5 determined by, the Commission, in order to comply
6 with the public reporting requirements contained in
7 section 13.

8 “(c) DESIGNATION OF COMPLIANCE OFFICER.—

9 “(1) IN GENERAL.—Each clearing agency that
10 clears security-based swaps shall designate an indi-
11 vidual to serve as a compliance officer.

12 “(2) DUTIES.—The compliance officer shall
13 perform the following duties:

14 “(A) Report directly to the board or to the
15 senior officer of the clearing agency.

16 “(B) Consult with the board of the clear-
17 ing agency, a body performing a function simi-
18 lar to that of a board, or the senior officer of
19 the clearing agency, to resolve any conflicts of
20 interest that may arise.

21 “(C) Administering the policies and proce-
22 dures of the clearing agency required to be es-
23 tablished pursuant to this section.

24 “(D) Ensuring compliance with securities
25 laws and the rules and regulations issued there-

1 under, including rules prescribed by the Com-
2 mission pursuant to this section.

3 “(E) Establishing procedures for remedi-
4 ation of noncompliance issues found during
5 compliance office reviews, lookbacks, internal or
6 external audit findings, self-reported errors, or
7 through validated complaints. Procedures to be
8 established under this subsection include proce-
9 dures related to the handling, management re-
10 sponse, remediation, retesting, and closing of
11 noncompliance issues.

12 “(3) ANNUAL REPORTS REQUIRED.—

13 “(A) IN GENERAL.—The compliance offi-
14 cer shall annually prepare and sign a report on
15 the compliance of the clearing agency with the
16 securities laws and the policies and procedures
17 of the agency, including the code of ethics and
18 conflict of interest policies of the agency, in ac-
19 cordance with rules prescribed by the Commis-
20 sion.

21 “(B) SUBMISSION.—The compliance report
22 required under subparagraph (A) shall accom-
23 pany the financial reports of the clearing agen-
24 cy that are required to be furnished to the
25 Commission pursuant to this section and shall

1 include a certification that, under penalty of
2 law, the report is accurate and complete.

3 “(d) CONSULTATION.—The Commission and the
4 Commodity Futures Trading Commission shall consult
5 with the appropriate Federal banking agencies and each
6 other prior to adopting rules under this section.

7 “(e) HARMONIZATION OF RULES.—Not later than
8 180 days after the effective date of the Over-the-Counter
9 Derivatives Markets Act of 2009, the Commission and the
10 Commodity Futures Trading Commission shall jointly
11 adopt uniform rules governing—

12 “(1) the clearing and settlement of swaps, as
13 well as persons that are registered as derivatives
14 clearing organizations for swaps under the Com-
15modity Exchange Act (7 U.S.C. 1 et seq.); and

16 “(2) the clearing and settlement of security-
17 based swaps, as well as persons that are registered
18 as clearing agencies for security-based swaps under
19 this Act.”.

20 (b) ALTERNATIVE SWAP EXECUTION FACILITIES.—
21 The Securities Exchange Act of 1934 (15 U.S.C. 78a et
22 seq.) is further amended by adding after section 3B the
23 following:

24 **“SEC. 3C. ALTERNATIVE SWAP EXECUTION FACILITIES.**

25 “(a) REGISTRATION.—

1 “(1) IN GENERAL.—No person may operate a
2 facility for the trading of security-based swaps un-
3 less the facility is registered as an alternative swap
4 execution facility under this section or as a securities
5 exchange registered under this Act.

6 “(2) DUAL REGISTRATION.—Any person that is
7 required to be registered as an alternative swap exe-
8 cution facility under this section shall register with
9 the Commission regardless of whether that person
10 also is registered with the Commodity Futures Trad-
11 ing Commission as an alternative swap execution fa-
12 cility.

13 “(b) REQUIREMENTS FOR TRADING.—An alternative
14 swap execution facility that is registered under subsection
15 (a) may trade any security-based swap.

16 “(c) TRADING BY EXCHANGES.—An exchange shall,
17 to the extent that the exchange also operates an alter-
18 native swap execution facility and uses the same electronic
19 trade execution system for trading on the exchange and
20 the alternative swap execution facility, identify whether
21 the electronic trading is taking place on the exchange or
22 the alternative swap execution facility.

23 “(d) CRITERIA FOR REGISTRATION.—

24 “(1) IN GENERAL.—To be registered as an al-
25 ternative swap execution facility, the facility shall be

1 required to demonstrate to the Commission such fa-
2 cility meets the criteria established by this section.

3 “(2) DETERRENCE OF ABUSES.—Each alter-
4 native swap execution facility shall establish and en-
5 force trading and participation rules that will deter
6 abuses and have the capacity to detect, investigate,
7 and enforce those rules, including—

8 “(A) means to obtain information nec-
9 essary to perform the functions required under
10 this section; or

11 “(B) means to—

12 “(i) provide market participants with
13 impartial access to the market; and

14 “(ii) capture information that may be
15 used in establishing whether any violations
16 of this section have occurred.

17 “(3) TRADING PROCEDURES.—Each alternative
18 swap execution facility shall establish and enforce
19 rules or terms and conditions defining, or specifica-
20 tions detailing, trading procedures to be used in en-
21 tering and executing orders traded on or through its
22 facilities.

23 “(4) FINANCIAL INTEGRITY OF TRANS-
24 ACTIONS.—Each alternative swap execution facility
25 shall establish and enforce rules and procedures for

1 ensuring the financial integrity of security-based
2 swaps entered on or through its facilities, including
3 the clearance and settlement of the security-based
4 swaps.

5 “(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP
6 EXECUTION FACILITIES.—

7 “(1) COMPLIANCE.—

8 “(A) IN GENERAL.—To maintain its reg-
9 istration as an alternative swap execution facil-
10 ity, the facility shall comply with the core prin-
11 ciples established in this subsection and any re-
12 quirement that the Commission may impose by
13 rule or regulation.

14 “(B) REASONABLE DISCRETION.—Except
15 where the Commission determines otherwise by
16 rule or regulation, the facility shall have reason-
17 able discretion in establishing the manner in
18 which it complies with the core principles estab-
19 lished in this subsection.

20 “(2) COMPLIANCE WITH RULES.—Each alter-
21 native swap execution facility shall monitor and en-
22 force compliance with any of the rules of the facility,
23 including the terms and conditions of the security-
24 based swaps traded on or through the facility and
25 any limitations on access to the facility.

1 “(3) SECURITY-BASED SWAPS NOT READILY
2 SUSCEPTIBLE TO MANIPULATION.—Each alternative
3 swap execution facility shall permit trading only in
4 security-based swaps that are not readily susceptible
5 to manipulation.

6 “(4) MONITORING OF TRADING.—Each alter-
7 native swap execution facility shall monitor trading
8 in security-based swaps to prevent manipulation and
9 price distortion through surveillance, compliance,
10 and disciplinary practices and procedures, including
11 methods for conducting real-time monitoring of trad-
12 ing and comprehensive and accurate trade recon-
13 structions.

14 “(5) ABILITY TO OBTAIN INFORMATION.—Each
15 alternative swap execution facility shall—

16 “(A) establish and enforce rules that will
17 allow the facility to obtain any necessary infor-
18 mation to perform any of the functions de-
19 scribed in this subsection;

20 “(B) provide the information to the Com-
21 mission upon request; and

22 “(C) have the capacity to carry out such
23 international information-sharing agreements as
24 the Commission may require.

25 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

1 “(A) IN GENERAL.—To reduce the poten-
2 tial threat of market manipulation or conges-
3 tion, an alternative swap execution facility shall
4 adopt for each of its contracts, where necessary
5 and appropriate, position limitations or position
6 accountability.

7 “(B) FOR CERTAIN CONTRACTS.—For any
8 contract that is subject to a position limitation
9 established by the Commission pursuant to sec-
10 tion 10B, an alternative swap execution facility
11 shall set its position limitation at a level no
12 higher than the Commission limitation.

13 “(7) EMERGENCY AUTHORITY.—Each alter-
14 native swap execution facility shall adopt rules to
15 provide for the exercise of emergency authority, in
16 consultation or cooperation with the Commission,
17 where necessary and appropriate, including the au-
18 thority to suspend or curtail trading in a security-
19 based swap.

20 “(8) TIMELY PUBLICATION OF TRADING INFOR-
21 MATION.—Each alternative swap execution facility
22 shall make public timely information on price, trad-
23 ing volume, and other trading data to the extent
24 prescribed by the Commission.

25 “(9) RECORDKEEPING AND REPORTING.—

1 “(A) IN GENERAL.—Each alternative swap
2 execution facility shall—

3 “(i) maintain records of all activities
4 related 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 all in-
9 formation determined by the Commission
10 to be necessary or appropriate for the
11 Commission to perform its responsibilities
12 under this Act in a form and manner ac-
13 ceptable to the Commission.

14 “(B) DATA COLLECTION REQUIRE-
15 MENTS.—The Commission shall adopt data col-
16 lection and reporting requirements for alter-
17 native swap execution facilities that are com-
18 parable to corresponding requirements for clear-
19 ing agencies and security-based swap reposi-
20 tories.

21 “(10) ANTITRUST CONSIDERATIONS.—Unless
22 necessary or appropriate to achieve the purposes of
23 this Act, an alternative swap execution facility shall
24 avoid—

1 “(A) adopting any rules or taking any ac-
2 tions that result in any unreasonable restraints
3 of trade; or

4 “(B) imposing any material anticompeti-
5 tive burden on trading on the swap execution
6 facility.

7 “(11) CONFLICTS OF INTEREST.—Each alter-
8 native swap execution facility shall—

9 “(A) establish and enforce rules to mini-
10 mize conflicts of interest in its decisionmaking
11 process; and

12 “(B) establish a process for resolving any
13 conflicts of interest.

14 “(12) DESIGNATION OF COMPLIANCE OFFI-
15 CER.—

16 “(A) IN GENERAL.—Each alternative swap
17 execution facility shall designate an individual
18 to serve as a compliance officer.

19 “(B) DUTIES.—The compliance officer
20 shall perform the following duties:

21 “(i) Report directly to the board or to
22 the senior officer of the facility.

23 “(ii) Review the compliance of the fa-
24 cility with the core principles established in
25 this subsection.

1 “(iii) Consult with the board of the
2 facility, a body performing a function simi-
3 lar to that of a board, or the senior officer
4 of the facility, to resolve any conflicts of
5 interest that may arise.

6 “(iv) Administering the policies and
7 procedures of the facility required to be es-
8 tablished pursuant to this section.

9 “(v) Ensuring compliance with securi-
10 ties laws and the rules and regulations
11 issued thereunder, including any rules pre-
12 scribed by the Commission pursuant to
13 this section.

14 “(vi) Establishing procedures for re-
15 mediation of noncompliance issues found
16 during compliance office reviews,
17 lookbacks, internal or external audit find-
18 ings, self-reported errors, or through vali-
19 dated complaints. Procedures to be estab-
20 lished under this paragraph include proce-
21 dures related to the handling, management
22 response, remediation, retesting, and clos-
23 ing of noncompliance issues.

24 “(C) ANNUAL REPORTS REQUIRED.—

1 “(i) IN GENERAL.—The compliance
2 officer shall annually prepare and sign a
3 report on the compliance of the alternative
4 swap execution facility with the securities
5 laws and the policies and procedures of the
6 facility, including the code of ethics and
7 conflict of interest policies of the facility,
8 in accordance with rules prescribed by the
9 Commission.

10 “(ii) SUBMISSION.—The compliance
11 report required under clause (i) shall ac-
12 company the financial reports of the alter-
13 native swap execution facility that are re-
14 quired to be furnished to the Commission
15 pursuant to this section and shall include
16 a certification that, under penalty of law,
17 the report is accurate and complete.

18 “(f) EXEMPTIONS.—The Commission may exempt,
19 conditionally or unconditionally, an alternative swap exe-
20 cution facility from registration under this section if the
21 Commission finds that such organization is subject to
22 comparable, comprehensive supervision and regulation on
23 a consolidated basis by the Commodity Futures Trading
24 Commission, the Financial Institutions Regulatory Ad-

1 ministration, or the appropriate governmental authorities
2 in the organization’s home country.

3 “(g) HARMONIZATION OF RULES.—Within 180 days
4 of the date of the enactment of the Over-the-Counter De-
5 rivatives Markets Act of 2009, the Commission and the
6 Commodity Futures Trading Commission shall jointly pre-
7 scribe rules governing the regulation of alternative swap
8 execution facilities under this section and section 5h of
9 the Commodity Exchange Act.”.

10 (c) TRADING IN SECURITY-BASED SWAP AGREE-
11 MENTS.—Section 6 of the Securities Exchange Act of
12 1934 (15 U.S.C. 78f) is amended by adding at the end
13 the following:

14 “(l) PROHIBITION.—It shall be unlawful for any per-
15 son to effect a transaction in a security-based swap with
16 or for a person that is not an eligible contract participant
17 unless such transaction is effected on a national securities
18 exchange registered pursuant to subsection (b).”.

19 (d) REGISTRATION AND REGULATION OF SWAP
20 DEALERS AND MAJOR SWAP PARTICIPANTS.—The Secu-
21 rities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
22 amended by inserting after section 15E (15 U.S.C. 78o–
23 7) the following:

1 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
2 **BASED SWAP DEALERS AND MAJOR SECU-**
3 **RITY-BASED SWAP PARTICIPANTS.**

4 “(a) REGISTRATION.—It shall be unlawful for any
5 person—

6 “(1) to act as a security-based swap dealer un-
7 less such person is registered as a security-based
8 swap dealer with the Commission; and

9 “(2) to act as a major security-based swap par-
10 ticipant unless such person is registered as a major
11 security-based swap participant with the Commis-
12 sion.

13 “(b) REQUIREMENTS.—

14 “(1) IN GENERAL.—A person shall register as
15 a security-based swap dealer or major security-based
16 swap participant by filing a registration application
17 with the Commission.

18 “(2) CONTENTS.—The application required
19 under paragraph (1) shall be made in such form and
20 manner as prescribed by the Commission, giving any
21 information and facts as the Commission may deem
22 necessary concerning the business in which the ap-
23 plicant is or will be engaged. Such person, when reg-
24 istered as a security-based swap dealer or major se-
25 curity-based swap participant, shall continue to re-
26 port and furnish to the Commission such informa-

1 tion pertaining to such person’s business as the
2 Commission may require.

3 “(3) EXPIRATION.—Each registration shall ex-
4 pire at such time as the Commission may by rule or
5 regulation prescribe.

6 “(4) RULES.—Except as provided in sub-
7 sections (c), (d), and (e), the Commission may pre-
8 scribe rules applicable to security-based swap dealers
9 and major security-based swap participants, includ-
10 ing rules that limit the activities of security-based
11 swap dealers and major security-based swap partici-
12 pants. Except as provided in subsections (c) and (e),
13 the Commission may provide conditional or uncondi-
14 tional exemptions from rules prescribed under this
15 section for security-based swap dealers and major
16 security-based swap participants that are subject to
17 substantially similar requirements as brokers or
18 dealers.

19 “(5) TRANSITION.—Rules adopted under this
20 section shall provide for the registration of security-
21 based swap dealers and major security-based swap
22 participants not later than 1 year after the effective
23 date of the Over-the-Counter Derivatives Markets
24 Act of 2009.

25 “(c) DUAL REGISTRATION.—

1 “(1) SECURITY-BASED SWAP DEALERS.—Any
2 person that is required to be registered as a secu-
3 rity-based swap dealer under this section shall reg-
4 ister with the Commission regardless of whether that
5 person also is a bank or is registered with the Com-
6 modity Futures Trading Commission as a swap deal-
7 er.

8 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
9 PANTS.—Any person that is required to be reg-
10 istered as a major security-based swap participant
11 under this section shall register with the Commis-
12 sion regardless of whether that person also is a bank
13 or is registered with the Commodity Futures Trad-
14 ing Commission as a major swap participant.

15 “(d) JOINT RULES.—

16 “(1) IN GENERAL.—Not later than 180 days
17 after the effective date of the Over-the-Counter De-
18 rivatives Markets Act of 2009, the Commission and
19 the Commodity Futures Trading Commission shall
20 jointly adopt uniform rules for persons that are reg-
21 istered—

22 “(A) as security-based swap dealers or
23 major security-based swap participants under
24 this Act; and

1 “(B) as swap dealers or major swap par-
2 ticipants under the Commodity Exchange Act
3 (7 U.S.C. 1 et seq.).

4 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
5 MENTS.—The Commission and the Commodity Fu-
6 tures Trading Commission shall not prescribe rules
7 imposing prudential requirements (including activity
8 restrictions) on security-based swap dealers or major
9 security-based swap participants for which the Fi-
10 nancial Institutions Regulatory Administration is the
11 primary financial regulatory agency. This provision
12 shall not be construed as limiting the authority of
13 the Commission and the Commodity Futures Trad-
14 ing Commission to prescribe appropriate business
15 conduct, reporting, and recordkeeping requirements
16 to protect investors.

17 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

18 “(1) IN GENERAL.—

19 “(A) BANK SECURITY-BASED SWAP DEAL-
20 ERS AND MAJOR SECURITY-BASED SWAP PAR-
21 TICIPANTS.—Each registered security-based
22 swap dealer and major security-based swap par-
23 ticipant for which the Financial Institutions
24 Regulatory Administration is the primary finan-
25 cial regulatory agency shall meet such minimum

1 capital requirements and minimum initial and
2 variation margin requirements as FIRA shall
3 by rule or regulation prescribe to help ensure
4 the safety and soundness of the security-based
5 swap dealer or major security-based swap par-
6 ticipant.

7 “(B) NONBANK SECURITY-BASED SWAP
8 DEALERS AND MAJOR SECURITY-BASED SWAP
9 PARTICIPANTS.—Each registered security-based
10 swap dealer and major security-based swap par-
11 ticipant for which the Financial Institutions
12 Regulatory Administration is not the primary
13 financial regulatory agency shall meet such
14 minimum capital requirements and minimum
15 initial and variation margin requirements as the
16 Commission and the Commodity Futures Trad-
17 ing Commission shall by rule or regulation
18 jointly prescribe to help ensure the safety and
19 soundness of the security-based swap dealer or
20 major security-based swap participant.

21 “(2) JOINT RULES.—

22 “(A) BANK SECURITY-BASED SWAP DEAL-
23 ERS AND MAJOR SECURITY-BASED SWAP PAR-
24 TICIPANTS.—Within 180 days of the date of the
25 enactment of the Over-the-Counter Derivatives

1 Markets Act of 2009, the Financial Institutions
2 Regulatory Administration, in consultation with
3 the Commission and the Commodity Futures
4 Trading Commission, shall jointly adopt rules
5 imposing capital and margin requirements
6 under this subsection for security-based swap
7 dealers and major security-based swap partici-
8 pants for which FIRA is the primary financial
9 regulatory agency.

10 “(B) NONBANK SECURITY-BASED SWAP
11 DEALERS AND MAJOR SECURITY-BASED SWAP
12 PARTICIPANTS.—Within 180 days of the date of
13 the enactment of the Over-the-Counter Deriva-
14 tives Markets Act of 2009, the Commission and
15 the Commodity Futures Trading Commission,
16 in consultation with the Financial Institutions
17 Regulatory Administration, shall jointly adopt
18 rules imposing capital and margin requirements
19 under this subsection for security-based swap
20 dealers and major security-based swap partici-
21 pants for which FIRA is not the primary finan-
22 cial regulatory agency.

23 “(3) CAPITAL.—

24 “(A) BANK SECURITY-BASED SWAP DEAL-
25 ERS AND MAJOR SECURITY-BASED SWAP PAR-

1 PARTICIPANTS.—In setting capital requirements
2 under this subsection for security-based swap
3 dealers and major security-based swap partici-
4 pants for which FIRA is the primary financial
5 regulatory agency, the Financial Institutions
6 Regulatory Administration shall impose—

7 “(i) a capital requirement that is
8 greater than zero for security-based swaps
9 that are cleared by a clearing agency; and

10 “(ii) to offset the greater risk to the
11 security-based swap dealer or major secu-
12 rity-based swap participant and to the fi-
13 nancial system arising from the use of se-
14 curity-based swaps that are not centrally
15 cleared, substantially higher capital re-
16 quirements for security-based swaps that
17 are not cleared by a clearing agency than
18 for security-based swaps that are centrally
19 cleared.

20 “(B) **NONBANK SECURITY-BASED SWAP**
21 **DEALERS AND MAJOR SECURITY-BASED SWAP**
22 **PARTICIPANTS.**—Capital requirements set by
23 the Commission and the Commodity Futures
24 Trading Commission under this subsection shall
25 be as strict as or stricter than the capital re-

1 responsibility rules for a futures com-
2 mission merchant or introducing
3 broker registered pursuant to section
4 4f(a) of the Commodity Exchange Act
5 (except for section 4f(a)(3) thereof) in
6 accordance with section 4f(b) of the
7 Commodity Exchange Act.

8 “(ii) FUTURES COMMISSION MER-
9 CHANTS AND OTHER DEALERS.—A futures
10 commission merchant, introducing broker,
11 broker, or dealer shall maintain sufficient
12 capital to comply with the stricter of any
13 applicable capital requirements to which
14 such merchant, introducing broker, broker,
15 or dealer is subject to under this title or
16 the Commodity Exchange Act.

17 “(4) MARGIN.—

18 “(A) BANK SWAP DEALERS AND MAJOR
19 SWAP PARTICIPANTS.—

20 “(i) IN GENERAL.—The Financial In-
21 stitutions Regulatory Administration shall
22 impose both initial and variation margin
23 requirements under this subsection for se-
24 curity-based swap dealers and major secu-
25 rities based swap participants for which

1 FIRA is the primary financial regulatory
2 agency on all security-based swaps that are
3 not cleared by a clearing agency.

4 “(ii) EXEMPTION.—The Financial In-
5 stitutions Regulatory Administration by
6 rule or order, as FIRA deems necessary or
7 appropriate in the public interest, may
8 conditionally or unconditionally exempt a
9 security-based swap dealer or major secu-
10 rity-based swap participant for which
11 FIRA is the primary financial regulatory
12 agency from the requirements of this sub-
13 section and the rules issued under this
14 subsection with regard to any security-
15 based swap in which 1 of the counterpar-
16 ties is—

17 “(I) not a swap dealer, major
18 swap participant, security-based swap
19 dealer, or a major security-based swap
20 participant;

21 “(II) using the swap as part of
22 an effective hedge under generally ac-
23 cepted accounting principles; and

24 “(III) predominantly engaged in
25 activities that are not financial in na-

1 ture, as defined in section 4(k) of the
2 Bank Holding Company Act of 1956
3 (12 U.S.C. 1843(k)).

4 “(iii) PRIOR CONSULTATION WITH
5 AGENCY FOR FINANCIAL STABILITY, THE
6 COMMISSION, AND THE COMMODITIES FU-
7 TURE TRADING COMMISSION.—

8 “(I) CONSULTATION.—Before
9 acting by rule or order to exempt a
10 security-based swap from any require-
11 ment or rule under this subsection,
12 the Financial Institutions Regulatory
13 Administration shall consult with, and
14 consider the views of, the Agency for
15 Financial Stability, the Commission,
16 and the Commodity Futures Trading
17 Commission concerning whether such
18 exemption is necessary and appro-
19 priate for the reduction of systemic
20 risk and in the public interest.

21 “(II) PROHIBITION ON
22 ISSUANCE.—Not later than 45 days
23 prior to issuing any exemption under
24 this subparagraph, the Financial In-
25 stitutions Regulatory Administration

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1 shall send a notice to the Agency for
2 Financial Stability describing such ex-
3 emption. If the Agency for Financial
4 Stability issues a finding under sub-
5 clause (I) that such an exemption
6 does not meet the standard described
7 in subclause (I), the Financial Institu-
8 tions Regulatory Administration may
9 not issue such exemption.

10 “(III) DEADLINE.—Any finding
11 by the Agency for Financial Stability
12 shall be made and provided in writing
13 to the Financial Institutions Regu-
14 latory Administration not later than
15 45 days after the date of receipt of
16 notice of a proposed exemption by
17 FIRA.

18 “(IV) NONDELEGATION.—Action
19 by the Agency for Financial Stability
20 under this clause may not be dele-
21 gated.

22 “(B) NONBANK SECURITY-BASED SWAP
23 DEALERS AND MAJOR SECURITY-BASED SWAP
24 PARTICIPANTS.—

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1 “(III) predominantly engaged in
2 activities that are not financial in na-
3 ture, as defined in section 4(k) of the
4 Bank Holding Company Act of 1956
5 (12 U.S.C. 1843(k)).

6 “(iii) PRIOR CONSULTATION WITH
7 THE COMMODITIES FUTURE TRADING COM-
8 MISSION AND AGENCY FOR FINANCIAL STA-
9 BILITY.—

10 “(I) CONSULTATION.—Before
11 acting by rule or order to exempt a
12 swap, or any group, category, type, or
13 class of swaps from any requirement
14 or rule under this section, the Com-
15 mission shall consult with, and con-
16 sider the views of, the Commodity Fu-
17 tures Trading Commission and the
18 Agency for Financial Stability con-
19 cerning whether such exemption is
20 necessary and appropriate for the re-
21 duction of systemic risk and in the
22 public interest.

23 “(II) PROHIBITION ON
24 ISSUANCE.—Not later than 45 days
25 prior to issuing any exemption under

1 this paragraph, the Commission shall
2 send a notice to the Commodity Fu-
3 tures Trading Commission and the
4 Agency for Financial Stability describ-
5 ing such exemption. If either the
6 Commodity Futures Trading Commis-
7 sion or the Agency for Financial Sta-
8 bility issues a finding under clause (i)
9 that such an exemption does not meet
10 the standard described in clause (i),
11 the Commission may not issue such
12 exemption.

13 “(III) DEADLINE.—Any finding
14 by the Commodity Futures Trading
15 Commission or the Agency for Finan-
16 cial Stability shall be made and pro-
17 vided in writing to the Commission
18 not later than 45 days after the date
19 of receipt of notice of a proposed ex-
20 emption by the Commission.

21 “(IV) NONDELEGATION.—Action
22 by the Commodity Futures Trading
23 Commission or the Agency for Finan-
24 cial Stability under this subparagraph
25 may not be delegated.

1 “(5) MARGIN REQUIREMENTS.—In prescribing
2 margin requirements under this subsection, the Fi-
3 nancial Institutions Regulatory Administration, the
4 Commission, or the Commodity Futures Trading
5 Commission may permit the use of noncash collat-
6 eral, as FIRA, the Commission, or the Commodity
7 Futures Trading Commission determines to be con-
8 sistent with—

9 “(A) preserving the financial integrity of
10 markets trading security-based swaps; and

11 “(B) preventing systemic risk.

12 “(6) REQUESTED MARGIN.—If any party to a
13 security-based swap that is exempt from the margin
14 requirements of paragraph (4)(A)(i) pursuant to the
15 provisions of paragraph (4)(A)(ii) requests that such
16 security-based swap be margined, then—

17 “(A) the exemption shall not apply; and

18 “(B) the counterparty to such security-
19 based swap shall provide the requested margin.

20 “(f) REPORTING AND RECORDKEEPING.—

21 “(1) IN GENERAL.—Each registered security-
22 based swap dealer and major security-based swap
23 participant—

24 “(A) shall make such reports as are pre-
25 scribed by the Commission by rule or regulation

1 regarding the transactions and positions and fi-
2 nancial condition of such dealer or participant;

3 “(B) for which—

4 “(i) the Financial Institutions Regu-
5 latory Administration is the primary finan-
6 cial regulatory agency shall keep books and
7 records of all activities related to its busi-
8 ness as a security-based swap dealer or
9 major security-based swap participant in
10 such form and manner and for such period
11 as may be prescribed by the Commission
12 by rule or regulation; and

13 “(ii) the Financial Institutions Regu-
14 latory Administration is not the primary fi-
15 nancial regulatory agency shall keep books
16 and records in such form and manner and
17 for such period as may be prescribed by
18 the Commission by rule or regulation; and

19 “(C) shall keep such books and records
20 open to inspection and examination by any rep-
21 resentative of the Commission.

22 “(2) RULES.—Within 1 year of the date of the
23 enactment of the Over-the-Counter Derivatives Mar-
24 kets Act of 2009, the Commission and the Com-
25 modity Futures Trading Commission, in consultation

1 with the appropriate Federal banking agencies, shall
2 jointly adopt rules governing reporting and record-
3 keeping for swap dealers, major swap participants,
4 security-based swap dealers and major security-
5 based swap participants.

6 “(g) DAILY TRADING RECORDS.—

7 “(1) IN GENERAL.—Each registered security-
8 based swap dealer and major security-based swap
9 participant shall, for such period as may be pre-
10 scribed by the Commission by rule or regulation,
11 maintain daily trading records of that dealer’s or
12 participant’s—

13 “(A) security-based swaps and all related
14 records (including related transactions); and

15 “(B) recorded communications, including
16 electronic mail, instant messages, and record-
17 ings of telephone calls.

18 “(2) INFORMATION REQUIREMENTS.—The daily
19 trading records required to be maintained under
20 paragraph (1) shall include such information as the
21 Commission shall prescribe by rule or regulation.

22 “(3) CUSTOMER RECORDS.—Each registered se-
23 curity-based swap dealer or major security-based
24 swap participant shall maintain daily trading records
25 for each customer or counterparty in such manner

1 and form as to be identifiable with each security-
2 based swap transaction.

3 “(4) AUDIT TRAIL.—

4 “(A) MAINTENANCE OF AUDIT TRAIL.—

5 Each registered security-based swap dealer or
6 major security-based swap participant shall
7 maintain a complete audit trail for conducting
8 comprehensive and accurate trade reconstruc-
9 tions.

10 “(B) PERMISSIBLE COMPLIANCE BY ENTI-

11 TY OTHER THAN DEALER OR PARTICIPANT.—A

12 registered security-based swap repository may,
13 at the request of a registered security-based
14 swap dealer or major security-based swap par-
15 ticipant, satisfy the requirement of subpara-
16 graph (A) on behalf of such registered security-
17 based swap dealer or major security-based swap
18 participant.

19 “(5) RULES.—Not later than 1 year after the

20 date of the enactment of the Over-the-Counter De-
21 rivatives Markets Act of 2009, the Commission and
22 the Commodity Futures Trading Commission, in
23 consultation with the appropriate Federal banking
24 agencies, shall jointly adopt rules governing daily
25 trading records for swap dealers, major swap partici-

1 pants, security-based swap dealers, and major secu-
2 rity-based swap participants.

3 “(h) BUSINESS CONDUCT STANDARDS.—

4 “(1) IN GENERAL.—Each registered security-
5 based swap dealer and major security-based swap
6 participant shall conform with such business conduct
7 standards as may be prescribed by the Commission
8 by rule or regulation, including any standards ad-
9 dressing—

10 “(A) fraud, manipulation, and other abu-
11 sive practices involving security-based swaps
12 (including security-based swaps that are offered
13 but not entered into);

14 “(B) diligent supervision of its business as
15 a security-based swap dealer;

16 “(C) adherence to all applicable position
17 limits; and

18 “(D) such other matters as the Commis-
19 sion shall determine to be necessary or appro-
20 priate.

21 “(2) BUSINESS CONDUCT REQUIREMENTS.—
22 Business conduct requirements adopted by the Com-
23 mission pursuant to paragraph (1) shall—

24 “(A) establish a standard of care for a se-
25 curity-based swap dealer or major security-

1 based swap participant to verify that any secu-
2 rity-based swap counterparty meets the eligi-
3 bility standards for an eligible contract partici-
4 pant;

5 “(B) require disclosure by the security-
6 based swap dealer or major security-based swap
7 participant to any counterparty to the security-
8 based swap (other than a swap dealer, major
9 swap participant, security-based swap dealer, or
10 major security-based swap participant) of—

11 “(i) information about the material
12 risks and characteristics of the security-
13 based swap;

14 “(ii) the source and amount of any
15 fees or other material remuneration that
16 the security-based swap dealer or major se-
17 curity-based swap participant would di-
18 rectly or indirectly expect to receive in con-
19 nection with the security-based swap; and

20 “(iii) any other material incentives or
21 conflicts of interest that the security-based
22 swap dealer or major security-based swap
23 participant may have in connection with
24 the security-based swap; and

1 “(C) establish a standard of conduct for a
2 security-based swap dealer or major security-
3 based swap participant to communicate in a
4 fair and balanced manner based on principles of
5 fair dealing and good faith;

6 “(D) establish a standard of conduct for a
7 security-based swap dealer or major security-
8 based swap participant, with respect to a
9 counterparty that is an eligible contract partici-
10 pant within the meaning of subclause (I) or (II)
11 of clause (vii) section 1a(13) of the Commodity
12 Exchange Act (7 U.S.C. 1a(13)), to have a rea-
13 sonable basis to believe that the counterparty
14 has an independent representative that—

15 “(i) has sufficient knowledge to evalu-
16 ate the transaction and risks;

17 “(ii) is not subject to a statutory dis-
18 qualification;

19 “(iii) is independent of the security-
20 based swap dealer or major security-based
21 swap participant;

22 “(iv) undertakes a duty to act in the
23 best interests of the counterparty it rep-
24 resents;

1 “(v) makes appropriate disclosures;

2 and

3 “(vi) will provide written representa-

4 tions to the eligible contract participant re-

5 garding fair pricing and the appropriate-

6 ness of the transaction; and

7 “(E) establish such other standards and

8 requirements as the Commission may determine

9 are necessary or appropriate in the public inter-

10 est, for the protection of investors, or otherwise

11 in furtherance of the purposes of this title.

12 “(3) RULES.—Not later than 1 year after the

13 date of the enactment of the Over-the-Counter De-

14 rivatives Markets Act of 2009, the Commission and

15 the Commodity Futures Trading Commission, in

16 consultation with the appropriate Federal banking

17 agencies, shall jointly prescribe rules under this sub-

18 section governing business conduct standards for

19 swap dealers, major swap participants, security-

20 based swap dealers, and major security-based swap

21 participants.

22 “(i) DOCUMENTATION AND BACK OFFICE STAND-

23 ARDS.—

24 “(1) IN GENERAL.—Each registered security-

25 based swap dealer and major security-based swap

1 participant shall conform with standards, as may be
2 prescribed by the Commission by rule or regulation,
3 addressing timely and accurate confirmation, proc-
4 essing, netting, documentation, and valuation of all
5 security-based swaps.

6 “(2) RULES.—Not later than 1 year after the
7 date of the enactment of the Over-the-Counter De-
8 rivatives Markets Act of 2009, the Commission and
9 the Commodity Futures Trading Commission, in
10 consultation with the appropriate Federal banking
11 agencies, shall jointly adopt rules governing docu-
12 mentation and back office standards for swap deal-
13 ers, major swap participants, security-based swap
14 dealers, and major security-based swap participants.

15 “(j) DEALER RESPONSIBILITIES.—Each registered
16 security-based swap dealer and major security-based swap
17 participant shall, at all times, comply with the following
18 requirements:

19 “(1) MONITORING OF TRADING.—The security-
20 based swap dealer or major security-based swap par-
21 ticipant shall monitor its trading in security-based
22 swaps to prevent violations of applicable position
23 limits.

24 “(2) DISCLOSURE OF GENERAL INFORMA-
25 TION.—The security-based swap dealer or major se-

1 security-based swap participant shall disclose to the
2 Commission and to the Financial Institutions Regu-
3 latory Administration information concerning—

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 “(3) ABILITY TO OBTAIN INFORMATION.—The
13 security-based swap dealer or major swap security-
14 based 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 Financial Institutions Regu-
21 latory Administration upon request.

22 “(4) CONFLICTS OF INTEREST.—The security-
23 based swap dealer and major security-based swap
24 participant shall implement conflict of interest sys-
25 tems and procedures that—

1 “(A) establish structural and institutional
2 safeguards to assure that the activities of any
3 person within the firm relating to research or
4 analysis of the price or market for any security
5 are separated by appropriate informational par-
6 titions within the firm from the review, pres-
7 sure, or oversight of those whose involvement in
8 trading or clearing activities might potentially
9 bias their judgment or supervision; and

10 “(B) address such other issues as the
11 Commission determines appropriate.

12 “(5) **ANTITRUST CONSIDERATIONS.**—Unless
13 necessary or appropriate to achieve the purposes of
14 this Act, a security-based swap dealer or major secu-
15 rity-based swap participant shall avoid—

16 “(A) adopting any processes or taking any
17 actions that result in any unreasonable re-
18 straints of trade; or

19 “(B) imposing any material anticompeti-
20 tive burden on trading.

21 “(k) **RULES.**—The Commission, the Commodity Fu-
22 tures Trading Commission, and the Financial Institutions
23 Regulatory Administration shall consult with each other
24 prior to adopting any rules under the Over-the-Counter
25 Derivatives Markets Act of 2009.

1 “(l) STATUTORY DISQUALIFICATION.—Except to the
2 extent otherwise specifically provided by rule, regulation,
3 or order of the Commission, it shall be unlawful for a secu-
4 rity-based swap dealer or a major security-based swap par-
5 ticipant to permit any person associated with a security-
6 based swap dealer or a major security-based swap partici-
7 pant who is subject to a statutory disqualification to effect
8 or be involved in effecting security-based swaps on behalf
9 of such security-based swap dealer or major security-based
10 swap participant, if such security-based swap dealer or
11 major security-based swap participant knew, or in the ex-
12 ercise of reasonable care should have known, of such stat-
13 utory disqualification.

14 “(m) ENFORCEMENT AND ADMINISTRATIVE PRO-
15 CEEDING AUTHORITY.—

16 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

17 “(A) SECURITIES AND EXCHANGE COMMIS-
18 SION.—Except as provided in subsection (b),
19 the Commission shall have primary authority to
20 enforce the provisions of subtitle B of the Over-
21 the-Counter Derivatives Markets Act of 2009
22 with respect to any person.

23 “(B) FIRA.—The Financial Institutions
24 Regulatory Administration shall have exclusive
25 authority to enforce the provisions of section

1 15F(e) and other prudential requirements of
2 this Act with respect to banks, and branches or
3 agencies of foreign banks that are security-
4 based swap dealers or major security-based
5 swap participants.

6 “(C) REFERRAL.—If the Financial Institu-
7 tions Regulatory Administration has cause to
8 believe that such security-based swap dealer or
9 major security-based swap participant for which
10 FIRA is the primary financial regulatory agen-
11 cy may have engaged in conduct that con-
12 stitutes a violation of the nonprudential require-
13 ments of section 15F or rules adopted by the
14 Commission thereunder, the Financial Institu-
15 tions Regulatory Administration may rec-
16 ommend in writing to the Commission that the
17 Commission initiate an enforcement proceeding
18 as authorized under this Act. The recommenda-
19 tion shall be accompanied by a written expla-
20 nation of the concerns giving rise to the rec-
21 ommendation.

22 “(D) BACKSTOP ENFORCEMENT AUTHOR-
23 ITY.—If the Commission does not initiate an
24 enforcement proceeding before the end of the
25 90-day period beginning on the date on which

1 the Commission receives a recommendation
2 under subparagraph (C), the Financial Institu-
3 tions Regulatory Administration may initiate an
4 enforcement proceeding as permitted under
5 Federal law.

6 “(2) ENFORCEMENT ACTIONS.—The Commis-
7 sion, by order, shall censure, place limitations on the
8 activities, functions, or operations of, or reject the
9 filing of any security-based swap dealer or major se-
10 curity-based swap participant that has registered
11 with the Commission pursuant to subsection (b) if it
12 finds, on the record after notice and opportunity for
13 hearing, that such censure, placing of limitations, or
14 rejection is in the public interest and that such secu-
15 rity-based swap dealer or major security-based swap
16 participant, or any person associated with such secu-
17 rity-based swap dealer or major security-based swap
18 participant effecting or involved in effecting trans-
19 actions in security-based swaps on behalf of such se-
20 curity-based swap dealer or major security-based
21 swap participant, whether prior or subsequent to be-
22 coming so associated—

23 “(A) has committed or omitted any act, or
24 is subject to an order or finding, described 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, described in subparagraph (G) of
17 such paragraph (4).

18 “(3) PERSONNEL ENFORCEMENT ACTIONS.—
19 With respect to any person who is associated, who
20 is seeking to become associated, or, at the time of
21 the alleged misconduct, who was associated or was
22 seeking to become associated with a security-based
23 swap dealer or major security-based swap partici-
24 pant for the purpose of effecting or being involved
25 in effecting security-based swaps on behalf of such

1 security-based swap dealer or major security-based
2 swap participant, the Commission, by order, shall
3 censure, place limitations on the activities or func-
4 tions of such person, or suspend for a period not ex-
5 ceeding 12 months, or bar such person from being
6 associated with a security-based swap dealer or
7 major security-based swap participant, if the Com-
8 mission finds, on the record after notice and oppor-
9 tunity for a hearing, that such censure, placing of
10 limitations, suspension, or bar is in the public inter-
11 est and that such person—

12 “(A) has committed or omitted any act, or
13 is subject to an order or finding, described in
14 subparagraph (A), (D), or (E) of paragraph (4)
15 of section 15(b);

16 “(B) as been convicted of any offense spec-
17 ified in subparagraph (B) of such paragraph
18 (4) within 10 years of the commencement of the
19 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, described in subparagraph (G) of
5 such paragraph (4).

6 “(4) NO VIOLATIONS OF ORDERS.—It shall be
7 unlawful—

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.”.

24 (e) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
25 TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)

1 through (3) of section 9(b) of the Securities Exchange Act
2 of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read
3 as follows:

4 “(1) any transaction in connection with any se-
5 curity whereby any party to such transaction ac-
6 quires—

7 “(A) any put, call, straddle, or other op-
8 tion or privilege of buying the security from or
9 selling the security to another without being
10 bound to do so;

11 “(B) any security futures product on the
12 security; or

13 “(C) any security-based swap involving the
14 security or the issuer of the security;

15 “(2) any transaction in connection with any se-
16 curity with relation to which he has, directly or indi-
17 rectly, any interest in any—

18 “(A) such put, call, straddle, option, or
19 privilege;

20 “(B) such security futures product; or

21 “(C) such security-based swap; or

22 “(3) any transaction in any security for the ac-
23 count of any person who he has reason to believe
24 has, and who actually has, directly or indirectly, any
25 interest in any—

1 “(A) such put, call, straddle, option, or
2 privilege;

3 “(B) such security futures product with re-
4 lation to such security; or

5 “(C) any security-based swap involving
6 such security or the issuer of such security.”.

7 (f) **RULEMAKING AUTHORITY TO PREVENT FRAUD,**
8 **MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-**
9 **BASED SWAPS AND SECURITY-BASED SWAP AGREE-**
10 **MENTS.**—Section 9 of the Securities Exchange Act of
11 1934 (15 U.S.C. 78i) is amended by adding at the end
12 the following:

13 “(j) **PROHIBITION.**—It shall be unlawful for any per-
14 son, directly or indirectly, by the use of any means or in-
15 strumentality of interstate commerce or of the mails, or
16 of any facility of any national securities exchange, to effect
17 any transaction in, or to induce or attempt to induce the
18 purchase or sale of, any security-based swap or any secu-
19 rity-based swap agreement, in connection with which such
20 person engages in any fraudulent, deceptive, or manipula-
21 tive act or practice, makes any fictitious quotation, or en-
22 gages in any transaction, practice, or course of business
23 which operates as a fraud or deceit upon any person. The
24 Commission shall, for the purposes of this paragraph, by
25 rules and regulations define, and prescribe means reason-

1 ably designed to prevent, such transactions, acts, prac-
2 tices, and courses of business as are fraudulent, deceptive,
3 or manipulative, and such quotations as are fictitious.”.

4 (g) POSITION LIMITS AND POSITION ACCOUNT-
5 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
6 Exchange Act of 1934 is amended by inserting after sec-
7 tion 10A (15 U.S.C. 78j–1) the following new section:

8 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
9 **ABILITY FOR SECURITY-BASED SWAPS AND**
10 **LARGE TRADER REPORTING.**

11 “(a) AGGREGATE POSITION LIMITS.—As a means
12 reasonably designed to prevent fraud and manipulation,
13 the Commission may, by rule or regulation, as necessary
14 or appropriate in the public interest or for the protection
15 of investors, establish limits (including related hedge ex-
16 emption provisions) on the aggregate number or amount
17 of positions that may be held by any person or persons
18 across—

19 “(1) securities listed on a national securities ex-
20 change; and

21 “(2) security-based swaps that perform or af-
22 fect a significant price discovery function with re-
23 spect to regulated markets.

24 “(b) EXEMPTIONS.—The Commission, by rule, regu-
25 lation, or order, may conditionally or unconditionally ex-

1 empt any person or class of persons, any security-based
2 swap or class of security-based swaps, or any transaction
3 or class of transactions from any requirement it may es-
4 tablish under this section with respect to position limits.

5 “(c) SELF-REGULATORY ORGANIZATION RULES.—As
6 a means reasonably designed to prevent fraud or manipu-
7 lation, the Commission, by rule, regulation, or order, as
8 necessary or appropriate in the public interest, for the pro-
9 tection of investors, or otherwise in furtherance of the pur-
10 poses of this title, may direct a self-regulatory organiza-
11 tion—

12 “(1) to adopt rules regarding the size of posi-
13 tions in any security-based swap and any security on
14 which such security-based swap is based that may be
15 held by—

16 “(A) any member of such self-regulatory
17 organization; or

18 “(B) any person for whom a member of
19 such self-regulatory organization effects trans-
20 actions in such security-based swap or other se-
21 curity; and

22 “(2) to adopt rules reasonably designed to en-
23 sure compliance with requirements prescribed by the
24 Commission under subsection (a).

1 “(d) LARGE SECURITY-BASED SWAP TRADER RE-
2 PORTING.—

3 “(1) PROHIBITION.—It shall be unlawful for
4 any person to enter into any security-based swap
5 if—

6 “(A) such person shall directly or indi-
7 rectly enter into such security-based swaps dur-
8 ing any 1 day in an amount equal to or in ex-
9 cess of such amount as shall be fixed from time
10 to time by the Commission; and

11 “(B) such person shall directly or indi-
12 rectly have or obtain a position in such secu-
13 rity-based swaps equal to or in excess of such
14 amount as shall be fixed from time to time by
15 the Commission, unless such person—

16 “(i) files or causes to be filed with the
17 properly designated officer of the Commis-
18 sion such reports regarding any trans-
19 actions or positions described in subpara-
20 graphs (A) and (B) as the Commission
21 may by rule or regulation require; and

22 “(ii) needs books and records of all
23 such security-based swaps and any trans-
24 actions and positions in any related secu-
25 rity traded on or subject to the rules of

1 any national securities exchange, and of
2 purchase and sale commitments of, such a
3 security.

4 “(2) RECORDKEEPING.—The books and records
5 required to be kept under paragraph (1) shall—

6 “(A) show complete details concerning all
7 transactions and positions as the Commission
8 may by rule or regulation prescribe; and

9 “(B) be open at all times to inspection and
10 examination by any representative of the Com-
11 mission.

12 “(3) RULE OF CONSTRUCTION.—For the pur-
13 pose of this subsection, the security-based swaps,
14 and securities transactions and positions of any per-
15 son shall include such security-based swaps, trans-
16 actions and positions of any persons directly or indi-
17 rectly controlled by such person.”.

18 (h) PUBLIC REPORTING AND REPOSITORIES FOR SE-
19 CURITY-BASED SWAP AGREEMENTS.—Section 13 of the
20 Securities Exchange Act of 1934 (15 U.S.C. 78m) is
21 amended by adding at the end the following:

22 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
23 BASED SWAP DATA.—

24 “(1) IN GENERAL.—The Commission, or a per-
25 son designated by the Commission pursuant to para-

1 graph (2), shall make available to the public, in a
2 manner that does not disclose the business trans-
3 actions and market positions of any person, aggre-
4 gate data on security-based swap trading volumes
5 and positions from the sources set forth in para-
6 graph (3).

7 “(2) **DESIGNEE OF THE COMMISSION.**—The
8 Commission may designate a clearing agency or a
9 security-based swap repository to carry out the pub-
10 lic reporting requirement described in paragraph (1).

11 “(3) **SOURCES OF INFORMATION.**—The sources
12 of the information to be publicly reported as de-
13 scribed in paragraph (1) are—

14 “(A) clearing agencies pursuant to section
15 3B;

16 “(B) security-based swap repositories pur-
17 suant to subsection (n); and

18 “(C) reports received by the Commission
19 pursuant to section 13A.

20 “(n) **SECURITY-BASED SWAP REPOSITORIES.**—

21 “(1) **REGISTRATION REQUIREMENT.**—

22 “(A) **IN GENERAL.**—A person may register
23 as a security-based swap repository by filing
24 with the Commission an application in such
25 form as the Commission, by rule, may pre-

1 scribe, containing the rules of the security-
2 based swap repository and such other informa-
3 tion and documentation as the Commission, by
4 rule, may prescribe as necessary or appropriate
5 in the public interest, for the protection of in-
6 vestors, or in the furtherance of the purposes of
7 this section.

8 “(B) INSPECTION AND EXAMINATION.—
9 Registered security-based swap repositories
10 shall be subject to inspection and examination
11 by any representatives of the Commission.

12 “(2) STANDARD SETTING.—

13 “(A) DATA IDENTIFICATION.—The Com-
14 mission shall prescribe standards that specify
15 the data elements for each security-based swap
16 that shall be collected and maintained by each
17 security-based swap repository.

18 “(B) DATA COLLECTION AND MAINTEN-
19 NANCE.—The Commission shall prescribe data
20 collection and data maintenance standards for
21 security-based swap repositories.

22 “(C) COMPARABILITY.—The standards
23 prescribed by the Commission under this sub-
24 section shall be comparable to the data stand-

1 ards imposed by the Commission on clearing
2 agencies that clear security-based swaps.

3 “(3) DUTIES.—A security-based swap reposi-
4 tory shall—

5 “(A) accept data prescribed by the Com-
6 mission for each security-based swap under
7 paragraph (2);

8 “(B) maintain such data in such form and
9 manner and for such period as may be required
10 by the Commission;

11 “(C) provide to the Commission, or its des-
12 ignee, such information as is required by, and
13 in a form and at a frequency to be determined
14 by, the Commission, in order to comply with the
15 public reporting requirements contained in sub-
16 section (m); and

17 “(D) make available, on a confidential
18 basis, all data obtained by the security-based
19 swap repository, including individual
20 counterparty trade and position data, to the
21 Commission, the appropriate Federal banking
22 agencies, the Commodity Futures Trading
23 Commission, the Agency for Financial Stability,
24 and the Department of Justice or to other per-
25 sons the Commission deems appropriate, includ-

1 ing foreign financial supervisors (including for-
2 eign futures authorities), foreign central banks,
3 and foreign ministries.

4 “(4) **REQUIRED REGISTRATION FOR SECURITY-**
5 **BASED SWAP REPOSITORIES.**—Any person that is re-
6 quired to be registered as a securities-based swap re-
7 pository under this subsection shall register with the
8 Commission, regardless of whether that person also
9 is registered with the Commodity Futures Trading
10 Commission as a swap repository.

11 “(5) **HARMONIZATION OF RULES.**—Not later
12 than 180 days after the effective date of the Over-
13 the-Counter Derivatives Markets Act of 2009, the
14 Commission and the Commodity Futures Trading
15 Commission shall jointly adopt uniform rules gov-
16 erning persons that are registered under this section
17 and persons that are registered as swap repositories
18 under the Commodity Exchange Act (7 U.S.C. 1 et
19 seq.), including uniform rules that specify the data
20 elements that shall be collected and maintained by
21 each repository.

22 “(6) **EXEMPTIONS.**—The Commission may ex-
23 empt, conditionally or unconditionally, a security-
24 based swap repository from the requirements of this
25 section if the Commission finds that such security-

1 based swap repository is subject to comparable, com-
2 prehensive supervision or regulation on a consoli-
3 dated basis by the Commodity Futures Trading
4 Commission, the Financial Institutions Regulatory
5 Administration, or the appropriate governmental au-
6 thorities in the organization’s home country.”.

7 (i) **RECORDKEEPING BY SECURITY-BASED SWAP RE-**
8 **POSITORIES.**—Section 17(a)(1) of the Securities Exchange
9 Act of 1934 (15 U.S.C. 78m) is amended by inserting
10 “registered security-based swap repository,” after “reg-
11 istered securities information processor,”.

12 **SEC. 754. SEGREGATION OF ASSETS HELD AS COLLATERAL**
13 **IN SECURITY-BASED SWAP TRANSACTIONS.**

14 The Securities Exchange Act of 1934 (15 U.S.C. 78a
15 et seq.) is further amended by adding after section 3C (as
16 added by section 753) the following:

17 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
18 **IN SECURITY-BASED SWAP TRANSACTIONS.**

19 “(a) **CLEARED SECURITY-BASED SWAPS.**—A secu-
20 rity-based swap dealer or clearing agency by or through
21 which funds or other property are held to margin, guar-
22 antee, or secure the obligations of a counterparty under
23 a security-based swap to be cleared by or through a clear-
24 ing agency shall segregate, maintain, and use the funds
25 or other property for the benefit of the counterparty, in

1 accordance with such rules and regulations as the Com-
2 mission shall prescribe for nonbank security-based swap
3 dealers or clearing agencies, or the Financial Institutions
4 Regulatory Administration shall prescribe for bank secu-
5 rity-based swap dealers. Any such funds or other property
6 shall be treated as customer property under this Act.

7 “(b) OTHER SECURITY-BASED SWAPS.—At the re-
8 quest of a security-based swap counterparty who provides
9 funds or other property to a security-based swap dealer
10 to margin, guarantee, or secure the obligations of the
11 counterparty under a security-based swap between the
12 counterparty and the security-based swap dealer that is
13 not submitted for clearing to a clearing agency, the secu-
14 rity-based swap dealer shall segregate the funds or other
15 property for the benefit of the counterparty, and maintain
16 the funds or other property in an account which is carried
17 by an independent third-party custodian and designated
18 as a segregated account for the counterparty, in accord-
19 ance with such rules and regulations as the Commission
20 shall prescribe for nonbank security-based swap dealers or
21 clearing agencies, or the Financial Institutions Regulatory
22 Administration shall prescribe for bank security-based
23 swap dealers. This subsection shall not be interpreted to
24 preclude commercial arrangements regarding the invest-
25 ment of the segregated funds or other property and the

1 related allocation of gains and losses resulting from any
2 such investment, provided, however, that the segregated
3 funds or other property under this subsection may be in-
4 vested only in such investments as the Commission or the
5 Financial Institutions Regulatory Administration, as ap-
6 plicable, permits by rule or regulation.”.

7 **SEC. 755. REPORTING AND RECORDKEEPING.**

8 (a) **ADDITIONAL REPORTING REQUIREMENTS.**—The
9 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
10 is amended by inserting after section 13 the following sec-
11 tion:

12 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
13 **TAIN SECURITY-BASED SWAPS.**

14 “(a) **IN GENERAL.**—Any person who enters into a se-
15 curity-based swap shall satisfy the reporting requirements
16 under subsection (b), if such person—

17 “(1) did not clear the security-based swap in
18 accordance with section 3B; and

19 “(2) did not have data regarding the security-
20 based swap accepted by a security-based swap repos-
21 itory in accordance with rules adopted by the Com-
22 mission under section 13(n).

23 “(b) **REPORTS.**—Any person described in subsection
24 (a) shall—

1 “(1) make such reports in such form and man-
2 ner and for such period as the Commission shall pre-
3 scribe by rule or regulation regarding the security-
4 based swaps held by the person; and

5 “(2) keep books and records pertaining to the
6 security-based swaps held by the person in such
7 form and manner and for such period as may be re-
8 quired by the Commission, which books and records
9 shall be open to inspection by any representative of
10 the Commission, an appropriate Federal banking
11 agency, the Commodity Futures Trading Commis-
12 sion, the Agency for Financial Stability, and the De-
13 partment of Justice.

14 “(c) IDENTICAL DATA.—In adopting rules under this
15 section, the Commission shall require persons described in
16 subsection (a) to report the same or more comprehensive
17 data than the Commission requires security-based swap
18 repositories to collect under section 13(n).”.

19 (b) BENEFICIAL OWNERSHIP REPORTING.—

20 (1) Section 13(d)(1) of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
22 inserting “or otherwise becomes or is deemed to be-
23 come a beneficial owner of any of the foregoing upon
24 the purchase or sale of a security-based swap or
25 other derivative instrument that the Commission

1 may define by rule, and” after “Alaska Native
2 Claims Settlement Act,”.

3 (2) Section 13(g)(1) of the Securities Exchange
4 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by
5 inserting “or otherwise becomes or is deemed to be-
6 come a beneficial owner of any security of a class de-
7 scribed in subsection (d)(1) upon the purchase or
8 sale of a security-based swap or other derivative in-
9 strument that the Commission may define by rule”
10 after “subsection (d)(1) of this section”.

11 (c) **REPORTS BY INSTITUTIONAL INVESTMENT MAN-**
12 **AGERS.**—Section 13(f) of the Securities Exchange Act of
13 1934 (15 U.S.C. 78m(f)(1)) is amended—

14 (1) in paragraph (1)—

15 (A) by inserting “(A)” after “accounts
16 holding”; and

17 (B) by inserting “or (B) security-based de-
18 rivative instruments or other derivative securi-
19 ties that the Commission may determine by
20 rule, having such values as the Commission, by
21 rule, may determine” after “less than
22 \$10,000,000) as the Commission, by rule, may
23 determine.”; and

24 (2) in paragraph (3), by striking “section
25 13(d)(1) of this title” and inserting “subsection

1 (d)(1) of this section and of security-based swaps or
2 other derivative instrument that the Commission
3 may determine by rule.”.

4 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
5 Section 15(b)(4) of the Securities Exchange Act of 1934
6 (15 U.S.C. 78o(b)(4)) is amended—

7 (1) in subparagraph (C), by inserting “security-
8 based swap dealer, major security-based swap partici-
9 pant,” after “government securities dealer,”; and

10 (2) in subparagraph (F), by inserting “, or se-
11 curity-based swap dealer, or a major security-based
12 swap participant” after “or dealer”.

13 (e) TRANSACTIONS BY CORPORATE INSIDERS.—Sec-
14 tion 16(f) of the Securities Exchange Act of 1934 (15
15 U.S.C. 78p) is amended by inserting “or security-based
16 swaps” after “security futures products”.

17 **SEC. 756. STATE GAMING AND BUCKET SHOP LAWS.**

18 Section 28(a) of the Securities Exchange Act of 1934
19 (15 U.S.C. 78bb(a)) is amended to read as follows:

20 “(a) ADDITIONAL RIGHTS AND REMEDIES; RECOV-
21 ERY OF ACTUAL DAMAGES; STATE SECURITIES COMMIS-
22 SIONS.—Except as provided in subsection (f), the rights
23 and remedies provided by this title shall be in addition
24 to any and all other rights and remedies that may exist
25 at law or in equity, but no person permitted to maintain

1 a suit for damages under the provisions of this title shall
2 recover, through satisfaction of judgment in 1 or more ac-
3 tions, a total amount in excess of his actual damages on
4 account of the act complained of. Except as otherwise spe-
5 cifically provided in this title, nothing in this title shall
6 affect the jurisdiction of the securities commission (or any
7 agency or officer performing like functions) of any State
8 over any security or any person insofar as it does not con-
9 flict with the provisions of this title or the rules and regu-
10 lations thereunder. No State law which prohibits or regu-
11 lates the making or promoting of wagering or gaming con-
12 tracts, or the operation of ‘bucket shops’ or other similar
13 or related activities, shall invalidate—

14 “(1) any put, call, straddle, option, privilege, or
15 other security subject to this title (except a security-
16 based swap agreement and any security that has a
17 pari-mutuel payout or otherwise is determined by
18 the Commission, acting by rule, regulation, or order,
19 to be appropriately subject to such laws), or apply
20 to any activity which is incidental or related to the
21 offer, purchase, sale, exercise, settlement, or closeout
22 of any such security;

23 “(2) any security-based swap between eligible
24 contract participants; or

1 “(3) any security-based swap effected on a na-
2 tional securities exchange registered pursuant to sec-
3 tion 6(b).

4 No provision of State law regarding the offer, sale, or dis-
5 tribution of securities shall apply to any transaction in a
6 security-based swap or a security futures product, except
7 that this sentence shall not be construed as limiting any
8 State antifraud law of general applicability.”.

9 **SEC. 757. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

10 **TREATMENT OF SECURITY-BASED SWAPS.**

11 (a) DEFINITIONS.—Section 2(a) of the Securities Act
12 of 1933 (15 U.S.C. 77b(a)) is amended—

13 (1) in paragraph (1), by inserting “security-
14 based swap,” after “security future,”;

15 (2) in paragraph (3), by adding at the end the
16 following: “Any offer or sale of a security-based
17 swap by or on behalf of the issuer of the securities
18 upon which such security-based swap is based or is
19 referenced, an affiliate of the issuer, or an under-
20 writer, shall constitute a contract for sale of, sale of,
21 offer for sale, or offer to sell such securities,”; and

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

23 “(17) The terms ‘swap’ and ‘security-based
24 swap’ have the same meanings as provided in sec-
25 tions 1a(35) of the Commodity Exchange Act (7

1 U.S.C. 1a(35)) and section 3(a)(68) of the Securi-
2 ties Exchange Act of 1934 (15 U.S.C. 18(c)(a)(68)),
3 respectively.

4 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
5 rity-based swap shall be deemed to mean the execu-
6 tion, termination (prior to its scheduled maturity
7 date), assignment, exchange, or similar transfer or
8 conveyance of, or extinguishing of rights or obliga-
9 tions under, a security-based swap, as the context
10 may require.”.

11 (b) **REGISTRATION OF SECURITY-BASED SWAPS.**—
12 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
13 is amended by adding at the end the following:

14 “(d) **MANDATORY REGISTRATION: PROHIBITION ON**
15 **SALE.**—Notwithstanding the provisions of section 3 or
16 section 4, except as the Commission shall otherwise ex-
17 empt by rule or regulation pursuant to this title, unless
18 a registration statement meeting the requirements of sub-
19 section (a) of section 10 is in effect as to a security-based
20 swap, it shall be unlawful for any person, directly or indi-
21 rectly, to make use of any means or instruments of trans-
22 portation or communication in interstate commerce or of
23 the mails to offer to sell, offer to buy or purchase or sell
24 a security-based swap to any person who is not an eligible

1 contract participant as defined in section 1a(13) of the
2 Commodity Exchange Act (7 U.S.C. 1a(13)).”.

3 **SEC. 758. OTHER AUTHORITY.**

4 Unless otherwise provided by its terms, this subtitle
5 does not divest any appropriate Federal banking agency,
6 the Commission, the Commodity Futures Trading Com-
7 mission, or other Federal or State agency, of any authority
8 derived from any other applicable law.

9 **SEC. 759. JURISDICTION.**

10 Section 36 of the Securities Exchange Act of 1934
11 (15 U.S.C. 78mm) is amended

12 (1) in subsection (a)(1), by inserting “and (c)
13 and subject to subsection (d)” after “Except as pro-
14 vided in subsection (b)”;

15 (2) by adding at the end the following:

16 “(c) DERIVATIVES.—The Commission shall not have
17 the authority to grant exemptions from the security-based
18 swap provisions of this Act or the Over-the-Counter De-
19 rivatives Markets Act of 2009, except as expressly author-
20 ized under the provisions of that Act.

21 “(d) EXPRESS AUTHORITY.—The Commission is ex-
22 pressly authorized to use any authority granted to the
23 Commission under subsection (a) to exempt any person,
24 security, or transaction, or any class or classes of persons,
25 securities, or transactions from any provision or provisions

1 of this title, or of any rule or regulation thereunder, that
2 applies to such person, security, or transaction solely be-
3 cause a ‘security-based swap’ is a ‘security’ under section
4 3(a).”.

5 **Subtitle C—Other Provisions**

6 **SEC. 761. INTERNATIONAL HARMONIZATION.**

7 In order to promote effective and consistent global
8 regulation of swaps and security-based swaps, the Securi-
9 ties and Exchange Commission, the Commodity Futures
10 Trading Commission, the Financial Institutions Regu-
11 latory Administration, the Agency for Financial Stability,
12 and the Treasury Department—

13 (1) shall, both individually and collectively, con-
14 sult and coordinate with foreign regulatory authori-
15 ties on the establishment of consistent international
16 standards with respect to the regulation of such
17 swaps; and

18 (2) may, both individually and collectively,
19 agree to such information-sharing arrangements as
20 may be deemed to be necessary or appropriate in the
21 public interest or for the protection of investors and
22 swap counterparties.

23 **SEC. 762. INTERAGENCY COOPERATION.**

24 (a) **JOINT ADVISORY COMMITTEE.**—

1 (1) ESTABLISHMENT.—The Securities and Ex-
2 change Commission and the Commodity Futures
3 Trading Commission, shall establish a joint advisory
4 committee or work through an established joint advi-
5 sory committee to consider and develop solutions to
6 emerging and ongoing issues of common interest re-
7 lating to the trading and regulation of products reg-
8 ulated by the Securities and Exchange Commission
9 and the Commodity Futures Trading Commission,
10 including securities, commodity futures, swaps and
11 securities-based swaps.

12 (2) MEMBERSHIP.—The joint advisory com-
13 mittee shall—

14 (A) be fairly balanced in terms of the
15 points of view represented and the functions to
16 be performed by the committee;

17 (B) include at least 1 representative from
18 each of the Securities and Exchange Commis-
19 sion and the Commodity Futures Trading Com-
20 mission; and

21 (C) include other individuals with expertise
22 in commodities and securities trading, commod-
23 ities and securities law, investor protection, con-
24 sumer protection, or international markets.

1 (3) **REPORTING.**—Not later than 6 months
2 after the date of enactment of this title, and every
3 6 months thereafter, the joint advisory committee
4 shall report its findings and recommendations to
5 the—

6 (A) Committee on Banking, Housing, and
7 Urban Affairs of the Senate;

8 (B) Committee on Financial Services of
9 the House of Representatives;

10 (C) Committee on Agriculture, Nutrition,
11 and Forestry of the Senate; and

12 (D) Committee on Agriculture of the
13 House of Representatives.

14 (4) **JOINT FUNDING.**—Notwithstanding any
15 other provision of law, amounts made available to
16 the Commodity Futures Trading Commission and
17 the Securities and Exchange Commission for the
18 current or subsequent fiscal years by a current or
19 future appropriations Act may be used for the inter-
20 agency funding of the joint advisory committee spon-
21 sored by such agencies pursuant to this section.

22 (b) **JOINT ENFORCEMENT TASK FORCE.**—The Secu-
23 rities and Exchange Commission and the Commodity Fu-
24 tures Trading Commission shall jointly establish an inter-
25 agency group to be known as the Joint Enforcement Task

1 Force in order to improve market oversight, enhance en-
2 forcement, and relieve duplicative regulatory burdens. The
3 Task Force shall consist of staff from each agency to co-
4 ordinate and develop processes for conducting joint inves-
5 tigations in response to events that affect both the com-
6 modities and securities markets. The Task Force shall
7 prepare and offer training programs for the staffs of both
8 agencies, develop enforcement and examination standards
9 and protocols, and coordinate information sharing.

10 (c) **TRADING AND MARKETS FELLOWSHIP PRO-**
11 **GRAM.—**

12 (1) **IN GENERAL.—**The Securities and Ex-
13 change Commission, the Commodity Futures Trad-
14 ing Commission, and the Board of Governors of the
15 Federal Reserve System shall jointly establish a
16 Trading and Markets Fellowship Program in order
17 to enhance staff understanding about the inter-
18 actions between financial markets and the economy.

19 (2) **SELECTION OF FELLOWS.—**On January 1
20 of each calendar year, the Chairmen of the Securi-
21 ties and Exchange Commission, the Commodity Fu-
22 tures Trading Commission, and the Board of Gov-
23 ernors of the Federal Reserve System shall jointly
24 announce the selection of 3 employees from their re-
25 spective agencies to participate in the fellowship pro-

1 gram established under paragraph (1), for a total
2 annual class size of 9 fellows per calendar year.

3 (3) **JOINT TRAINING CURRICULUM.**—

4 (A) **DEVELOPMENT.**—The Securities and
5 Exchange Commission, the Commodity Futures
6 Trading Commission, and the Board of Gov-
7 ernors of the Federal Reserve System shall
8 jointly develop a 1-month long training cur-
9 riculum that focuses on the mission and activi-
10 ties of each agency, enforcement matters, and
11 economic and financial analysis.

12 (B) **FACULTY.**—The training curriculum
13 developed under subparagraph (A) shall be
14 taught by senior officials from each agency, ex-
15 perienced academics, and professionals from
16 commodities and securities trading.

17 (C) **MANDATORY ATTENDANCE.**—Each of
18 the 9 fellows selected under paragraph (2) shall
19 complete the training curriculum developed
20 under this paragraph.

21 (4) **CROSS-AGENCY ROTATION.**—

22 (A) **IN GENERAL.**—Following the comple-
23 tion of the 1-month training curriculum devel-
24 oped under paragraph (3), each fellow shall be

1 assigned to serve at each participating agency
2 for 3 months each.

3 (B) SUBMISSION OF PAPER.—Upon com-
4 pletion of the Trading and Markets Fellowship
5 Program, each fellow shall submit a written
6 paper to the Chairmen of the Securities and
7 Exchange Commission, the Commodity Futures
8 Trading Commission, and the Board of Gov-
9 ernors of the Federal Reserve System—

10 (i) summarizing his or her observa-
11 tions from participating in the program;
12 and

13 (ii) providing recommendations for en-
14 hancing the contribution of each agency to
15 the stable functioning of the financial mar-
16 kets and economy of the nation.

17 (d) CROSS-AGENCY ENFORCEMENT.—The Securities
18 and Exchange Commission and the Commodity Futures
19 Trading Commission shall jointly establish a cross-agency
20 training and education curriculum for enforcement per-
21 sonnel in order to improve the ability of employees at both
22 agencies to understand and respond to matters where both
23 agencies have enforcement jurisdiction and interest.

24 (e) DETAILING OF STAFF.—The Securities and Ex-
25 change Commission and the Commodity Futures Trading

1 Commission shall jointly establish a program for the reg-
2 ular detailing of staff between such agencies.

3 **SEC. 763. STUDY AND REPORT ON IMPLEMENTATION.**

4 (a) **STUDY REQUIRED.**—The Comptroller General of
5 the United States shall conduct a study of—

6 (1) how the Commodity Futures Trading Com-
7 mission and the Securities and Exchange Commis-
8 sion have implemented this title and the amend-
9 ments made by this title;

10 (2) the extent to which jurisdictional disputes
11 have created challenges in the process of imple-
12 menting this title and the amendments made by this
13 title;

14 (3) the benefits and drawbacks of harmonizing
15 laws implemented by the Commodity Futures Trad-
16 ing Commission and the Securities and Exchange
17 Commission, and merging those agencies;

18 (4) the benefits and feasibility of—

19 (A) holding of both futures and securities
20 products in the same account to allow cross-net-
21 ting; and

22 (B) creating the ability to cross-net across
23 securities and futures accounts; and

1 (5) the benefits and feasibility of imposing a
2 uniform fiduciary duty on financial intermediaries
3 who provide similar investment advisory services.

4 (b) **REPORT REQUIRED.**—Not later than 1 year after
5 the date of enactment of this title, the Comptroller Gen-
6 eral shall submit a report on the results of the study re-
7 quired by this section to Congress, the Commodity Fu-
8 tures Trading Commission, and the Securities and Ex-
9 change Commission.

10 **SEC. 764. RECOMMENDATIONS FOR CHANGES TO INSOL-**
11 **VENCY LAWS.**

12 Not later than 180 days after the date of enactment
13 of this Act, the Securities and Exchange Commission, the
14 Commodity Futures Trading Commission, and FIRA shall
15 transmit to Congress recommendations on legislative
16 changes to the Federal insolvency laws—

17 (1) in order to enhance the legal certainty with
18 respect to swap participants clearing swaps and se-
19 curity-based swaps through a derivatives clearing or-
20 ganization or clearing agency, including , includ-
21 ing—

22 (A) customer rights to cover margin depos-
23 its or custodial property held at or through an
24 insolvent swap clearinghouse or clearing partici-
25 pant; and

1 (B) the enforceability or clearing rules re-
2 lating to the portability of customer swap posi-
3 tions (and associated margins) upon the insol-
4 vency of a clearing participant;

5 (2) to clarify and harmonize the insolvency law
6 framework applicable to entities that are both com-
7 modity brokers (as defined in section 101(6) of title
8 11, United States Code) and registered brokers or
9 dealers (as defined in section 3(a) of the Securities
10 Exchange Act of 1934 (15 U.S.C. 78c(a)); and

11 (3) to facilitate the portfolio margining of secu-
12 rities and commodities futures and options positions
13 held through entities that are both futures commis-
14 sion merchants (as defined in section 1a of the Com-
15 modity Exchange Act) and registered brokers or
16 dealers (as defined in section 3(a) of the Securities
17 Exchange Act of 1934 (15 U.S.C. 78c(a)).

18 **SEC. 765. EFFECTIVE DATE.**

19 Except as specifically provided in the amendments
20 made by this title, this title, and the amendments made
21 by this title, shall take effect 180 days after the date of
22 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 2009”.

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) **DESIGNATED ACTIVITY.**—The term “des-
9 ignated activity” means a payment, clearing, or set-
10 tlement activity that the Agency has designated as
11 systemically important under section 804.

12 (2) **DESIGNATED FINANCIAL MARKET UTIL-**
13 **ITY.**—The term “designated financial market util-
14 ity” means a financial market utility that the Agen-
15 cy has designated as systemically important under
16 section 804.

17 (3) **FINANCIAL INSTITUTION.**—The term “fi-
18 nancial institution” means—

19 (A) a depository institution, as defined in
20 section 3 of the Federal Deposit Insurance Act
21 (12 U.S.C. 1813);

22 (B) a branch or agency of a foreign bank,
23 as defined in section 1(b) of the International
24 Banking Act of 1978 (12 U.S.C. 3101);

1 (C) an organization operating under sec-
2 tion 25 or 25A of the Federal Reserve Act (12
3 U.S.C. 601–604a and 611 through 631);

4 (D) a credit union, as defined in section
5 101 of the Federal Credit Union Act (12
6 U.S.C. 1752);

7 (E) a broker or dealer, as defined in sec-
8 tion 3 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78c);

10 (F) an investment company, as defined in
11 section 3 of the Investment Company Act of
12 1940 (15 U.S.C. 80a–3);

13 (G) an insurance company, as defined in
14 section 2 of the Investment Company Act of
15 1940 (15 U.S.C. 80a–2);

16 (H) an investment adviser, as defined in
17 section 202 of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b–2);

19 (I) a futures commission merchant, com-
20 modity trading advisor, or commodity pool oper-
21 ator, as defined in section 1a of the Commodity
22 Exchange Act (7 U.S.C. 1a); and

23 (J) any company engaged in activities that
24 are financial in nature or incidental to a finan-
25 cial activity, as described in section 4 of the

1 Bank Holding Company Act of 1956 (12
2 U.S.C. 1843(k)).

3 (4) FINANCIAL MARKET UTILITY.—The term
4 “financial market utility” means any person that
5 manages or operates a multilateral system for the
6 purpose of transferring, clearing, or settling pay-
7 ments, securities, or other financial transactions
8 among financial institutions or between financial in-
9 stitutions and the person.

10 (5) PAYMENT, CLEARING, OR SETTLEMENT AC-
11 TIVITY.—

12 (A) IN GENERAL.—The term “payment,
13 clearing, or settlement activity” means an activ-
14 ity carried out by 1 or more financial institu-
15 tions to facilitate the completion of financial
16 transactions.

17 (B) FINANCIAL TRANSACTION.—For the
18 purposes of subparagraph (A), the term “finan-
19 cial transaction” includes—

- 20 (i) funds transfers;
21 (ii) securities contracts;
22 (iii) contracts of sale of a commodity
23 for future delivery;
24 (iv) forward contracts;
25 (v) repurchase agreements;

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- 1 (vi) swap agreements;
- 2 (vii) security-based swap agreements;
- 3 (viii) foreign exchange contracts;
- 4 (ix) financial derivatives contracts;

5 and

- 6 (x) any similar transaction that the
- 7 Agency determines, by rule or order, to be
- 8 a financial transaction for purposes of this
- 9 title.

10 (C) INCLUDED ACTIVITIES.—When con-
11 ducted with respect to a financial transaction,
12 payment, clearing, and settlement activities may
13 include—

- 14 (i) the calculation and communication
- 15 of unsettled financial transactions between
- 16 counterparties;

- 17 (ii) the netting of transactions;

- 18 (iii) provision and maintenance of
- 19 trade, contract, or instrument information;

- 20 (iv) the management of risks and ac-
- 21 tivities associated with continuing financial
- 22 transactions;

- 23 (v) transmittal and storage of pay-
- 24 ment instructions;

- 25 (vi) the movement of funds;

1 (vii) the final settlement of financial
2 transactions; and

3 (viii) other similar functions that the
4 Agency may determine by rule or order.

5 (6) SUPERVISORY AGENCY.—

6 (A) IN GENERAL.—The term “Supervisory
7 Agency” means the Federal agency that has
8 primary jurisdiction over a designated financial
9 market utility under Federal banking, securi-
10 ties, or commodity futures laws, including—

11 (i) the Securities and Exchange Com-
12 mission, with respect to a designated fi-
13 nancial market utility that is a clearing
14 agency registered with the Securities and
15 Exchange Commission;

16 (ii) the Commodity Futures Trading
17 Commission, with respect to a designated
18 financial market utility that is a deriva-
19 tives clearing organization registered with
20 the Commodity Futures Trading Commis-
21 sion; and

22 (iii) the Financial Institutions Regu-
23 latory Administration, with respect to a
24 designated financial market utility that
25 is—

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1 (I) an insured State nonmember
2 bank or an insured branch of a for-
3 eign bank;

4 (II) a national bank or a Federal
5 branch (other than an insured
6 branch) or a Federal agency of a for-
7 eign bank;

8 (III) a savings association or a
9 savings and loan holding company; or

10 (IV) otherwise not subject to the
11 jurisdiction of any agency listed in
12 clauses (i) and (ii).

13 (B) MULTIPLE AGENCY JURISDICTION.—If
14 a designated financial market utility is subject
15 to the jurisdictional supervision of more than 1
16 agency listed in subparagraph (A), then such
17 agencies should agree on 1 agency to act as the
18 Supervisory Agency, and if such agencies can-
19 not agree on which agency has primary jurisdic-
20 tion, the Agency shall decide which agency is
21 the Supervisory Agency for purposes of this
22 title.

23 (7) SYSTEMICALLY IMPORTANT AND SYSTEMIC
24 IMPORTANCE.—The terms “systemically important”
25 and “systemic importance” mean a situation where

1 the failure of or a disruption to the functioning of
2 a financial market utility or the conduct of a pay-
3 ment, clearing, or settlement activity could create, or
4 increase, the risk of significant liquidity or credit
5 problems spreading among financial institutions or
6 markets and thereby threaten the stability of the fi-
7 nancial system.

8 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

9 (a) DESIGNATION.—

10 (1) AGENCY FOR FINANCIAL STABILITY.—The
11 Agency, on a nondelegable basis, shall designate
12 those financial market utilities or payment, clearing,
13 or settlement activities that the Agency determines
14 are, or are likely to become, systemically important.

15 (2) CONSIDERATIONS.—In determining whether
16 a financial market utility or payment, clearing, or
17 settlement activity is, or is likely to become, system-
18 ically important, the Agency shall take into consider-
19 ation the following:

20 (A) The aggregate monetary value of
21 transactions processed by the financial market
22 utility or carried out through the payment,
23 clearing, or settlement activity.

24 (B) The aggregate exposure of the finan-
25 cial market utility or a financial institution en-

1 gaged in payment, clearing, or settlement activi-
2 ties to its counterparties.

3 (C) The relationship, interdependencies, or
4 other interactions of the financial market utility
5 or payment, clearing, or settlement activity with
6 other financial market utilities or payment,
7 clearing, or settlement activities.

8 (D) The effect that the failure of or a dis-
9 ruption to the financial market utility or pay-
10 ment, clearing, or settlement activity would
11 have on critical markets, financial institutions,
12 or the broader financial system.

13 (E) Any other factors that the Agency
14 deems appropriate.

15 (b) RESCISSION OF DESIGNATION.—

16 (1) IN GENERAL.—The Agency, on a nondele-
17 gable basis, shall rescind a designation of systemic
18 importance for a designated financial market utility
19 or designated activity if the Agency determines that
20 the utility or activity no longer meets the standards
21 for systemic importance.

22 (2) EFFECT OF RESCISSION.—Upon rescission,
23 the financial market utility or financial institutions
24 conducting the activity will no longer be subject to

1 the provisions of this title or any rules or orders pre-
2 scribed by the Agency under this title.

3 (c) CONSULTATION AND NOTICE AND OPPORTUNITY
4 FOR HEARING.—

5 (1) FINANCIAL MARKET UTILITY.—Before mak-
6 ing any determination under subsection (a) or (b)
7 with regard to a financial market utility, the Agency
8 shall consult with the relevant Supervisory Agency
9 and the Board of Governors.

10 (2) ADVANCE NOTICE AND OPPORTUNITY FOR
11 HEARING.—

12 (A) IN GENERAL.—Before making any de-
13 termination under subsection (a) or (b) with re-
14 gard to a financial market utility or a payment,
15 clearing, or settlement activity, the Agency shall
16 provide the financial market utility or, in the
17 case of a payment, clearing, or settlement activ-
18 ity, financial institutions with advance notice of
19 the proposed determination of the Agency.

20 (B) NOTICE IN FEDERAL REGISTER.—The
21 Agency shall provide such advance notice to fi-
22 nancial institutions by publishing a notice in
23 the Federal Register.

24 (C) REQUESTS FOR HEARING.—Within 30
25 days from the date of any notice of the pro-

1 posed determination of the Agency, the finan-
2 cial market utility or, in the case of a payment,
3 clearing, or settlement activity, a financial insti-
4 tution engaged in the designated activity may
5 request in writing an opportunity for a written
6 or oral hearing before the Agency to dem-
7 onstrate that the proposed designation or re-
8 scission of designation is not supported by sub-
9 stantial evidence.

10 (D) WRITTEN SUBMISSIONS.—Upon re-
11 ceipt of a timely request, the Agency shall fix
12 a time, not more than 30 days after receipt of
13 the request, unless extended at the request of
14 the financial market utility or financial institu-
15 tion, and place at which the financial market
16 utility or financial institution may appear, per-
17 sonally or through counsel, to submit written
18 materials, or, at the sole discretion of the Agen-
19 cy, oral testimony or oral argument.

20 (3) EMERGENCY EXCEPTION.—

21 (A) WAIVER OR MODIFICATION BY VOTE
22 OF THE AGENCY.—The Agency may waive or
23 modify the requirements of paragraph (2) if the
24 Agency determines, by an affirmative vote of
25 not less than $\frac{2}{3}$ of all members then serving

1 and available, that the waiver or modification is
2 necessary to prevent or mitigate an immediate
3 threat to the financial system posed by the fi-
4 nancial market utility or the payment, clearing,
5 or settlement activity.

6 (B) NOTICE OF WAIVER OR MODIFICA-
7 TION.—The Agency shall provide notice of the
8 waiver or modification to the financial market
9 utility concerned or, in the case of a payment,
10 clearing, or settlement activity, to financial in-
11 stitutions, as soon as practicable, which shall be
12 no later than 24 hours after the waiver or
13 modification in the case of a financial market
14 utility and 3 business days in the case of finan-
15 cial institutions. The Agency shall provide the
16 notice to financial institutions by posting a no-
17 tice on the website of the Agency and by pub-
18 lishing a notice in the Federal Register.

19 (d) NOTIFICATION OF FINAL DETERMINATION.—

20 (1) AFTER HEARING.—Within 60 days of any
21 hearing under subsection (c)(3), the Agency shall
22 notify the financial market utility or financial insti-
23 tutions of the final determination of the Agency in
24 writing, which shall include findings of fact upon
25 which the determination of the Agency is based.

1 (2) the conduct of designated activities by fi-
2 nancial institutions.

3 (b) **OBJECTIVES AND PRINCIPLES.**—The objectives
4 and principles for the risk management standards pre-
5 scribed under subsection (a) shall be to—

6 (1) promote robust risk management;

7 (2) promote safety and soundness;

8 (3) reduce systemic risks; and

9 (4) support the stability of the broader financial
10 system.

11 (c) **SCOPE.**—The standards prescribed under sub-
12 section (a) may address areas such as—

13 (1) risk management policies and procedures;

14 (2) margin and collateral requirements;

15 (3) participant or counterparty default policies
16 and procedures;

17 (4) the ability to complete timely clearing and
18 settlement of financial transactions;

19 (5) capital and financial resource requirements
20 for designated financial market utilities; and

21 (6) other areas that the Board determines are
22 necessary to achieve the objectives and principles in
23 subsection (b).

24 (d) **THRESHOLD LEVEL.**—The standards prescribed
25 under subsection (a) governing the conduct of designated

1 activities by financial institutions shall, where appropriate,
2 establish a threshold as to the level or significance of en-
3 gagement in the activity at which a financial institution
4 will become subject to the standards with respect to that
5 activity.

6 (e) **COMPLIANCE REQUIRED.**—Designated financial
7 market utilities and financial institutions subject to the
8 standards prescribed by the Board of Governors for a des-
9 ignated activity shall conduct their operations in compli-
10 ance with the applicable risk management standards pre-
11 scribed by the Board of Governors.

12 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MAR-**
13 **KET UTILITIES.**

14 (a) **FEDERAL RESERVE ACCOUNT AND SERVICES.**—
15 The Board of Governors may authorize a Federal Reserve
16 Bank to establish and maintain an account for a des-
17 ignated financial market utility and provide services to the
18 designated financial market utility that the Federal Re-
19 serve Bank is authorized under the Federal Reserve Act
20 to provide to a depository institution, subject to any appli-
21 cable rules, orders, standards, or guidelines prescribed by
22 the Board of Governors.

23 (b) **ADVANCES.**—The Board of Governors may au-
24 thorize a Federal Reserve Bank to provide to a designated
25 financial market utility the same discount and borrowing

1 privileges as the Federal Reserve Bank may provide to a
2 depository institution under the Federal Reserve Act, sub-
3 ject to any applicable rules, orders, standards, or guide-
4 lines prescribed by the Board of Governors.

5 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—

6 A Federal Reserve Bank may pay earnings on balances
7 maintained by or on behalf of a designated financial mar-
8 ket utility in the same manner and to the same extent
9 as the Federal Reserve Bank may pay earnings to a depos-
10 itory institution under the Federal Reserve Act, subject
11 to any applicable rules, orders, standards, or guidelines
12 prescribed by the Board of Governors.

13 (d) RESERVE REQUIREMENTS.—The Board of Gov-
14 ernors may exempt a designated financial market utility
15 from, or modify any, reserve requirements under section
16 19 of the Federal Reserve Act (12 U.S.C. 461) applicable
17 to a designated financial market utility.

18 (e) CHANGES TO RULES, PROCEDURES, OR OPER-
19 ATIONS.—

20 (1) REFERENCE.—For purposes of paragraphs

21 (2) and (3), all references to the phrase “Super-
22 visory Agency or the Board of Governors” mean
23 “Supervisory Agency or, in the absence of a Super-
24 visory Agency, the Board of Governors”.

25 (2) ADVANCE NOTICE.—

1 (A) ADVANCE NOTICE OF PROPOSED
2 CHANGES REQUIRED.—A designated financial
3 market utility shall provide 60-days’ advance
4 notice to its Supervisory Agency and the Board
5 of Governors of any proposed change to its
6 rules, procedures, or operations that could, as
7 defined in rules of the Board of Governors, ma-
8 terially affect, the nature or level of risks pre-
9 sented by the designated financial market util-
10 ity.

11 (B) TERMS AND STANDARDS PRESCRIBED
12 BY THE BOARD OF GOVERNORS.—The Board of
13 Governors shall prescribe regulations that de-
14 fine and describe the standards for determining
15 when notice is required to be provided under
16 subparagraph (A).

17 (C) CONTENTS OF NOTICE.—The notice of
18 a proposed change shall describe—

19 (i) the nature of the change and ex-
20 pected effects on risks to the designated fi-
21 nancial market utility, its participants, or
22 the market; and

23 (ii) how the designated financial mar-
24 ket utility plans to manage any identified
25 risks.

1 (D) ADDITIONAL INFORMATION.—The Su-
2 pervisory Agency or the Board of Governors
3 may require a designated financial market util-
4 ity to provide any information necessary to as-
5 sess the effect the proposed change would have
6 on the nature or level of risks associated with
7 the designated financial market utility’s pay-
8 ment, clearing, or settlement activities and the
9 sufficiency of any proposed risk management
10 techniques.

11 (E) NOTICE OF OBJECTION.—The Super-
12 visory Agency or the Board of Governors shall
13 notify the designated financial market utility of
14 any objection regarding the proposed change
15 within 60 days from the later of—

16 (i) the date that the notice of the pro-
17 posed change is received; or

18 (ii) the date any further information
19 requested for consideration of the notice is
20 received.

21 (F) CHANGE NOT ALLOWED IF OBJEC-
22 TION.—A designated financial market utility
23 shall not implement a change to which the
24 Board of Governors or the Supervisory Agency
25 has an objection.

1 (G) CHANGE ALLOWED IF NO OBJECTION
2 WITHIN 60 DAYS.—A designated financial mar-
3 ket utility may implement a change if it has not
4 received an objection to the proposed change
5 within 60 days of the later of—

6 (i) the date that the Supervisory
7 Agency or the Board of Governors receives
8 the notice of proposed change; or

9 (ii) the date the Supervisory Agency
10 or the Board of Governors receives any
11 further information it requests for consid-
12 eration of the notice.

13 (H) REVIEW EXTENSION FOR NOVEL OR
14 COMPLEX ISSUES.—The Supervisory Agency or
15 the Board of Governors may, during the 60-day
16 review period, extend the review period for an
17 additional 60 days for proposed changes that
18 raise novel or complex issues, subject to the Su-
19 pervisory Agency or the Board of Governors
20 providing the designated financial market utility
21 with prompt written notice of the extension.
22 Any extension under this subparagraph will ex-
23 tend the time periods under subparagraphs (D)
24 and (F).

1 (I) CHANGE ALLOWED EARLIER IF NOTI-
2 FIED OF NO OBJECTION.—A designated finan-
3 cial market utility may implement a change in
4 less than 60 days from the date of receipt of
5 the notice of proposed change by the Super-
6 visory Agency or the Board of Governors, or the
7 date the Supervisory Agency or the Board of
8 Governors receives any further information it
9 requested, if the Supervisory Agency or the
10 Board of Governors notifies the designated fi-
11 nancial market utility in writing that it does
12 not object to the proposed change and author-
13 izes the designated financial market utility to
14 implement the change on an earlier date, sub-
15 ject to any conditions imposed by the Super-
16 visory Agency or the Board of Governors.

17 (3) EMERGENCY CHANGES.—

18 (A) IN GENERAL.—A designated financial
19 market utility may implement a change that
20 would otherwise require advance notice under
21 this subsection if it determines that—

22 (i) an emergency exists; and

23 (ii) immediate implementation of the
24 change is necessary for the designated fi-
25 nancial market utility to continue to pro-

1 vide its services in a safe and sound man-
2 ner.

3 (B) NOTICE REQUIRED WITHIN 24
4 HOURS.—The designated financial market util-
5 ity shall provide notice of any such emergency
6 change to its Supervisory Agency and the
7 Board of Governors, as soon as practicable,
8 which shall be no later than 24 hours after im-
9 plementation of the change.

10 (C) CONTENTS OF EMERGENCY NOTICE.—
11 In addition to the information required for
12 changes requiring advance notice, the notice of
13 an emergency change shall describe—

14 (i) the nature of the emergency; and
15 (ii) the reason the change was nec-
16 essary for the designated financial market
17 utility to continue to provide its services in
18 a safe and sound manner.

19 (D) MODIFICATION OR RESCISSION OF
20 CHANGE MAY BE REQUIRED.—The Supervisory
21 Agency or the Board of Governors may require
22 modification or rescission of the change if it
23 finds that the change is not consistent with the
24 purposes of this Act or any rules, orders, or

1 standards prescribed by the Board of Governors
2 hereunder.

3 (4) **COPYING THE BOARD OF GOVERNORS.**—In
4 the case of a designated financial market utility that
5 has a Supervisory Agency, the Supervisory Agency
6 shall provide the Board of Governors concurrently
7 with a complete copy of any notice, request, or other
8 information it issues, submits, or receives under this
9 subsection.

10 (5) **CONSULTATION WITH BOARD OF GOV-**
11 **ERNORS.**—Before taking any action on, or com-
12 pleting its review of, a change proposed by a des-
13 igned financial market utility, the Supervisory
14 Agency shall consult with the Board of Governors.

15 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS**
16 **AGAINST DESIGNATED FINANCIAL MARKET**
17 **UTILITIES.**

18 (a) **EXAMINATION.**—Notwithstanding any other pro-
19 vision of law and subject to subsection (d), the Supervisory
20 Agency shall conduct examinations of a designated finan-
21 cial market utility at least once annually in order to deter-
22 mine the following:

23 (1) The nature of the operations of, and the
24 risks borne by, the designated financial market util-
25 ity.

1 (2) The financial and operational risks pre-
2 sented by the designated financial market utility to
3 financial institutions, critical markets, or the broad-
4 er financial system.

5 (3) The resources and capabilities of the des-
6 ignated financial market utility to monitor and con-
7 trol such risks.

8 (4) The safety and soundness of the designated
9 financial market utility.

10 (5) The designated financial market utility's
11 compliance with—

12 (A) this title; and

13 (B) the rules and orders prescribed by the
14 Board of Governors under this title.

15 (b) **SERVICE PROVIDERS.**—Whenever a service inte-
16 gral to the operation of a designated financial market util-
17 ity is performed for the designated financial market utility
18 by another entity, whether an affiliate or non-affiliate and
19 whether on or off the premises of the designated financial
20 market utility, the Supervisory Agency may examine
21 whether the provision of that service is in compliance with
22 applicable law, rules, orders, and standards to the same
23 extent as if the designated financial market utility were
24 performing the service on its own premises.

1 (c) ENFORCEMENT.—For purposes of enforcing the
2 provisions of this section, a designated financial market
3 utility shall be subject to, and the appropriate Supervisory
4 Agency shall have authority under the provisions of sub-
5 sections (b) through (n) of section 8 of the Federal De-
6 posit Insurance Act (12 U.S.C. 1818) in the same manner
7 and to the same extent as if the designated financial mar-
8 ket utility was an insured depository institution and the
9 Supervisory Agency was the appropriate Federal banking
10 agency for such insured depository institution.

11 (d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMI-
12 NATIONS.—

13 (1) BOARD OF GOVERNORS CONSULTATION ON
14 EXAMINATION PLANNING.—The Supervisory Agency
15 shall consult with the Board of Governors regarding
16 the scope and methodology of any examination con-
17 ducted under subsections (a) and (b).

18 (2) BOARD OF GOVERNORS PARTICIPATION IN
19 EXAMINATION.—The Board of Governors may, in its
20 discretion, participate in any examination led by a
21 Supervisory Agency and conducted under sub-
22 sections (a) and (b).

23 (e) BOARD OF GOVERNORS ENFORCEMENT REC-
24 OMMENDATIONS.—

1 (1) RECOMMENDATION.—The Board of Gov-
2 ernors may at any time recommend to the Super-
3 visory Agency that such agency take enforcement ac-
4 tion against a designated financial market utility.
5 Any such recommendation for enforcement action
6 shall provide a detailed analysis supporting the rec-
7 ommendation of the Board of Governors.

8 (2) CONSIDERATION.—The Supervisory Agency
9 shall consider the recommendation of the Board of
10 Governors and submit a response to the Board of
11 Governors within 30 days.

12 (3) MEDIATION.—If the Supervisory Agency re-
13 jects, in whole or in the part, the recommendation
14 of the Board of Governors, the Board of Governors
15 may dispute the matter by referring the rec-
16 ommendation to the Agency, which shall attempt to
17 resolve the dispute.

18 (4) ENFORCEMENT ACTION.—If the Agency is
19 unable to resolve the dispute under paragraph (3)
20 within 30 days from the date of referral, the Board
21 of Governors may—

22 (A) exercise the enforcement authority ref-
23 erenced in subsection (c) as if it were the Su-
24 pervisory Agency; and

1 (B) take enforcement action against the
2 designated financial market utility.

3 (f) DESIGNATED FINANCIAL MARKET UTILITIES
4 WITHOUT A SUPERVISORY AGENCY.—In the case of a des-
5 ignated financial market utility that is not under the pri-
6 mary jurisdiction of a Supervisory Agency, the Board of
7 Governors shall have examination and enforcement au-
8 thority under subsections (a) through (c) with respect to
9 the designated financial market utility and any service
10 providers in the same manner and to the same extent as
11 if the Board of Governors were the Supervisory Agency.

12 (g) 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 Agency 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 primary financial regu-
14 latory agency is authorized to examine a financial institu-
15 tion subject to the standards prescribed by the Board of
16 Governors for a designated activity in order to determine
17 the following:

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 primary financial regulatory agency
15 shall have authority under the provisions of subsections
16 (b) through (n) of section 8 of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1818) in the same manner and to
18 the same extent as if the financial institution was an in-
19 sured depository institution and the primary financial reg-
20 ulatory agency was the appropriate Federal banking agen-
21 cy for such insured 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 primary financial regu-
25 latory agencies to ensure that the rules and orders pre-

1 scribed by the Board of Governors under this title are in-
2 terpreted and applied in as consistent and uniform a man-
3 ner as practicable.

4 (d) DELEGATION.—

5 (1) EXAMINATION.—

6 (A) REQUEST TO BOARD OF GOV-
7 ERNORS.—The primary financial regulatory
8 agency may request the Board of Governors to
9 conduct or participate in an examination of a fi-
10 nancial institution subject to the standards pre-
11 scribed by the Board of Governors for a des-
12 ignated activity in order to assess the compli-
13 ance of such 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 primary financial regulatory agency mutu-
23 ally agree.

24 (2) ENFORCEMENT.—

1 (A) REQUEST TO BOARD OF GOV-
2 ERNORS.—The primary financial regulatory
3 agency may request the Board of Governors to
4 enforce this title or the rules or orders pre-
5 scribed by the Board of Governors under this
6 title against a financial institution that is sub-
7 ject to the standards prescribed by the Board of
8 Governors 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 any finan-
7 cial institution that is subject to the standards
8 prescribed by the Board of Governors for a des-
9 ignated activity; and

10 (B) enforce the provisions of this title or
11 any rules or orders prescribed by the Board of
12 Governors under this title against any financial
13 institution that is subject to the standards pre-
14 scribed by the Board of Governors for a des-
15 ignated activity.

16 (2) LIMITATIONS.—

17 (A) EXAMINATION.—The Board of Gov-
18 ernors may exercise the authority described in
19 paragraph (1)(A) only if the Board of Gov-
20 ernors has—

21 (i) reasonable cause to believe that a
22 financial institution is not in compliance
23 with this title or the rules or orders pre-
24 scribed by the Board of Governors under

1 this title with respect to a designated activ-
2 ity;

3 (ii) notified, in writing, the primary fi-
4 nancial regulatory agency and the Agency
5 of its belief under clause (i) with sup-
6 porting documentation included;

7 (iii) requested the primary financial
8 regulatory agency to conduct a prompt ex-
9 amination 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 primary financial regu-
15 latory agency within 30 days after the
16 date of the Board's notification under
17 clause (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 primary financial regulatory agency a
3 reasonable opportunity to participate
4 in 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 primary fi-
16 nancial regulatory agency and the Agency
17 of its belief under clause (i) with sup-
18 porting documentation included and with a
19 recommendation that the primary financial
20 regulatory agency 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 primary financial regulatory

1 agency of the commencement of an
2 enforcement action recommended by
3 the Board of Governors against the fi-
4 nancial institution within 30 days
5 from the date of the notification
6 under 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 primary financial regulatory agency of
17 the 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 Agen-
9 cy is authorized to require any financial market util-
10 ity to submit such information as the Agency may
11 require for the sole purpose of assessing whether
12 that financial market utility is systemically impor-
13 tant, but only if the Agency 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 Agency is authorized to require any financial in-
20 stitution to submit such information as the Agency
21 may require for the sole purpose of assessing wheth-
22 er any payment, clearing, or settlement activity en-
23 gaged in or supported by a financial institution is
24 systemically important, but only if the Agency 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 Agency may
6 require a designated financial market utility to sub-
7 mit reports or data to the Board of Governors and
8 the Agency in such frequency and form as deemed
9 necessary by the Board of Governors and the Agency
10 in order to assess the safety and soundness of the
11 utility and the systemic risk that the utility's oper-
12 ations pose to the financial system.

13 (2) FINANCIAL INSTITUTIONS SUBJECT TO
14 STANDARDS DESIGNATED ACTIVITIES.—The Board
15 of Governors and the Agency may require 1 or more
16 financial institutions subject to the standards pre-
17 scribed by the Board of Governors for a designated
18 activity to submit, in such frequency and form as
19 deemed necessary by the Board of Governors and
20 the Agency, reports and data to the Board of Gov-
21 ernors and the Agency solely with respect to the con-
22 duct of the designated activity and solely to assess
23 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 Agency shall co-
16 ordinate with the Supervisory Agency for a financial
17 market utility or the primary financial regulatory
18 agency for a financial institution to determine if the
19 information is available from or may be obtained by
20 the agency in the form, format, or detail required by
21 the Board of Governors and the Agency.

22 (2) SUPERVISORY REPORTS.—Notwithstanding
23 any other provision of law, the Supervisory Agency,
24 the primary financial regulatory agency, and the
25 Board of Governors are authorized to disclose to

1 each other and the Agency a copy of any examina-
2 tion report a copy of any examination report or simi-
3 lar report regarding any financial market utility or
4 any financial institution engaged in payment, clear-
5 ing, or settlement activities.

6 (d) **TIMING OF RESPONSE FROM APPROPRIATE FED-**
7 **ERAL SUPERVISORY AGENCY.**—If the information, report,
8 records, or data requested by the Board of Governors or
9 the Agency under subsection (c)(1) are not provided in
10 full by the Supervisory Agency or the primary financial
11 regulatory agency in less than 15 days after the date on
12 which the material is requested, the Board of Governors
13 or the Agency may request the information or impose rec-
14 ordkeeping or reporting requirements directly on such per-
15 sons as provided in subsections (a) and (b) with notice
16 to the agency.

17 (e) **SHARING OF INFORMATION.**—

18 (1) **MATERIAL CONCERNS.**—Notwithstanding
19 any other provision of law, the Board of Governors,
20 the Agency, the primary financial regulatory agency,
21 and any Supervisory Agency are authorized to—

22 (A) promptly notify each other of material
23 concerns about a designated financial market
24 utility or any financial institution engaged in
25 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 Agency, the primary financial regulatory agency,
6 or any Supervisory Agency may, under such terms
7 and conditions as it deems appropriate, provide con-
8 fidential supervisory information and other informa-
9 tion obtained under this title to other persons it
10 deems appropriate, including the Secretary, State fi-
11 nancial institution supervisory agencies, foreign fi-
12 nancial supervisors, foreign central banks, and for-
13 eign finance ministries, subject to reasonable assur-
14 ances of confidentiality.

15 (f) PRIVILEGE MAINTAINED.—The Board of Gov-
16 ernors, the Agency, the primary financial regulatory agen-
17 cy, 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 Agency under this sec-
25 tion and any materials prepared by the Board of Gov-

1 errors or the Agency 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 Agency 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 Agen-
16 cy, respectively, and prevent evasions thereof.

17 **SEC. 811. OTHER AUTHORITY.**

18 Unless otherwise provided by its terms, this title does
19 not divest any primary financial regulatory agency, any
20 Supervisory Agency, or any other Federal or State agency,
21 of any authority derived from any other applicable law,
22 except 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 mission shall be—

15 “(A) the Investor Advocate;

16 “(B) a representative of State securities
17 commissions; and

18 “(C) not fewer than 13, and not more than
19 23, members appointed by the Commission,
20 from among individuals who—

21 “(i) represent the interests of indi-
22 vidual equity and debt investors;

23 “(ii) represent the interests of institu-
24 tional investors;

1 “(iii) are knowledgeable about invest-
2 ment issues;

3 “(iv) are experienced with invest-
4 ments; and

5 “(v) have reputations of integrity.

6 “(2) TERM.—

7 “(A) LENGTH.—Each member of the Com-
8 mission appointed under paragraph (1)(B) shall
9 serve for a term of 5 years.

10 “(B) LIMITATION ON CONSECUTIVE
11 TERMS.—No member of the Commission ap-
12 pointed under paragraph (1)(B) may serve for
13 more than 2 consecutive terms.

14 “(3) MEMBERS NOT COMMISSION EMPLOY-
15 EES.—Members appointed under paragraph (1)(B)
16 shall not be deemed to be employees or agents of the
17 Commission solely because of membership on the
18 Committee.

19 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
20 SISTANT SECRETARY.—

21 “(1) IN GENERAL.—The members of the Com-
22 mittee shall elect, from among the members of the
23 Committee—

24 “(A) a chairman;

25 “(B) a vice chairman;

1 “(C) a secretary; and

2 “(D) an assistant secretary.

3 “(2) **TERM.**—Each member elected under para-
4 graph (1) shall serve for a term of 3 years in the
5 capacity for which the member was elected under
6 paragraph (1).

7 “(d) **MEETINGS.**—

8 “(1) **FREQUENCY OF MEETINGS.**—The Com-
9 mittee shall meet—

10 “(A) not less frequently than twice annu-
11 ally; 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 notice of
16 each meeting, not later than 2 weeks before the date
17 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 provide to the
11 Committee such staff as are necessary to carry out this
12 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 CONSUMER 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.—

15 “(1) IN GENERAL.—For the purpose of evalu-
16 ating any rule or program of the Commission issued
17 or carried out under any provision of the securities
18 laws, as defined in section 3 of the Securities Ex-
19 change Act of 1934 (15 U.S.C.78c), and the pur-
20 poses of considering, proposing, adopting, or engag-
21 ing in any such rule or program or developing new
22 rules or programs, the Commission may—

23 “(A) gather information from and commu-
24 nicate with investors or other members of the
25 public; and

1 “(B) engage in such temporary programs
2 as the Commission determines are in the public
3 interest or would protect investors.

4 “(2) DELEGATION.—The Commission may dele-
5 gate to the staff of the Commission any of the au-
6 thority of the Commission under this subsection.”.

7 **SEC. 913. REGULATION OF BROKERS, DEALERS, AND IN-**
8 **VESTMENT ADVISERS.**

9 (a) DEFINITION OF INVESTMENT ADVISER.—Section
10 202(a)(11) of the Investment Advisers Act of 1940 (15
11 U.S.C. 80b–2(a)(11)) is amended—

12 (1) by striking “any broker” and all that fol-
13 lows through “therefor; (D)”;

14 (2) by striking “(E)” and inserting “(D)”; and

15 (3) by striking “(F)” and inserting “(E)”.

16 (b) EXEMPTION FROM PROHIBITED TRANS-
17 ACTIONS.—Section 206 of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b-6) is amended—

19 (1) by striking “It shall” and inserting the fol-
20 lowing:

21 “(a) IN GENERAL.—Except as provided in subpara-
22 graph (b), it shall”; and

23 (2) by adding at the end the following:

24 “(b) EXCEPTIONS.—The Commission may, by rule,
25 exempt any person or transaction, or any class of persons

1 or transactions from the prohibition under subsection
2 (a)(3), if the Commission determines that—

3 “(1) such exemption is in the public interest
4 and for the protection of investors; and

5 “(2) the adviser provides investors with ade-
6 quate protection against conflicts of interest or prin-
7 cipal transactions that are not in the best interests
8 of the investors.”.

9 (c) **ASSET MANAGEMENT FEES AND OTHER COM-**
10 **PENSATION.**—Section 205 of the Investment Advisers Act
11 of 1940 (15 U.S.C. 80b-5) is amended by adding at the
12 end the following:

13 “(f) **ASSET MANAGEMENT FEES AND OTHER COM-**
14 **PENSATION PERMITTED.**—Nothing in this section pro-
15 hibits an investment adviser from entering into an invest-
16 ment advisory relationship that provides for the payment
17 of an asset management fee or a commission.”.

18 (d) **DISCLOSURE REQUIRED.**—Section 206(a) of the
19 Investment Advisers Act of 1940 (15 U.S.C. 80b-6(a)),
20 as so designated by this subtitle, is amended—

21 (1) in paragraph (4), by striking “paragraph
22 (4)” and inserting “paragraph (5)”;

23 (2) by redesignating paragraph (4) as para-
24 graph (5); and

1 “(B) COMPENSATION.—The Commission
2 shall fix the annual compensation of the Inves-
3 tor Advocate at a level equal to that of the most
4 highly paid employee of the Commission who is
5 not a commissioner.

6 “(C) LIMITATION ON SERVICE.—An indi-
7 vidual who serves as the Investor Advocate may
8 not be employed by the Commission—

9 “(i) during the 2-year period ending
10 on the date of appointment as Investor Ad-
11 vocate; or

12 “(ii) during the 5-year period begin-
13 ning on the date on which the person
14 ceases to serve as the Investor Advocate.

15 “(3) STAFF OF OFFICE.—The Investor Advo-
16 cate may retain or employ independent counsel, re-
17 search staff, and service staff, as the Investor Advo-
18 cate deems necessary to carry out the functions of
19 the Office.

20 “(4) FUNCTIONS OF THE INVESTOR ADVO-
21 CATE.—The Investor Advocate shall—

22 “(A) assist investors in resolving problems
23 with the Commission and with self-regulatory
24 organizations;

1 “(B) identify areas in which investors have
2 encountered significant problems in dealings
3 with the Commission and self-regulatory organi-
4 zations;

5 “(C) analyze the potential impact on inves-
6 tors of—

7 “(i) proposed regulations of the Com-
8 mission; and

9 “(ii) proposed rules of self-regulatory
10 organizations registered under this title;

11 “(D) to the extent practicable, propose to
12 the Commission changes in the regulations or
13 orders of the Commission and the rules of self-
14 regulatory organizations to mitigate problems
15 identified under this paragraph; and

16 “(E) recommend to the Commission and to
17 Congress any legislative, administrative, or per-
18 sonnel changes that may be appropriate to miti-
19 gate problems identified under this paragraph.

20 “(5) ACCESS TO DOCUMENTS.—The Commis-
21 sion shall ensure that the Investor Advocate has full
22 access to the documents of the Commission and any
23 self-regulatory organization, as necessary to carry
24 out the functions of the Office.

25 “(6) ANNUAL REPORTS.—

1 “(A) REPORT ON OBJECTIVES.—

2 “(i) IN GENERAL.—Not later than
3 June 30 of each year after 2009, the In-
4 vestor Advocate shall submit to the Com-
5 mittee on Banking, Housing, and Urban
6 Affairs of the Senate and the Committee
7 on Financial Services of the House of Rep-
8 resentatives a report on the objectives of
9 the Investor Advocate for the following fis-
10 cal year.

11 “(ii) CONTENTS.—Each report re-
12 quired under clause (i) shall contain full
13 and substantive analysis and explanation.

14 “(B) REPORT ON ACTIVITIES.—

15 “(i) IN GENERAL.—Not later than
16 December 31 of each year after 2009, the
17 Investor Advocate shall submit to the Com-
18 mittee on Banking, Housing, and Urban
19 Affairs of the Senate and the Committee
20 on Financial Services of the House of Rep-
21 resentatives a report on the activities of
22 the Investor Advocate during the imme-
23 diately preceding fiscal year.

24 “(ii) CONTENTS.—Each report re-
25 quired under clause (i) shall include—

1 “(I) appropriate statistical infor-
2 mation and full and substantive anal-
3 ysis;

4 “(II) information on steps that
5 the Investor Advocate has taken dur-
6 ing the reporting period to improve in-
7 vestor services and the responsiveness
8 of the Commission and self-regulatory
9 organizations to investor concerns;

10 “(III) a summary of not fewer
11 than 20 of the most serious problems
12 encountered by investors in dealings
13 with the Commission or self-regu-
14 latory organizations during the report-
15 ing period;

16 “(IV) an inventory of the items
17 described in subclauses (III) that in-
18 cludes—

19 “(aa) identification of any
20 action taken by the Commission
21 or the self-regulatory organiza-
22 tion and the result of such ac-
23 tion;

650

1 “(bb) the length of time that
2 each item has remained on such
3 inventory; and

4 “(cc) for items on which no
5 action has been taken, the rea-
6 sons for inaction, and an identi-
7 fication of any official who is re-
8 sponsible for such action;

9 “(V) recommendations for such
10 administrative and legislative actions
11 as may be appropriate to resolve prob-
12 lems encountered by investors; and

13 “(VI) any other information, as
14 determined appropriate by the Inves-
15 tor Advocate.

16 “(iii) INDEPENDENCE.—Each report
17 required under this paragraph shall be pro-
18 vided directly to the Committees listed in
19 clause (i) without any prior review or com-
20 ment from the Commission, any commis-
21 sioner, any other officer or employee of the
22 Commission, or the Office of Management
23 and Budget.

24 “(7) REGULATIONS.—The Commission shall, by
25 regulation, establish procedures requiring a formal

1 response to all recommendations submitted to the
2 Commission by the Investor Advocate, not later than
3 3 months after the date of such submission.”.

4 **SEC. 915. STREAMLINING OF FILING PROCEDURES FOR**
5 **SELF-REGULATORY ORGANIZATIONS.**

6 (a) FILING PROCEDURES.—Section 19(b) of the Se-
7 curities Exchange Act of 1934 (15 U.S.C. 78s(b)) is
8 amended by striking paragraph (2) (including the undesig-
9 nated matter immediately following subparagraph (B))
10 and inserting the following:

11 “(2) APPROVAL PROCESS.—

12 “(A) APPROVAL PROCESS ESTABLISHED.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in clause (ii), not later than 45 days
15 after the date of publication of a proposed
16 rule change under paragraph (1), the Com-
17 mission shall—

18 “(I) by order, approve the pro-
19 posed rule change; or

20 “(II) institute proceedings under
21 subparagraph (B) to determine wheth-
22 er the proposed rule change should be
23 disapproved.

24 “(ii) EXTENSION OF TIME PERIOD.—

25 The Commission may extend the period es-

1 tablished under clause (i) by not more than
2 an additional 45 days, if—

3 “(I) the Commission determines
4 that a longer period is appropriate
5 and publishes the reasons for such de-
6 termination; or

7 “(II) the self-regulatory organiza-
8 tion that filed the proposed rule
9 change consents to the longer period.

10 “(B) PROCEEDINGS.—

11 “(i) NOTICE AND HEARING.—If the
12 Commission does not approve a proposed
13 rule change under subparagraph (A), the
14 Commission shall provide to the self-regu-
15 latory organization that filed the proposed
16 rule change—

17 “(I) notice of the grounds for
18 disapproval under consideration; and

19 “(II) opportunity for hearing, to
20 be concluded not later than 180 days
21 of the date of publication of notice of
22 the filing of the proposed rule change.

23 “(ii) ORDER OF APPROVAL OR DIS-
24 APPROVAL.—

1 with the requirements of this title and the
2 rules and regulations issued under this
3 title that are applicable to such organiza-
4 tion.

5 “(ii) **DISAPPROVAL.**—The Commission
6 shall disapprove a proposed rule change of
7 a self-regulatory organization if it does not
8 make a finding described in clause (i).

9 “(iii) **TIME FOR APPROVAL.**—The
10 Commission may not approve a proposed
11 rule change earlier than 30 days after the
12 date of publication under paragraph (1),
13 unless the Commission finds good cause
14 for so doing and publishes the reason for
15 the finding.

16 “(D) **RESULT OF FAILURE TO INSTITUTE**
17 **OR CONCLUDE PROCEEDINGS.**—A proposed rule
18 change shall be deemed to have been approved
19 by the Commission, if—

20 “(i) the Commission does not approve
21 the proposed rule change or begin pro-
22 ceedings under subparagraph (B) within
23 the period described in subparagraph (A);
24 or

1 “(ii) the Commission does not issue
2 an order approving or disapproving the
3 proposed rule change under subparagraph
4 (B) within the period described in subpara-
5 graph (B)(ii).

6 “(E) PUBLICATION DATE BASED ON
7 WEBSITE PUBLISHING.—For purposes of this
8 paragraph, if, after filing a proposed rule
9 change with the Commission pursuant to para-
10 graph (1), a self-regulatory organization pub-
11 lishes a notice of the filing of such proposed
12 rule change, together with the substantive
13 terms of such proposed rule change, on a pub-
14 licly accessible website, the date of publication
15 of notice of the filing of such proposed rule
16 change shall be deemed to be the date on which
17 such website publication is made.”.

18 (b) CLARIFICATION OF FILING DATE.—

19 (1) RULE OF CONSTRUCTION.—Section 19(b) of
20 the Securities Exchange Act of 1934 (15 U.S.C.
21 78s(b)) is amended by adding at the end the fol-
22 lowing:

23 “(10) RULE OF CONSTRUCTION RELATING TO
24 FILING DATE OF PROPOSED RULE CHANGES.—

1 “(A) **IN GENERAL.**—For purposes of this
2 subsection, the date of filing of a proposed rule
3 change shall be deemed the date on which the
4 Commission receives the proposed rule change.

5 “(B) **EXCEPTION.**—A proposed rule
6 change has not been received by the Commis-
7 sion for purposes of subparagraph (A) if, not
8 later than 7 days after the date of receipt by
9 the Commission, the Commission notifies the
10 self-regulatory organization that such proposed
11 rule change does not comply with the rules of
12 the Commission relating to the required form of
13 a proposed rule change.”.

14 (2) **PUBLICATION.**—Section 19(b)(1) of the Se-
15 curities Exchange Act of 1934 (15 U.S.C. 78s(b)(1))
16 is amended by striking “upon” and inserting “as
17 soon as practicable after the date of”.

18 (c) **EFFECTIVE DATE OF PROPOSED RULES.**—Sec-
19 tion 19(b)(3) of the Securities Exchange Act of 1934 (15
20 U.S.C. 78s(b)(3)) is amended—

21 (1) in subparagraph (A)—

22 (A) by striking “may take effect” and in-
23 serting “shall take effect”; and

24 (B) by inserting “ on any person, whether
25 or not the person is a member of the self-regu-

1 latory organization” after “charge imposed by
2 the self-regulatory organization”; and

3 (2) in subparagraph (C)—

4 (A) by amending the second sentence to
5 read as follows: “At any time within the 60-day
6 period beginning on the date of filing of such
7 a proposed rule change in accordance with the
8 provisions of paragraph (1), the Commission
9 summarily may temporarily suspend the change
10 in the rules of the self-regulatory organization
11 made thereby, if it appears to the Commission
12 that such action is necessary or appropriate in
13 the public interest, for the protection of inves-
14 tors, or otherwise in furtherance of the pur-
15 poses of this title.”;

16 (B) by inserting after the second sentence
17 the following: “If the Commission takes such
18 action, the Commission shall institute pro-
19 ceedings under paragraph (2)(B) to determine
20 whether the proposed rule should be approved
21 or disapproved.”; and

22 (C) in the third sentence, by striking “the
23 preceding sentence” and inserting “this sub-
24 paragraph”.

1 (d) CONFORMING CHANGE.—Section 19(b)(4)(D) of
2 the Securities Exchange Act of 1934 (15 U.S.C.
3 78s(b)(4)(D)) is amended to read as follows:

4 “(D)(i) The Commission shall order the
5 temporary suspension of any change in the
6 rules of a clearing agency made by a proposed
7 rule change that has taken effect under para-
8 graph (3), if the appropriate regulatory agency
9 for the clearing agency notifies the Commission
10 not later than 30 days after the date on which
11 the proposed rule change was filed of—

12 “(I) the determination by the appro-
13 priate regulatory agency that the rules of
14 such clearing agency, as so changed, may
15 be inconsistent with the safeguarding of
16 securities or funds in the custody or con-
17 trol of such clearing agency or for which it
18 is responsible; and

19 “(II) the reasons for the determina-
20 tion described in subclause (I).

21 “(ii) If the Commission takes action under
22 clause (i), the Commission shall institute pro-
23 ceedings under paragraph (2)(B) to determine
24 if the proposed rule change should be approved
25 or disapproved.”.

1 **SEC. 916. STUDY REGARDING FINANCIAL LITERACY AMONG**
2 **MUTUAL FUND INVESTORS.**

3 (a) IN GENERAL.—The Commission shall conduct a
4 study to identify—

5 (1) the existing level of financial literacy among
6 investors that purchase shares of open-end compa-
7 nies, as that term is defined under section 5 of the
8 Investment Company Act of 1940 (15 U.S.C. 80a-
9 5), that are registered under section 8 of that Act;

10 (2) the most useful and understandable relevant
11 information that investors need to make sound fi-
12 nancial decisions prior to purchasing such shares;

13 (3) methods to increase the transparency of ex-
14 penses and potential conflicts of interest in trans-
15 actions involving the shares of open-end companies;

16 (4) the existing private and public efforts to
17 educate investors; and

18 (5) a strategy to increase the financial literacy
19 of investors that results in a positive change in in-
20 vestor behavior.

21 (b) REPORT.—Not later than 1 year after the date
22 of enactment of this Act, the Commission shall submit a
23 report on the study required under subsection (a) to—

24 (1) the Committee on Banking, Housing, and
25 Urban Affairs of the Senate; and

1 (2) the Committee on Financial Services of the
2 House of Representatives.

3 **SEC. 917. STUDY REGARDING MUTUAL FUND ADVERTISING.**

4 (a) IN GENERAL.—The Comptroller General of the
5 United States shall conduct a study on mutual fund adver-
6 tising to identify—

7 (1) existing and proposed regulatory require-
8 ments for open-end investment company advertise-
9 ments;

10 (2) current marketing practices for the sale of
11 open-end investment company shares, including the
12 use of unsustainable past performance data, funds
13 that have merged, and incubator funds;

14 (3) the impact of such advertising on con-
15 sumers; and

16 (4) recommendations to improve investor pro-
17 tections in mutual fund advertising and additional
18 information necessary to ensure that investors can
19 make informed financial decisions when purchasing
20 shares.

21 (b) REPORT.—Not later than 1 year after the date
22 of enactment of this Act, the Comptroller General of the
23 United States shall submit a report on the results of the
24 study conducted under subsection (a) to—

1 (1) the Committee on Banking, Housing, and
2 Urban Affairs of the United States Senate; and

3 (2) the Committee on Financial Services of the
4 House of Representatives.

5 **SEC. 918. CLARIFICATION OF COMMISSION AUTHORITY TO**
6 **REQUIRE INVESTOR DISCLOSURES BEFORE**
7 **PURCHASE OF INVESTMENT COMPANY**
8 **SHARES.**

9 Section 24 of the Investment Company Act of 1940
10 (15 U.S.C. 80a–24) is amended by adding at the end the
11 following:

12 “(h) **TIMING OF DISCLOSURE.**—Notwithstanding any
13 other provision of this Act or the Securities Act of 1933,
14 the Commission may promulgate rules designating docu-
15 ments or information that shall be provided to a purchaser
16 of securities issued by a registered investment company.”.

17 **Subtitle B—Increasing Regulatory**
18 **Enforcement and Remedies**

19 **SEC. 921. AUTHORITY TO RESTRICT MANDATORY**
20 **PREDISPUTE ARBITRATION.**

21 (a) **AMENDMENT TO SECURITIES EXCHANGE ACT OF**
22 **1934.**—Section 15 of the Securities Exchange Act of 1934
23 (15 U.S.C. 78o), as amended by section 913, is amended
24 by adding at the end the following:

1 “(l) AUTHORITY TO RESTRICT MANDATORY
2 PREDISPUTE ARBITRATION.—Not later than 180 days
3 after the date of enactment of this subsection, the Com-
4 mission shall conduct a rulemaking to prohibit, or impose
5 conditions or limitations on the use of, agreements that
6 require customers or clients of any broker, dealer, or mu-
7 nicipal securities dealer to arbitrate any dispute between
8 them that occurs after the effective date of the regulations
9 and that arises under the securities laws or the rules of
10 a self-regulatory organization, if the Commission finds
11 that such prohibition, imposition of conditions, or limita-
12 tions are in the public interest and for the protection of
13 investors.”.

14 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF
15 1940.—Section 205 of the Investment Advisers Act of
16 1940 (15 U.S.C. 80b–5) is amended by adding at the end
17 the following:

18 “(f) AUTHORITY TO RESTRICT MANDATORY
19 PREDISPUTE ARBITRATION.—

20 “(1) IN GENERAL.—Not later than 180 days
21 after the date of enactment of this subsection, the
22 Commission shall conduct rulemaking to prohibit, or
23 impose conditions or limitations on the use of, agree-
24 ments that require customers or clients of any in-
25 vestment adviser to arbitrate any dispute between

1 them that occurs after the effective date of the regu-
2 lations and that arises under the securities laws, as
3 defined in section 3 of the Securities Exchange Act
4 of 1934 (15 U.S.C. 78c), or the rules of a self-regu-
5 latory organization, if the Commission finds that
6 such prohibition or imposition of conditions, or limi-
7 tations are in the public interest and for the protec-
8 tion of investors.

9 “(2) **EFFECTIVE DATE.**—The rules required to
10 be promulgated by the Commission under paragraph
11 (1) shall become effective not later than 270 days
12 after the date of enactment of this subsection.”.

13 **SEC. 922. WHISTLEBLOWER PROTECTION.**

14 The Securities Exchange Act of 1934 (15 U.S.C. 78a
15 et seq.) is amended by inserting after section 21E the fol-
16 lowing:

17 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
18 **PROTECTION.**

19 “(a) **DEFINITIONS.**—In this section the following def-
20 inition shall apply:

21 “(1) **COVERED JUDICIAL OR ADMINISTRATIVE**
22 **ACTION.**—The term ‘covered judicial or administra-
23 tive action’ means any judicial or administrative ac-
24 tion brought by the Commission under the securities

1 laws that results in monetary sanctions exceeding
2 \$1,000,000.

3 “(2) **FUND.**—The term ‘Fund’ means the Secu-
4 rities and Exchange Commission Investor Protection
5 Fund.

6 “(3) **ORIGINAL INFORMATION.**—The term
7 ‘original information’ means information that—

8 “(A) is based on the direct and inde-
9 pendent knowledge or analysis of a whistle-
10 blower;

11 “(B) is not known to the Commission from
12 any other source, unless the whistleblower is the
13 original source of the information; and

14 “(C) is not exclusively based on an allega-
15 tion made in a judicial or administrative hear-
16 ing, in a governmental report, hearing, audit, or
17 investigation, or from the news media.

18 “(4) **MONETARY SANCTIONS.**—The term ‘mone-
19 tary sanctions’, when used with respect to any judi-
20 cial or administrative action, means—

21 “(A) any monies, including penalties,
22 disgorgement, and interest, ordered to be paid;
23 and

24 “(B) any monies deposited into a
25 disgorgement fund or other fund pursuant to

1 section 308(b) of the Sarbanes-Oxley Act of
2 2002 (15 U.S.C. 7246(b)), as a result of such
3 action or any settlement of such action.

4 “(5) RELATED ACTION.—The term ‘related ac-
5 tion’, when used with respect to any judicial or ad-
6 ministrative action brought by the Commission
7 under the securities laws, means any judicial or ad-
8 ministrative action brought by an entity described in
9 subclauses (I) through (IV) of subsection
10 (h)(2)(D)(i) that is based upon the original informa-
11 tion provided by a whistleblower pursuant to sub-
12 section (a) that led to the successful enforcement of
13 the Commission action.

14 “(6) WHISTLEBLOWER.—The term ‘whistle-
15 blower’ means any individual, or 2 or more individ-
16 uals acting jointly, that provides information relat-
17 ing to a violation of the securities laws to the Com-
18 mission, in a manner established, by rule or regula-
19 tion, by the Commission.

20 “(b) AWARDS.—

21 “(1) IN GENERAL.—In any covered judicial or
22 administrative action, the Commission, under regula-
23 tions prescribed by the Commission and subject to
24 subsection (c), may pay an award or awards to 1 or
25 more whistleblowers who voluntarily provided origi-

1 “(i) the significance of the informa-
2 tion provided by the whistleblower to the
3 success of the covered judicial or adminis-
4 trative action;

5 “(ii) the degree of assistance provided
6 by the whistleblower and any legal rep-
7 resentative of the whistleblower in a cov-
8 ered judicial or administrative action;

9 “(iii) the programmatic interest of the
10 Commission in deterring violations of the
11 securities laws by making awards to whis-
12 tlers who provide information that
13 lead to the successful enforcement of such
14 laws; and

15 “(iv) such additional relevant factors
16 as the Commission may establish by rule
17 or regulation.

18 “(2) DENIAL OF AWARD.—No award under
19 subsection (b) shall be made—

20 “(A) to any whistleblower who is, or was at
21 the time the whistleblower acquired the original
22 information submitted to the Commission, a
23 member, officer, or employee of—

24 “(i) an appropriate regulatory agency;

25 “(ii) the Department of Justice;

1 “(iii) a self-regulatory organization; or

2 “(iv) the Public Company Accounting

3 Oversight Board;

4 “(B) to any whistleblower who is convicted

5 of a criminal violation related to the judicial or

6 administrative action for which the whistle-

7 blower otherwise could receive an award under

8 this section; or

9 “(C) to any whistleblower who fails to sub-

10 mit information to the Commission in such

11 form as the Commission may, by rule, require.

12 “(d) REPRESENTATION.—

13 “(1) PERMITTED REPRESENTATION.—Any

14 whistleblower who makes a claim for an award under

15 subsection (b) may be represented by counsel.

16 “(2) REQUIRED REPRESENTATION.—

17 “(A) IN GENERAL.—Any whistleblower

18 who anonymously makes a claim for an award

19 under subsection (b) shall be represented by

20 counsel if the whistleblower anonymously sub-

21 mits the information upon which the claim is

22 based.

23 “(B) DISCLOSURE OF IDENTITY.—Prior to

24 the payment of an award, a whistleblower or

25 the counsel for the whistleblower shall disclose

1 the identity of the whistleblower and provide
2 such other information as the Commission may
3 require.

4 “(e) NO CONTRACT NECESSARY.—No contract with
5 the Commission is necessary for any whistleblower to re-
6 ceive an award under subsection (b), unless otherwise re-
7 quired by the Commission by rule or regulation.

8 “(f) APPEALS.—Any determination made under this
9 section, including whether, to whom, or in what amount
10 to make awards, shall be in the sole discretion of the Com-
11 mission, and any such determination may be appealed to
12 the appropriate district court of the United States not
13 more than 30 days after the determination is issued by
14 the Commission.

15 “(g) INVESTOR PROTECTION FUND.—

16 “(1) FUND ESTABLISHED.—There is estab-
17 lished in the Treasury of the United States a fund
18 to be known as the ‘Securities and Exchange Com-
19 mission Investor Protection Fund’.

20 “(2) USE OF FUND.—The Fund shall be avail-
21 able to the Commission, without further appropria-
22 tion or fiscal year limitation, for—

23 “(A) paying awards to whistleblowers as
24 provided in subsection (b); and

1 “(B) funding the activities of the Inspector
2 General of the Commission under section 4(i).

3 “(3) DEPOSITS AND CREDITS.—There shall be
4 deposited into or credited to the Fund—

5 “(A) any monetary sanction collected by
6 the Commission in any judicial or administra-
7 tive action brought by the Commission under
8 the securities laws that is not added to a
9 disgorgement fund or other fund pursuant to
10 section 308 of the Sarbanes-Oxley Act of 2002
11 (15 U.S.C. 7246) or otherwise distributed to
12 victims of a violation of the securities laws, or
13 the rules and regulations thereunder, under-
14 lying such action, unless the balance of the
15 Fund at the time the monetary sanction is col-
16 lected exceeds \$200,000,000;

17 “(B) any monetary sanction added to a
18 disgorgement fund or other fund pursuant to
19 section 308 of the Sarbanes-Oxley Act of 2002
20 (15 U.S.C. 7246) that is not distributed to the
21 victims for whom the disgorgement fund was
22 established, unless the balance of the
23 disgorgement fund at the time the determina-
24 tion is made not to distribute the monetary

1 sanction to such victims exceeds \$100,000,000;
2 and

3 “(C) all income from investments made
4 under paragraph (4).

5 “(4) INVESTMENTS.—

6 “(A) AMOUNTS IN FUND MAY BE IN-
7 VESTED.—The Commission may request the
8 Secretary of the Treasury to invest the portion
9 of the Fund that is not, in the discretion of the
10 Commission, required to meet the current needs
11 of the Fund.

12 “(B) ELIGIBLE INVESTMENTS.—Invest-
13 ments shall be made by the Secretary of the
14 Treasury in obligations of the United States or
15 obligations that are guaranteed as to principal
16 and interest by the United States, with matu-
17 rities suitable to the needs of the Fund as de-
18 termined by the Commission on the record.

19 “(C) INTEREST AND PROCEEDS CRED-
20 ITED.—The interest on, and the proceeds from
21 the sale or redemption of, any obligations held
22 in the Fund shall be credited to the Fund.

23 “(5) REPORTS TO CONGRESS.—Not later than
24 October 30 of each fiscal year beginning after the
25 date of enactment of this subsection, the Commis-

1 sion shall submit to the Committee on Banking,
2 Housing, and Urban Affairs of the Senate, and the
3 Committee on Financial Services of the House of
4 Representatives a report on—

5 “(A) the whistleblower award program, es-
6 tablished under this section, including—

7 “(i) a description of the number of
8 awards granted; and

9 “(ii) the types of cases in which
10 awards were granted during the preceding
11 fiscal year;

12 “(B) the balance of the Fund at the begin-
13 ning of the preceding fiscal year;

14 “(C) the amounts deposited into or cred-
15 ited to the Fund during the preceding fiscal
16 year;

17 “(D) the amount of earnings on invest-
18 ments made under paragraph (4) during the
19 preceding fiscal year;

20 “(E) the amount paid from the Fund dur-
21 ing the preceding fiscal year to whistleblowers
22 pursuant to subsection (b);

23 “(F) the balance of the Fund at the end
24 of the preceding fiscal year; and

1 “(G) a complete set of audited financial
2 statements, including—

3 “(i) a balance sheet;

4 “(ii) income statement; and

5 “(iii) cash flow analysis.

6 “(h) PROTECTION OF WHISTLEBLOWERS.—

7 “(1) PROHIBITION AGAINST RETALIATION.—

8 “(A) IN GENERAL.—No employer may dis-
9 charge, demote, suspend, threaten, harass, di-
10 rectly or indirectly, or in any other manner dis-
11 criminate against, a whistleblower in the terms
12 and conditions of employment because of any
13 lawful act done by the whistleblower—

14 “(i) in providing information to the
15 Commission in accordance with subsection
16 (a); or

17 “(ii) in assisting in any investigation
18 or judicial or administrative action of the
19 Commission based upon or related to such
20 information.

21 “(B) ENFORCEMENT.—

22 “(i) CAUSE OF ACTION.—An indi-
23 vidual who alleges discharge or other dis-
24 crimination in violation of subparagraph
25 (A) may bring an action under this sub-

1 section in the appropriate district court of
2 the United States for the relief provided in
3 subparagraph (C).

4 “(ii) SUBPOENAS.—A subpoena re-
5 quiring the attendance of a witness at a
6 trial or hearing conducted under this sec-
7 tion may be served at any place in the
8 United States.

9 “(iii) STATUTE OF LIMITATIONS.—

10 “(I) IN GENERAL.—An action
11 under this subsection may not be
12 brought—

13 “(aa) more than 6 years
14 after the date on which the viola-
15 tion of subparagraph (A) oc-
16 curred;

17 “(bb) or more than 3 years
18 after the date when facts mate-
19 rial to the right of action are
20 known or reasonably should have
21 been known by the employee al-
22 leging a violation of subpara-
23 graph (A).

24 “(II) REQUIRED ACTION WITHIN
25 10 YEARS.—Notwithstanding sub-

1 clause (I), an action under this sub-
2 section may not in any circumstance
3 be brought more than 10 years after
4 the date on which the violation occurs.

5 “(C) RELIEF.—Relief for an individual
6 prevailing in an action brought under subpara-
7 graph (B) shall include—

8 “(i) reinstatement with the same se-
9 niority status that the individual would
10 have had, but for the discrimination;

11 “(ii) 2 times the amount of back pay
12 otherwise owed to the individual, with in-
13 terest; and

14 “(iii) compensation for any special
15 damages sustained as a result of the dis-
16 crimination, including litigation costs, ex-
17 pert witness fees, and reasonable attor-
18 neys’ fees.

19 “(2) CONFIDENTIALITY.—

20 “(A) IN GENERAL.—Unless and until re-
21 quired to be disclosed to a defendant or re-
22 spondent in connection with a proceeding insti-
23 tuted by the Commission or any entity de-
24 scribed in subparagraph (D), all information

1 provided to the Commission by a whistle-
2 blower—

3 “(i) in any proceeding in any Federal
4 or State court or administrative agency—

5 “(I) shall be confidential and
6 privileged as an evidentiary matter;
7 and

8 “(II) shall not be subject to civil
9 discovery or other legal process; and

10 “(ii) shall not be subject to disclosure
11 under section 552 of title 5, United States
12 Code (commonly referred to as the Free-
13 dom of Information Act) or under any pro-
14 ceeding under that section.

15 “(B) EXEMPTED STATUTE.—For purposes
16 of section 552 of title 5, United States Code,
17 this paragraph shall be considered a statute de-
18 scribed in subsection (b)(3)(B) of such section
19 552.

20 “(C) RULE OF CONSTRUCTION.—Nothing
21 in this section is intended to limit, or shall be
22 construed to limit, the ability of the Attorney
23 General to present such evidence to a grand
24 jury or to share such evidence with potential

1 witnesses or defendants in the course of an on-
2 going criminal investigation.

3 “(D) AVAILABILITY TO GOVERNMENT
4 AGENCIES.—

5 “(i) IN GENERAL.—Without the loss
6 of its status as confidential and privileged
7 in the hands of the Commission, all infor-
8 mation referred to in subparagraph (A)
9 may, in the discretion of the Commission,
10 when determined by the Commission to be
11 necessary to accomplish the purposes of
12 this Act and to protect investors, be made
13 available to—

14 “(I) the Attorney General of the
15 United States;

16 “(II) an appropriate regulatory
17 authority;

18 “(III) a self-regulatory organiza-
19 tion;

20 “(IV) a State attorney general in
21 connection with any criminal inves-
22 tigation;

23 “(V) any appropriate State regu-
24 latory authority;

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1 “(VI) the Public Company Ac-
2 counting Oversight Board;

3 “(VII) a foreign securities au-
4 thority; and

5 “(VIII) a foreign law enforce-
6 ment authority.

7 “(ii) CONFIDENTIALITY.—

8 “(I) IN GENERAL.—Each of the
9 entities described in subclauses (I)
10 through (VI) of clause (i) shall main-
11 tain such information as confidential
12 and privileged, in accordance with the
13 requirements established under sub-
14 paragraph (A).

15 “(II) FOREIGN AUTHORITIES.—
16 Each of the entities described in sub-
17 clauses (VII) and (VIII) of clause (i)
18 shall maintain such information in ac-
19 cordance with such assurances of con-
20 fidentiality as the Commission deter-
21 mines appropriate.

22 “(3) RIGHTS RETAINED.—Nothing in this sec-
23 tion shall be deemed to diminish the rights, privi-
24 leges, or remedies of any whistleblower under any

1 Federal or State law, or under any collective bar-
2 gaining agreement.

3 “(i) PROVISION OF FALSE INFORMATION.—A whis-
4 tleblower shall not be entitled to an award under this sec-
5 tion, and shall be subject to prosecution under section
6 1001 of title 18, United States Code, if the whistle-
7 blower—

8 “(1) knowingly and willfully makes any false,
9 fictitious, or fraudulent statement or representation;
10 or

11 “(2) uses any false writing or document know-
12 ing the writing or document contains any false, ficti-
13 tious, or fraudulent statement or entry.

14 “(j) RULEMAKING AUTHORITY.—The Commission
15 shall have the authority to issue such rules and regulations
16 as may be necessary or appropriate to implement the pro-
17 visions of this section consistent with the purposes of this
18 section.”.

19 **SEC. 923. CONFORMING AMENDMENTS FOR WHISTLE-**
20 **BLOWER PROTECTION.**

21 (a) IN GENERAL.—

22 (1) SECURITIES ACT OF 1933.—Section
23 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C.
24 77t(d)(3)(A)) is amended by inserting “and section

1 21F of the Securities Exchange Act of 1934” after
2 “the Sarbanes-Oxley Act of 2002”.

3 (2) INVESTMENT COMPANY ACT OF 1940.—Sec-
4 tion 42(e)(3)(A) of the Investment Company Act of
5 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by
6 inserting “and section 21F of the Securities Ex-
7 change Act of 1934” after “the Sarbanes-Oxley Act
8 of 2002”.

9 (3) INVESTMENT ADVISERS ACT OF 1940.—Sec-
10 tion 209(e)(3)(A) of the Investment Advisers Act of
11 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by in-
12 serting “and section 21F of the Securities Exchange
13 Act of 1934” after “the Sarbanes-Oxley Act of
14 2002”.

15 (b) SECURITIES EXCHANGE ACT.—

16 (1) SECTION 21.—Section 21(d)(3)(C)(i) of the
17 Securities Exchange Act of 1934 (15 U.S.C.
18 78u(d)(3)(C)(i)) is amended by inserting “and sec-
19 tion 21F of this title” after “the Sarbanes-Oxley Act
20 of 2002”.

21 (2) SECTION 21A.—Section 21A of the Securi-
22 ties Exchange Act of 1934 (15 U.S.C. 78u–1) is
23 amended—

24 (A) in subsection (d)(1) by—

1 (i) striking “(subject to subsection
2 (e))”; and

3 (ii) inserting “and section 21F of this
4 title” after “the Sarbanes-Oxley Act of
5 2002”;

6 (B) by striking subsection (e); and

7 (C) by redesignating subsections (f) and
8 (g) as subsections (e) and (f), respectively.

9 **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS**

10 **FOR WHISTLEBLOWER PROTECTION.**

11 (a) **IMPLEMENTING RULES.**—The Securities and Ex-
12 change Commission shall issue final regulations imple-
13 menting the provisions of section 21F of the Securities
14 Exchange Act of 1934, as added by this subtitle, not later
15 than 270 days after the date of enactment of this Act.

16 (b) **ORIGINAL INFORMATION.**—Information provided
17 to the Commission by a whistleblower in accordance with
18 the regulations referenced in subsection (a) shall not lose
19 the status of original information (as defined in section
20 21F(i)(1) of the Securities Exchange Act of 1934, as
21 added by this subtitle) solely because the whistleblower
22 provided the information prior to the effective date of the
23 regulations, provided the information was—

24 (1) provided by the whistleblower after the date
25 of enactment of this subtitle; or

1 (2) related to a violation for which an award
2 under section 21F of the Securities Exchange Act of
3 1934, as added by this subtitle, could have been paid
4 at the time the information was provided by the
5 whistleblower.

6 (c) AWARDS.—A whistleblower may receive an award
7 pursuant to section 21F of the Securities Exchange Act
8 of 1934, as added by this subtitle, regardless of whether
9 any violation of a provision of the securities laws, or a
10 rule or regulation thereunder, underlying the judicial or
11 administrative action upon which the award is based, oc-
12 curred prior to the date of enactment of this subtitle.

13 **SEC. 925. COLLATERAL BARS.**

14 (a) SECURITIES EXCHANGE ACT OF 1934.—

15 (1) SECTION 15.—Section 15(b)(6)(A) of the
16 Securities Exchange Act of 1934 (15 U.S.C.
17 78o(b)(6)(A)) is amended by striking “12 months,
18 or bar such person from being associated with a
19 broker or dealer,” and inserting “12 months, or bar
20 any such person from being associated with a
21 broker, dealer, investment adviser, municipal securi-
22 ties dealer, transfer agent, or nationally recognized
23 statistical rating organization,”.

24 (2) SECTION 15B.—Section 15B(c)(4) of the Se-
25 curities Exchange Act of 1934 (15 U.S.C. 78o-

1 4(c)(4)) is amended by striking “twelve months or
2 bar any such person from being associated with a
3 municipal securities dealer,” and inserting “12
4 months or bar any such person from being associ-
5 ated with a broker, dealer, investment adviser, mu-
6 nicipal securities dealer, transfer agent, or nationally
7 recognized statistical rating organization,”.

8 (3) SECTION 17A.—Section 17A(c)(4)(C) of the
9 Securities Exchange Act of 1934 (15 U.S.C. 78q–
10 1(c)(4)(C)) is amended by striking “twelve months
11 or bar any such person from being associated with
12 the transfer agent,” and inserting “12 months or
13 bar any such person from being associated with any
14 transfer agent, broker, dealer, investment adviser,
15 municipal securities dealer, or nationally recognized
16 statistical rating organization,”.

17 (b) INVESTMENT ADVISERS ACT OF 1940.—Section
18 203(f) of the Investment Advisers Act of 1940 (15 U.S.C.
19 80b–3(f)) is amended by striking “twelve months or bar
20 any such person from being associated with an investment
21 adviser,” and inserting “12 months or bar any such per-
22 son from being associated with an investment adviser,
23 broker, dealer, municipal securities dealer, transfer agent,
24 or nationally recognized statistical rating organization,”.

1 **SEC. 926. AIDING AND ABETTING AUTHORITY UNDER THE**
2 **SECURITIES ACT AND THE INVESTMENT COM-**
3 **PANY ACT.**

4 (a) UNDER THE SECURITIES ACT OF 1933.—Section
5 15 of the Securities Act of 1933 (15 U.S.C. 77o) is
6 amended to read as follows:

7 **“SEC. 15. LIABILITY OF CONTROLLING PERSONS AND PER-**
8 **SONS WHO AID AND ABET VIOLATIONS.**

9 “(a) CONTROLLING PERSONS.—Any person who, by
10 or through stock ownership, agency, or otherwise, or who,
11 pursuant to or in connection with an agreement or under-
12 standing with 1 or more other persons by or through stock
13 ownership, agency, or otherwise, controls any person liable
14 under section 11 or 12, shall also be liable jointly and sev-
15 erally with and to the same extent as such controlled per-
16 son to any person to which such controlled person is liable,
17 unless the controlling person had no knowledge of or rea-
18 sonable ground to believe in the existence of the facts by
19 reason of which the liability of the controlled person is
20 alleged to exist.

21 “(b) PROSECUTION OF PERSONS WHO AID AND
22 ABET VIOLATIONS.—For purposes of any action brought
23 by the Commission under subsections (b) or (d) of section
24 20, any person that knowingly or recklessly provides sub-
25 stantial assistance to another person in violation of a pro-
26 vision of this Act, or of any rule or regulation issued under

1 this Act, shall be deemed to be in violation of such provi-
2 sion to the same extent as the person to whom such assist-
3 ance is provided.”.

4 (b) UNDER THE INVESTMENT COMPANY ACT OF
5 1940.—Section 48 of the Investment Company Act of
6 1940 (15 U.S.C. 80a–48) is amended to read as follows:

7 **“SEC. 48. LIABILITY OF CONTROLLING PERSONS AND PER-**
8 **SONS WHO AID AND ABET VIOLATIONS; PRE-**
9 **VENTING COMPLIANCE WITH ACT.**

10 “(a) CONTROLLING PERSONS.—It shall be unlawful
11 for any person, directly or indirectly, to cause to be done
12 any act or thing through or by means of any other person
13 which it would be unlawful for such person to do under
14 the provisions of this Act or any rule, regulation, or order
15 thereunder.

16 “(b) PROSECUTION OF PERSONS WHO AID AND
17 ABET VIOLATIONS.—For purposes of any action brought
18 by the Commission under subsections (d) or (e) of section
19 42, any person that knowingly or recklessly provides sub-
20 stantial assistance to another person in violation of a pro-
21 vision of this Act, or of any rule or regulation issued under
22 this Act, shall be deemed to be in violation of such provi-
23 sion to the same extent as the person to whom such assist-
24 ance is provided.

1 “(c) PREVENTING COMPLIANCE WITH ACT.—It shall
2 be unlawful for any person without just cause to hinder,
3 delay, or obstruct the making, filing, or keeping of any
4 information, document, report, record, or account required
5 to be made, filed, or kept under any provision of this Act
6 or any rule, regulation, or order thereunder.”.

7 **SEC. 927. AUTHORITY TO IMPOSE PENALTIES FOR AIDING**
8 **AND ABETTING VIOLATIONS OF THE INVEST-**
9 **MENT ADVISERS ACT.**

10 Section 209 of the Investment Advisers Act of 1940
11 (15 U.S.C. 80b–9) is amended by adding at the end the
12 following:

13 “(f) AIDING AND ABETTING.—For purposes of any
14 action brought by the Commission under subsection (e),
15 any person that knowingly or recklessly aids, abets, coun-
16 sels, commands, induces, or procures another person to
17 commit a violation of a provision of this Act, or of a rule,
18 regulation, or order issued under this Act, shall be deemed
19 to be in violation of such provision, rule, regulation, or
20 order to the same extent as the person that committed
21 such violation.”.

22 **SEC. 928. RESTORING THE AUTHORITY OF STATE REGU-**
23 **LATORS OVER REGULATION D OFFERINGS.**

24 Section 18(b)(4) of the Securities Act of 1933 (15
25 U.S.C. 77r(b)(4)) is amended—

1 (1) in subparagraph (B), by adding “or” at the
2 end;

3 (2) in subparagraph (C), by striking the “or”
4 at the end; and

5 (3) by striking subparagraph (D).

6 **Subtitle C—Improvements to the**
7 **Regulation of Credit Rating**
8 **Agencies**

9 **SEC. 931. ENHANCED REGULATION OF NATIONALLY REC-**
10 **OGNIZED STATISTICAL RATING ORGANIZA-**
11 **TIONS.**

12 Section 15E of the Securities Exchange Act of 1934
13 (15 U.S.C. 78o–7) is amended—

14 (1) in subsection (c)—

15 (A) in paragraph (2), in the second sen-
16 tence, by inserting “any other provision of this
17 section, or” after “Notwithstanding”; and

18 (B) by adding at the end the following:

19 “(3) **INTERNAL CONTROLS OVER PROCESSES**
20 **FOR DETERMINING CREDIT RATINGS.—**

21 “(A) **IN GENERAL.—**Each nationally recog-
22 nized statistical rating organization shall estab-
23 lish, maintain, enforce, and document an effec-
24 tive internal control structure governing the im-
25 plementation of and adherence to policies, pro-

1 cedures, and methodologies for determining
2 credit ratings, taking into consideration such
3 factors as the Commission may prescribe, by
4 rule.

5 “(B) ATTESTATION REQUIREMENT.—The
6 Commission shall prescribe rules requiring each
7 nationally recognized statistical organization to
8 submit to the Commission an annual internal
9 controls report, which shall contain—

10 “(i) a description of the responsibility
11 of the management of the nationally recog-
12 nized statistical rating organization in es-
13 tablishing and maintaining an effective in-
14 ternal control structure under subpara-
15 graph (A);

16 “(ii) an assessment of the effective-
17 ness of the internal control structure of the
18 national recognized statistical rating orga-
19 nization; and

20 “(iii) the attestation of the chief exec-
21 utive officer, or equivalent individual, of
22 the nationally recognized statistical rating
23 organization.”;

24 (2) in subsection (d)—

1 (A) in the subsection heading, by inserting
2 “FINE,” after “CENSURE,”;

3 (B) by inserting “fine,” after “censure,”
4 each place that term appears;

5 (C) in paragraph (2), by redesignating
6 subparagraphs (A) and (B) as clauses (i) and
7 (ii), respectively, and adjusting the clause mar-
8 gins accordingly;

9 (D) by redesignating paragraphs (1)
10 through (5) as subparagraphs (A) through (E),
11 respectively, and adjusting the subparagraph
12 margins accordingly;

13 (E) in the matter preceding subparagraph
14 (A), as so redesignated, by striking “The Com-
15 mission” and inserting the following:

16 “(1) IN GENERAL.—The Commission”;

17 (F) in subparagraph (D), as so redesi-
18 gnated, by striking “or” at the end;

19 (G) in subparagraph (E), as so redesi-
20 gnated, by striking the period at the end and in-
21 serting a semicolon; and

22 (H) by adding at the end the following:

23 “(F) has failed reasonably to supervise,
24 with a view to preventing a violation of the se-
25 curities laws, an individual who commits such a

1 violation, if the individual is subject to the su-
2 pervision of that person.”.

3 “(2) SUSPENSION OR REVOCATION FOR PAR-
4 TICULAR CLASS OF SECURITIES.—

5 “(A) IN GENERAL.—The Commission may
6 temporarily suspend or permanently revoke the
7 registration of a nationally recognized statistical
8 rating organization with respect to a particular
9 class or subclass of securities, if the Commis-
10 sion finds, on the record after notice and oppor-
11 tunity for hearing, that the nationally recog-
12 nized statistical rating organization does not
13 have adequate financial and managerial re-
14 sources to consistently produce credit ratings
15 with integrity.

16 “(B) CONSIDERATIONS.—In making any
17 determination under subparagraph (A), the
18 Commission shall consider—

19 “(i) whether the nationally recognized
20 statistical rating organization has failed
21 over a sustained period of time, as deter-
22 mined by the Commission, to produce ac-
23 curate ratings for that class or subclass of
24 securities;

1 “(ii) whether the performance of the
2 nationally recognized statistical rating or-
3 ganization has been significantly worse
4 than the performance of other nationally
5 recognized statistical rating organizations
6 during the same time period; and

7 “(iii) such other factors as the Com-
8 mission may determine.”;

9 (3) in subsection (h), by adding at the end the
10 following:

11 “(3) SEPARATION OF RATINGS FROM SALES
12 AND MARKETING.—The Commission shall issue rules
13 to prevent the sales and marketing considerations of
14 a nationally recognized statistical rating organiza-
15 tion from influencing the production of ratings by
16 the nationally recognized statistical rating organiza-
17 tion. Such rules shall provide for exceptions for
18 small nationally recognized statistical rating organi-
19 zations with respect to which the Commission deter-
20 mines that the separation of the production of rat-
21 ings and sales and marketing activities is not appro-
22 priate.”;

23 (4) in subsection (j)—

24 (A) by striking “Each” and inserting the
25 following:

1 “(1) IN GENERAL.—Each”; and

2 (B) by adding at the end the following:

3 “(2) LIMITATIONS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), an individual designated
6 under paragraph (1) may not, while serving in
7 the designated capacity—

8 “(i) perform credit ratings;

9 “(ii) participate in the development of
10 ratings methodologies or models;

11 “(iii) perform marketing or sales
12 functions; or

13 “(iv) participate in establishing com-
14 pensation levels, other than for employees
15 working for that individual.

16 “(B) EXCEPTION.—The Commission may
17 exempt a small nationally recognized statistical
18 rating organization from the limitations under
19 this paragraph, if the Commission finds that
20 compliance with such limitations would impose
21 an unreasonable burden on the nationally recog-
22 nized statistical rating organization.

23 “(3) OTHER DUTIES.—Each individual des-
24 ignated under paragraph (1) shall establish proce-
25 dures for the receipt, retention, and treatment of—

1 “(A) complaints regarding credit ratings,
2 models, methodologies, and compliance with the
3 securities laws and the policies and procedures
4 developed under this section; and

5 “(B) confidential, anonymous complaints
6 by employees or users of credit ratings.

7 “(4) ANNUAL REPORTS REQUIRED.—

8 “(A) ANNUAL REPORTS REQUIRED.—Each
9 individual designated under paragraph (1) shall
10 submit to the nationally recognized statistical
11 rating organization an annual report on the
12 compliance of the nationally recognized statis-
13 tical rating organization with the securities laws
14 and the policies and procedures of the nation-
15 ally recognized statistical rating organization
16 that includes—

17 “(i) a description of any material
18 changes to the code of ethics and conflict
19 of interest policies of the nationally recog-
20 nized statistical rating organization; and

21 “(ii) a certification that the report is
22 accurate and complete.

23 “(B) SUBMISSION OF REPORTS TO THE
24 COMMISSION.—Each nationally recognized sta-
25 tistical rating organization shall file the reports

1 required under subparagraph (A) together with
2 the financial report that is required to be sub-
3 mitted to the Commission under this section.

4 “(C) REGULATIONS.—The Commission
5 shall issue rules prescribing matters that should
6 be addressed in the reports required under this
7 paragraph.”;

8 (5) in subsection (k)—

9 (A) by striking “, on a confidential basis,”;

10 (B) by striking “Each nationally” and in-
11 sserting the following:

12 “(1) IN GENERAL.—Each nationally”; and

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

14 “(2) EXCEPTION.—The Commission may treat
15 as confidential any information contained in a finan-
16 cial statement furnished to the Commission under
17 paragraph (1), if the Commission determines that
18 the publication of the financial statement may have
19 a harmful effect on a nationally recognized statis-
20 tical rating organization.”; and

21 (6) by striking subsection (p) and inserting the
22 following:

23 “(p) REGULATION OF NATIONALLY RECOGNIZED
24 STATISTICAL RATING ORGANIZATIONS.—

1 “(1) ESTABLISHMENT OF OFFICE OF CREDIT
2 RATINGS.—

3 “(A) OFFICE ESTABLISHED.—The Com-
4 mission shall establish within the Commission
5 an Office of Credit Ratings (referred to in this
6 subsection as the ‘Office’) to administer the
7 rules of the Commission—

8 “(i) with respect to the practices of
9 nationally recognized statistical rating or-
10 ganizations in determining ratings, for the
11 protection of users of credit ratings and in
12 the public interest;

13 “(ii) to promote accuracy in credit
14 ratings issued by nationally recognized sta-
15 tistical rating organizations; and

16 “(iii) to ensure that such ratings are
17 not unduly influenced by conflicts of inter-
18 est.

19 “(B) DIRECTOR OF THE OFFICE.—The
20 head of the Office shall be the Director, who
21 shall report to the Chairman.

22 “(2) STAFFING.—The Office established under
23 this subsection shall be staffed sufficiently to carry
24 out fully the requirements of this section. The staff
25 shall include persons with knowledge of and exper-

1 tise in corporate, municipal, and structured debt fi-
2 nance.

3 “(3) COMMISSION EXAMINATIONS.—

4 “(A) ANNUAL EXAMINATIONS RE-
5 QUIRED.—The Office shall conduct an examina-
6 tion of each nationally recognized statistical
7 rating organization at least annually.

8 “(B) CONDUCT OF EXAMINATIONS.—Each
9 examination under subparagraph (A) shall in-
10 clude a review of—

11 “(i) the policies, procedures, and rat-
12 ing methodologies of the nationally recog-
13 nized statistical rating organization, and
14 whether the nationally recognized statis-
15 tical rating organization conducts business
16 in accordance with such policies, proce-
17 dures, and rating methodologies;

18 “(ii) the management of conflicts of
19 interest by the nationally recognized statis-
20 tical rating organization;

21 “(iii) implementation of ethics policies
22 by the nationally recognized statistical rat-
23 ing organization;

1 “(iv) the internal supervisory controls
2 of the nationally recognized statistical rat-
3 ing organization;

4 “(v) the governance of the nationally
5 recognized statistical rating organization;

6 “(vi) the activities of the individual
7 designated by the nationally recognized
8 statistical rating organization under sub-
9 section (j)(1);

10 “(vii) the processing of complaints by
11 the nationally recognized statistical rating
12 organization; and

13 “(viii) the policies of the nationally
14 recognized statistical rating organization
15 governing the post-employment activities of
16 former staff of the nationally recognized
17 statistical rating organization.

18 “(C) INSPECTION REPORTS.—The Com-
19 mission shall make available to the public a re-
20 port summarizing the essential findings of each
21 examination under subparagraph (A) that is in
22 an easily understandable format, as deemed ap-
23 propriate by the Commission.

24 “(4) RULEMAKING AUTHORITY.—The Commis-
25 sion shall—

1 “(A) establish, by rule, fines, and other
2 penalties applicable to any nationally recognized
3 statistical rating organization that violates the
4 requirements of this subsection and the rules
5 thereunder; and

6 “(B) issue such rules as may be necessary
7 to carry out this subsection.

8 “(q) **TRANSPARENCY OF RATINGS PERFORMANCE.—**

9 “(1) **RULEMAKING REQUIRED.—**The Commis-
10 sion shall, by rule, require that each nationally rec-
11 ognized statistical rating organization publicly dis-
12 close information on the initial credit ratings pub-
13 lished by the nationally recognized statistical rating
14 organization for each type of obligor, security, and
15 money market instrument and any subsequent
16 changes to such credit ratings, for the purpose of al-
17 lowing users of credit ratings to evaluate the accu-
18 racy of ratings and compare the performance of rat-
19 ings by different nationally recognized statistical rat-
20 ing organizations.

21 “(2) **CONTENT.—**The rules of the Commission
22 under this subsection shall require, at a minimum,
23 disclosures that—

24 “(A) are comparable among nationally rec-
25 ognized statistical rating organizations, to allow

1 users of credit ratings to compare the perform-
2 ance of credit ratings across nationally recog-
3 nized statistical rating organizations;

4 “(B) are clear and informative for inves-
5 tors with varying levels of financial sophistica-
6 tion;

7 “(C) include performance information over
8 a range of years and for a variety of types of
9 credit ratings, in a format determined by the
10 Commission;

11 “(D) are published and made freely avail-
12 able by the nationally recognized statistical rat-
13 ing organization, on an easily accessible portion
14 of its website, and in writing, when requested;
15 and

16 “(E) are appropriate to the business model
17 of a nationally recognized statistical rating or-
18 ganization.

19 “(r) CREDIT RATINGS METHODOLOGIES.—The Com-
20 mission shall prescribe rules, for the protection of inves-
21 tors and in the public interest, with respect to the proce-
22 dures and methodologies, including qualitative and quan-
23 titative inputs and models, used by nationally recognized
24 statistical rating organizations that require each nation-
25 ally recognized statistical rating organization—

1 “(1) to ensure that credit ratings are deter-
2 mined using procedures and methodologies, includ-
3 ing qualitative and quantitative inputs and models,
4 that are—

5 “(A) approved by the board of the nation-
6 ally recognized statistical rating organization, a
7 body performing a function similar to that of a
8 board, or the senior officer of the nationally
9 recognized statistical rating organization; and

10 “(B) in accordance with the policies and
11 procedures of the nationally recognized statis-
12 tical rating organization for the development
13 and modification of credit rating procedures
14 and methodologies;

15 “(2) to ensure that when material changes to
16 credit rating procedures and methodologies, includ-
17 ing changes to qualitative and quantitative inputs
18 and models, are made, that—

19 “(A) the changes are applied consistently
20 to all credit ratings to which the changed proce-
21 dures and methodologies apply;

22 “(B) to the extent that changes are made
23 to credit rating surveillance procedures and
24 methodologies, the changes are applied to then-
25 current credit ratings by the nationally recog-

1 nized statistical rating organization within a
2 reasonable time period determined by the Com-
3 mission, by rule; and

4 “(C) the nationally recognized statistical
5 rating organization publically discloses the rea-
6 son for the change; and

7 “(3) to notify users of credit ratings—

8 “(A) of the version of a procedure or meth-
9 odology, including the qualitative methodology
10 or quantitative inputs, used with respect to a
11 particular credit rating;

12 “(B) when a material change is made to a
13 procedure or methodology, including to a quali-
14 tative model or quantitative inputs;

15 “(C) when a significant error is identified
16 in a procedure or methodology that may result
17 in credit rating actions; and

18 “(D) of the likelihood of the change result-
19 ing in current credit ratings being subject to a
20 change in rating.

21 “(s) **TRANSPARENCY OF CREDIT RATING METH-**
22 **ODOLOGIES AND INFORMATION REVIEWED.—**

23 “(1) **FORM FOR DISCLOSURES.—**The Commis-
24 sion shall require by rule, a nationally recognized
25 statistical rating organization to prescribe a form to

1 include with the publication of each credit rating
2 that discloses—

3 “(A) information relating to—

4 “(i) the assumptions underlying credit
5 rating procedures and methodologies;

6 “(ii) the data that was relied on to de-
7 termine the credit rating; and

8 “(iii) if applicable, how the nationally
9 recognized statistical rating organization
10 used servicer or remittance reports, and
11 with what frequency, to conduct surveil-
12 lance of the credit rating; and

13 “(B) information that can be used by in-
14 vestors and other users of credit ratings to bet-
15 ter understand credit ratings in each class of
16 credit rating issued by the nationally recognized
17 statistical rating organization.

18 “(2) **FORMAT.**—The form developed under
19 paragraph (1) shall—

20 “(A) be easy to use and helpful for users
21 of credit ratings to understand the information
22 contained in the report; and

23 “(B) require the nationally recognized sta-
24 tistical rating organization to provide the quali-
25 tative and quantitative content described in

1 paragraph (3)(B) in a manner that is directly
2 comparable across types of securities.

3 “(3) CONTENT OF FORM.—

4 “(A) QUALITATIVE CONTENT.—Each na-
5 tionally recognized statistical rating organiza-
6 tion shall disclose on the form developed under
7 paragraph (1)—

8 “(i) the credit ratings produced by the
9 nationally recognized statistical rating or-
10 ganization;

11 “(ii) the main assumptions used in
12 constructing procedures and methodolo-
13 gies, including qualitative methodologies
14 and quantitative inputs and assumptions
15 about the correlation of defaults across ob-
16 ligors used in rating structured products;

17 “(iii) the potential limitations of the
18 credit ratings, and the types of risks ex-
19 cluded from the credit ratings that the na-
20 tionally recognized statistical rating orga-
21 nization does not comment on, including li-
22 quidity, market, and other risks;

23 “(iv) information on the uncertainty
24 of the credit rating, including—

1 “(I) information on the reli-
2 ability, accuracy, and quality of the
3 data relied on in determining the
4 credit rating; and

5 “(II) a statement relating to the
6 extent to which data essential to the
7 determination of the credit rating
8 were reliable or limited, including—

9 “(aa) any limits on the
10 scope of historical data; and

11 “(bb) any limits in accessi-
12 bility to certain documents or
13 other types of information that
14 would have better informed the
15 credit rating;

16 “(v) whether and to what extent third
17 party due diligence services have been used
18 by the nationally recognized statistical rat-
19 ing organization, a description of the infor-
20 mation that such third party reviewed in
21 conducting due diligence services, and a
22 description of the findings or conclusions
23 of such third party;

24 “(vi) a description of data about any
25 obligor, issuer, security, or money market

1 instrument that were relied upon for the
2 purpose of determining the credit rating;

3 “(vii) a statement containing an over-
4 all assessment of the quality of information
5 available and considered in producing a
6 rating for an obligor, security, or a money
7 market instrument in relation to the qual-
8 ity of information available to the nation-
9 ally recognized statistical rating organiza-
10 tion in rating similar issuances;

11 “(viii) information relating to conflicts
12 of interest of the nationally recognized sta-
13 tistical rating organization; and

14 “(ix) such additional information as
15 the Commission may require.

16 “(B) QUANTITATIVE CONTENT.—Each na-
17 tionally recognized statistical rating organiza-
18 tion shall disclose on the form developed under
19 this subsection—

20 “(i) an explanation or measure of the
21 potential volatility of the credit rating, in-
22 cluding—

23 “(I) any factors that might lead
24 to a change in the credit ratings; and

1 “(II) the extent of the change
2 that a user can expect under different
3 market conditions;

4 “(ii) information on the content of the
5 rating, including—

6 “(I) the historical performance of
7 the rating, or the expected probability
8 of default; and

9 “(II) the historical performance
10 of the rating, or the loss to the user
11 in the event of default;

12 “(iii) information on the sensitivity of
13 the rating to assumptions made by the na-
14 tionally recognized statistical rating orga-
15 nization; and

16 “(iv) such additional information as
17 may be required by the Commission.

18 “(4) DUE DILIGENCE SERVICES.—

19 “(A) PUBLIC DISCLOSURE.—The issuer or
20 underwriter of any asset-backed security shall
21 make publicly available any third-party due dili-
22 gence report obtained by the issuer or under-
23 writer.

24 “(B) CERTIFICATION REQUIRED.—In any
25 case in which third-party due diligence services

1 are employed by a nationally recognized statis-
2 tical rating organization, an issuer, or an un-
3 derwriter, the person providing the due dili-
4 gence services shall provide to any nationally
5 recognized statistical rating organization that
6 produces a rating to which such services relate,
7 written certification, as provided in subpara-
8 graph (C).

9 “(C) **FORMAT AND CONTENT.**—Each na-
10 tionally recognized statistical rating organiza-
11 tion shall establish the appropriate format and
12 content for the written certifications required
13 under subparagraph (B), to ensure that pro-
14 viders of due diligence services have conducted
15 a thorough review of data, documentation, and
16 other relevant information necessary for the na-
17 tionally recognized statistical rating organiza-
18 tion to provide an accurate rating.

19 “(D) **DISCLOSURE OF CERTIFICATION.**—
20 The Commission shall adopt rules requiring a
21 nationally recognized statistical rating organiza-
22 tion, at the time at which the nationally recog-
23 nized statistical rating organization produces a
24 rating, to disclose the certification described in
25 subparagraph (B) to the public in a manner

1 that allows the public to determine the ade-
2 quacy and level of due diligence services pro-
3 vided by a third party.”.

4 **SEC. 932. STATE OF MIND IN PRIVATE ACTIONS.**

5 Section 21D(b)(2) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78u-4(b)(2)) is amended—

7 (1) by striking “In any” and inserting the fol-
8 lowing:

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), in any”; and

11 (2) by adding at the end the following:

12 “(B) EXCEPTION.—In the case of an ac-
13 tion for money damages brought against a na-
14 tionally recognized statistical rating organiza-
15 tion under this title, it shall be sufficient, for
16 purposes of pleading any required state of mind
17 in relation to such action, that the complaint
18 state with particularity facts giving rise to a
19 strong inference that the nationally recognized
20 statistical rating organization knowingly or
21 recklessly failed—

22 “(i) to conduct a reasonable investiga-
23 tion of the rated security with respect to
24 the factual elements relied upon by its own
25 methodology for evaluating credit risk; or

1 “(ii) to obtain reasonable verification
2 of such factual elements (which verification
3 may be based on a sampling technique that
4 does not amount to an audit) from other
5 sources that it considered to be competent
6 and that were independent of the issuer
7 and underwriter.”.

8 **SEC. 933. REFERRING TIPS TO LAW ENFORCEMENT OR**
9 **REGULATORY AUTHORITIES.**

10 Section 15E of the Securities Exchange Act of 1934
11 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-
12 ed by adding at the end the following:

13 “(t) DUTY TO REPORT TIPS ALLEGING VIOLA-
14 TIONS.—

15 “(1) DUTY TO REPORT.—Each nationally rec-
16 ognized statistical rating organization shall refer to
17 the appropriate law enforcement or regulatory au-
18 thorities any information that the nationally recog-
19 nized statistical rating organization receives and
20 finds credible that alleges that an issuer of securities
21 rated by the nationally recognized statistical rating
22 organization has committed or is committing a viola-
23 tion of law that has not been adjudicated by a Fed-
24 eral or State court.

1 “(2) RULE OF CONSTRUCTION.—Nothing in
2 paragraph (1) may be construed to require a nation-
3 ally recognized statistical rating organization to
4 verify the accuracy of the information described in
5 paragraph (1).”.

6 **SEC. 934. CONSIDERATION OF INFORMATION FROM**
7 **SOURCES OTHER THAN THE ISSUER IN RAT-**
8 **ING DECISIONS.**

9 Section 15E of the Securities Exchange Act of 1934
10 (15 U.S.C. 78o–7), as amended by this subtitle, is amend-
11 ed by adding at the end the following:

12 “(u) INFORMATION FROM SOURCES OTHER THAN
13 THE ISSUER.—In producing a credit rating, a nationally
14 recognized statistical rating organization shall consider in-
15 formation about an issuer that the nationally recognized
16 statistical rating organization has, or receives from a
17 source other than the issuer, that the nationally recog-
18 nized statistical rating organization finds credible and po-
19 tentially significant to a rating decision.”.

20 **SEC. 935. QUALIFICATION STANDARDS FOR CREDIT RAT-**
21 **ING ANALYSTS.**

22 Not later than 1 year after the date of enactment
23 of this Act, the Securities and Exchange Commission (re-
24 ferred to in this subtitle as the “Commission”), or a na-
25 tional securities association designated by the Commis-

1 sion, shall issue rules that are reasonably designed to en-
2 sure that any person employed by a nationally recognized
3 statistical rating organization to perform credit ratings—

4 (1) meets standards of training, experience, and
5 competence necessary to produce accurate ratings;
6 and

7 (2) is tested for knowledge of the credit rating
8 process.

9 **SEC. 936. TIMING OF REGULATIONS.**

10 The Securities and Exchange Commission shall issue
11 final regulations, as required by this title and the amend-
12 ments made by this subtitle, not later than 1 year after
13 the date of enactment of this Act.

14 **SEC. 937. STUDIES AND REPORTS.**

15 (a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
16 ON REQUIRED USES OF NATIONALLY RECOGNIZED STA-
17 TISTICAL RATING ORGANIZATION RATINGS.—

18 (1) STUDY.—The Comptroller General of the
19 United States shall conduct a study of the scope of
20 provisions of Federal, State, and local law that re-
21 quire the use of ratings issued by nationally recog-
22 nized statistical rating organizations (in this section
23 referred to as the “ratings requirements”).

24 (2) SUBJECTS FOR EVALUATION; PROCESS OF
25 EVALUATION.—

1 (A) SUBJECTS FOR EVALUATION.—In con-
2 ducting the study under paragraph (1), the
3 Comptroller General of the United States shall
4 evaluate—

5 (i) the appropriateness of and neces-
6 sity for ratings requirements;

7 (ii) which ratings requirements, if
8 any, could be removed with minimal dis-
9 ruption to the financial markets;

10 (iii) the potential impact on the finan-
11 cial markets and on investors if the ratings
12 requirements identified under clause (ii)
13 were rescinded; and

14 (iv) whether the financial markets and
15 investors would benefit from the rescission
16 of such ratings requirements.

17 (B) PROCESS OF EVALUATION.—In con-
18 ducting the study under paragraph (1), the
19 Comptroller General of the United States shall
20 research and take into consideration the views
21 of—

22 (i) the Federal financial regulatory
23 agencies;

24 (ii) hedge funds;

25 (iii) banks;

- 1 (iv) brokerage firms;
- 2 (v) pension funds; and
- 3 (vi) all other interested parties.

4 (3) REPORT AND RECOMMENDATIONS.—Not
5 later than 1 year after the date of enactment of this
6 Act, the Comptroller General of the United States
7 shall submit to the Committee on Banking, Housing,
8 and Urban Affairs of the Senate and the Committee
9 on Financial Services of the House of Representa-
10 tives a report on the results of the study conducted
11 under paragraph (1), including recommendations
12 on—

13 (A) which ratings requirements, if any,
14 could be removed with minimal disruption to
15 the markets; and

16 (B) whether the financial markets and in-
17 vestors would benefit from the rescission of the
18 ratings requirements identified under subpara-
19 graph (A).

20 (b) SECURITIES AND EXCHANGE COMMISSION STUDY
21 ON STRENGTHENING CREDIT RATING AGENCY INDE-
22 PENDENCE.—

23 (1) STUDY.—The Commission shall conduct a
24 study of—

1 (A) the independence of nationally recog-
2 nized statistical rating organizations; and

3 (B) how the independence of nationally
4 recognized statistical rating organizations im-
5 pacts the ratings issued by the nationally orga-
6 nized statistical rating organizations.

7 (2) SUBJECTS FOR EVALUATION.—In con-
8 ducting the study under paragraph (1), the Commis-
9 sion shall evaluate—

10 (A) the management of conflicts of interest
11 raised by a nationally recognized statistical rat-
12 ing organization providing other services, in-
13 cluding risk management advisory services, an-
14 cillary assistance, or consulting services;

15 (B) the potential impact of rules prohib-
16 iting a nationally recognized statistical rating
17 organization that provided a rating to an issuer
18 from providing other services to the issuer; and

19 (C) any other issue relating to nationally
20 recognized statistical organizations, as the
21 Chairman determines is appropriate.

22 (3) REPORT.—Not later than 1 year after the
23 date of enactment of this Act, the Chairman of the
24 Commission shall submit to the Committee on Bank-
25 ing, Housing, and Urban Affairs of the Senate and

1 the Committee on Financial Services of the House of
2 Representatives a report on the results of the study
3 conducted under paragraph (1), including rec-
4 ommendations, if any, for improving the quality of
5 ratings issued by nationally recognized statistical
6 rating organizations.

7 (c) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
8 ON ALTERNATIVE BUSINESS MODELS.—

9 (1) STUDY.—The Comptroller General of the
10 United States shall conduct a study on alternative
11 means for compensating nationally recognized statis-
12 tical rating organizations in order to create incen-
13 tives for nationally recognized statistical rating orga-
14 nizations to provide more accurate credit ratings, in-
15 cluding any statutory changes that would be re-
16 quired to facilitate the use of an alternative means
17 of compensation.

18 (2) REPORT.—Not later than 1 year after the
19 date of enactment of this Act, the Comptroller Gen-
20 eral shall submit to the Committee on Banking,
21 Housing, and Urban Affairs of the Senate and the
22 Committee on Financial Services of the House of
23 Representatives a report on the results of the study
24 conducted under paragraph (1), including rec-
25 ommendations, if any, for providing incentives to

1 credit rating agencies to provide more accurate cred-
2 it ratings.

3 (d) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
4 ON THE CREATION OF AN INDEPENDENT PROFESSIONAL
5 ANALYST ORGANIZATION.—

6 (1) STUDY.—The Comptroller General of the
7 United States shall conduct a study on the
8 feasibility and merits of creating an independent
9 professional organization for rating analysts em-
10 ployed by nationally recognized statistical rating or-
11 ganizations that would be responsible for—

12 (A) establishing independent standards for
13 governing the profession of rating analysts;

14 (B) establishing a code of ethical conduct;
15 and

16 (C) overseeing the profession of rating an-
17 alysts.

18 (2) REPORT.—Not later than 1 year after the
19 date of enactment of this Act, the Comptroller Gen-
20 eral shall submit to the Committee on Banking,
21 Housing, and Urban Affairs of the Senate and the
22 Committee on Financial Services of the House of
23 Representatives a report on the results of the study
24 conducted under paragraph (1).

1 (e) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
2 OF EFFECTIVENESS OF RULES OF THE COMMISSION.—

3 (1) STUDY.—The Comptroller General of the
4 United States shall carry out a study of the extent
5 to which the rules of the Commission have carried
6 out this subtitle, and the amendments made by this
7 subtitle.

8 (2) REPORT.—Not later than 30 months after
9 the date of enactment of this Act, the Comptroller
10 General shall submit 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 and the Commission, a report con-
14 taining the results of the study required under para-
15 graph (1).

16 (f) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
17 ON THE PERFORMANCE OF RATINGS FOR THE PURPOSES
18 OF REGULATORY USE.—

19 (1) STUDY.—The Comptroller General of the
20 United States shall carry out a study of a represent-
21 ative sample of the credit ratings issued by each na-
22 tionally recognized statistical rating organization to
23 assess—

24 (A) the predictive performance of the ini-
25 tial credit ratings in each such sample; and

1 (B) the predictive performance of any sub-
2 sequent credit rating described in subparagraph
3 (A) that is issued by the nationally recognized
4 statistical rating organization.

5 (2) REPORT.—Not later than 18 months after
6 the date of enactment of this Act, the Comptroller
7 General shall submit to the Committee on Banking,
8 Housing, and Urban Affairs of the Senate and the
9 Committee on Financial Services of the House of
10 Representatives a report that contains—

11 (A) the results of the study required under
12 paragraph (1); and

13 (B) a score card evaluating the predictive
14 performance of the credit ratings of each na-
15 tionally recognized statistical rating organiza-
16 tion.

17 **Subtitle D—Improvements to the**
18 **Asset-Backed Securitization**
19 **Process**

20 **SEC. 941. REGULATION OF CREDIT RISK RETENTION.**

21 (a) DEFINITION OF ASSET-BACKED SECURITY.—Sec-
22 tion 3(a) of the Securities Exchange Act of 1934 (15
23 U.S.C. 78c(a)) is amended by adding at the end the fol-
24 lowing:

1 “(65) ASSET-BACKED SECURITY.—The term
2 ‘asset-backed security’—

3 “(A) means a fixed-income or other secu-
4 rity collateralized by any type of self-liquidating
5 financial asset (including a loan, a lease, a
6 mortgage, or a secured or unsecured receivable)
7 that allows the holder of the security to receive
8 payments that depend primarily on cash flow
9 from the asset, including—

10 “(i) a collateralized mortgage obliga-
11 tion;

12 “(ii) a collateralized debt obligation;

13 “(iii) a collateralized bond obligation;

14 “(iv) a collateralized debt obligation of
15 asset backed-securities;

16 “(v) a collateralized debt obligation of
17 collateralized debt obligations; and

18 “(vi) a security that the Commission,
19 by rule, determines to be an asset-backed
20 security; and

21 “(B) does not include a security issued by
22 a finance subsidiary held by the parent com-
23 pany or a company controlled by the parent
24 company, if none of the securities issued by the

1 finance subsidiary are held by an entity that is
2 not controlled by the parent company.”.

3 (b) CREDIT RISK RETENTION.—The Securities Ex-
4 change Act of 1934 (15 U.S.C. 78a et seq.) is amended
5 by inserting after section 15F, as added by this Act, the
6 following:

7 **“SEC. 15G. CREDIT RISK RETENTION.**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘Federal banking agencies’ means
10 the Board of Governors of the Federal Reserve Sys-
11 tem, FIRA, and the Federal Deposit Insurance Cor-
12 poration;

13 “(2) the term ‘insured depository institution’
14 has the same meaning as in section 3(e) of the Fed-
15 eral Deposit Insurance Act (12 U.S.C. 1813(e));

16 “(3) the term ‘securitizer’ means—

17 “(A) an issuer of an asset-backed security;

18 or

19 “(B) a person who organizes and initiates
20 an asset-backed securities transaction by selling
21 or transferring assets, either directly or indi-
22 rectly, including through an affiliate, to the
23 issuer; and

24 “(4) the term ‘originator’ means a person who
25 sells an asset to a securitizer.

1 “(b) IN GENERAL.—Not later than 270 day after the
2 date of enactment of this section, the Federal banking
3 agencies and the Commission shall jointly prescribe regu-
4 lations to require any securitizer to retain an economic
5 interest in a material portion of the credit risk for any
6 asset that the securitizer, through the issuance of an
7 asset-backed security, transfers, sells, or conveys to a third
8 party.

9 “(c) STANDARDS FOR REGULATIONS.—The regula-
10 tions prescribed under subsection (b) shall—

11 “(1) prohibit a securitizer from directly or indi-
12 rectly hedging or otherwise transferring the credit
13 risk that the securitizer is required to retain with re-
14 spect to an asset;

15 “(2) require a securitizer to retain not less than
16 10 percent of the credit risk for any asset that is
17 transferred, sold, or conveyed through the issuance
18 of an asset-backed security by the securitizer;

19 “(3) specify—

20 “(A) the permissible forms of risk reten-
21 tion for purposes of this section; and

22 “(B) the minimum duration of the risk re-
23 tention required under this section;

24 “(4) apply, regardless of whether the securitizer
25 is an insured depository institution; and

1 “(5) provide for—

2 “(A) a total or partial exemption for the
3 securitization of an asset issued or guaranteed
4 by the United States, an agency of the United
5 States, or a Government-sponsored enterprise,
6 as the Federal banking agencies and the Com-
7 mission jointly determine appropriate;

8 “(B) a total or partial exemption of any
9 other securitizations, as may be appropriate in
10 the public interest or for the protection of in-
11 vestors; and

12 “(C) the allocation of risk retention obliga-
13 tions between a securitizer and an originator in
14 the case of a securitizer that purchases assets
15 from an originator, as the Federal banking
16 agencies and the Commission jointly determine
17 appropriate.

18 “(d) EXEMPTIONS, EXCEPTIONS, AND ADJUST-
19 MENTS.—

20 “(1) IN GENERAL.—The Federal banking agen-
21 cies may jointly adopt or issue exemptions, excep-
22 tions, or adjustments to the rules issued under this
23 section, including exemptions, exceptions, or adjust-
24 ments for classes of institutions or assets relating to

1 the risk retention requirement and the prohibition
2 on hedging under subsection (c)(2).

3 “(2) **APPLICABLE STANDARDS.**—Any exemp-
4 tion, exception, or adjustment adopted or issued by
5 the Federal banking agencies under this paragraph
6 shall—

7 “(A) help ensure high quality underwriting
8 standards for the securitizers and originators of
9 assets; and

10 “(B) encourage appropriate risk manage-
11 ment practices by the securitizers and origina-
12 tors of assets, improve the access of consumers
13 to credit on reasonable terms, or otherwise be
14 in the public interest and for the protection of
15 investors.

16 “(e) **ENFORCEMENT.**—The regulations issued under
17 this section shall be enforced by—

18 “(1) the appropriate Federal banking agency,
19 with respect to any securitizer that is an insured de-
20 pository institution; and

21 “(2) the Commission, with respect to any
22 securitizer that is not an insured depository institu-
23 tion.

24 “(f) **AUTHORITY OF COMMISSION.**—The authority of
25 the Commission under this section shall be in addition to

1 the authority of the Commission to otherwise enforce the
2 securities laws.”.

3 **SEC. 942. PERIODIC AND OTHER REPORTING UNDER THE**
4 **SECURITIES EXCHANGE ACT OF 1934 FOR**
5 **ASSET-BACKED SECURITIES.**

6 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
7 15 of Securities Exchange Act of 1934 (15 U.S.C. 78o)
8 is amended—

9 (1) in subsection (d)—

10 (A) by striking “(d) Each” and inserting
11 the following:

12 “(d) SUPPLEMENTARY AND PERIODIC INFORMA-
13 TION.—

14 “(1) IN GENERAL.—Each”;

15 (B) in the third sentence, by inserting
16 after “securities of each class” the following: “,
17 other any class of asset-backed securities,”;

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

19 “(2) ASSET-BACKED SECURITIES.—

20 “(A) SUSPENSION OF DUTY TO FILE.—The
21 Commission may, by rule or regulation, provide
22 for the suspension or termination of the duty to
23 file under this subsection for any class of asset-
24 backed security, on such terms and conditions
25 and for such period or periods as the Commis-

1 sion deems necessary or appropriate in the pub-
2 lic interest or for the protection of investors.

3 “(B) CLASSIFICATION OF ISSUERS.—The
4 Commission may, for purposes of this sub-
5 section, classify issuers and prescribe require-
6 ments appropriate for each class of issuer of
7 asset-backed security.”.

8 (b) SECURITIES ACT OF 1933.—Section 7 of the Se-
9 curities Act of 1933 (15 U.S.C. 77g) is amended by add-
10 ing at the end the following:

11 “(c) DISCLOSURE REQUIREMENTS.—

12 “(1) IN GENERAL.—The Commission shall
13 adopt regulations under this subsection requiring
14 each issuer of an asset-backed security to disclose,
15 for each tranche or class of security, information re-
16 garding the assets backing that security.

17 “(2) CONTENT OF REGULATIONS.—In adopting
18 regulations under this subsection, the Commission
19 shall—

20 “(A) set standards for the format of the
21 data provided by issuers of an asset-backed se-
22 curity, which shall, to the extent feasible, facili-
23 tate comparison of such data across securities
24 in similar types of asset classes; and

1 “(B) require issuers of asset-backed securi-
2 ties, at a minimum, to disclose asset-level or
3 loan-level data necessary for investors to inde-
4 pendently perform due diligence, including—

5 “(i) data having unique identifiers re-
6 lating to loan brokers or originators;

7 “(ii) the nature and extent of the
8 compensation of the broker or originator of
9 the assets backing the security; and

10 “(iii) the amount of risk retention by
11 the originator or the securitizer of such as-
12 sets.”.

13 **SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-**
14 **BACKED OFFERINGS.**

15 Not later than 180 days after the date of enactment
16 of this Act, the Securities and Exchange Commission shall
17 prescribe regulations on the use of representations and
18 warranties in the market for asset-backed securities (as
19 that term is defined in section 3(a)(65) of the Securities
20 Exchange Act of 1934, as added by this subtitle) that—

21 (1) require each credit rating agency to include
22 in any report accompanying a credit rating a de-
23 scription of—

1 (A) the representations, warranties, and
2 enforcement mechanisms available to investors;
3 and

4 (B) how they differ from the representa-
5 tions, warranties, and enforcement mechanisms
6 in issuances of similar securities; and

7 (2) require any originator to disclose fulfilled
8 repurchase requests across all trusts aggregated by
9 the originator, so that investors may identify asset
10 originators with clear underwriting 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)(65) 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 (a) AMENDMENT.—The Securities Exchange Act of
23 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
24 section 14 (15 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 1-year 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 board of directors of an issuer and may not be con-
16 strued—

17 “(1) as overruling a decision by such board of
18 directors;

19 “(2) to create or imply any change to the cur-
20 rent fiduciary duties of such board of directors;

21 “(3) to create or imply any additional fiduciary
22 duty by such 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. SHAREHOLDER VOTE ON GOLDEN PARACHUTE**
2 **POLICY.**

3 (a) AMENDMENT.—The Securities Exchange Act of
4 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
5 section 14A, as added by this Act, the following:

6 **“SEC. 14B. SHAREHOLDER VOTE ON GOLDEN PARACHUTE**
7 **POLICY.**

8 “(a) DISCLOSURE.—In proxy solicitation material for
9 an annual or other meeting of the shareholders occurring
10 after the end of the 1-year period beginning on the date
11 of enactment of this section, the person making such solici-
12 tation shall disclose in the proxy solicitation material, in
13 a clear and simple form, in accordance with regulations
14 of the Commission, any policy that the issuer has relating
15 to the award of any type of compensation (whether
16 present, deferred, or contingent) to any principal executive
17 officer of the issuer—

18 “(1) upon the acquisition, merger, consolida-
19 tion, sale, or other disposition of the issuer; and

20 “(2) that has not been subject to a shareholder
21 vote under section 14A.

22 “(b) SHAREHOLDER APPROVAL.—

23 “(1) IN GENERAL.—The proxy solicitation ma-
24 terial containing the disclosure required by section
25 14A shall require a separate shareholder vote to ap-
26 prove the policy described in subsection (a).

1 “(2) RULE OF CONSTRUCTION.—A vote by the
2 shareholders referred to in paragraph (1) shall not
3 be binding on the board of directors of an issuer and
4 may not be construed—

5 “(A) as overruling a decision by such
6 board of directors;

7 “(B) to create or imply any change to the
8 current fiduciary duties of such board of direc-
9 tors;

10 “(C) to create or imply any additional fi-
11 duciary duty by such board of directors; or

12 “(D) to restrict or limit the ability of
13 shareholders to make proposals for inclusion in
14 proxy materials related to executive compensa-
15 tion.”.

16 (b) DEADLINE FOR RULEMAKING.—Not later than 1
17 year after the date of enactment of this Act, the Securities
18 and Exchange Commission shall issue final rules to carry
19 out section 14B of the Securities Exchange Act of 1934,
20 as added by this section.

21 **SEC. 953. COMPENSATION COMMITTEE INDEPENDENCE.**

22 The Securities Exchange Act of 1934 (15 U.S.C. 78
23 et seq.) is amended by inserting after section 10B, as
24 added by section 753, the following:

1 **“SEC. 10C. COMPENSATION COMMITTEES.**

2 “(a) INDEPENDENCE OF COMPENSATION COMMIT-
3 TEES.—

4 “(1) LISTING STANDARDS.—The Commission
5 shall, by rule, direct the national securities ex-
6 changes and national securities associations to pro-
7 hibit the listing of any security of an issuer that
8 does not comply with the requirements of this sub-
9 section.

10 “(2) INDEPENDENCE OF COMPENSATION COM-
11 MITTEES.—The rules of the Commission under para-
12 graph (1) shall require that each member of the
13 compensation committee of the board of directors of
14 an issuer be—

15 “(A) a member of the board of directors of
16 the issuer; and

17 “(B) independent.

18 “(3) INDEPENDENCE.—The rules of the Com-
19 mission under paragraph (1) shall require that, in
20 determining the definition of the term ‘independ-
21 ence’ for purposes of paragraph (2), the national se-
22 curities exchanges and the national securities asso-
23 ciations shall consider relevant factors, including—

24 “(A) the source of compensation of a mem-
25 ber of the board of directors of an issuer; and

1 “(B) whether a member of the board of di-
2 rectors of an issuer is affiliated with the issuer,
3 a subsidiary of the issuer, or an affiliate of a
4 subsidiary of the issuer.

5 “(4) EXEMPTION AUTHORITY.—The rules of
6 the Commission under paragraph (1) shall permit a
7 national securities exchange or a national securities
8 association to exempt a particular relationship from
9 the requirements of paragraph (2), with respect to
10 the members of a compensation committee, as the
11 national securities exchange or national securities
12 association determines is appropriate, taking into
13 consideration the size of an issuer and any other rel-
14 evant factors.

15 “(b) INDEPENDENCE STANDARDS FOR COMPENSA-
16 TION CONSULTANTS AND OTHER COMPENSATION COM-
17 MITTEE ADVISERS.—

18 “(1) IN GENERAL.—Any compensation consult-
19 ant, legal counsel, or other adviser to the compensa-
20 tion committee of an issuer shall be independent.

21 “(2) RULES.—The Commission shall issue rules
22 defining the term ‘independent’ for purposes of this
23 subsection.

24 “(c) COMPENSATION COMMITTEE AUTHORITY RE-
25 LATING TO COMPENSATION CONSULTANTS.—

1 “(1) AUTHORITY TO RETAIN COMPENSATION
2 CONSULTANT.—

3 “(A) IN GENERAL.—The compensation
4 committee of an issuer, in its capacity as a
5 committee of the board of directors, may, in its
6 sole discretion, retain or obtain the advice of a
7 compensation consultant.

8 “(B) DIRECT RESPONSIBILITY OF COM-
9 PENSATION COMMITTEE.—The compensation
10 committee of an issuer shall be directly respon-
11 sible for the appointment, compensation, and
12 oversight of the work of a compensation con-
13 sultant.

14 “(C) RULE OF CONSTRUCTION.—This
15 paragraph may not be construed—

16 “(i) to require the compensation com-
17 mittee to implement or act consistently
18 with the advice or recommendations of the
19 compensation consultant; or

20 “(ii) to affect the ability or obligation
21 of a compensation committee to exercise its
22 own judgment in fulfillment of the duties
23 of the compensation committee.

24 “(2) DISCLOSURE.—In any proxy or consent
25 solicitation material for an annual meeting of the

1 shareholders (or a special meeting in lieu of the an-
2 nual meeting) occurring on or after the date that is
3 1 year after the date of enactment of this section,
4 each issuer shall disclose in the proxy or consent
5 material, in accordance with regulations of the Com-
6 mission, whether—

7 “(A) the compensation committee of the
8 issuer retained or obtained the advice of a com-
9 pensation consultant; and

10 “(B) the work of the compensation com-
11 mittee has raised any conflict of interest and, if
12 so, the nature of the conflict and how the con-
13 flict is being addressed.

14 “(3) STUDY REQUIRED.—

15 “(A) IN GENERAL.—The Commission shall
16 conduct a study and review of—

17 “(i) the use of compensation consult-
18 ants by issuers in accordance with this sec-
19 tion; and

20 “(ii) the effects of the use of com-
21 pensation consultants on the performance
22 of issuers.

23 “(B) REPORT TO CONGRESS.—Not earlier
24 than 3 years or later than 5 years after the
25 date of enactment of this section, the Commis-

1 sion shall submit a report to Congress on the
2 results of the study and review under subpara-
3 graph (A).

4 “(d) **AUTHORITY TO ENGAGE INDEPENDENT LEGAL**
5 **COUNSEL AND OTHER ADVISERS.—**

6 “(1) **IN GENERAL.—**The compensation com-
7 mittee of an issuer, in its capacity as a committee
8 of the board of directors, may, in its sole discretion,
9 retain and obtain the advice of independent legal
10 counsel and other advisers.

11 “(2) **DIRECT RESPONSIBILITY OF COMPENSA-**
12 **TION COMMITTEE.—**The compensation committee of
13 an issuer shall be directly responsible for the ap-
14 pointment, compensation, and oversight of the work
15 of independent legal counsel and other advisers.

16 “(3) **RULE OF CONSTRUCTION.—**This sub-
17 section may not be construed—

18 “(A) to require a compensation committee
19 to implement or act consistently with the advice
20 or recommendations of independent legal coun-
21 sel or other advisers under this subsection; or

22 “(B) to affect the ability or obligation of a
23 compensation committee to exercise its own
24 judgment in fulfillment of the duties of the
25 compensation committee.

1 “(e) COMPENSATION OF COMPENSATION CONSULT-
2 ANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER AD-
3 VISORS.—Each issuer shall provide for appropriate fund-
4 ing, as determined by the compensation committee in its
5 capacity as a committee of the board of directors, for pay-
6 ment of reasonable compensation—

7 “(1) to a compensation consultant; and

8 “(2) to independent legal counsel or any other
9 adviser to the compensation committee.

10 “(f) COMMISSION RULES.—

11 “(1) IN GENERAL.—Not later than 360 days
12 after the date of enactment of this section, the Com-
13 mission shall, by rule, direct the national securities
14 exchanges and national securities associations to
15 prohibit the listing of any security of an issuer that
16 is not in compliance with the requirements of this
17 section.

18 “(2) OPPORTUNITY TO CURE DEFECTS.—The
19 rules of the Commission under paragraph (1) shall
20 provide for appropriate procedures for an issuer to
21 have a reasonable opportunity to cure any defects
22 that would be the basis for the prohibition under
23 paragraph (1), before the imposition of such prohibi-
24 tion.

25 “(3) EXEMPTION AUTHORITY.—

1 “(A) IN GENERAL.—The rules of the Com-
2 mission under paragraph (1) shall permit a na-
3 tional securities exchange or a national securi-
4 ties association to exempt a category of issuers
5 from the requirements under this section, as
6 the national securities exchange or the national
7 securities association determines is appropriate.

8 “(B) CONSIDERATIONS.—In determining
9 appropriate exemptions under subparagraph
10 (A), the national securities exchange or the na-
11 tional securities association shall take into ac-
12 count the potential impact of the requirements
13 of this section on smaller reporting issuers.”.

14 **SEC. 954. EXECUTIVE COMPENSATION DISCLOSURES.**

15 Section 14 of the Securities Exchange Act of 1934
16 (15 U.S.C. 78n), as amended by this title, is amended by
17 adding at the end the following:

18 “(j) DISCLOSURE OF EXECUTIVE COMPENSATION.—
19 The Commission shall, by rule, require each issuer to dis-
20 close in the annual proxy statement of the issuer a clear
21 description of any compensation required to be disclosed
22 by the issuer under section 229.402 of title 17, Code of
23 Federal Regulations (or any successor thereto), includ-
24 ing—

1 “(1) information that shows the relationship be-
2 tween executive compensation and the financial per-
3 formance of the issuer; and

4 “(2) a graphic or pictorial comparison of the
5 amount of executive compensation and the financial
6 performance of the issuer or return to investors of
7 the issuer during a 5-year period, or such other pe-
8 riod, as determined by the Commission.”.

9 **SEC. 955. CLAWBACK.**

10 Section 16 of the Securities Exchange Act of 1934
11 (15 U.S.C. 78p) is amended by adding at the end the fol-
12 lowing:

13 “(h) **CLAWBACK POLICY.**—Each issuer shall develop
14 and implement a policy providing that, in the event that
15 the issuer is required to prepare an accounting restate-
16 ment due to the material noncompliance of the issuer with
17 any financial reporting requirement under the securities
18 laws, the issuer will recover from any current or former
19 executive officer of the issuer who received incentive-based
20 compensation (including stock options awarded as com-
21 pensation) during the 3-year period preceding the date on
22 which the issuer is required to prepare an accounting re-
23 statement based on the erroneous data, in excess of what
24 would have been paid to the executive officer under the
25 accounting restatement.”.

1 **SEC. 956. DISCLOSURE REGARDING EMPLOYEE HEDGING.**

2 Section 14 of the Securities Exchange Act of 1934
3 (15 U.S.C. 78n), as amended by this title, is amended by
4 adding at the end the following:

5 “(l) **DISCLOSURE OF HEDGING BY EMPLOYEES.**—

6 The Commission shall, by rule, require each issuer to dis-
7 close in the annual proxy statement of the issuer whether
8 the employees of the issuer are permitted to purchase fi-
9 nancial instruments (including prepaid variable forward
10 contracts, equity swaps, collars, and exchange funds) that
11 are designed to hedge or offset any decrease in the market
12 value of equity securities granted to employees by the
13 issuer as part of an employee compensation.”.

14 **SEC. 957. COMPENSATION STANDARDS FOR HOLDING COM-**
15 **PANIES OF DEPOSITORY INSTITUTIONS.**

16 Section 5 of the Bank Holding Company Act of 1956
17 (12 U.S.C. 1844) is amended by adding at the end the
18 following:

19 “(h) **EXCESSIVE COMPENSATION.**—

20 “(1) **IN GENERAL.**—Not later than 180 days
21 after the transfer date established under section 321
22 of the Restoring American Financial Stability Act of
23 2009, FIRA shall, by rule, establish standards pro-
24 hibiting as an unsafe and unsound practice any com-
25 pensation plan of a bank holding company that—

1 U.S.C. 1813), shall prohibit the payment by a depository
2 institution holding company of executive compensation
3 that is excessive or could lead to material financial loss
4 to the institution controlled by the depository institution
5 holding company, or to the consolidated depository institu-
6 tion holding company.

7 **Subtitle F—Improvements to the**
8 **Management of the Securities**
9 **and Exchange Commission**

10 **SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SU-**
11 **PERVISORY CONTROLS.**

12 (a) ANNUAL REPORTS AND CERTIFICATION.—Not
13 later than 90 days after end of each fiscal year, the Com-
14 mission shall submit a report to the Committee on Bank-
15 ing, Housing, and Urban Affairs of the Senate and the
16 Committee on Financial Services of the House of Rep-
17 resentatives on the conduct by the Commission of exami-
18 nations of registered entities, enforcement investigations,
19 and review of corporate financial securities filings.

20 (b) CONTENTS OF REPORTS.—Each report under
21 subsection (a) shall contain—

22 (1) an assessment, as of the end of the most re-
23 cent fiscal year, of the effectiveness of—

24 (A) the internal supervisory controls of the
25 Commission; and

1 (B) the procedures of the Commission ap-
2 plicable to the staff of the Commission who per-
3 form examinations of registered entities, en-
4 forcement investigations, and reviews of cor-
5 poration financial securities filings;

6 (2) a certification that the Commission has ade-
7 quate internal supervisory controls to carry out the
8 duties of the Commission described in paragraph
9 (1)(B); and

10 (3) a summary by the Comptroller General of
11 the United States of the assessment carried out
12 under subsection (d).

13 (c) CERTIFICATION.—

14 (1) SIGNATURE.—The certification under sub-
15 section (b)(2) shall be signed by the Director of the
16 Division of Enforcement, the Director of the Divi-
17 sion of Corporation Finance, and the Director of the
18 Office of Compliance Inspections and Examinations
19 (or the head of any successor division or office).

20 (2) CONTENT OF CERTIFICATION.—Each indi-
21 vidual described in paragraph (1) shall certify that
22 the individual—

23 (A) is directly responsible for establishing
24 and maintaining the internal supervisory con-

1 controls of the Division or Office of which the indi-
2 vidual is the head;

3 (B) has designed the internal supervisory
4 controls of the Division or Office of which the
5 individual is the head;

6 (C) has evaluated the effectiveness of the
7 internal supervisory controls during the 90-day
8 period ending on the final day of the fiscal year
9 to which the report relates; and

10 (D) has disclosed to the Commission any
11 significant deficiencies in the design or oper-
12 ation of internal supervisory controls that could
13 adversely affect the ability of the Division or
14 Office to consistently conduct inspections, or in-
15 vestigations, or reviews of filings with profes-
16 sional competence and integrity.

17 (d) ATTESTATION BY THE COMPTROLLER GEN-
18 ERAL.—The Comptroller General of the United States
19 shall attest to the adequacy and effectiveness of the inter-
20 nal supervisory control structure and procedures described
21 in subsection (b)(1).

22 **SEC. 962. BIENNIAL REPORT ON PERSONNEL MANAGE-**
23 **MENT.**

24 (a) BIENNIAL REPORT REQUIRED.—The Comp-
25 troller General of the United States shall submit a bian-

1 nual report to the Committee on Banking, Housing, and
2 Urban Affairs of the Senate and the Committee on Finan-
3 cial Services of the House of Representatives on the qual-
4 ity of personnel management by the Commission.

5 (b) CONTENTS OF REPORT.—Each report under sub-
6 section (a) shall include—

7 (1) an evaluation of—

8 (A) the effectiveness of supervisors in
9 using the skills, talents, and motivation of the
10 employees of the Commission to achieve the
11 goals of the Commission;

12 (B) the criteria for promoting employees of
13 the Commission to supervisory positions;

14 (C) the fairness of the promotion decisions
15 of the Commission, as perceived by the employ-
16 ees of the Commission;

17 (D) the competence the professional staff
18 of the Commission;

19 (E) the efficiency of communication be-
20 tween the units of the Commission regarding
21 the work of the Commission (including commu-
22 nication between divisions and between subunits
23 of a division) and the efforts by the Commission
24 to promote such communication;

1 (F) the turnover within subunits of the
2 Commission, including the identification of su-
3 pervisors whose subordinates have an unusually
4 high rate of turnover;

5 (G) whether there are excessive numbers of
6 low- and mid-level managers;

7 (H) any initiatives of the Commission that
8 increase the competence of the staff of the
9 Commission;

10 (I) the actions taken by the Commission
11 regarding employees of the Commission who
12 have failed to perform their duties; and

13 (J) such other factors relating to the man-
14 agement of the Commission as the Comptroller
15 General determines are appropriate; and

16 (2) recommendations for how the Commission
17 can use the human resources of the Commission
18 more effectively and efficiently to carry out the mis-
19 sion of the Commission.

20 (c) CONSULTATION.—In preparing the report under
21 subsection (a), the Comptroller General shall consult with
22 current employees of the Commission, retired employees
23 and other former employees of the Commission, persons
24 that have business before the Commission, any collective
25 bargaining unit representing the employees of the Com-

1 mission, private management consultants, academics, and
2 any other source that the Comptroller General deems ap-
3 propriate.

4 (d) REPORT BY COMMISSION.—Not later than 90
5 days after the date on which the Comptroller General sub-
6 mits each report under subsection (a), the Commission
7 shall submit to the Committee on Banking, Housing, and
8 Urban Affairs of the Senate and the Committee on Finan-
9 cial Services of the House of Representatives a report de-
10 scribing the actions taken by the Commission in response
11 to the recommendations contained in the report under
12 subsection (a).

13 (e) REIMBURSEMENTS FOR COST OF REPORTS.—

14 (1) REIMBURSEMENTS REQUIRED.—The Com-
15 mission shall reimburse the Government Account-
16 ability Office for the full cost of making the reports
17 under this section, as billed therefor by the Comp-
18 troller General.

19 (2) CREDITING AND USE OF REIMBURSE-
20 MENTS.—Such reimbursements shall—

21 (A) be credited to the appropriation ac-
22 count “Salaries and Expenses, Government Ac-
23 countability Office” current when the payment
24 is received; and

25 (B) remain available until expended.

1 **SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.**

2 (a) REPORTS OF COMMISSION.—

3 (1) ANNUAL REPORTS REQUIRED.—Not later
4 than 6 months after the end of each fiscal year, the
5 Commission shall publish and submit to Congress a
6 report that—

7 (A) describes the responsibility of the man-
8 agement of the Commission for establishing and
9 maintaining an adequate internal control struc-
10 ture and procedures for financial reporting; and

11 (B) contains an assessment of the effec-
12 tiveness of the internal control structure and
13 procedures for financial reporting of the Com-
14 mission during that fiscal year.

15 (2) ATTESTATION.—The reports required under
16 paragraph (1) shall be attested to by the Chairman
17 and chief financial officer of the Commission.

18 (b) REPORT BY COMPTROLLER GENERAL.—

19 (1) REPORT REQUIRED.—Not later than 6
20 months after the end of each fiscal year, the Comp-
21 troller General of the United States shall submit an
22 annual report to Congress that assesses—

23 (A) the effectiveness of the internal control
24 structure and procedures of the Commission for
25 financial reporting; and

1 (B) the assessment of the Commission
2 under subsection (a)(1)(B).

3 (2) ATTESTATION.—The Comptroller General
4 shall attest to, and report on, the assessment made
5 by the Commission under subsection (a).

6 (c) 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 (b), 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. 964. REPORT ON OVERSIGHT OF NATIONAL SECURI-**
20 **TIES ASSOCIATIONS.**

21 (a) STUDY AND REPORT.—Not later than September
22 30, 2010, and every 3 years thereafter, the Comptroller
23 General of the United States shall submit to Congress a
24 report on the oversight by the Commission of national se-
25 curities associations registered under section 15A of the

1 Securities Exchange Act of 1934 (15 U.S.C. 78o-3) that
2 includes an evaluation of—

3 (1) the governance of such national securities
4 associations, including the identification and man-
5 agement of conflicts of interest by such national se-
6 curities associations;

7 (2) the examinations by the Commission of
8 such national securities associations, including the
9 expertise of the examiners;

10 (3) the oversight by the Commission of the ex-
11 ecutive compensation practices of such national secu-
12 rities associations;

13 (4) arbitration services provided by the national
14 securities associations;

15 (5) the review performed by national securities
16 associations of advertising by the members of the
17 national securities associations; and

18 (6) any other issue that has an impact, as de-
19 termined by the Comptroller General on—

20 (A) the effectiveness of such national secu-
21 rities associations in performing the mission of
22 the national securities associations;

23 (B) the public confidence in such national
24 securities associations; and

1 (C) the confidence of the members of such
2 national securities associations in the national
3 securities associations.

4 **SEC. 965. COMPLIANCE EXAMINERS.**

5 Section 4 of the Securities Exchange Act of 1934 (15
6 U.S.C. 78d) is amended by adding at the end the fol-
7 lowing:

8 “(h) EXAMINERS.—

9 “(1) DIVISION OF TRADING AND MARKETS.—

10 The Division of Trading and Markets of the Com-
11 mission, or any successor organizational unit, shall
12 have a staff of examiners who shall—

13 “(A) perform compliance inspections and
14 examinations of entities under the jurisdiction
15 of that Division; and

16 “(B) report to the Director of that Divi-
17 sion.

18 “(2) DIVISION OF INVESTMENT MANAGE-
19 MENT.—The Division of Investment Management of
20 the Commission, or any successor organizational
21 unit, shall have a staff of examiners who shall—

22 “(A) perform compliance inspections and
23 examinations of entities under the jurisdiction
24 of that Division; and

1 “(B) report to the Director of that Divi-
2 sion.”.

3 **SEC. 966. REPORTS OF MISCONDUCT BY EMPLOYEES OF**
4 **THE COMMISSION.**

5 Section 4 of the Securities Exchange Act of 1934 (15
6 U.S.C. 78d) is amended by adding at the end the fol-
7 lowing:

8 “(i) **ADDITIONAL DUTIES OF INSPECTOR GEN-**
9 **ERAL.—**

10 “(1) **REPORTS OF MISCONDUCT BY EMPLOYEES**
11 **OF COMMISSION.—**

12 “(A) **HOTLINE ESTABLISHED.—**The In-
13 spector General of the Commission shall estab-
14 lish and maintain a telephone hotline or other
15 electronic means for the receipt of—

16 “(i) suggestions by employees of the
17 Commission for improvements in the work
18 effectiveness and the use of the resources
19 of the Commission; and

20 “(ii) allegations by employees of the
21 Commission of waste, abuse, misconduct,
22 and ineffectiveness within the Commission.

23 “(B) **CONFIDENTIALITY.—**The Inspector
24 General shall maintain the confidentiality of

1 any information received by the means estab-
2 lished under subparagraph (A).

3 “(2) CONSIDERATION OF REPORTS.—The In-
4 spector General shall consider any suggestions or al-
5 legations received by the means established under
6 subparagraph (A) and take appropriate action in re-
7 lation to such suggestions or allegations.

8 “(3) REWARD.—

9 “(A) IN GENERAL.—The Inspector General
10 may, as the Inspector General determines ap-
11 propriate, pay a monetary award to any em-
12 ployee who makes a suggestion or allegation by
13 the means established under paragraph (1) that
14 results in—

15 “(i) action by the Commission that in-
16 creases work effectiveness; or

17 “(ii) a reduction of waste, abuse, mis-
18 conduct, or ineffectiveness within the Com-
19 mission.

20 “(B) LIMITATION ON AMOUNT OF
21 AWARD.—No award paid by the Inspector Gen-
22 eral under this paragraph may exceed \$50,000,
23 unless the Inspector General determines that
24 the suggestion or allegation has extraordinary
25 merit.

1 “(C) NO APPEAL.—Any determination of
2 the Inspector General under this paragraph, in-
3 cluding whether, to whom, or in what amount
4 to make an award, shall be—

5 “(i) in the sole discretion of the In-
6 specter General; and

7 “(ii) final and not subject to judicial
8 review.

9 “(4) REPORT.—The Inspector General of the
10 shall submit to Congress an annual report con-
11 taining a description of—

12 “(A) the nature, number, and seriousness
13 of any allegations received under paragraph (1);

14 “(B) any action the Inspector General has
15 taken in response to substantiated allegations
16 received under paragraph (1); and

17 “(C) any action the Commission has taken
18 in response to suggestions and allegations re-
19 ceived under paragraph (1).

20 “(5) FUNDING.—The activities of the Inspector
21 General under this subsection shall be funded by the
22 Securities and Exchange Commission Investor Pro-
23 tection Fund established under section 21F.”.

1 **Subtitle G—Strengthening**
2 **Corporate Governance**

3 **SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN**
4 **UNCONTESTED ELECTIONS.**

5 The Securities Exchange Act of 1934 (15 U.S.C. 78a
6 et seq.) is amended by inserting after section 14 (15
7 U.S.C. 78n) the following:

8 **“SEC. 14A. CORPORATE GOVERNANCE.**

9 “(a) CORPORATE GOVERNANCE STANDARDS.—

10 “(1) LISTING STANDARDS.—

11 “(A) IN GENERAL.—Not later than 1 year
12 after the date of enactment of this subsection,
13 the Commission shall, by rule, direct the na-
14 tional securities exchanges and national securi-
15 ties associations to prohibit the listing of any
16 security of an issuer that is not in compliance
17 with any of the requirements of this subsection.

18 “(B) OPPORTUNITY TO COMPLY AND
19 CURE.—The rules established under this para-
20 graph shall allow an issuer to have an oppor-
21 tunity to come into compliance with the require-
22 ments of this subsection, and to cure any defect
23 that would be the basis for a prohibition under
24 subparagraph (A), before the imposition of such
25 prohibition.

1 “(C) **AUTHORITY TO EXEMPT.**—The Com-
2 mission may, by rule or order, exempt an issuer
3 from any or all of the requirements of this sub-
4 section and the rules issued under this sub-
5 section, based on the size of the issuer, the
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 the reasons that—

24 “(aa) the board chose not to
25 accept the resignation; and

1 “(bb) the decision was in the
2 best interests of the issuer and
3 the shareholders of the issuer.”.

4 **SEC. 972. PROXY ACCESS.**

5 (a) **PROXY ACCESS.**—Section 14(a) of the Securities
6 Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

7 (1) by inserting “(1)” after “(a)”; and

8 (2) by adding at the end the following:

9 “(2) The rules and regulations prescribed by the
10 Commission under paragraph (1) may include—

11 “(A) a requirement that a solicitation of proxy,
12 consent, or authorization by (or on behalf of) an
13 issuer include a nominee submitted by a shareholder
14 to serve on the board of directors of the issuer; and

15 “(B) a requirement that an issuer follow a cer-
16 tain procedure in relation to a solicitation described
17 in subparagraph (A).”.

18 (b) **REGULATIONS.**—Not later than 180 days after
19 the date of enactment of this Act, the Commission shall
20 issue rules permitting the use by shareholders of proxy
21 solicitation materials supplied by an issuer of securities
22 for the purpose of nominating individuals to membership
23 on the board of directors of the issuer, under such terms
24 and conditions as the Commission determines are in the

1 interests of shareholders and for the protection of inves-
2 tors.

3 **SEC. 973. DISCLOSURES REGARDING CHAIRMAN AND CEO**
4 **STRUCTURES.**

5 Section 14A 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 **SEC. 974. SHAREHOLDER VOTE ON STAGGERED TERMS OF**
20 **DIRECTORS.**

21 Section 14 of the Securities Exchange Act of 1934
22 (15 U.S.C. 78n), as amended by this subtitle, is amended
23 by adding at the end the following:

24 “(k) **SHAREHOLDER VOTE ON STAGGERED BOARD**
25 **OF DIRECTORS.**—

1 “(1) LISTING STANDARDS.—Not later than 1
2 year after the date of enactment of this subsection,
3 the Commission shall, by rule, direct the national se-
4 curities exchanges and the national securities asso-
5 ciations to prohibit the listing of any security of an
6 issuer that is not in compliance with any of the re-
7 quirements of this subsection.

8 “(2) SHAREHOLDER VOTE REQUIRED.—

9 “(A) IN GENERAL.—No issuer may have a
10 board of directors with staggered terms of serv-
11 ice, unless the issuer has obtained the approval
12 or ratification of the shareholders of the issuer,
13 in accordance with subparagraph (B), before
14 the adoption of such board of directors with
15 staggered terms of service.

16 “(B) SHAREHOLDER VOTE.—The percent-
17 age of shareholders required to approve or rat-
18 ify the board of directors with staggered terms
19 of service of an issuer shall be the percentage
20 required by the issuer for an amendment to—

21 “(i) the certificate of incorporation of
22 the issuer, in the case of a board of direc-
23 tors with staggered terms of service adopt-
24 ed pursuant to a certificate of incorpora-
25 tion of the issuer; or

1 diately following the end of such 120-day
2 period.

3 “(D) DEFINITION.—In this paragraph, the
4 term ‘board of directors with staggered terms of
5 service’ means a board of directors of an issuer
6 that conducts an annual election for member-
7 ship on such board of directors in which fewer
8 than all members are elected to such board of
9 directors.”.

10 **Subtitle H—Municipal Securities**

11 **SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND** 12 **CHANGES TO THE BOARD OF THE MSRB.**

13 (a) REGISTRATION OF MUNICIPAL SECURITIES
14 DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of
15 the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a))
16 is amended—

17 (1) in paragraph (1)—

18 (A) by inserting “(A)” after “(1)”; and

19 (B) by adding at the end the following:

20 “(B) It shall be unlawful for a municipal
21 advisor to provide advice to or on behalf of an
22 issuer of municipal securities with respect to
23 municipal financial products or the issuance of
24 municipal securities unless the municipal advi-

1 sor is registered in accordance with this sub-
2 section.”;

3 (2) in paragraph (2), by inserting “or municipal
4 advisor” after “municipal securities dealer” each
5 place that term appears;

6 (3) in paragraph (3), by inserting “or municipal
7 advisor” after “municipal securities dealer” each
8 place that term appears; and

9 (4) in paragraph (4), by striking “dealer, or
10 municipal securities dealer or class of brokers, deal-
11 ers, or municipal securities dealers” and inserting
12 “dealer, municipal securities dealer, or municipal ad-
13 visor, or class of brokers, dealers, municipal securi-
14 ties dealers, or municipal advisors”.

15 (b) MUNICIPAL SECURITIES RULEMAKING BOARD.—
16 Section 15B(b) of the Securities Exchange Act of 1934
17 (15 U.S.C. 78o-4(b)) is amended—

18 (1) in paragraph (1)—

19 (A) in the first sentence, by striking “Not
20 later than” and all that follows through “com-
21 posed initially” and inserting “The Municipal
22 Securities Rulemaking Board shall be com-
23 posed”;

24 (B) by striking the second sentence and in-
25 serting the following: “The members of the

1 Board shall serve as members for a term of 3
2 years or for such other terms as specified by
3 rules of the Board pursuant to paragraph
4 (2)(B), and shall consist of (A) 8 individuals
5 who are not associated with any broker, dealer,
6 municipal securities dealer, or municipal advisor
7 (other than by reason of being under common
8 control with, or indirectly controlling, any
9 broker or dealer which is not a municipal secu-
10 rities broker or dealer, at least 3 of whom shall
11 be representatives of institutional and retail in-
12 vestors in municipal securities, and at least 2 of
13 whom shall be representatives of issuers of mu-
14 nicipal securities, and at least 1 of whom shall
15 be a member of the public with knowledge of or
16 experience in the municipal industry (which
17 members are hereinafter referred to as ‘public
18 representatives’); and (B) 7 individuals who are
19 associated with a broker, dealer, or municipal
20 securities dealer that is not a bank or a sub-
21 sidiary or department or division of a bank
22 (which members are hereinafter referred to as
23 ‘broker-dealer representatives’), including not
24 fewer than 2 individuals who are associated
25 with and representative of municipal securities

1 dealers which are banks or subsidiaries or de-
2 partments or divisions of banks (which mem-
3 bers are hereinafter referred to as ‘bank rep-
4 resentatives’), and at least 1 individual who is
5 associated with a municipal advisor (which
6 member is hereinafter referred to as the ‘advi-
7 sor representative’).”;

8 (C) in the third sentence, by striking “ini-
9 tial”;

10 (2) in paragraph (2)—

11 (A) in the matter preceding subparagraph
12 (A)—

13 (i) by inserting before the period at
14 the end of the first sentence the following:
15 “and advice provided to or on behalf of an
16 issuer of municipal securities by brokers,
17 dealers, municipal securities dealers, and
18 municipal advisors with respect to munic-
19 ipal financial products or the issuance of
20 municipal securities”; and

21 (ii) by striking the second sentence;

22 (B) in subparagraph (A)—

23 (i) in the matter preceding clause
24 (i)—

1 (I) by inserting “, and no broker,
2 dealer, municipal securities dealer, or
3 municipal advisor shall provide advice
4 to or on behalf of an issuer of munic-
5 ipal securities with respect to munic-
6 ipal financial products or the issuance
7 of municipal securities” after “sale of,
8 any municipal security”; and

9 (II) by inserting “and issuers of
10 municipal securities” after “protection
11 of investors”;

12 (ii) in clause (i), by striking “munic-
13 ipal securities brokers and municipal secu-
14 rities dealers” each place that term ap-
15 pears and inserting “municipal securities
16 brokers, municipal securities dealers, and
17 municipal advisors”;

18 (iii) in clause (ii), by adding “and” at
19 the end;

20 (iv) in clause (iii), by striking “; and”
21 and inserting a period; and

22 (v) by striking clause (iv);

23 (C) in subparagraph (B), by striking
24 “nominations and elections” and all that follows
25 through “specify” and inserting “nominations

1 and elections of public representatives, broker-
2 dealer representatives, bank representatives,
3 and advisor representatives. Such rules shall
4 provide that the membership of the Board shall
5 at all times be as evenly divided in number as
6 possible between entities or individuals who are
7 subject to regulation by the Board and entities
8 or individuals not subject to regulation by the
9 Board. Such rules shall also specify”;

10 (D) in subparagraph (C)—

11 (i) by inserting “and municipal finan-
12 cial products” after “municipal securities”
13 the first two times that term appears;

14 (ii) by inserting “, issuers,” before
15 “and the public interest”;

16 (iii) by striking “between” and insert-
17 ing “among”; and

18 (iv) by striking “or municipal securi-
19 ties dealers, to fix” and inserting “munic-
20 ipal securities dealers, or municipal advi-
21 sors, to fix”;

22 (E) in subparagraph (D)—

23 (i) by inserting “and advice con-
24 cerning municipal financial products” after
25 “transactions in municipal securities”;

1 (ii) by striking “That no” and insert-
2 ing “that no”;

3 (iii) by inserting “municipal advisor,”
4 before “or person associated”; and

5 (iv) by striking “a municipal securi-
6 ties broker or municipal securities dealer
7 may be compelled” and inserting “a mu-
8 nicipal securities broker, municipal securi-
9 ties dealer, or municipal advisor may be
10 compelled”;

11 (F) in subparagraph (E)—

12 (i) by striking “municipal securities
13 brokers and municipal securities dealers”
14 and inserting “municipal securities bro-
15 kers, municipal securities dealers, and mu-
16 nicipal advisors”; and

17 (ii) by striking “municipal securities
18 broker or municipal securities dealer” and
19 inserting “municipal securities broker, mu-
20 nicipal securities dealer, or municipal advi-
21 sor”;

22 (G) in subparagraph (G), by striking “mu-
23 nicipal securities brokers and municipal securi-
24 ties dealers” and inserting “municipal securities

1 brokers, municipal securities dealers, and mu-
2 nicipal advisors”;

3 (H) in subparagraph (J)—

4 (i) by striking “municipal securities
5 broker and each municipal securities deal-
6 er” and inserting “municipal securities
7 broker, municipal securities dealer, and
8 municipal advisor”; and

9 (ii) by striking the period at the end
10 of the second sentence and inserting “,
11 which may include charges for failure to
12 submit to the Board required information
13 or documents to any information system
14 operated by the Board in a full, accurate,
15 or timely manner, or any other failure to
16 comply with the rules of the Board.”; and

17 (I) in subparagraph (K)—

18 (i) by inserting “broker, dealer, or”
19 before “municipal securities dealer” each
20 place that term appears; and

21 (ii) by striking “municipal securities
22 investment portfolio” and insert “related
23 account of a broker, dealer, or municipal
24 securities dealer”;

1 (3) by redesignating paragraph (3) as para-
2 graph (7); and

3 (4) by inserting after paragraph (2) the fol-
4 lowing:

5 “(3) The Board shall serve as a repository of
6 information from municipal market participants re-
7 quired by FIRA.

8 “(4) The Board shall provide guidance and as-
9 sistance in the enforcement of the rules promulgated
10 by the Board pursuant to subsection (c).

11 “(5) The Board, in conjunction with or on be-
12 half of other Federal financial regulators or self-reg-
13 ulatory organizations, may—

14 “(A) establish information systems; and

15 “(B) assess such reasonable fees and
16 charges for the submission of information to, or
17 the receipt of information from, such systems
18 from any persons, in furtherance of the pur-
19 poses of the Board, other Federal financial reg-
20 ulator, or self-regulatory organization.

21 “(6) The Board shall provide guidance and as-
22 sistance in the enforcement of, and examination for,
23 compliance with the rules of the Board to the Com-
24 mission, a registered securities association under

1 section 15A, or any other appropriate regulatory
2 agency, as applicable.”.

3 (c) DISCIPLINE OF DEALERS AND MUNICIPAL ADVI-
4 SORS AND OTHER MATTERS.—Section 15B(c) of the Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78o-4(c)) is
6 amended—

7 (1) in paragraph (1), by inserting “, and no
8 broker, dealer, municipal securities dealer, or munic-
9 ipal advisor shall provide advice to or on behalf of
10 an issuer of municipal securities with respect to mu-
11 nicipal financial products or the issuance of munic-
12 ipal securities,” after “any municipal security”;

13 (2) in paragraph (2), by inserting “or municipal
14 advisor” after “municipal securities dealer” each
15 place that term appears;

16 (3) in paragraph (3)—

17 (A) by inserting “or issuers” after “protec-
18 tion of investors” each place that term appears;
19 and

20 (B) by inserting “or municipal advisor”
21 after “municipal securities dealer” each place
22 that term appears;

23 (4) in paragraph (4), by inserting “or municipal
24 advisor” after “municipal securities dealer” each
25 place that term appears;

1 (5) in paragraph (6)(B), by inserting “or
2 issuers” after “protection of investors”;

3 (6) in paragraph (7)

4 (A) in subparagraph (A)—

5 (i) by amending clause (i) to read as
6 follows:

7 “(i) the Commission, or its designee,
8 in the case of municipal advisors who are
9 not banks or subsidiaries, or departments
10 or divisions of banks and municipal securi-
11 ties brokers and municipal securities deal-
12 ers who are members of a registered secu-
13 rities association; and”;

14 (ii) in clause (ii), by inserting “, and
15 any municipal advisor who is a bank or
16 subsidiary or department or division of a
17 bank” after “municipal securities dealers”;
18 and

19 (B) in subparagraph (B), by inserting “or
20 issuers” after “protection of investors”; and

21 (7) by adding at the end the following:

22 “(9) Fines collected by the Commission or its
23 designee for violations of the rules of the Board shall
24 be equally divided between the Commission or any
25 such designee and the Board”.

1 (d) ISSUANCE OF MUNICIPAL SECURITIES.—Section
2 15B(d)(2) of the Securities Exchange Act of 1934 (15
3 U.S.C. 78o-4(d)) is amended—

4 (1) by striking “through a municipal securities
5 broker or municipal securities dealer or otherwise”
6 and insert “through a municipal securities broker,
7 municipal securities dealer, municipal advisor, or
8 otherwise”; and

9 (2) by inserting “or municipal advisors” before
10 “to furnish”.

11 (e) DEFINITIONS.—Section 15B of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78o-4) is amended by add-
13 ing at the end the following:

14 “(e) DEFINITIONS.—For purposes of this section—

15 “(1) the term ‘Board’ means the Municipal Se-
16 curities Rulemaking Board established under sub-
17 section (b)(1);

18 “(2) the term ‘guaranteed investment contract’
19 includes any investment that has specifically nego-
20 tiated withdrawal or reinvestment provisions and a
21 specifically negotiated interest rate, and also in-
22 cludes any agreement to supply investments on 2 or
23 more future dates, such as a forward supply con-
24 tract;

1 “(3) the term ‘investment strategies’ means
2 plans or programs for the investment of the proceeds
3 of municipal securities that are not municipal de-
4 rivatives, including guaranteed investment contracts
5 and the recommendation of and brokerage of munic-
6 ipal escrow investments;

7 “(4) the term ‘municipal advisor’ means a fi-
8 nancial advisor or consultant (who is not an issuer
9 of municipal securities or an employee of an issuer
10 of municipal securities) that provides advice to or on
11 behalf of an issuer of municipal securities with re-
12 spect to municipal financial products or the issuance
13 of municipal securities, including advice with respect
14 to the structure, timing, terms, and other similar
15 matters concerning such financial products or issues,
16 but who is not a broker, dealer, or municipal securi-
17 ties dealer (including financial advisors, guaranteed
18 investment contract brokers, third-party marketers,
19 placement agents, solicitors, finders, and swap advi-
20 sors, but not including attorneys and engineers) and,
21 except to the extent that such municipal advisors are
22 subject to sales practice rules for registered broker-
23 dealers;

24 “(5) the term ‘municipal derivative’ means any
25 financial instrument whose characteristics and value

1 depend upon the characteristics and value of a mu-
2 nicipal security or securities (including interest rate
3 swaps, basis swaps, caps, floors, and collars);

4 “(6) the term ‘municipal financial product’
5 means municipal derivatives and investment strate-
6 gies; and

7 “(7) the term ‘rules of the Board’ means the
8 rules proposed and adopted by the Board under sub-
9 section (b)(2).”.

10 (f) REGISTERED SECURITIES ASSOCIATION.—Section
11 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C.
12 78o-3(b)) is amended by adding at the end the following:

13 “(15) The rules of the association provide that
14 the association shall—

15 “(A) request guidance from the Municipal
16 Securities Rulemaking Board in interpretation
17 of the rules of the association; and

18 “(B) provide information to the Municipal
19 Securities Rulemaking Board about the enforce-
20 ment actions and examinations of the associa-
21 tion under section 15B(b)(2)(E), so that the
22 Municipal Securities Rulemaking Board may—

23 “(i) assist in such enforcement actions
24 and examinations; and

1 bonds to provide additional financial disclosures for
2 the benefit of investors; and

3 (4) make recommendations relating to the ad-
4 visability of the repeal of section 15B(d) of the Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78o-4(d))
6 (commonly known as the “Tower Amendment”).

7 (c) REPORT.—Not later than 1 year after the date
8 of enactment of this Act, the Comptroller General of the
9 United States shall submit a report to Congress on the
10 results of the study conducted under subsection (a), in-
11 cluding recommendations for how to improve disclosure by
12 issuers of municipal securities.

13 **SEC. 977. MUNICIPAL SECURITIES RULEMAKING BOARD**
14 **STUDY ON TRANSPARENCY OF TRADING IN**
15 **THE MUNICIPAL SECURITIES.**

16 (a) STUDY.—The Municipal Securities Rulemaking
17 Board established under section 15B(d) of the Securities
18 Exchange Act of 1934 (15 U.S.C. 78o-4(d)) shall conduct
19 a study of the transparency of trading in the municipal
20 securities market.

21 (b) REPORT.—Not later than 1 year after the date
22 of enactment of this Act, the Municipal Securities Rule-
23 making Board shall submit a report to Congress on the
24 results of the study conducted under subsection (a), in-
25 cluding—

- 1 (1) the history of trade reporting;
- 2 (2) the impact of recent innovations; and
- 3 (3) recommendations for how to improve the
- 4 transparency of trading in the municipal securities
- 5 market.

6 **SEC. 978. STUDY OF FUNDING FOR GOVERNMENT AC-**
7 **COUNTING STANDARDS BOARD.**

8 (a) STUDY.—The Commission shall conduct a study
9 that evaluates—

10 (1) the role and importance of the Government
11 Accounting Standards Board in the municipal secu-
12 rities markets;

13 (2) the manner in which the Government Ac-
14 counting Standards Board is funded, and how such
15 manner of funding affects the financial information
16 available to securities investors;

17 (3) the advisability of changes to the manner in
18 which the Government Accounting Standards Board
19 is funded; and

20 (4) whether legislative changes to the manner
21 in which the Government Accounting Standards
22 Board is funded are necessary for the benefit of in-
23 vestors and in the public interest.

24 (b) REPORT.—Not later than 180 days after the date
25 of enactment of this Act, the Commission shall submit to

1 the Committee on Banking, Housing, and Urban Affairs
2 of the Senate and the Committee on Financial Services
3 of the House of Representatives a report on the study re-
4 quired under subsection (a).

5 **Subtitle I—Public Company Ac-**
6 **counting Oversight Board, Aid-**
7 **ing and Abetting, and Other**
8 **Matters**

9 **SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION**
10 **WITH FOREIGN AUTHORITIES.**

11 (a) DEFINITION.—Section 2(a) of the Sarbanes-
12 Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by
13 adding at the end the following:

14 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-
15 ITY.—The term ‘foreign auditor oversight authority’
16 means any governmental body or other entity em-
17 powered by a foreign government to conduct inspec-
18 tions of public accounting firms or otherwise to ad-
19 minister or enforce laws related to the regulation of
20 public accounting firms.”.

21 (b) AVAILABILITY TO SHARE INFORMATION.—Sec-
22 tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15
23 U.S.C. 7215(b)(5)) is amended by adding at the end the
24 following:

1 authority that are relevant to informa-
2 tion access; and

3 “(iii) the Board determines that it is
4 appropriate to share such information.”.

5 (c) CONFORMING AMENDMENT.—Section
6 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15
7 U.S.C. 7215(b)(5)(A)) is amended by striking “subpara-
8 graph (B)” and inserting “subparagraphs (B) and (C)”.

9 **SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.**

10 (a) DEFINITIONS.—

11 (1) DEFINITIONS AMENDED.—Title I of the
12 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et
13 seq.) is amended by adding at the end the following
14 new section:

15 **“SEC. 110. DEFINITIONS.**

16 “For the purposes of this title, the following defini-
17 tions shall apply:

18 “(1) AUDIT.—The term ‘audit’ means an exam-
19 ination of the financial statements, reports, docu-
20 ments, procedures, controls, or notices of any issuer,
21 broker, or dealer by an independent public account-
22 ing firm in accordance with the rules of the Board
23 or the Commission, for the purpose of expressing an
24 opinion on the financial statements or providing an
25 audit report.

1 “(2) **AUDIT REPORT.**—The term ‘audit report’
2 means a document, report, notice, or other record—

3 “(A) prepared following an audit per-
4 formed for purposes of compliance by an issuer,
5 broker, or dealer with the requirements of the
6 securities laws; and

7 “(B) in which a public accounting firm ei-
8 ther—

9 “(i) sets forth the opinion of that firm
10 regarding a financial statement, report, no-
11 tice, or other document, procedures, or
12 controls; or

13 “(ii) asserts that no such opinion can
14 be expressed.

15 “(3) **BROKER.**—The term ‘broker’ means a
16 broker (as such term is defined in section 3(a)(4) of
17 the Securities Exchange Act of 1934 (15 U.S.C.
18 78c(a)(4))) that is required to file a balance sheet,
19 income statement, or other financial statement
20 under section 17(e)(1)(A) of such Act (15 U.S.C.
21 78q(e)(1)(A)), where such balance sheet, income
22 statement, or financial statement is required to be
23 certified by a registered public accounting firm.

24 “(4) **DEALER.**—The term ‘dealer’ means a
25 dealer (as such term is defined in section 3(a)(5) of

1 the Securities Exchange Act of 1934 (15 U.S.C.
2 78c(a)(5))) that is required to file a balance sheet,
3 income statement, or other financial statement
4 under section 17(e)(1)(A) of such Act (15 U.S.C.
5 78q(e)(1)(A)), where such balance sheet, income
6 statement, or financial statement is required to be
7 certified by a registered public accounting firm.

8 “(5) PROFESSIONAL STANDARDS.—The term
9 ‘professional standards’ means—

10 “(A) accounting principles that are—

11 “(i) established by the standard set-
12 ting body described in section 19(b) of the
13 Securities Act of 1933, as amended by this
14 Act, or prescribed by the Commission
15 under section 19(a) of that Act (15 U.S.C.
16 17a(s)) or section 13(b) of the Securities
17 Exchange Act of 1934 (15 U.S.C. 78a(m));
18 and

19 “(ii) relevant to audit reports for par-
20 ticular issuers, brokers, or dealers, or dealt
21 with in the quality control system of a par-
22 ticular registered public accounting firm;
23 and

24 “(B) auditing standards, standards for at-
25 testation engagements, quality control policies

1 and procedures, ethical and competency stand-
2 ards, and independence standards (including
3 rules implementing title II) that the Board or
4 the Commission determines—

5 “(i) relate to the preparation or
6 issuance of audit reports for issuers, bro-
7 kers, or dealers; and

8 “(ii) are established or adopted by the
9 Board under section 103(a), or are pro-
10 mulgated as rules of the Commission.

11 “(6) SELF-REGULATORY ORGANIZATION.—The
12 term ‘self-regulatory organization’ has the same
13 meaning as in section 3(a) of the Securities Ex-
14 change Act of 1934 (15 U.S.C. 78c(a)).”.

15 (2) CONFORMING AMENDMENT.—Section 2(a)
16 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
17 7201(a)) is amended in the matter preceding para-
18 graph (1), by striking “In this” and inserting “Ex-
19 cept as otherwise specifically provided in this Act, in
20 this”.

21 (b) ESTABLISHMENT AND ADMINISTRATION OF THE
22 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
23 Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
24 7211) is amended—

1 (1) by striking “issuers” each place that term
2 appears and inserting “issuers, brokers, and deal-
3 ers”; and

4 (2) in subsection (a)—

5 (A) by striking “public companies” and in-
6 serting “companies”; and

7 (B) by striking “for companies the securi-
8 ties of which are sold to, and held by and for,
9 public investors”.

10 (c) **REGISTRATION WITH THE BOARD.**—Section 102
11 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is
12 amended—

13 (1) in subsection (a)—

14 (A) by striking “Beginning 180” and all
15 that follows through “101(d), it” and inserting
16 “it”; and

17 (B) by striking “issuer” and inserting
18 “issuer, broker, or dealer”;

19 (2) in subsection (b)—

20 (A) in paragraph (2)(A), by striking
21 “issuers” and inserting “issuers, brokers, and
22 dealers”; and

23 (B) by striking “issuer” each place that
24 term appears and inserting “issuer, broker, or
25 dealer”.

1 (d) AUDITING AND INDEPENDENCE.—Section 103(a)
2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a))
3 is amended—

4 (1) in paragraph (1), by striking “and such eth-
5 ics standards” and inserting “such ethics standards,
6 and such independence standards”;

7 (2) in paragraph (2)(A)(iii), by striking “de-
8 scribe in each audit report” and inserting “in each
9 audit report for an issuer, describe”; and

10 (3) in paragraph (2)(B)(i), by striking
11 “issuers” and inserting “issuers, brokers, and deal-
12 ers”.

13 (e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-
14 ING FIRMS.—Section 104 of the Sarbanes-Oxley Act of
15 2002 (15 U.S.C. 7214) is amended—

16 (1) in subsection (a), by striking “issuers” and
17 inserting “issuers, brokers, and dealers”; and

18 (2) in subsection (b)(1)—

19 (A) by striking “audit reports for” each
20 place that term appears and inserting “audit
21 reports on annual financial statements for”;

22 (B) in subparagraph (A), by striking
23 “and” at the end;

24 (C) in subparagraph (B), by striking the
25 period at the end and inserting “; and”; and

1 (D) by adding at the end the following:

2 “(C) with respect to each registered public
3 accounting firm that regularly provides audit
4 reports and that is not described in subpara-
5 graph (A) or (B), on a basis determined by the
6 Board, by rule, that is consistent with the pub-
7 lic interest and protection of investors.”.

8 (f) INVESTIGATIONS AND DISCIPLINARY PRO-
9 CEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley
10 Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

11 (1) in the subparagraph heading, by inserting
12 “, BROKER, OR DEALER” after “ISSUER”;

13 (2) by striking “any issuer” each place that
14 term appears and inserting “any issuer, broker, or
15 dealer”; and

16 (3) by striking “an issuer under this sub-
17 section” and inserting “a registered public account-
18 ing firm under this subsection”.

19 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
20 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
21 7216(a)) is amended—

22 (1) in paragraph (1), by striking “issuer” and
23 inserting “issuer, broker, or dealer”; and

24 (2) in paragraph (2), by striking “issuers” and
25 inserting “issuers, brokers, or dealers”.

1 (h) FUNDING.—Section 109 of the Sarbanes-Oxley
2 Act of 2002 (15 U.S.C. 7219) is amended—

3 (1) in subsection (c)(2), by striking “subsection
4 (i)” and inserting “subsection (j)”;

5 (2) in subsection (d)—

6 (A) in paragraph (2), by striking “allowing
7 for differentiation among classes of issuers, as
8 appropriate” and inserting “and among brokers
9 and dealers, in accordance with subsection (h),
10 and allowing for differentiation among classes
11 of issuers, brokers and dealers, as appropriate”;
12 and

13 (B) by adding at the end the following:

14 “(3) **BROKERS AND DEALERS.**—The Board
15 shall begin the allocation, assessment, and collection
16 of fees under paragraph (2) with respect to brokers
17 and dealers with the payment of support fees to
18 fund the first full fiscal year beginning after the ef-
19 fective date of this paragraph.”;

20 (3) by redesignating subsections (h), (i), and (j)
21 as subsections (i), (j), and (k), respectively; and

22 (4) by inserting after subsection (g) the fol-
23 lowing:

24 “(h) **ALLOCATION OF ACCOUNTING SUPPORT FEES**
25 **AMONG BROKERS AND DEALERS.**—

1 “(1) OBLIGATION TO PAY.—Each broker or
2 dealer shall pay to the Board the annual accounting
3 support fee allocated to such broker or dealer under
4 this section.

5 “(2) ALLOCATION.—Any amount due from a
6 broker or dealer (or from a particular class of bro-
7 kers and dealers) under this section shall be allo-
8 cated among brokers and dealers and payable by the
9 broker or dealer (or the brokers and dealers in the
10 particular class, as applicable).

11 “(3) PROPORTIONALITY.—The amount due
12 from a broker or dealer shall be in proportion to the
13 net capital of the broker or dealer, compared to the
14 total net capital of all brokers and dealers, in ac-
15 cordance with rules issued by the Board.”.

16 (i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-
17 LATORY ORGANIZATION.—Section 105(b)(4)(B) of the
18 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B))
19 is amended—

20 (1) by redesignating clauses (ii) and (iii) as
21 clauses (iii) and (iv), respectively; and

22 (2) by inserting after clause (i) the following:

23 “(ii) to a self-regulatory organization,
24 in the case of an investigation that con-
25 cerns an audit report for a broker or deal-

1 er that is under the jurisdiction of such
2 self-regulatory organization;”.

3 (j) **USE OF DOCUMENTS RELATED TO AN INSPEC-**
4 **TION OR INVESTIGATION.**—Section 105(b)(5)(B)(ii) of the
5 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii))
6 is amended—

7 (1) in subclause (III), by striking “and” at the
8 end;

9 (2) in subclause (IV), by striking the comma
10 and inserting “; and”; and

11 (3) by inserting after subclause (IV) the fol-
12 lowing:

13 “(V) a self-regulatory organiza-
14 tion, with respect to an audit report
15 for a broker or dealer that is under
16 the jurisdiction of such self-regulatory
17 organization;”.

18 (k) **EFFECTIVE DATE.**—The amendments made by
19 this section shall take effect 180 days after the date of
20 enactment of this Act.

21 **SEC. 983. PORTFOLIO MARGINING.**

22 (a) **ADVANCES.**—Section 9(a)(1) of the Securities In-
23 vestor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(1))
24 is amended by inserting “or options on commodity futures
25 contracts” after “claim for securities”.

1 (b) DEFINITIONS.—Section 16 of the Securities In-
2 vestor Protection Act of 1970 (15 U.S.C. 78*lll*) is amend-
3 ed—

4 (1) by striking paragraph (2) and inserting the
5 following:

6 “(2) CUSTOMER.—

7 “(A) IN GENERAL.—The term ‘customer’
8 of a debtor means any person (including any
9 person with whom the debtor deals as principal
10 or agent) who has a claim on account of securi-
11 ties received, acquired, or held by the debtor in
12 the ordinary course of its business as a broker
13 or dealer from or for the securities accounts of
14 such person for safekeeping, with a view to sale,
15 to cover consummated sales, pursuant to pur-
16 chases, as collateral, security, or for purposes of
17 effecting transfer.

18 “(B) INCLUDED PERSONS.—The term
19 ‘customer’ includes—

20 “(i) any person who has deposited
21 cash with the debtor for the purpose of
22 purchasing securities;

23 “(ii) any person who has a claim
24 against the debtor for cash, securities, fu-
25 tures contracts, or options on futures con-

1 tracts received, acquired, or held in a port-
2 folio margining account carried as a secu-
3 rities account pursuant to a portfolio mar-
4 gining program approved by the Commis-
5 sion; and

6 “(iii) any person who has a claim
7 against the debtor arising out of sales or
8 conversions of such securities.

9 “(C) **EXCLUDED PERSONS.**—The term
10 ‘customer’ does not include any person, to the
11 extent that—

12 “(i) the claim of such person arises
13 out of transactions with a foreign sub-
14 sidiary of a member of SIPC; or

15 “(ii) such person has a claim for cash
16 or securities which by contract, agreement,
17 or understanding, or by operation of law,
18 is part of the capital of the debtor, or is
19 subordinated to the claims of any or all
20 creditors of the debtor, notwithstanding
21 that some ground exists for declaring such
22 contract, agreement, or understanding void
23 or voidable in a suit between the claimant
24 and the debtor.”;

25 (2) in paragraph (4)—

1 (A) in subparagraph (C), by striking
2 “and” at the end;

3 (B) by redesignating subparagraph (D) as
4 subparagraph (E); and

5 (C) by inserting after subparagraph (C)
6 the following:

7 “(D) in the case of a portfolio margining
8 account of a customer that is carried as a secu-
9 rities account pursuant to a portfolio margining
10 program approved by the Commission, a futures
11 contract or an option on a futures contract re-
12 ceived, acquired, or held by or for the account
13 of a debtor from or for such portfolio margining
14 account, and the proceeds thereof; and”;

15 (3) in paragraph (9), in the matter following
16 subparagraph (L), by inserting after “Such term”
17 the following: “includes revenues earned by a broker
18 or dealer in connection with a transaction in the
19 portfolio margining account of a customer carried as
20 securities accounts pursuant to a portfolio margining
21 program approved by the Commission. Such term”;
22 and

23 (4) in paragraph (11)

24 (A) in subparagraph (A)—

1 (i) by striking “filing date, all” and
2 all that follows through the end of the sub-
3 paragraph and inserting the following: “fil-
4 ing date—

5 “(i) all securities positions of such
6 customer (other than customer name secu-
7 rities reclaimed by such customer); and

8 “(ii) all positions in futures contracts
9 and options on futures contracts held in a
10 portfolio margining account carried as a
11 securities account pursuant to a portfolio
12 margining program approved by the Com-
13 mission; minus”; and

14 (B) in the matter following subparagraph
15 (C), by striking “In determining” and inserting
16 the following: “A claim for a commodity futures
17 contract received, acquired, or held in a port-
18 folio margining account pursuant to a portfolio
19 margining program approved by the Commis-
20 sion or a claim for a security futures contract,
21 shall be deemed to be a claim with respect to
22 such contract as of the filing date, and such
23 claim shall be treated as a claim for cash. In
24 determining”.

1 **SEC. 984. PRIVATE CIVIL ACTION FOR AIDING AND ABET-**
2 **TING.**

3 Section 21D of the Securities Exchange Act of 1934
4 (15 U.S.C. 78u-4) is amended by adding at the end the
5 following:

6 “(g) PRIVATE CIVIL ACTIONS.—For purposes of any
7 private civil action implied under this title, any person that
8 knowingly or recklessly provides substantial assistance to
9 another person in violation of this title, or of any rule or
10 regulation issued under this title, shall be deemed to be
11 in violation of this title to the same extent as the person
12 to whom such assistance is provided.”.

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”;

24 (3) in section 19(d)(6)(A) (15 U.S.C.
25 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
26 and inserting “in paragraph (1) or (3)”; and

1 (4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–
2 2(c)(1)(B)(ii)), by striking “business entity;” and in-
3 sserting “business entity;”.

4 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
6 is amended—

7 (1) in section 2 (15 U.S.C. 78b), by striking
8 “affected” and inserting “effected”;

9 (2) in section 3 (15 U.S.C. 78c)—

10 (A) in subsection (a)(55)(A), by striking
11 “section 3(a)(12) of the Securities Exchange
12 Act of 1934” and inserting “section 3(a)(12) of
13 this title”; and

14 (B) in subsection (g), by striking “com-
15 pany, account person, or entity” and inserting
16 “company, account, person, or entity”;

17 (3) in section 10A(i)(1)(B) (15 U.S.C. 78j–
18 1(i)(1)(B))—

19 (A) in the subparagraph heading, by strik-
20 ing “MINIMUS” and inserting “MINIMIS”; and

21 (B) in clause (i), by striking “nonaudit”
22 and inserting “non-audit”;

23 (4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
24 by striking “earning statement” and inserting
25 “earnings statement”;

1 (5) in section 15 (15 U.S.C. 78o)—

2 (A) in subsection (b)(1)—

3 (i) in subparagraph (B), by striking
4 “The order granting” and all that follows
5 through “from such membership.”; and

6 (ii) in the undesignated matter imme-
7 diately following subparagraph (B), by in-
8 serting after the first sentence the fol-
9 lowing: “The order granting registration
10 shall not be effective until such broker or
11 dealer has become a member of a reg-
12 istered securities association, or until such
13 broker or dealer has become a member of
14 a national securities exchange, if such
15 broker or dealer effects transactions solely
16 on that exchange, unless the Commission
17 has exempted such broker or dealer, by
18 rule or order, from such membership.”;

19 (6) in section 15C(a)(2) (15 U.S.C. 78o-
20 5(a)(2))—

21 (A) by redesignating clauses (i) and (ii) as
22 subparagraphs (A) and (B), respectively, and
23 adjusting the subparagraph margins accord-
24 ingly;

1 (B) in subparagraph (B), as so redesignig-
2 nated, by striking “The order granting” and all
3 that follows through “from such membership.”;
4 and

5 (C) in the matter following subparagraph
6 (B), as so redesignated, by inserting after the
7 first sentence the following: “The order grant-
8 ing registration shall not be effective until such
9 government securities broker or government se-
10 curities dealer has become a member of a na-
11 tional securities exchange registered under sec-
12 tion 6 of this title, or a securities association
13 registered under section 15A of this title, unless
14 the Commission has exempted such government
15 securities broker or government securities deal-
16 er, by rule or order, from such membership.”;

17 (7) in section 16(a)(2)(C) (15 U.S.C.
18 78p(a)(2)(C)), by striking “section 206(b)” and in-
19 serting “section 206B”;

20 (8) in section 17(b)(1)(B) (15 U.S.C.
21 78q(b)(1)(B)), by striking “15A(k) gives” and in-
22 serting “15A(k), give”; and

23 (9) in section 21C(c)(2) (15 U.S.C. 78u-
24 3(c)(2)), by striking “paragraph (1) subsection” and
25 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 subclause
21 (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 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 the Congress on
9 the results of the determinations of the In-
10 spector 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 present
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.—In ac-
10 cordance with section 716 of title 31, United States Code,
11 and for purposes of conducting the study required under
12 subsection (b), the Comptroller General shall have access,
13 upon request, to any information, data, schedules, books,
14 accounts, financial records, reports, files, electronic com-
15 munications, or other papers, things, or property belong-
16 ing to or in use by a covered entity that engages in propri-
17 etary trading, and to the officers, directors, employees,
18 independent public accountants, financial advisors, staff,
19 and agents and representatives of a covered entity (as re-
20 lated to the activities of the agent or representative on
21 behalf of the covered entity), at such reasonable times as
22 the Comptroller General may request. The Comptroller
23 General may make and retain copies of books, records, ac-
24 counts, and other records, as the Comptroller General
25 deems appropriate.

1 (e) CONFIDENTIALITY OF REPORTS.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the Comptroller General may not disclose
4 information regarding—

5 (A) any proprietary trading activity of a
6 covered entity, unless such information is dis-
7 closed at a level of generality that does not re-
8 veal the investment or trading position or strat-
9 egy of the covered entity for any specific secu-
10 rity, commodity, derivative, or other investment
11 or financial product; or

12 (B) any individual interviewed by the
13 Comptroller General for purposes of the study
14 under subsection (b), unless such information is
15 disclosed at a level of generality that does not
16 reveal—

17 (i) the name of or identifying details
18 relating to such individual; or

19 (ii) in the case of an individual who is
20 an employee of a third party that provides
21 professional services to a covered entity be-
22 lieved to be engaged in proprietary trading,
23 the name of or any identifying details re-
24 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 “misleading designation”—

14 (A) means the use of a purported certifi-
15 cation, professional designation, or other cre-
16 dential, that indicates or implies that a sales-
17 person or adviser has special certification or
18 training in advising or servicing seniors; and

19 (B) does not include any legitimate certifi-
20 cation, professional designation, license, or
21 other credential, if—

22 (i) such credential has been offered by
23 an academic institution having regional ac-
24 creditation; or

1 (ii) such credential meets the stand-
2 ards for certifications, licenses, and profes-
3 sional designations outlined by the North
4 American Securities Administrators Asso-
5 ciation (in this section referred to as the
6 “NASAA”) Model Rule on the Use of Sen-
7 ior-Specific Certifications and Professional
8 Designations in the Sale of Life Insurance
9 and Annuities, adopted by the National
10 Association of Insurance Commissioners,
11 as in effect on the date of enactment of
12 this Act, or any successor thereto, or it
13 was issued by or obtained from any State;

14 (2) the term “financial product” means securi-
15 ties, insurance products (including insurance prod-
16 ucts which pay a return, whether fixed or variable),
17 and bank and loan products;

18 (3) the term “misleading or fraudulent mar-
19 keting” means the use of a misleading designation
20 in selling to or advising a senior in the sale of a fi-
21 nancial product; and

22 (4) the term “senior” means any individual who
23 has attained the age of 62 years or older.

24 (b) GRANTS TO STATES FOR ENHANCED PROTEC-
25 TION OF SENIORS FROM BEING MISLED BY FALSE DES-

1 IGNATIONS.—The Office of Financial Literacy within the
2 CFPA (in this section referred to as the “Office”)—

3 (1) shall establish a program in accordance with
4 this section to provide grants to States—

5 (A) to investigate and prosecute misleading
6 and fraudulent marketing practices; or

7 (B) to develop educational materials and
8 training aimed at reducing misleading and
9 fraudulent marketing of financial products to-
10 ward seniors; and

11 (2) may establish such performance objectives,
12 reporting requirements, and application procedures
13 for States and State agencies receiving grants under
14 this section as the Office determines are necessary
15 to carry out and assess the effectiveness of the pro-
16 gram under this section.

17 (c) USE OF GRANT AMOUNTS.—A grant under this
18 section may be used (including through subgrants) by the
19 State or the appropriate State agency designated by the
20 State—

21 (1) to fund additional staff to identify, inves-
22 tigate, and prosecute (through civil, administrative,
23 or criminal enforcement actions) cases involving mis-
24 leading or fraudulent marketing of financial prod-
25 ucts to seniors;

1 (2) to fund technology, equipment, and training
2 for regulators, prosecutors, and law enforcement in
3 order to identify salespersons and advisers who tar-
4 get seniors through the use of misleading designa-
5 tions;

6 (3) to fund technology, equipment, and training
7 for prosecutors to increase the successful prosecution
8 of those targeting seniors with the use of misleading
9 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 of fi-
13 nancial products;

14 (5) to provide educational materials and train-
15 ing to seniors to increase their awareness and under-
16 standing of designations;

17 (6) to develop comprehensive plans to combat
18 misleading or fraudulent marketing of financial
19 products to seniors; and

20 (7) to enhance provisions of State law that
21 could offer additional protection for seniors against
22 misleading or fraudulent marketing of financial
23 products.

24 (d) GRANT REQUIREMENTS.—

1 (1) **MAXIMUM.**—The amount of a grant under
2 this section may not exceed \$500,000 per fiscal year
3 per State, if all requirements of paragraphs (2), (3),
4 (4), and (5) are met. Such amount shall be limited
5 to \$100,000 per fiscal year per State in any case in
6 which the State meets the requirements of—

7 (A) paragraphs (2) and (3), but not each
8 of paragraphs (4) and (5); or

9 (B) paragraphs (4) and (5), but not each
10 of paragraphs (2) and (3).

11 (2) **STANDARD DESIGNATION RULES FOR SECURITIES.**—A State shall have adopted rules on the ap-
12 propriate use of designations in the offer or sale of
13 securities or investment advice, which shall meet or
14 exceed the minimum requirements of the NASAA
15 Model Rule on the Use of Senior-Specific Certifi-
16 cations and Professional Designations, as in effect
17 on the date of enactment of this Act, or any suc-
18 cessor thereto, as determined by the Office.

19 (3) **SUITABILITY RULES FOR SECURITIES.**—A
20 State shall have adopted standard rules on the suit-
21 ability requirements in the sale of securities, which
22 shall, to the extent practicable, conform to the min-
23 imum requirements on suitability imposed by self-
24 regulatory organization rules under the securities
25

1 laws (as defined in section 3 of the Securities Ex-
2 change Act of 1934), as determined by the Office.

3 (4) STANDARD DESIGNATION RULES FOR IN-
4 SURANCE PRODUCTS.—A State shall have adopted
5 standard rules on the appropriate use of designa-
6 tions in the sale of insurance products, which shall,
7 to the extent practicable, conform to the minimum
8 requirements of the National Association of Insur-
9 ance Commissioners Model Regulation on the Use of
10 Senior-Specific Certifications and Professional Des-
11 ignations in the Sale of Life Insurance and Annu-
12 ities, as in effect on the date of enactment of this
13 Act, or any successor thereto, as determined by the
14 Office.

15 (5) SUITABILITY AND SUPERVISION RULES FOR
16 ANNUITY PRODUCTS.—

17 (A) IN GENERAL.—A State shall have
18 adopted rules governing insurer supervision of,
19 suitability of, and insurer and insurance pro-
20 ducer conduct relating to, the sale of annuity
21 products, including fixed and index annuities,
22 notwithstanding any delayed effective date for
23 such rules.

24 (B) ANNUITY PRODUCTS CRITERIA.—The
25 rules required by subparagraph (A) shall, to the

1 extent practicable (as determined by the Of-
2 fice), provide—

3 (i) that insurers, and insurance pro-
4 ducers are responsible for, and liable for
5 penalties for, the suitability of each rec-
6 ommended annuity transaction;

7 (ii) that insurers and insurance pro-
8 ducers are required to apply a standard for
9 determining the suitability of each rec-
10 ommended annuity transaction, including
11 fixed and index annuities, that is at least
12 as protective of the interests of the con-
13 sumer as rule 2821(b) of the Financial In-
14 dustry Regulatory Authority (in this para-
15 graph referred to as “FINRA”), as in ef-
16 fect on the date of enactment of this Act,
17 or any successor to such rule;

18 (iii) that insurers and insurance pro-
19 ducers are required to maintain a process
20 for review of the suitability, and approval
21 or disapproval, of each recommended annu-
22 ity transaction that is at least as protective
23 of the interests of the consumer as the
24 principal review required under rule
25 2821(c) of FINRA, as in effect on the date

1 of enactment of this Act, or any successor
2 to such rule;

3 (iv) that insurers and insurance pro-
4 ducers are required to maintain processes
5 for the supervision of direct annuity sales
6 and insurance producer-recommended an-
7 nuity sales (including procedures for the
8 insurer to obtain and confirm consumer
9 suitability information and for the insurer
10 to confirm consumer understanding of the
11 annuity transaction) that are at least as
12 protective of the interests of the consumer
13 as member broker and dealer supervision
14 requirements of FINRA, as in effect on
15 the date of enactment of this Act, or any
16 successor to such requirements;

17 (v) that insurers are required to verify
18 that each insurance producer successfully
19 completes, and each insurance producer is
20 required to receive, training designed to
21 ensure that the insurance producer is com-
22 petent to recommend each class of annuity;

23 (vi) that insurers are required to
24 verify that insurance producers receive,
25 and insurance producers are required to

1 receive, training regarding the features of
2 each offered annuity product, to an extent
3 that is at least as protective of the inter-
4 ests of the consumer as the FINRA firm
5 element training requirements, as in effect
6 on the date of enactment of this Act, or
7 any successor to such requirements;

8 (vii) for coordination of such rules
9 with the rules of FINRA governing mem-
10 ber brokers, dealers, and security rep-
11 resentatives, to the extent appropriate,
12 consistent with protecting the interests of
13 consumers, for State insurance regulators
14 to rely on, or to avoid duplication of
15 FINRA rules; and

16 (viii) for exemption from such rules
17 only if such exemption is consistent with
18 the protection of consumers.

19 (e) **ELIGIBLE ENTITIES.**—The following State agen-
20 cies shall be eligible to receive a grant under this section:

21 (1) A securities commission (or any agency or
22 office performing like functions) of any State, which
23 commission has adopted standard designation rules
24 for securities, as described in subsection (d)(2) and

1 suitability rules for securities, as described in sub-
2 section (d)(3).

3 (2) The insurance commission (or any agency
4 or office performing like functions) of any State,
5 which commission has adopted standard designation
6 rules for insurance products, as described in sub-
7 section (d)(2) and suitability and supervision rules
8 for annuity products, as described in subsection
9 (d)(5).

10 (3) Any State consumer protection agency, if ei-
11 ther the securities commission or the insurance com-
12 mission in that State has met the requirements of
13 paragraph (1) or (2), as applicable.

14 (f) APPLICATIONS.—To be eligible for a grant under
15 this section, the State or appropriate State agency shall
16 submit to the Office a proposal to use the grant money
17 to protect seniors from misleading or fraudulent mar-
18 keting techniques in the offer and sale of financial prod-
19 ucts, which application shall—

20 (1) identify the scope of the problem;

21 (2) describe how the proposed program will help
22 to protect seniors from misleading or fraudulent
23 marketing in the sale of financial products, includ-
24 ing, at a minimum—

1 (A) by proactively identifying senior vic-
2 tims of misleading and fraudulent marketing in
3 the offer and sale of financial products;

4 (B) how the proposed program can assist
5 in the investigation and prosecution of those
6 using misleading or fraudulent marketing in the
7 offer and sale of financial products to seniors;
8 and

9 (C) how the proposed program can help
10 discourage and reduce future cases of mis-
11 leading or fraudulent marketing in the offer
12 and sale of financial products to seniors; and

13 (3) describe how the proposed program is to be
14 integrated with other existing State efforts.

15 (g) **LENGTH OF PARTICIPATION.**—A State receiving
16 a grant under this section shall be provided assistance
17 funds for a period of 3 years, after which the State may
18 reapply for additional funding.

19 (h) **AUTHORIZATION OF APPROPRIATIONS.**—There
20 are authorized to be appropriated to carry out this section,
21 \$8,000,000 for each of the fiscal years 2010 through
22 2014.

1 **Subtitle J—Self-funding of the Se-**
2 **curities and Exchange Commis-**
3 **sion**

4 **SEC. 991. SECURITIES AND EXCHANGE COMMISSION SELF-**
5 **FUNDING.**

6 (a) SELF-FUNDING AUTHORITY.—Section 4 of the
7 Securities Exchange Act of 1934 (15 U.S.C. 78d) is
8 amended—

9 (1) in subsection (e), in the second sentence, by
10 striking “credited to the appropriated funds of the
11 Commission” and inserting “deposited in the ac-
12 count described in subsection (j)(4)”;

13 (2) in subsection (f), in the second sentence, by
14 striking “considered a reimbursement to the appro-
15 priated funds of the Commission” and inserting “de-
16 posited in the account described in subsection
17 (j)(4)”;

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

19 “(j) FUNDING OF THE COMMISSION.—

20 “(1) BUDGET.—For each fiscal year, the Chair-
21 man of the Commission shall prepare and submit to
22 Congress a budget to Congress. Such budget shall be
23 submitted at the same time the President submits a
24 budget of the United States to Congress for such
25 fiscal year. The budget submitted by the Chairman

1 of the Commission pursuant to this paragraph shall
2 not be considered a request for appropriations.

3 “(2) TREASURY PAYMENT.—

4 “(A) On the first day of each fiscal year,
5 the Treasury shall pay into the account de-
6 scribed in paragraph (4) an amount equal to
7 the budget submitted by the Chairman of the
8 Commission pursuant to paragraph (1) for such
9 fiscal year.

10 “(B) At or prior to the end of each fiscal
11 year, the Commission shall pay to the Treasury
12 from fees and assessments deposited in the ac-
13 count described in paragraph (4) an amount
14 equal to the amount paid by the Treasury pur-
15 suant to subparagraph (A) for such fiscal year,
16 unless there are not sufficient fees and assess-
17 ments deposited in such account at or prior to
18 the end of the fiscal year to make such pay-
19 ment, in which case the Commission shall make
20 such payment in a subsequent fiscal year.

21 “(3) OBLIGATIONS AND EXPENSES.—

22 “(A) IN GENERAL.—The Commission shall
23 determine and prescribe the manner in which—

24 “(i) the obligations of the Commission
25 shall be incurred; and

1 “(ii) the disbursements and expenses
2 of the Commission allowed and paid.

3 “(B) INSUFFICIENT FUNDS.—If, in the
4 course of any fiscal year, the Chairman of the
5 Commission determines that, due to unforeseen
6 circumstances, the obligations of the Commis-
7 sion will exceed those provided for in the budget
8 submitted under paragraph (1), the Chairman
9 of the Commission may notify Congress of the
10 amount and expected uses of the additional ob-
11 ligations.

12 “(C) AUTHORITY TO INCUR EXCESS OBLI-
13 GATIONS.—The Commission may incur obliga-
14 tions in excess of the budget submitted under
15 paragraph (1) from amounts available in the
16 account described in paragraph (4).

17 “(D) RULE OF CONSTRUCTION.—Any noti-
18 fication to Congress under this paragraph shall
19 not be considered a request for appropriations.

20 “(4) ACCOUNT.—

21 “(A) ESTABLISHMENT.—Fees and assess-
22 ments collected under this title, section 6(b) of
23 the Securities Act of 1933 (15 U.S.C. 77f(b)),
24 and section 24(f) of the Investment Company
25 Act of 1940 (15 U.S.C. 80a–24(f)) and pay-

1 ments made by the Treasury pursuant to para-
2 graph (2)(A) for any fiscal year shall be depos-
3 ited into an account established at any regular
4 Government depository or any State or national
5 bank.

6 “(B) RULE OF CONSTRUCTION.—Any
7 amounts deposited into the account established
8 under subparagraph (A) shall not be construed
9 to be Government funds or appropriated mon-
10 ies.

11 “(C) NO APPORTIONMENT.—Any amounts
12 deposited into the account established under
13 subparagraph (A) shall not be subject to appor-
14 tionment for the purpose of chapter 15 of title
15 31, United States Code, or under any other au-
16 thority.

17 “(5) USE OF ACCOUNT FUNDS.—

18 “(A) PERMISSIBLE USES.—Amounts avail-
19 able in the account described in paragraph (4)
20 may be withdrawn by the Commission and used
21 for the purposes described in paragraphs (2)
22 and (3).

23 “(B) IMPERMISSIBLE USE.—Except as
24 provided in paragraph (6), no amounts available
25 in the account described in paragraph (4) shall

1 be deposited and credited as general revenue of
2 the Treasury.

3 “(6) EXCESS FUNDS.—If, at the end of any fis-
4 cal year and after all payments have been made to
5 the Treasury pursuant to paragraph (2)(B) for such
6 fiscal year and all prior fiscal years, the balance of
7 the account described in paragraph (4) exceeds 25
8 percent of the budget of the Commission for the fol-
9 lowing fiscal year, the amount by which the balance
10 exceeds 25 percent of such budget shall be credited
11 as general revenue of the Treasury.”.

12 (b) CONFORMING AMENDMENTS TO TRANSACTION
13 FEE PROVISIONS.—Section 31 of the Securities Exchange
14 Act of 1934 (15 U.S.C. 78ee) is amended—

15 (1) by amending subsection (a) to read as fol-
16 lows:

17 “(a) RECOVERY OF COSTS AND EXPENSES.—

18 “(1) IN GENERAL.—The Commission shall, in
19 accordance with this section, collect transaction fees
20 and assessments that are designed—

21 “(A) to recover the reasonable costs and
22 expenses of the Commission, as set forth in the
23 annual budget of the Commission; and

24 “(B) to provide funds necessary to main-
25 tain a reserve.

1 “(2) OVERPAYMENTS.—The authority to collect
2 transaction fees and assessments in accordance with
3 this section shall include the authority to offset from
4 such collection any overpayment of transactions fees
5 or assessments, regardless of the fiscal year in which
6 such overpayment is made.”;

7 (2) in subsection (e)(2), by striking “September
8 30” and inserting “September 25”;

9 (3) in subsection (g), by striking “April 30”
10 and inserting “August 31”;

11 (4) by amending subsection (i) to read as fol-
12 lows:

13 “(i) FEE COLLECTIONS.—Fees and assessments col-
14 lected pursuant to this section shall be deposited and cred-
15 ited in accordance with section 4(g) of this title.”;

16 (5) by amending subsection (j) to read as fol-
17 lows:

18 “(j) ADJUSTMENTS TO TRANSACTION FEE RATES.—

19 “(1) ANNUAL ADJUSTMENT.—For each fiscal
20 year, the Commission shall by order adjust each of
21 the rates applicable under subsections (b) and (c)
22 for such fiscal year to a uniform adjusted rate that,
23 when applied to the baseline estimate of the aggre-
24 gate dollar amount of sales for such fiscal year, is
25 reasonably likely to produce aggregate fee collections

1 under this section (including assessments collected
2 under subsection (d)) that are equal to the budget
3 of the Commission for such fiscal year, plus amounts
4 necessary to maintain a reserve.

5 “(2) MID-YEAR ADJUSTMENT.—For each fiscal
6 year, the Commission shall determine, by March 1 of
7 such fiscal year, whether, based on the actual aggregate
8 dollar volume of sales during the first 4 months
9 of such fiscal year, the baseline estimate of the aggregate
10 dollar volume of sales used under paragraph
11 (1) for such fiscal year is reasonably likely to be 10
12 percent (or more) greater or less than the actual aggregate
13 dollar volume of sales for such fiscal year.
14 If the Commission so determines, the Commission
15 shall by order, not later than March 1, adjust each
16 of the rates applicable under subsections (b) and (c)
17 for such fiscal year to a uniform adjusted rate that,
18 when applied to the revised estimate of the aggregate
19 dollar amount of sales for the remainder of
20 such fiscal year, is reasonably likely to produce aggregate
21 fee collections under this section (including
22 fees estimated to be collected under subsections (b)
23 and (c) during such fiscal year prior to the effective
24 date of the new uniform adjusted rate and assessments
25 collected under subsection (d)) that are equal

1 to the budget of the Commission for such fiscal year,
2 plus amounts necessary to maintain a reserve. In
3 making such revised estimate, the Commission shall,
4 after consultation with the Congressional Budget Of-
5 fice and the Office of Management and Budget, use
6 the same methodology required by paragraph (4).

7 “(3) REVIEW AND EFFECTIVE DATE.—In exer-
8 cising its authority under this subsection, the Com-
9 mission shall not be required to comply with the pro-
10 visions of section 553 of title 5 United States Code.
11 An adjusted rate prescribed under paragraph (1) or
12 (2) and published under subsection (g) shall not be
13 subject to judicial review. An adjusted rate pre-
14 scribed under paragraph (1) shall take effect on the
15 first day of the fiscal year to which such rate ap-
16 plies. An adjusted rate prescribed under paragraph
17 (2) shall take effect on April 1 of the fiscal year to
18 which such rate applies.

19 “(4) BASELINE ESTIMATE OF THE AGGREGATE
20 DOLLAR AMOUNT OF SALES.—For purposes of this
21 subsection, the baseline estimate of the aggregate
22 dollar amount of sales for any fiscal year is the
23 baseline estimate of the aggregate dollar amount of
24 sales of securities (other than bonds, debentures,
25 other evidences of indebtedness, security futures

1 products, and options on securities indexes excluding
2 a narrow-based security index)) to be transacted on
3 each national securities exchange and by or through
4 any member of each national securities association
5 (otherwise than on a national securities exchange)
6 during such fiscal year as determined by the Com-
7 mission, after consultation with the Congressional
8 Budget Office and the Office of Management and
9 Budget, using the methodology required for making
10 projections pursuant to section 907 of title 2.”; and

11 (6) by striking subsections (k) and (l).

12 (c) CONFORMING AMENDMENTS TO REGISTRATION
13 FEE PROVISIONS.—

14 (1) SECTION 6(B) OF THE SECURITIES ACT OF
15 1933.—Section 6(b) of the Securities Act of 1933
16 (15 U.S.C. 77f(b)) is amended—

17 (A) by striking “offsetting” each place that
18 term appears and inserting “fee”;

19 (B) in paragraph (3), in the paragraph
20 heading, by striking “OFFSETTING” and insert-
21 ing “FEE”;

22 (C) in paragraph (11)(A), in the subpara-
23 graph heading, by striking “OFFSETTING” and
24 inserting “FEE”;

1 (D) by striking paragraphs (1), (3), (4),
2 (6), (8), and (9);

3 (E) by redesignating paragraph (2) as
4 paragraph (1);

5 (F) in paragraph (1), as so redesignated,
6 by striking “(5) or (6)” and inserting “(3)”;

7 (G) by inserting after paragraph (1), as so
8 redesignated, the following:

9 “(2) **FREE COLLECTIONS.**—Fees collected pursu-
10 ant to this subsection shall be deposited and credited
11 in accordance with section 4(j) of the Securities Ex-
12 change Act of 1934.”;

13 (H) by redesignating paragraph (5) as
14 paragraph (3);

15 (I) in paragraph (3), as redesignated—

16 (i) by striking “of the fiscal years
17 2003 through 2011” and inserting “fiscal
18 year”; and

19 (ii) by striking “paragraph (2)” and
20 inserting “paragraph (1)”;

21 (J) by redesignating paragraph (7) as
22 paragraph (4);

23 (K) by inserting after paragraph (4), as so
24 redesignated, the following:

1 “(5) 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, United States Code.
 5 An adjusted rate prescribed under paragraph (3)
 6 and published under paragraph (6) shall not be sub-
 7 ject to judicial review. An adjusted rate prescribed
 8 under paragraph (3) shall take effect on the first
 9 day of the fiscal year to which such rate applies.”;

10 (L) by redesignating paragraphs (10) and
 11 (11), as paragraphs (6) and (7);

12 (M) in paragraph (6), as redesignated, by
 13 striking “April 30” and inserting “August 31”;
 14 and

15 (N) in paragraph (7), as redesignated—

16 (i) by striking “of the fiscal years
 17 2002 through 2011” and inserting “fiscal
 18 year”; and

19 (ii) by inserting at the end of the
 20 table in subparagraph (A) the following:

2012 and each succeeding fiscal year	An amount that is equal to the target offsetting collection amount for the prior fiscal year adjusted by the rate of inflation.
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1 (2) SECTION 13(E) OF THE SECURITIES EX-
2 CHANGE ACT OF 1934.—Section 13(e) of the Securi-
3 ties Exchange Act of 1934 (15 U.S.C. 78m(e)) is
4 amended—

5 (A) by striking “offsetting” each place that
6 term appears and inserting “fee”;

7 (B) in paragraph (3) by striking “para-
8 graphs (5) and (6)” and inserting “paragraph
9 (5)”;

10 (C) by amending paragraph (4) to read as
11 follows:

12 “(4) FEE COLLECTIONS.—Fees collected pursu-
13 ant to this subsection shall be deposited and credited
14 in accordance with section 4(g) of this title.”;

15 (D) in paragraph (5), by striking “of the
16 fiscal years 2003 through 2011” and inserting
17 “fiscal year”;

18 (E) by striking paragraphs (6), (7), and
19 (8)

20 (F) by redesignating paragraph (7) as
21 paragraph (6);

22 (G) by inserting after paragraph (6), as so
23 redesignated, the following:

24 “(7) REVIEW AND EFFECTIVE DATE.—In exer-
25 cising its authority under this subsection, the Com-

1 mission shall not be required to comply with the pro-
2 visions of section 553 of title 5. An adjusted rate
3 prescribed under paragraph (5) and published under
4 paragraph (8) shall not be subject to judicial review.
5 An adjusted rate prescribed under paragraph (5)
6 shall take effect on the first day of the fiscal year
7 to which such rate applies.”;

8 (H) by striking paragraph (9);

9 (I) by redesignating paragraph (10) as
10 paragraph (8); and

11 (J) in paragraph (8), as so redesignated,
12 by striking “6(b)(10)” and inserting “6(b)(6)”.

13 (3) SECTION 14 OF THE SECURITIES EXCHANGE
14 ACT OF 1934.—Section 14(g) of the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78n(g)) is amend-
16 ed—

17 (A) by striking the word “offsetting” each
18 time that it appears and inserting in its place
19 the word “fee”;

20 (B) in paragraph (1)(A), by striking
21 “paragraphs (5) and (6)” each time it appears
22 and inserting “paragraph (5)”;

23 (C) in paragraph (3), by striking “para-
24 graphs (5) and (6)” and inserting “paragraph
25 (5)”;

1 (D) by amending paragraph (4) to read as
2 follows:

3 “(4) **FEE COLLECTIONS.**—Fees collected pursu-
4 ant to this subsection shall be deposited and credited
5 in accordance with section 4(g) of this title.”;

6 (E) in paragraph (5), by striking “of the
7 fiscal years 2003 through 2011” and inserting
8 “fiscal year”;

9 (F) by striking paragraphs (6), (8), and
10 (9);

11 (G) by redesignating paragraph (7) as
12 paragraph (6);

13 (H) by inserting after paragraph (6), as so
14 redesignated, the following:

15 “(7) **REVIEW AND EFFECTIVE DATE.**—In exer-
16 cising its authority under this subsection, the Com-
17 mission shall not be required to comply with the pro-
18 visions of section 553 of title 5. An adjusted rate
19 prescribed under paragraph (5) and published under
20 paragraph (8) shall not be subject to judicial review.
21 An adjusted rate prescribed under paragraph (5)
22 shall take effect on the first day of the fiscal year
23 to which such rate applies.”;

1 (I) by redesignating paragraphs (10) and
2 (11) as paragraphs (8) and (9), respectively;
3 and

4 (J) in paragraph (9), as so redesignated,
5 by striking “6(b)(10)” and inserting “6(b)(7)”.

6 (d) REPEAL OF AUTHORIZATION OF APPROPRIA-
7 TIONS.—Section 35 of the Securities Exchange Act of
8 1934 (15 U.S.C. 78kk) is repealed.

9 (e) CONFORMING AMENDMENT TO TITLE 2.—Section
10 255(g)(1)(A) of the Balanced Budget and Emergency
11 Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is
12 amended by inserting after “Salaries of Article III
13 judges;” the following:

14 “ Securities and Exchange Commission: Salaries and
15 Expenses (50-0100-0-1-376);”.

16 (f) EFFECTIVE DATE AND TRANSITION PROVI-
17 SIONS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graphs (2) and (3), the amendments made by this
20 section shall be effective on the first day of the fiscal
21 year following the fiscal year in which this Act is en-
22 acted.

23 (2) TRANSITION PERIOD.—For the fiscal year
24 following the fiscal year in which this Act is enacted,
25 the budget of the Commission shall be deemed to be

1 the budget submitted by the Chairman of the Com-
2 mission to the President for such fiscal year in ac-
3 cordance with the provisions of section 1108 of title
4 31, United States Code.

5 (3) OTHER PROVISIONS.—The amendments
6 made by this section to sections 31(g) and (j)(1) of
7 the Securities Exchange Act of 1934 (15 U.S.C.
8 78ee (g) and (j)(1)) shall be effective on the date of
9 enactment of this Act, and shall require the Com-
10 mission to make and publish an annual adjustment
11 to the fee rates applicable under sections 31(b) and
12 (c) of the Securities Exchange Act of 1934 (15
13 U.S.C. 78ee (b) and (c)) for the fiscal year following
14 the fiscal year in which this Act is enacted. The ad-
15 justed rate described in the preceding sentence shall
16 supersede any previously published adjusted rate ap-
17 plicable under sections 31 (b) and (c) of the Securi-
18 ties Exchange Act of 1934 for the fiscal year fol-
19 lowing the fiscal year in which this Act is enacted
20 and shall take effect on the first day of the fiscal
21 year following the fiscal year in which this Act is en-
22 acted, except that, if this Act is enacted on or after
23 August 31 and on or prior to September 30, the ad-
24 justed rate described in the first sentence shall be
25 published not later than 15 days after the date of

1 enactment of this Act and take effect 30 days there-
2 after, and the Commission shall continue to collect
3 fees under sections 31 (b) and (c) of the Securities
4 Exchange Act of 1934 at the rate in effect during
5 the preceding fiscal year until the adjusted rate is
6 effective.

7 **TITLE X—CONSUMER FINANCIAL**
8 **PROTECTION AGENCY ACT OF**
9 **2009**

10 **SEC. 1001. SHORT TITLE.**

11 This title may be cited as the “Consumer Financial
12 Protection Agency Act of 2009”.

13 **SEC. 1002. DEFINITIONS.**

14 Except as otherwise provided in this title, for pur-
15 poses of this title, the following definitions shall apply:

16 (1) **AFFILIATE.**—The term “affiliate” means
17 any person that controls, is controlled by, or is
18 under common control with another person.

19 (2) **APPOINTED BOARD MEMBER.**—The term
20 “appointed Board member” or “appointed Board
21 members” means a member or members of the
22 Board appointed by the President under section
23 1012(a)(1).

1 (3) BOARD.—The term “Board” means the
2 board of directors of the Consumer Financial Pro-
3 tection Agency.

4 (4) CONSUMER.—The term “consumer” means
5 an individual or an agent, trustee, or representative
6 acting on behalf of an individual.

7 (5) CONSUMER FINANCIAL PRODUCT OR SERV-
8 ICE.—The term “consumer financial product or
9 service” means any financial product or service to be
10 used by a consumer primarily for personal, family,
11 or household purposes.

12 (6) COVERED PERSON.—The term “covered
13 person” means any person who engages, directly or
14 indirectly in a financial activity, in connection with
15 the provision of a consumer financial product or
16 service.

17 (7) CREDIT.—The term “credit” means the
18 right granted by a person to a consumer to defer
19 payment of a debt, incur debt and defer its payment,
20 or purchase property or services and defer payment
21 for such purchase.

22 (8) CREDIT INSURANCE.—The term “credit in-
23 surance” means any insurance product or service re-
24 lated to, or provided in connection with, any exten-
25 sion of credit, and includes credit life insurance,

1 credit accident or health insurance, involuntary un-
2 employment insurance, and credit property insur-
3 ance.

4 (9) DEPOSIT-TAKING ACTIVITY.—

5 (A) IN GENERAL.—The term “deposit-tak-
6 ing activity” means—

7 (i) the acceptance of deposits, mainte-
8 nance of deposit accounts, or the provision
9 of services related to the acceptance of de-
10 posits or the maintenance of deposit ac-
11 counts;

12 (ii) the acceptance of money, the pro-
13 vision of other services related to the ac-
14 ceptance of money, or the maintenance of
15 member share accounts by a credit union;
16 and

17 (iii) the receipt of money or its equiv-
18 alent, as the CFPA may determine by rule
19 or order, received or held by a covered per-
20 son (or an agent for a covered person) for
21 the purpose of facilitating a payment or
22 transferring funds or value of funds by a
23 consumer to a third party.

24 (B) CFPA AUTHORITY.—For purposes of
25 this title, the CFPA may determine, by rule,

1 that the term “deposit-taking activity” includes
2 the receipt of money or its equivalent in connec-
3 tion with the sale or issuance of any payment
4 instrument or stored value product or service.

5 (10) DESIGNATED TRANSFER DATE.—The term
6 “designated transfer date” means the date estab-
7 lished under section 1062.

8 (11) DIRECTOR.—The term “Director” means
9 the Director of the CFPA.

10 (12) ENUMERATED CONSUMER LAWS.—The
11 term “enumerated consumer laws” means—

12 (A) the Alternative Mortgage Transaction
13 Parity Act of 1982 (12 U.S.C. 3801 et seq.);

14 (B) the Community Reinvestment Act of
15 1977 (12 U.S.C. 2901 et seq.);

16 (C) the Consumer Leasing Act of 1976 (15
17 U.S.C. 1667 et seq.);

18 (D) the Electronic Fund Transfer Act (15
19 U.S.C. 1693 et seq.);

20 (E) the Equal Credit Opportunity Act (15
21 U.S.C. 1691 et seq.);

22 (F) the Fair Credit Billing Act (15 U.S.C.
23 1666 et seq.);

24 (G) the Fair Credit Reporting Act (15
25 U.S.C. 1681 et seq.), except with respect to sec-

1 tions 615(e) and 628 of that Act (15 U.S.C.
2 1681m(e), 1681w);

3 (H) the Home Owners Protection Act of
4 1998 (12 U.S.C. 4901, et seq.);

5 (I) the Fair Debt Collection Practices Act
6 (15 U.S.C. 1692 et seq.);

7 (J) subsections (c) through (f) of section
8 43 of the Federal Deposit Insurance Act (12
9 U.S.C. 1831t(c)–(f));

10 (K) sections 502 through 509 of the
11 Gramm-Leach-Bliley Act (15 U.S.C. 6802–
12 6809);

13 (L) the Home Mortgage Disclosure Act of
14 1975 (12 U.S.C. 2801 et seq.);

15 (M) the Home Ownership and Equity Pro-
16 tection Act of 1994 (15 U.S.C. 1601 note);

17 (N) the Real Estate Settlement Procedures
18 Act of 1974 (12 U.S.C. 2601 et seq.);

19 (O) the S.A.F.E. Mortgage Licensing Act
20 of 2008 (12 U.S.C. 5101 et seq.);

21 (P) the Truth in Lending Act (15 U.S.C.
22 1601 et seq.); and

23 (Q) the Truth in Savings Act (12 U.S.C.
24 4301 et seq.).

1 (13) FINANCIAL ACTIVITY.—The term “finan-
2 cial activity” means—

3 (A) engaging in deposit-taking activities;

4 (B) extending credit and servicing loans,
5 including—

6 (i) acquiring, purchasing, selling,
7 brokering, or servicing loans or other ex-
8 tensions of credit; and

9 (ii) engaging in any other activity
10 usual in connection with extending credit
11 or servicing loans, including performing
12 appraisals of real estate and personal prop-
13 erty and selling or servicing credit insur-
14 ance or mortgage insurance;

15 (C) check cashing services or check-guar-
16 anty services, including—

17 (i) authorizing a subscribing merchant
18 to accept personal checks tendered by the
19 customers of the merchant in payment for
20 goods and services; and

21 (ii) purchasing from a subscribing
22 merchant validly authorized checks that
23 are subsequently dishonored;

24 (D) collecting, analyzing, maintaining, fur-
25 nishing, or providing consumer report informa-

1 tion or other account information, including in-
2 formation relating to the credit history of con-
3 sumers;

4 (E) collecting debt related to any consumer
5 financial product or service;

6 (F) providing real estate settlement serv-
7 ices, including providing title insurance;

8 (G) leasing personal or real property or
9 acting as agent, broker, or adviser in leasing
10 such property, if—

11 (i) the lease is on a non-operating
12 basis;

13 (ii) the initial term of the lease is at
14 least 90 days; and

15 (iii) in the case of a lease involving
16 real property, at the inception of the initial
17 lease, the transaction is intended to result
18 in ownership of the leased property to be
19 transferred to the lessee, subject to stand-
20 ards prescribed by the CFPA;

21 (H) acting as an investment adviser to any
22 person (other than a person that is regulated by
23 the Commodity Futures Trading Commission or
24 the Securities and Exchange Commission or

1 any securities commission, or any agency or of-
2 fice performing like functions, of any State);

3 (I) acting as financial adviser to any per-
4 son, including—

5 (i) providing financial and other re-
6 lated advisory services;

7 (ii) providing educational courses and
8 instructional materials to consumers on in-
9 dividual financial management matters;

10 (iii) providing credit counseling, tax-
11 planning, or tax-preparation services to
12 any person (excluding the preparation of
13 returns, or claims for refund, of tax im-
14 posed by the Internal Revenue Code of
15 1986, or advice with respect to positions
16 taken therein, or services regulated by the
17 Secretary under section 330 of title 31,
18 United States Code); or

19 (iv) providing services to assist a con-
20 sumer with—

21 (I) debt management or debt set-
22 tlement;

23 (II) modifying the terms of any
24 extension of credit; or

25 (III) avoiding foreclosure;

1 (J) financial data processing by any tech-
2 nological means, including providing data proc-
3 essing, access to or use of databases or facili-
4 ties, or advice regarding processing or
5 archiving, if the data to be processed, fur-
6 nished, stored, or archived are financial, bank-
7 ing, or economic, except that a person shall not
8 be deemed to be a covered person with respect
9 to financial data processing if the person—

10 (i) unknowingly or incidentally trans-
11 mits, processes, or stores financial data in
12 a manner that such data is undifferen-
13 tiated from other types of data that the
14 person transmits, processes, or stores;

15 (ii) does not provide to any consumer
16 a consumer financial product or service in
17 connection with or relating to in any man-
18 ner financial data processing; and

19 (iii) does not provide a material serv-
20 ice to, or process a transaction on behalf
21 of, any covered person in connection with
22 the provision of a consumer financial prod-
23 uct or service;

24 (K) money transmitting;

25 (L) selling or issuing stored value;

1 (M) acting as a money services business;

2 (N) acting as a custodian of money or any
3 financial instrument; or

4 (O) engaging in any other activity that the
5 CFPA defines, by rule, as a financial activity
6 for purposes of this title, including an activity
7 that is entered into or conducted as a subter-
8 fuge or with a purpose to evade any require-
9 ment of this title, the enumerated consumer
10 laws, or the authorities transferred under sub-
11 titles F and H.

12 (14) FINANCIAL PRODUCT OR SERVICE.—The
13 term “financial product or service” means any prod-
14 uct or service that, directly or indirectly, results
15 from or is related to engaging in 1 or more financial
16 activities.

17 (15) FOREIGN EXCHANGE.—The term “foreign
18 exchange” means the exchange, for compensation, of
19 currency of the United States or of a foreign govern-
20 ment for currency of another government.

21 (16) MONEY SERVICES BUSINESS.—The term
22 “money services business” means a covered person
23 that—

24 (A) receives currency, monetary value, or
25 payment instruments for the purpose of ex-

1 changing or transmitting the same by any
2 means, including transmission by wire, fac-
3 simile, electronic transfer, courier, the Internet,
4 or through bill payment services, or other busi-
5 nesses that facilitate third-party transfers with-
6 in the United States or to or from the United
7 States; or

8 (B) issues payment instruments or stored
9 value.

10 (17) **MONEY TRANSMITTING.**—The term
11 “money transmitting” means the receipt by a cov-
12 ered person of currency, monetary value, or payment
13 instruments for the purpose of transmitting the
14 same to any third-party by any means, including
15 transmission by wire, facsimile, electronic transfer,
16 courier, the Internet, or through bill payment serv-
17 ices.

18 (18) **MORTGAGE INSURANCE.**—The term
19 “mortgage insurance” means insurance, including
20 any mortgage guaranty insurance, against the non-
21 payment of, or any default on, an individual mort-
22 gage or loan involved in a residential mortgage
23 transaction.

24 (19) **PAYMENT INSTRUMENT.**—The term “pay-
25 ment instrument” means a check, draft, warrant,

1 money order, traveler’s check, electronic instrument,
2 or other instrument, payment of money, or monetary
3 value (other than currency).

4 (20) PERSON REGULATED BY THE COMMODITY
5 FUTURES TRADING COMMISSION.—The term “person
6 regulated by the Commodity Futures Trading Com-
7 mission” means any futures commission merchant,
8 commodity trading adviser, commodity pool oper-
9 ator, or introducing broker that is subject to the ju-
10 risdiction of the Commodity Futures Trading Com-
11 mission under the Commodity Exchange Act, but
12 only to the extent that the person acts in such ca-
13 pacity.

14 (21) PERSON REGULATED BY THE COMMIS-
15 SION.—The term “person regulated by the Commis-
16 sion” means a person who is—

17 (A) a broker or dealer that is required to
18 be registered under the Securities Exchange Act
19 of 1934;

20 (B) an investment adviser that is required
21 to be registered under the Investment Advisers
22 Act of 1940;

23 (C) an investment company that is re-
24 quired to be registered under the Investment
25 Company Act of 1940;

1 (D) a national securities exchange that is
2 required to be registered under the Securities
3 Exchange Act of 1934;

4 (E) a transfer agent that is required to be
5 registered under the Securities Exchange Act of
6 1934;

7 (F) a clearing corporation that is required
8 to be registered under the Securities Exchange
9 Act of 1934; and

10 (G) any employee, agent, or contractor act-
11 ing on behalf of, registered with, or providing
12 services to, any person described in any of sub-
13 paragraphs (A) through (F), but only to the ex-
14 tent that the person, or the employee, agent, or
15 contractor of such person, acts in a regulated
16 capacity.

17 (22) PERSON THAT PERFORMS INCOME TAX
18 PREPARATION ACTIVITIES FOR CONSUMERS.—The
19 term “person that performs income tax preparation
20 activities for consumers” means—

21 (A) any tax return preparer (as defined in
22 section 7701(a)(36) of the Internal Revenue
23 Code of 1986), regardless of whether com-
24 pensated, but only to the extent that the person
25 acts in such capacity;

1 (B) any person regulated by the Secretary
2 under section 330 of title 31, United States
3 Code, but only to the extent that the person
4 acts in such capacity; and

5 (C) any authorized IRS e-file Providers (as
6 defined for purposes of section 7216 of the In-
7 ternal Revenue Code of 1986), but only to the
8 extent that the person acts in such capacity.

9 (23) PROVISION OF A CONSUMER FINANCIAL
10 PRODUCT OR SERVICE.—The terms “provision of a
11 consumer financial product or service” and “pro-
12 viding a consumer financial product or service”
13 mean the advertisement, marketing, solicitation,
14 sale, disclosure, delivery, or account maintenance or
15 servicing of a consumer financial product or service.

16 (24) RELATED PERSON.—The term “related
17 person”—

18 (A) shall apply only with respect to a cov-
19 ered person that is not a bank holding company
20 (as that term is defined in section 2 of the
21 Bank Holding Company Act of 1956), credit
22 union, or depository institution;

23 (B) shall be deemed to mean a covered
24 person for all purposes of this title, any enu-
25 merated consumer law, and any law for which

1 authorities were transferred by subtitles F and
2 H; and

3 (C) means—

4 (i) any director, officer, or employee
5 charged with managerial responsibility, or
6 controlling stockholder of, or agent for,
7 such covered person;

8 (ii) any shareholder, consultant, joint
9 venture partner, or other person, as deter-
10 mined by the CFPA (by rule or on a case-
11 by-case basis) who materially participates
12 in the conduct of the affairs of such cov-
13 ered person; and

14 (iii) any independent contractor (in-
15 cluding any attorney, appraiser, or ac-
16 countant) who knowingly or recklessly par-
17 ticipates in any—

18 (I) violation of any provision of
19 law or regulation; or

20 (II) breach of a fiduciary duty.

21 (25) SERVICE PROVIDER.—

22 (A) IN GENERAL.—The term “service pro-
23 vider” means any person who provides a mate-
24 rial service to a covered person in connection
25 with the provision of a consumer financial prod-

1 uct or service by a covered person, including a
2 person who—

3 (i) facilitates the design of, or oper-
4 ations relating to the provision of, the con-
5 sumer financial product or service;

6 (ii) has direct interaction with a con-
7 sumer (whether in person or via a tele-
8 communication device or other similar
9 technology) regarding the consumer finan-
10 cial product or service; or

11 (iii) processes transactions relating to
12 the consumer financial product or service
13 (other than unknowingly or incidentally
14 transmitting or processing financial data in
15 a manner that such data is undifferen-
16 tiated from other types of data that the
17 person transmits or processes).

18 (B) EXCEPTIONS.—The term “service pro-
19 vider” does not include a person solely by virtue
20 of such person providing or selling to a covered
21 person—

22 (i) a support service of a type pro-
23 vided to businesses generally or a similar
24 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 (26) STORED VALUE.—The term “stored value”
6 means funds or monetary value represented in any
7 electronic format, whether or not specially encrypted,
8 and stored or capable of storage on electronic media
9 in such a way as to be retrievable and transferred
10 electronically, and includes a prepaid debit card or
11 product, or any other similar product, regardless of
12 whether the amount of the funds or monetary value
13 may be increased or reloaded.

14 (27) TITLE INSURANCE.—The term “title in-
15 surance” means insurance issued by an insurance
16 company or title company (as those terms are de-
17 fined in section 2(4) of the Real Estate Settlements
18 Procedures Act of 1974 (12 U.S.C. 2602(4)) that
19 insures, guarantees, or indemnifies an owner of real
20 property or the holder of a lien or encumbrance on
21 the real property against loss or damage in connec-
22 tion with any defect in the title, lien, encumbrance,
23 unmarketability of the title, or other non-record de-
24 fect.

1 **Subtitle A—The Consumer**
2 **Financial Protection Agency**

3 **SEC. 1011. ESTABLISHMENT OF THE AGENCY.**

4 (a) **CFPA ESTABLISHED.**—There is established the
5 Consumer Financial Protection Agency, which shall be an
6 independent establishment, as defined under section 104
7 of title 5, United States Code, and shall regulate the provi-
8 sion of consumer financial products or services under this
9 title, the enumerated consumer laws, and the authorities
10 transferred under subtitles F and H.

11 (b) **PRINCIPAL OFFICE.**—The principal office of the
12 CFPA shall be located in the city of Washington, District
13 of Columbia, at 1 or more sites.

14 **SEC. 1012. BOARD OF DIRECTORS.**

15 (a) **COMPOSITION OF THE BOARD.**—The manage-
16 ment of the CFPA shall be vested in a board of directors
17 that is composed of 5 members—

18 (1) 4 of whom shall be appointed by the Presi-
19 dent, by and with the advice and consent of the Sen-
20 ate—

21 (A) from among individuals who are citi-
22 zens of the United States; and

23 (B) who have strong competencies and ex-
24 periences related to consumer financial products
25 or services; and

1 (2) the Director of FIRA.

2 (b) DIRECTOR OF THE CFPA.—From among the ap-
3 pointed Board members, the President shall designate 1
4 member of the Board to serve as the Director. The Direc-
5 tor shall be the chief executive of the CFPA.

6 (c) TERMS OF APPOINTED BOARD MEMBERS.—

7 (1) IN GENERAL.—An appointed Board mem-
8 ber, including the Director, shall serve for a term of
9 5 years.

10 (2) REMOVAL FOR CAUSE.—The President may
11 remove any appointed Board member for ineffi-
12 ciency, neglect of duty, or malfeasance in office.

13 (3) VACANCIES.—Any member of the Board ap-
14 pointed to fill a vacancy occurring before the expira-
15 tion of the term to which the predecessor of that
16 member was appointed (including the Director) shall
17 be appointed only for the remainder of the term.

18 (4) CONTINUATION OF SERVICE.—Each ap-
19 pointed Board member may continue to serve after
20 the expiration of the term of office to which that
21 member was appointed, until a successor has been
22 appointed by the President and confirmed by the
23 Senate.

24 (5) INITIAL APPOINTMENTS STAGGERED.—The
25 appointed Board members (including the Director)

1 shall serve staggered terms, which initially shall be
2 established by the President for terms of 2, 3, 4,
3 and 5 years, respectively.

4 (d) COMPENSATION.—

5 (1) DIRECTOR.—The Director shall be com-
6 pensated at the rate prescribed for level II of the
7 Executive Schedule under section 5313 of title 5,
8 United States Code.

9 (2) OTHER APPOINTED BOARD MEMBERS.—The
10 3 other appointed Board members shall each be
11 compensated at the rate prescribed for level III of
12 the Executive Schedule under section 5314 of title
13 5, United States Code.

14 **SEC. 1013. EXECUTIVE AND ADMINISTRATIVE POWERS.**

15 (a) POWERS.—The Board may exercise all executive
16 and administrative functions of the CFPA, including—

17 (1) the establishment of rules for conducting
18 the general business of the CFPA, in a manner not
19 inconsistent with this title;

20 (2) to bind the CFPA and enter into contracts;

21 (3) directing the establishment and mainte-
22 nance of divisions or other offices within the CFPA,
23 in order to carry out the responsibilities of this title,
24 the enumerated consumer laws, and the authorities

1 transferred under subtitles F and H, and to satisfy
2 the 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 CFPA;

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
9 CFPA, and the manner in which they shall be in-
10 curred, allowed, and paid;

11 (7) delegating authority, at the lawful discretion
12 of the CFPA, to the Director or to a member of the
13 Board or to any officer or employee of the CFPA to
14 take action under any provision of this title or under
15 other applicable law;

16 (8) implementing this title and the authorities
17 of the CFPA under the enumerated consumer laws
18 and under subtitles F and H through rules, orders,
19 guidance, interpretations, statements of policy, ex-
20 aminations, and enforcement actions; and

21 (9) performing such other functions as may be
22 authorized or required by law.

23 (b) **TRANSACTING BUSINESS.**—

24 (1) **QUORUM.**—Three members of the Board
25 shall constitute a quorum for the transaction of

1 business, except that if only 3 members of the Board
2 are serving because of vacancies, 2 members of the
3 Board shall constitute a quorum for the transaction
4 of business.

5 (2) VOTING.—Other than acts performed under
6 delegated authority, the Board shall act through a
7 majority vote of its members assembled.

8 **SEC. 1014. ADMINISTRATION.**

9 (a) OFFICERS.—The CFPA shall appoint—

10 (1) a secretary, who shall be charged with
11 maintaining the records of the CFPA and per-
12 forming such other activities as the Board directs;

13 (2) a general counsel, who shall be charged with
14 overseeing the legal affairs of the CFPA and per-
15 forming such other activities as the Board directs;
16 and

17 (3) an inspector general, who shall have the au-
18 thority and functions of an inspector general of a
19 designated Federal entity under the Inspector Gen-
20 eral Act of 1978 (5 U.S.C. App. 3).

21 (b) PERSONNEL.—

22 (1) APPOINTMENT.—

23 (A) IN GENERAL.—The CFPA may fix the
24 number of, and appoint and direct, all employ-
25 ees of the CFPA.

1 (B) **EXPEDITED HIRING.**—During the 2-
2 year period beginning on the date of enactment
3 of this Act, the CFPA may appoint, without re-
4 gard to the provisions of sections 3309 through
5 3318, of title 5, United States Code, candidates
6 directly to positions for which public notice has
7 been given.

8 (2) **COMPENSATION.**—

9 (A) **PAY.**—The CFPA shall fix, adjust,
10 and administer the pay for all employees of the
11 CFPA without regard to the provisions of chap-
12 ter 51 or subchapter III of chapter 53 of title
13 5, United States Code.

14 (B) **BENEFITS.**—The CFPA may provide
15 additional benefits to CFPA employees if the
16 same type of benefits are then being provided
17 by the Board of Governors or, if not then being
18 provided, could be provided by the Board of
19 Governors under applicable provisions of law.

20 (C) **MINIMUM STANDARD.**—The CFPA
21 shall at all times provide compensation and ben-
22 efits to each class of employees that, at a min-
23 imum, are equivalent to the compensation and
24 benefits provided by the Board of Governors for

1 the corresponding class of employees in any fis-
2 cal year.

3 (c) SPECIFIC FUNCTIONAL UNITS.—

4 (1) RESEARCH.—The CFPA shall establish a
5 unit whose functions shall include researching, ana-
6 lyzing, and reporting on—

7 (A) developments in markets for consumer
8 financial products or services, including market
9 areas of alternative consumer financial products
10 or services with high growth rates and areas of
11 risk to consumers;

12 (B) consumer awareness, understanding,
13 and use of disclosures and communications re-
14 garding consumer financial products or services;

15 (C) consumer awareness and under-
16 standing of costs, risks, and benefits of con-
17 sumer financial products or services; and

18 (D) consumer behavior with respect to con-
19 sumer financial products or services.

20 (2) COMMUNITY AFFAIRS.—The CFPA shall es-
21 tablish a unit whose functions shall include pro-
22 viding information, guidance, and technical assist-
23 ance regarding the provision of consumer financial
24 products or services to traditionally underserved con-
25 sumers and communities.

1 (3) CONSUMER COMPLAINTS.—

2 (A) IN GENERAL.—The CFPA shall estab-
3 lish a unit whose functions shall include estab-
4 lishing a central database for collecting and
5 tracking information on consumer complaints
6 about consumer financial products or services
7 and resolution of complaints.

8 (B) COORDINATION.—In performing the
9 functions described in subparagraph (A), the
10 CFPA shall coordinate with the Federal bank-
11 ing agencies, other Federal agencies, and other
12 regulatory agencies or enforcement authorities.

13 (4) DATA SHARING REQUIRED.—To the extent
14 permitted by law and the rules prescribed by the
15 CFPA regarding the confidential treatment of infor-
16 mation, the CFPA shall share data relating to con-
17 sumer complaints with Federal banking agencies,
18 other Federal agencies, and State regulators. To the
19 extent permitted by law and the regulations pre-
20 scribed by the Federal banking agencies and other
21 Federal agencies regarding the confidential treat-
22 ment of information, the Federal banking agencies
23 and other Federal agencies, respectively, shall share
24 data relating to consumer complaints with the
25 CFPA.

1 (d) OFFICE OF FAIR LENDING AND EQUAL OPPOR-
2 TUNITY.—

3 (1) ESTABLISHMENT.—Not later than 180 days
4 after the date of enactment of this Act, the Director
5 shall establish within the CFPA the Office of Fair
6 Lending and Equal Opportunity.

7 (2) FUNCTIONS.—The Office of Fair Lending
8 and Equal Opportunity shall have such powers and
9 duties as the Director may delegate to the Office, in-
10 cluding—

11 (A) providing oversight and enforcement of
12 Federal laws intended to ensure the fair, equi-
13 table, and nondiscriminatory access to credit for
14 both individuals and communities that are en-
15 forced by the CFPA, including the Equal Credit
16 Opportunity Act and the Home Mortgage Dis-
17 closure Act;

18 (B) coordinating fair lending enforcement
19 efforts of the CFPA with other Federal agen-
20 cies and State regulators, as appropriate, to
21 promote consistent, efficient and effective en-
22 forcement of Federal fair lending laws;

23 (C) working with private industry, fair
24 lending, civil rights, consumer and community

1 advocates on the promotion of fair lending com-
2 pliance and education; and

3 (D) providing annual reports to Congress
4 on the efforts of the CFPA to fulfill its fair
5 lending mandate.

6 (3) **ADMINISTRATION OF OFFICE.**—There is es-
7 tablished the position of Assistant Director of the
8 CFPA for Fair Lending and Equal Opportunity,
9 who—

10 (A) shall be appointed by the Director;

11 (B) shall carry out such duties as the Di-
12 rector may delegate to such Assistant Director;
13 and

14 (C) shall serve as the Director of the Of-
15 fice of Fair Lending and Equal Opportunity.

16 **SEC. 1015. CONSUMER ADVISORY BOARD.**

17 (a) **ESTABLISHMENT REQUIRED.**—The CFPA shall
18 establish a Consumer Advisory Board to advise and con-
19 sult with the board of directors of the CFPA in the exer-
20 cise of its functions under this title, the enumerated con-
21 sumer laws, and to provide information on emerging prac-
22 tices in the consumer financial products or services indus-
23 try.

24 (b) **MEMBERSHIP.**—In appointing the members of
25 the Consumer Advisory Board, the CFPA shall seek to

1 assemble experts in financial services, community develop-
2 ment, fair lending, and consumer financial products or
3 services and seek representation of the interests of covered
4 persons and consumers.

5 (c) MEETINGS.—The Consumer Advisory Board shall
6 meet from time to time at the call of the CFPA, but, at
7 a minimum, shall meet at least twice in each year.

8 (d) COMPENSATION AND TRAVEL EXPENSES.—Mem-
9 bers of the Consumer Advisory Board who are not full-
10 time employees of the United States shall—

11 (1) be entitled to receive compensation at a rate
12 fixed by the CFPA while attending meetings of the
13 Consumer Advisory Board, including travel time;
14 and

15 (2) be allowed travel expenses, including trans-
16 portation and subsistence, while away from their
17 homes or regular places of business.

18 **SEC. 1016. COORDINATION.**

19 (a) COORDINATION WITH OTHER FEDERAL AGEN-
20 CIES AND STATE REGULATORS.—The CFPA shall coordi-
21 nate with the Commission, the Commodity Futures Trad-
22 ing Commission, and other Federal agencies and State
23 regulators, as appropriate, to promote consistent regu-
24 latory treatment of consumer and investment products
25 and services.

1 (b) COORDINATION OF CONSUMER EDUCATION INI-
2 TIATIVES.—

3 (1) IN GENERAL.—The CFPA shall coordinate
4 with each agency that is a member of the Financial
5 Literacy and Education Commission established
6 under the Financial Literacy and Education Im-
7 provement Act (20 U.S.C. 9701 et seq.) to assist
8 each agency in enhancing its financial literacy and
9 education initiatives, to better achieve the goals enu-
10 merated under paragraph (2), and to ensure the
11 consistency of such initiatives across Federal agen-
12 cies.

13 (2) GOALS OF COORDINATION.—In coordinating
14 with the agencies described in paragraph (1), the
15 CFPA shall seek to improve efforts to educate con-
16 sumers about financial matters generally, the man-
17 agement of their own financial affairs, and their
18 judgments about the appropriateness of certain fi-
19 nancial products.

20 **SEC. 1017. REPORTS TO CONGRESS.**

21 (a) REPORTS REQUIRED.—The CFPA shall prepare
22 and submit to the President and to Congress a report at
23 the beginning of each regular session of Congress, begin-
24 ning with the session following the designated transfer
25 date.

1 (b) CONTENTS.—The reports required by subsection

2 (a) shall include—

3 (1) a list of the significant rules and orders
4 adopted by the CFPA, as well as other significant
5 initiatives conducted by the CFPA, during the pre-
6 ceding year and the plan of the CFPA for rules, or-
7 ders, or other initiatives to be undertaken during the
8 upcoming period;

9 (2) an analysis of complaints about consumer
10 financial products or services that the CFPA has re-
11 ceived and collected in its central database on com-
12 plaints during the preceding year;

13 (3) a list, with a brief statement of the issues,
14 of the public supervisory and enforcement actions to
15 which the CFPA is a party (including any adjudica-
16 tion proceedings conducted under subtitle E) during
17 the preceding year;

18 (4) the actions taken regarding rules, orders,
19 and supervisory actions with respect to covered per-
20 sons which are not credit unions or depository insti-
21 tutions, including descriptions of the types of such
22 covered persons, financial activities, and consumer
23 financial products or services affected by such rules,
24 orders, and supervisory actions;

1 (5) an appraisal of significant actions, including
2 actions under Federal or State law, by State attor-
3 neys general or State regulators relating to this title,
4 the authorities transferred to the CFPB under sub-
5 titles F and H, and the enumerated consumer laws;
6 and

7 (6) an appraisal of the regulatory and legal dif-
8 ficulties encountered by the Agency in carrying out
9 the mission and the duties of the Agency with re-
10 spect to consumer protection, including a description
11 of—

12 (A) the difficulties and hardships encoun-
13 tered with respect to coordinating with other
14 Federal and State government entities;

15 (B) the regulatory and enforcement limita-
16 tions placed on the Agency by this title;

17 (C) the practices of covered persons and
18 others under this title, that allow such persons
19 to harm consumers and escape regulation or en-
20 forcement, including any trends identified; and

21 (D) legislative and administrative rec-
22 ommendations with respect to solving or alle-
23 viating identified difficulties.

1 **SEC. 1018. FUNDING; FEES AND ASSESSMENTS; PENALTIES**
2 **AND FINES.**

3 (a) FEES AND ASSESSMENTS.—

4 (1) IN GENERAL.—The CFPA shall assess fees
5 on covered persons to recover the expenses of the
6 CFPA for carrying out its duties and responsibil-
7 ities, to the maximum extent possible. The CFPA
8 shall assess fees on covered persons, as described in
9 paragraph (3).

10 (2) RULEMAKING.—The CFPA shall prescribe
11 rules to govern the imposition and collection of fees
12 and assessments. Such rules shall specify and de-
13 fine—

14 (A) the basis of fees or assessments, such
15 as—

16 (i) the outstanding volume of con-
17 sumer credit accounts;

18 (ii) total assets under management;

19 (iii) volume of consumer financial
20 transactions;

21 (iv) use of service providers; or

22 (v) the complexity of and risk posed
23 by the covered person;

24 (B) the amount and frequency of fees or
25 assessments; and

1 (C) such other factors as the CFPA deter-
2 mines appropriate.

3 (3) ASSESSMENTS ON COVERED PERSONS.—

4 (A) NONDEPOSITORY COVERED PER-
5 SONS.—The CFPA shall impose fees for the
6 registration, examination, and supervision of
7 covered persons that are not credit unions or
8 depository institutions. To the maximum extent
9 possible, fees assessed by the CFPA under this
10 paragraph shall be established at levels nec-
11 essary to recover the expenses of the CFPA for
12 carrying out its duties and responsibilities, in-
13 cluding supervising such covered persons. Reg-
14 istration fees imposed on a covered person
15 under this paragraph shall, at a minimum, be
16 imposed at the time at which the covered per-
17 son registers (or periodically renews its reg-
18 istration) with the CFPA, in accordance with
19 rules prescribed by the CFPA.

20 (B) INSURED DEPOSITORY INSTITUTIONS
21 AND CREDIT UNIONS WITH ASSETS OF
22 \$10,000,000,000 OR GREATER.—The CFPA shall
23 assess such fees as are appropriate on each
24 credit union and insured depository institution
25 which has total consolidated assets of

1 \$10,000,000,000 or more, taking into account
2 their size and complexity and risk that they
3 pose. Fees assessed by the CFPA under this
4 paragraph may be established at levels nec-
5 essary to recover the expenses of the CFPA for
6 carrying out its duties and responsibilities, in-
7 cluding supervising such credit unions and in-
8 sured depository institutions, taking into ac-
9 count such other sums as are available to the
10 CFPA.

11 (C) **FEDERALLY CHARTERED INSURED DE-**
12 **POSITORY INSTITUTIONS AND FEDERAL CREDIT**
13 **UNIONS WITH ASSETS OF LESS THAN**
14 **\$10,000,000,000.—**

15 (i) **IN GENERAL.—**The CFPA may as-
16 sess fees on each Federal credit union and
17 federally chartered insured depository in-
18 stitution which has total consolidated as-
19 sets of less than \$10,000,000,000 as are
20 appropriate, taking into account the size
21 and complexity of and risk posed by the
22 Federal credit union and insured depository
23 institution. The CFPA and the agency
24 responsible for chartering and supervising
25 national banks, in consultation with State

1 banking supervisors, shall coordinate on
2 the levels of fees assessed on Federal credit
3 unions and federally chartered insured de-
4 pository institutions under this paragraph.

5 (ii) **PARITY WITH FEES ASSESSED ON**
6 **STATE-CHARTERED INSTITUTIONS.**—The
7 CFPB may not assess fees under clause (i)
8 that, when combined with the fees assessed
9 on such insured depository institutions by
10 the agency responsible for chartering and
11 supervising national banks, exceed the av-
12 erage level of fees charged to State-char-
13 tered banks and State-chartered credit
14 unions having total consolidated assets of
15 less than \$10,000,000,000. In establishing
16 the fees assessed on federally chartered in-
17 sured depository institutions under clause
18 (i), the agencies may take into account
19 variances in the levels of fees assessed on
20 State-chartered banks and State-chartered
21 credit unions, including variances among
22 States.

23 (D) **STATE-CHARTERED CREDIT UNIONS**
24 **AND INSURED DEPOSITORY INSTITUTIONS WITH**
25 **ASSETS OF LESS THAN \$10,000,000,000.**—The

1 CFPA may not assess fees on a State-chartered
2 credit union or State-chartered insured deposi-
3 tory institution which has total consolidated as-
4 sets of less than \$10,000,000,000.

5 (E) TRANSFER OF FUNDS FROM BOARD OF
6 GOVERNORS.—

7 (i) IN GENERAL.—Each year (or quar-
8 ter of such year), beginning on the des-
9 ignated transfer date, and each quarter
10 thereafter, the Board of Governors shall
11 transfer to the CFPA from the combined
12 earnings of the Federal Reserve System
13 the amount estimated by the CFPA needed
14 to carry out the authorities granted in this
15 title, under the enumerated consumer laws,
16 and transferred under subtitles F and H,
17 taking into account such other sums avail-
18 able to the CFPA for the following year
19 (or quarter of such year), as requested by
20 the CFPA.

21 (ii) TRANSITION PERIOD.—Beginning
22 on the date of enactment of this Act and
23 until the designated transfer date, the
24 Board of Governors shall transfer to the
25 CFPA the amount estimated by the Sec-

1 retary to needed to carry out the authori-
2 ties granted to the Secretary under this
3 title, under the enumerated consumer laws,
4 and transferred under subtitles F and H,
5 from the date of enactment of this Act
6 until the designated transfer date.

7 (b) CONSUMER FINANCIAL PROTECTION AGENCY
8 FUND.—

9 (1) SEPARATE FUND IN TREASURY ESTAB-
10 LISHED.—There is established in the Treasury of
11 the United States a separate fund, to be known as
12 the “Consumer Financial Protection Agency Fund”
13 (referred to in this section as the “CFPA Fund”).

14 (2) FUND RECEIPTS.—All amounts transferred
15 to the CFPA under subsection (a), and all super-
16 visory fees and assessments that the CFPA receives
17 under subsection (b) shall be deposited into the
18 CFPA Fund.

19 (3) INVESTMENT AUTHORITY.—

20 (A) AMOUNTS IN CFPA FUND MAY BE IN-
21 VESTED.—The CFPA may request the Sec-
22 retary to invest the portion of the CFPA Fund
23 that is not, in the judgment of the CFPA, re-
24 quired to meet the current needs of the CFPA.

1 (B) ELIGIBLE INVESTMENTS.—Invest-
2 ments authorized by this paragraph shall be
3 made by the Secretary in obligations of the
4 United States or obligations that are guaran-
5 teed as to principal and interest by the United
6 States, with maturities suitable to the needs of
7 the CFPA Fund, as determined by the CFPA.

8 (C) INTEREST AND PROCEEDS CRED-
9 ITED.—The interest on, and the proceeds from
10 the sale or redemption of, any obligations held
11 in the Fund shall be credited to the Fund.

12 (c) USE OF FUNDS.—

13 (1) IN GENERAL.—Funds obtained by, trans-
14 ferred to, or credited to the CFPA Fund shall be im-
15 mediately available to the CFPA, and shall remain
16 available until expended, to pay the expenses of the
17 CFPA in carrying out its duties and responsibilities.
18 The compensation of the members of the Board and
19 other employees of the CFPA and all other expenses
20 thereof may be paid from assessments levied under
21 this section.

22 (2) FEES, ASSESSMENTS, AND OTHER FUNDS
23 NOT GOVERNMENT FUNDS.—Funds obtained by or
24 transferred to the CFPA Fund shall not be con-

1 strued to be Government funds or appropriated
2 monies.

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

10 (d) PENALTIES AND FINES.—

11 (1) ESTABLISHMENT OF VICTIMS RELIEF
12 FUND.—There is established in the Treasury of the
13 United States a fund to be known as the “Consumer
14 Financial Protection Agency Civil Penalty Fund”
15 (referred to in this subsection as the “Civil Penalty
16 Fund”). If the CFPA obtains a civil penalty against
17 any person in any judicial or administrative action
18 under this title, the authorities transferred under
19 subtitles F and H, or any enumerated consumer law,
20 the CFPA shall deposit into the Civil Penalty Fund,
21 the amount of the penalty collected.

22 (2) PAYMENT TO VICTIMS.—Amounts in the
23 Civil Penalty Fund shall be available to the CFPA,
24 without fiscal year limitation, for payments to the
25 victims of activities for which civil penalties have

1 (2) consumers are protected from abuse, unfair-
2 ness, deception, and discrimination;

3 (3) markets for consumer financial products or
4 services operate fairly and efficiently, with ample
5 room for sustainable growth and innovation; and

6 (4) consumers, including traditionally under-
7 served consumers and communities have access to fi-
8 nancial services.

9 **SEC. 1022. AUTHORITIES.**

10 (a) **IN GENERAL.**—The CFPA is authorized to exer-
11 cise its authorities under this title, in the enumerated con-
12 sumer laws, and transferred under subtitles F and H, to
13 administer, enforce, and otherwise implement the provi-
14 sions of this title, the enumerated consumer laws, and the
15 authorities transferred under subtitles F and H.

16 (b) **RULEMAKING, ORDERS, AND GUIDANCE.**—

17 (1) **IN GENERAL.**—The CFPA may prescribe
18 rules and issue orders and guidance, as may be nec-
19 essary or appropriate to enable the CFPA to admin-
20 ister and carry out the purposes and objectives of
21 this title, the authorities transferred under subtitles
22 F and H, and the enumerated consumer laws, and
23 to prevent evasions thereof.

24 (2) **STANDARDS FOR RULEMAKING.**—In pre-
25 scribing a rule under this title or pursuant to the

1 authorities transferred under subtitles F and H or
2 the enumerated consumer laws, the CFPB shall—

3 (A) consider the potential benefits and
4 costs to consumers and covered persons, includ-
5 ing the potential reduction of access by con-
6 sumers to consumer financial products or serv-
7 ices resulting from such rule; and

8 (B) consult with the Federal banking agen-
9 cies, or other Federal agencies, as appropriate,
10 regarding the consistency of a proposed rule
11 with prudential, market, or systemic objectives
12 administered by such agencies.

13 (3) EXEMPTIONS.—

14 (A) IN GENERAL.—The CFPB, by rule,
15 may conditionally or unconditionally exempt
16 any covered person, service provider, or any
17 consumer financial product or service or any
18 class of covered persons, class of service pro-
19 viders, or consumer financial products or serv-
20 ices, from any provision of this title, any enu-
21 merated consumer law, or from any rule there-
22 under, as the CFPB determines necessary or
23 appropriate to carry out the purposes and ob-
24 jectives of this title, taking into consideration
25 the factors in subparagraph (B).

1 (B) FACTORS.—In issuing an exemption
2 by rule or order, as permitted under subpara-
3 graph (A), the CFPA shall, as appropriate, take
4 into consideration—

5 (i) the total assets of the covered per-
6 son;

7 (ii) the volume of transactions involv-
8 ing consumer financial products or services
9 in which the covered person engages;

10 (iii) the extent to which the covered
11 person engages in one or more financial
12 activities; and

13 (iv) existing provisions of law which
14 are applicable to the consumer financial
15 product or service and the extent to which
16 such provisions provide consumers with
17 adequate protections.

18 (c) EXAMINATIONS AND REPORTS.—

19 (1) IN GENERAL.—The CFPA may, on a peri-
20 odic basis, examine, or require reports from, a cov-
21 ered person or service provider in connection with
22 the provision of any consumer financial product or
23 service by a covered person, for purposes of ensuring
24 compliance with the requirements of this title, the
25 enumerated consumer laws, and any rules prescribed

1 by the CFPB thereunder or under the authorities
2 transferred under subtitles F and H, and enforcing
3 compliance with such requirements.

4 (2) RISK-BASED EXAMINATION PROGRAM.—The
5 CFPB shall exercise its authority under paragraph
6 (1) in a manner designed to ensure that such exer-
7 cise, with respect to covered persons, is made with-
8 out regard to charter or corporate form, based on
9 the assessment by the CFPB of the risks posed to
10 consumers in the relevant product markets and geo-
11 graphic markets, and taking into consideration, as
12 applicable—

13 (A) the asset size of the covered person;

14 (B) the volume of transactions involving
15 consumer financial products or services in
16 which the covered person engages;

17 (C) the risks to consumers created by the
18 provision of such consumer financial products
19 or services;

20 (D) in the case of State-chartered or li-
21 censed institutions, the extent to which such in-
22 stitutions are subject to oversight by State au-
23 thorities for consumer protection; and

1 (E) any other factors that the CFPA de-
2 termines to be relevant to a class of covered
3 persons.

4 (3) COORDINATION.—To minimize regulatory
5 burden, the CFPA shall coordinate its supervisory
6 activities with the supervisory activities conducted by
7 the Federal banking agencies, the National Credit
8 Union Administration, and the State bank regu-
9 latory authorities, including establishing their re-
10 spective schedules for examining covered persons
11 and requirements regarding reports to be submitted
12 by covered persons.

13 (4) CONTENT OF REPORTS.—The CFPA may
14 require any reports collected under paragraph (1) to
15 include such information as necessary to keep the
16 CFPA informed as to—

17 (A) the compliance systems or procedures
18 of the covered person or any affiliate thereof,
19 with applicable provisions of this title or any
20 other provision of law that the CFPA has juris-
21 diction to enforce; and

22 (B) matters related to the provision of con-
23 sumer financial products or services, including
24 the servicing or maintenance of accounts or ex-
25 tensions of credit.

1 (5) USE OF EXISTING REPORTS.—The CFPA
2 shall, to the fullest extent possible, use—

3 (A) reports pertaining to a covered person,
4 or any service provider to such covered person
5 that have been provided or required to have
6 been provided to a Federal or State agency; and

7 (B) information that has been reported
8 publicly.

9 (6) ACCESS BY THE CFPA TO REPORTS OF
10 OTHER REGULATORS.—

11 (A) EXAMINATION AND FINANCIAL CONDI-
12 TION REPORTS.—Upon providing reasonable as-
13 surances of confidentiality, the CFPA shall
14 have access to any report of examination or fi-
15 nancial condition made by a Federal banking
16 agency or other Federal agency having super-
17 visory authority over a covered person, and to
18 all revisions made to any such report.

19 (B) PROVISION OF OTHER REPORTS TO
20 CFPA.—In addition to the reports described in
21 subparagraph (A), a Federal banking agency
22 may, in its discretion, furnish to the CFPA any
23 other report or other confidential supervisory
24 information concerning any insured depository
25 institution, credit union, or other entity exam-

1 ined by such agency under authority of any
2 Federal law.

3 (7) ACCESS BY OTHER REGULATORS TO RE-
4 PORTS OF THE CFPA.—

5 (A) EXAMINATION REPORTS.—Upon pro-
6 viding reasonable assurances of confidentiality,
7 a Federal banking agency, a State regulator, or
8 any other Federal agency having supervision of
9 a covered person shall have access to any report
10 of examination made by the CFPA with respect
11 to the covered person or service provider, and to
12 all revisions made to any such report.

13 (B) PROVISION OF OTHER REPORTS TO
14 OTHER REGULATORS.—In addition to the re-
15 ports described in subparagraph (A), the CFPA
16 may, in its discretion, furnish to a Federal
17 banking agency any other report or other con-
18 fidential supervisory information concerning
19 any insured depository institution, any credit
20 union, or other entity examined by the CFPA
21 under the authority of any other provision of
22 Federal law.

23 (8) PRESERVATION OF AUTHORITY.—Nothing
24 in—

1 (A) paragraph (3) may be construed to
2 prevent the CFPA from conducting an exam-
3 ination authorized by this title or under the au-
4 thorities transferred under subtitles F and H or
5 pursuant to any enumerated consumer law; and

6 (B) this title may be construed as limiting
7 the authority of the Director to require reports
8 from a covered person, as permitted under
9 paragraph (1), regarding information owned or
10 under the control of the covered person, regard-
11 less of whether such information is maintained,
12 stored, or processed by another person.

13 (9) **REPORTS OF TAX LAW NONCOMPLIANCE.**—
14 The CFPA shall provide the Commissioner of Inter-
15 nal Revenue with any report of examination or re-
16 lated information identifying possible tax law non-
17 compliance.

18 (d) **EXCLUSIVE RULEMAKING AND EXAMINATION**
19 **AUTHORITY.**—Subject to subsection (f), but notwith-
20 standing any other provision of Federal law, to the extent
21 that a provision of Federal law authorizes the CFPA and
22 another Federal agency to issue regulations or guidance,
23 conduct examinations, or require reports under that provi-
24 sion of law for purposes of assuring compliance with this
25 title, any enumerated consumer law, the laws for which

1 authorities were transferred under subtitles F and H, and
2 any regulations thereunder, the CFPA shall have the ex-
3 clusive authority to prescribe rules, issue guidance, con-
4 duct examinations, require reports, or issue exemptions
5 with regard to any person subject to those provisions of
6 law.

7 (e) PRIMARY ENFORCEMENT AUTHORITY.—

8 (1) THE CFPA TO HAVE PRIMARY ENFORCE-
9 MENT AUTHORITY.—To the extent that a provision
10 of Federal law authorizes enforcement by the CFPA
11 and another Federal agency, the CFPA shall have
12 primary authority to enforce that provision of Fed-
13 eral law with respect to any person in accordance
14 with this subsection.

15 (2) REFERRAL.—Any Federal agency author-
16 ized to enforce a provision of Federal law described
17 in paragraph (1) may recommend in writing to the
18 CFPA that the CFPA initiate an enforcement pro-
19 ceeding, as the CFPA is authorized by that provision
20 of Federal law or by this title. The recommendation
21 shall be accompanied by a written explanation of the
22 concerns giving rise to the recommendation.

23 (3) BACKSTOP ENFORCEMENT AUTHORITY OF
24 OTHER FEDERAL AGENCY.—If the CFPA does not,
25 before the end of the 120-day period beginning on

1 the date on which the CFPA receives a recommenda-
2 tion under paragraph (2), initiate an enforcement
3 proceeding, the other agency may initiate an en-
4 forcement proceeding, as permitted by the subject
5 provision of Federal law.

6 (f) **SIMULTANEOUS AND COORDINATED SUPER-**
7 **VISORY ACTION.—**

8 (1) **EXAMINATIONS.—**A Federal banking agen-
9 cy and the CFPA shall, with respect to each insured
10 depository institution, credit union, or other covered
11 person supervised by the Federal banking agency
12 and the CFPA, respectively—

13 (A) coordinate the scheduling of examina-
14 tions of the insured depository institution, cred-
15 it union, or other covered person;

16 (B) conduct simultaneous examinations of
17 each insured depository institution, credit
18 union, or other covered person, unless such in-
19 stitution requests examinations to be conducted
20 separately;

21 (C) share each draft report of examination
22 with the other agency and permit the receiving
23 agency a reasonable opportunity (which shall
24 not be less than a period of 30 days after the

1 date of receipt) to comment on the draft report
2 before such report is made final; and

3 (D) prior to issuing a final report of exam-
4 ination or taking supervisory action, take into
5 consideration concerns, if any, raised in the
6 comments made by the other agency.

7 (2) COORDINATION WITH STATE BANK SUPER-
8 VISORS.—The CFPA shall pursue arrangements and
9 agreements with State bank supervisors to coordi-
10 nate examinations, consistent with paragraph (1).

11 (3) AVOIDANCE OF CONFLICT IN SUPER-
12 VISION.—

13 (A) BANK REQUEST.—If the proposed su-
14 pervisory determinations of the CFPA and a
15 Federal banking agency (in this section referred
16 to collectively as the “agencies”) are conflicting,
17 an insured depository institution, credit union,
18 or other covered person may request the agen-
19 cies to coordinate and present a joint statement
20 of coordinated supervisory action.

21 (B) JOINT STATEMENT.—The agencies
22 shall provide a joint statement under subpara-
23 graph (A), not later than 30 days after the date
24 of receipt of the request of the insured deposi-
25 tory institution, credit union, or covered person.

1 (4) APPEALS TO GOVERNING PANEL.—

2 (A) IN GENERAL.—If the agencies do not
3 issue a joint statement required by subpara-
4 graph (B), or if either of the agencies takes or
5 attempts to take any supervisory action relating
6 to the request for the joint statement without
7 the consent of the other agency, an insured de-
8 pository institution, credit union, or other cov-
9 ered person may institute an appeal to a gov-
10 erning panel, as provided in this subsection, not
11 later than 30 days after the expiration of the
12 period during which a joint statement is re-
13 quired to be filed under paragraph (3)(B).

14 (B) COMPOSITION OF GOVERNING
15 PANEL.—The governing panel for an appeal
16 under this paragraph shall be composed of—

17 (i) a representative from the CFPA
18 and a representative of the Federal bank-
19 ing agency, both of whom—

20 (I) have not participated in the
21 material supervisory determinations
22 under appeal; and

23 (II) do not directly or indirectly
24 report to the person who made the su-

1 fore the governing panel in person or
2 by telephone; and

3 (ii) the governing panel—

4 (I) may request the insured de-
5 pository institution, credit union, or
6 other covered person, the CFPA, or
7 the Federal banking agency to
8 produce additional information rel-
9 evant to the appeal; and

10 (II) by a majority vote of its
11 members, shall provide a final deter-
12 mination, in writing, not later than 30
13 days after the date of filing of an
14 informationally complete appeal, or
15 such longer period as the panel and
16 the insured depository institution,
17 credit union, or other covered person
18 may jointly agree.

19 (E) PUBLIC AVAILABILITY OF DETERMINA-
20 TIONS.—A redacted copy of each determination
21 of the governing panel under this paragraph
22 shall be made public upon its issuance.

23 (F) PROHIBITION AGAINST RETALIA-
24 TION.—The CFPA and the Federal banking
25 agencies shall prescribe rules to provide safe-

1 guards from retaliation against the insured de-
2 pository institution, credit union, or other cov-
3 ered person instituting an appeal under this
4 paragraph, as well as their officers and employ-
5 ees.

6 (G) DEFINITIONS.—For purposes of this
7 paragraph, the following definitions shall apply:

8 (i) MATERIAL SUPERVISORY DETER-
9 MINATIONS.—The term “material super-
10 visory determinations”—

11 (I) includes those actions relating
12 to supervision and examinations for
13 which the FIRA, the CFPA, insured
14 depository institution, credit union, or
15 other covered person determines that
16 conflict resolution would be appro-
17 priate; and

18 (II) does not include a deter-
19 mination by a Federal banking agency
20 to appoint a conservator or receiver
21 for an insured depository institution
22 or a liquidating agent for an insured
23 credit union, as the case may be, or a
24 decision to take action pursuant to
25 section 38 of the Federal Deposit In-

1 surance Act (12 U.S.C. 1831o) or sec-
2 tion 212 of the Federal Credit Union
3 Act (112 U.S.C. 1790a), as appro-
4 priate.

5 (ii) INDEPENDENT APPELLATE PROC-
6 ESS.—The term “independent appellate
7 process” means a review by an agency offi-
8 cial who does not directly or indirectly re-
9 port to the agency official who made the
10 material supervisory determination under
11 review.

12 (H) EFFECT ON OTHER AUTHORITY.—
13 Nothing in this section shall modify or limit the
14 authority of an appropriate Federal banking
15 agency or the CFPA to interpret, or take en-
16 forcement action under, any law or rule the in-
17 terpretation or enforcement of which is com-
18 mitted to the agency or CFPA, which shall in-
19 clude, in the case of the CFPA, this title, the
20 enumerated consumer laws, and the rules pre-
21 scribed thereunder.

22 **SEC. 1023. COLLECTION OF INFORMATION; CONFIDEN-**
23 **TIALITY RULES.**

24 (a) COLLECTION OF INFORMATION.—In conducting
25 research on the provision of consumer financial products

1 or services, the CFPA shall have the power to gather in-
2 formation from time to time regarding the organization,
3 business conduct, and practices of covered persons or serv-
4 ice providers. In order to gather such information, the
5 CFPA shall have the power—

6 (1) to gather and compile information;

7 (2) to require persons to file with the CFPA, in
8 such form and within such reasonable period of time
9 as the CFPA may prescribe, by rule or order, annual
10 or special reports, or answers in writing to specific
11 questions, furnishing information that the CFPA
12 may require; and

13 (3) to make public such information obtained
14 by the CFPA under this section as is in the public
15 interest in reports or otherwise in the manner best
16 suited for public information and use.

17 (b) **CONFIDENTIALITY RULES.**—The CFPA shall
18 prescribe rules regarding the confidential treatment of in-
19 formation obtained from persons in connection with the
20 exercise of its authorities under this title and the enumer-
21 ated consumer laws and the authorities transferred under
22 subtitles F and H.

23 (c) **PRIVACY CONSIDERATIONS.**—In collecting infor-
24 mation from any person, publicly releasing information
25 held by the CFPA, or requiring covered persons to publicly

1 report information, the CFPA shall take steps to ensure
2 that proprietary, personal, or confidential consumer infor-
3 mation that is protected from public disclosure under sec-
4 tion 552(b) or 552a of title 5, United States Code, or any
5 other provision of law, is not made public under this title.

6 **SEC. 1024. LIMITATIONS ON AUTHORITIES OF THE CFPA;**

7 **PRESERVATION OF AUTHORITIES.**

8 (a) **EXCLUSION FOR MERCHANTS, RETAILERS, AND**
9 **OTHER SELLERS OF NONFINANCIAL SERVICES.—**

10 (1) **IN GENERAL.—**Except as permitted in para-
11 graph (3), the CFPA may not exercise any rule-
12 making, supervisory, enforcement or other authority,
13 including authority to order assessments, under this
14 title with respect to a person who is a merchant, re-
15 tailer, or seller of any nonfinancial good or service,
16 but only to the extent that such person is engaged
17 in the sale or brokerage of such nonfinancial good
18 or service.

19 (2) **REAL ESTATE BROKERAGE ACTIVITIES EX-**
20 **CLUDED.—**Without limiting paragraph (1) and ex-
21 cept as permitted in paragraph (3), the CFPA may
22 not exercise any rulemaking, supervisory, enforce-
23 ment or other authority, including authority to order
24 assessments, under this title with respect to a person
25 that is licensed or registered as a real estate broker,

1 real estate agent, in accordance with State law, but
2 only to the extent that such person—

3 (A) acts as a real estate agent or broker
4 for a buyer, seller, lessor, or lessee of real prop-
5 erty;

6 (B) brings together parties interested in
7 the sale, purchase, lease, rental, or exchange of
8 real property;

9 (C) negotiates, on behalf of any party, any
10 portion of a contract relating to the sale, pur-
11 chase, lease, rental, or exchange of real prop-
12 erty (other than in connection with the provi-
13 sion of financing with respect to any such
14 transaction); or

15 (D) offers to engage in any activity, or act
16 in any capacity, described in subparagraph (A),
17 (B), or (C).

18 (3) DESCRIPTION OF ACTIVITIES.—Paragraphs
19 (1) and (2) shall not apply to any person to the ex-
20 tent such person is engaged in any financial activity
21 described in any subparagraph of section 1002(13)
22 or is otherwise subject to any enumerated consumer
23 law or any law or authority transferred under sub-
24 title F or H.

1 (b) EXCLUSION FOR MERCHANTS, RETAILERS, AND
2 OTHER SELLERS OF NONFINANCIAL SERVICES FOR CER-
3 TAIN CREDIT TRANSACTIONS.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (3), the CFPA may not exercise any super-
6 visory or enforcement or other authority, including
7 authority to order assessments, under this title with
8 respect to—

9 (A) credit extended directly by a merchant,
10 retailer, or seller of nonfinancial goods or serv-
11 ices to a consumer, in a case in which the good
12 or service being provided is not itself a con-
13 sumer financial product or service, exclusively
14 for the purpose of enabling that consumer to
15 purchase such nonfinancial good or service di-
16 rectly from the merchant, retailer, or seller; or

17 (B) a merchant, retailer, or seller of a non-
18 financial good or service who directly collects
19 debt arising from such credit extended.

20 (2) RULE OF CONSTRUCTION.—No provision of
21 this title shall be construed as modifying, limiting,
22 or superseding the supervisory or enforcement au-
23 thority of the Federal Trade Commission or any
24 other agency with respect to credit extended, or the
25 collection of debt arising from such extension, di-

1 rectly by a merchant or retailer to a consumer exclu-
2 sively for the purpose of enabling that consumer to
3 purchase nonfinancial goods or services directly from
4 the merchant or retailer.

5 (3) EXCLUSIONS NOT APPLICABLE TO CERTAIN
6 CREDIT TRANSACTIONS OR ACTIVITIES.—Paragraph
7 (1) shall not apply to—

8 (A) any credit transaction, including the
9 collection of debt arising from such extension,
10 in which the merchant, retailer, or seller of non-
11 financial goods or services assigns, sells or oth-
12 erwise conveys such debt owed by the consumer
13 to another person; or

14 (B) any credit transaction—

15 (i) in which the credit provided ex-
16 ceeds the market value of the nonfinancial
17 good or service provided; or

18 (ii) with respect to which the CFPA
19 finds that the sale of the nonfinancial good
20 or service is done as a subterfuge so as to
21 evade or circumvent the provisions of this
22 title; or

23 (C) in which the merchant, retailer, or sell-
24 er of nonfinancial goods or services regularly
25 extends credit and the credit is—

- 1 (i) subject to a finance charge; or
2 (ii) payable by written agreement in
3 more than 4 installments.

4 (c) EXCLUSION FOR ACCOUNTANTS AND TAX PRE-
5 PARERS.—

6 (1) IN GENERAL.—Except as permitted in para-
7 graph (2), the CFPB may not exercise any rule-
8 making, supervisory, enforcement or other authority,
9 including authority to order assessments, over—

10 (A) any person that is a certified public ac-
11 countant, permitted to practice as a certified
12 public accounting firm, or certified or licensed
13 for such purpose by a State, or any individual
14 who is employed by or holds an ownership inter-
15 est with respect to a person described in this
16 subparagraph, when such person is performing
17 or offering to perform—

18 (i) customary and usual accounting
19 activities, including the provision of ac-
20 counting, tax, advisory, other services that
21 are subject to the regulatory authority of a
22 State board of accountancy or a Federal
23 authority; or

24 (ii) other services that are incidental
25 to such customary and usual accounting

1 activities, to the extent that such incidental
2 services are not offered or provided—

3 (I) by the person separate and
4 apart from such customary and usual
5 accounting activities; or

6 (II) to consumers who are not re-
7 ceiving such customary and usual ac-
8 counting activities; or

9 (B) any person, other than a person de-
10 scribed in subparagraph (A) that performs in-
11 come tax preparation activities for consumers.

12 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
13 (1) shall not apply to—

14 (A) any person described in paragraph
15 (1)(A) to the extent such person is engaged in
16 any activity which is not a customary and usual
17 accounting activity described in paragraph
18 (1)(A) or incidental thereto but which is a fi-
19 nancial activity described in any subparagraph
20 of section 1002(13);

21 (B) any person described in paragraph
22 (1)(B) to the extent such person is engaged in
23 any activity which is a financial activity de-
24 scribed in any subparagraph of section
25 1002(13); or

1 (C) any person described in paragraph
2 (1)(A) or (1)(B) that is otherwise subject to
3 any of the enumerated consumer laws or any
4 law or authority transferred under subtitle F or
5 H.

6 (d) EXCLUSION FOR QUALIFIED RETIREMENT OR
7 ELIGIBLE DEFERRED COMPENSATION PLANS AND AR-
8 RANGEMENTS.—

9 (1) IN GENERAL.—No provision of this title
10 shall be construed as altering, amending, or affect-
11 ing the authority of the Secretary of the Treasury,
12 the Secretary of Labor, or the Commissioner of In-
13 ternal Revenue to adopt regulations, initiate enforce-
14 ment proceedings, or take any actions with respect
15 to—

16 (A) any retirement or eligible deferred
17 compensation plan or arrangement qualified
18 under or meeting the requirements of section
19 401(a), 403(a), 403(b), 457(b), 408 or 408A of
20 the Internal Revenue Code of 1986; or

21 (B) any educational savings arrangement
22 under section 529 of such Code.

23 (2) LIMITATION ON CFPA AUTHORITY.—

24 (A) IN GENERAL.—Except as permitted in
25 subsection (f), the CFPA may not exercise any

1 power to enforce this title with respect to serv-
2 ices provided directly (or indirectly if the serv-
3 ices relate to the operation of such plan or ar-
4 rangement) to any retirement or eligible de-
5 ferred compensation plan or arrangement quali-
6 fied under or meeting the requirements of sec-
7 tion 401(a), 403(a), 403(b), or 457(b) of the
8 Internal Revenue Code of 1986.

9 (B) SERVICES DEFINED.—For purposes
10 subparagraph (A), the term “services” means
11 activities relating to the establishment or ad-
12 ministration of a plan or arrangement, includ-
13 ing the custody and investment of assets.

14 (e) PERSONS REGULATED BY A STATE SECURITIES
15 COMMISSION.—

16 (1) IN GENERAL.—No provision of this title
17 shall be construed as altering, amending, or affect-
18 ing the authority of any securities commission (or
19 any agency or office performing like functions) of
20 any State to adopt rules, initiate enforcement pro-
21 ceedings, or take any other action with respect to a
22 person regulated by any securities commission (or
23 any agency or office performing like functions) of
24 any State. Except as permitted in paragraph (2) and
25 subsection (f), the CFPA shall have no authority to

1 exercise any power to enforce this title with respect
2 to a person regulated by any securities commission
3 (or any agency or office performing like functions)
4 of any State, but only to the extent that the person
5 acts in such regulated capacity.

6 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
7 (1) shall not apply to any person to the extent such
8 person is engaged in any financial activity described
9 in any subparagraph of section 1002(13) or is other-
10 wise subject to any enumerated consumer law or any
11 law or authority transferred under subtitle F or H.

12 (f) LIMITED AUTHORITY OF THE CFPA TO OBTAIN
13 INFORMATION.—Notwithstanding subsections (a), (b), (c),
14 (d), and (e), the CFPA may request or require information
15 from any person subject to or described in such sub-
16 sections in order to carry out the responsibilities and func-
17 tions of the CFPA and in accordance with section 1023,
18 1051, or 1052.

19 (g) EXCLUSION FOR PERSONS REGULATED BY THE
20 COMMISSION.—

21 (1) IN GENERAL.—No provision of this title
22 shall be construed as altering, amending, or affect-
23 ing the authority of the Commission or any securi-
24 ties commission (or any agency or office performing
25 like functions) of any State to adopt rules, initiate

1 enforcement proceedings, or take any other action
2 with respect to a person regulated by the Commis-
3 sion or any securities commission (or any agency or
4 office performing like functions) of any State. The
5 CFPA shall have no authority to exercise any power
6 to enforce this title with respect to a person regu-
7 lated by the Commission or any securities commis-
8 sion (or any agency or office performing like func-
9 tions) of any State.

10 (2) CONSULTATION AND COORDINATION.—Not-
11 withstanding paragraph (1), the Commission shall
12 consult and coordinate with the CFPA with respect
13 to any rule (including any advance notice of pro-
14 posed rulemaking) regarding an investment product
15 or service that is the same type of product as, or
16 that competes directly with, a consumer financial
17 product or service that is subject to the jurisdiction
18 of the CFPA under this title or under any other law.

19 (h) EXCLUSION FOR PERSONS REGULATED BY THE
20 COMMODITY FUTURES TRADING COMMISSION.—

21 (1) IN GENERAL.—No provision of this title
22 shall be construed as altering, amending, or affect-
23 ing the authority of the Commodity Futures Trading
24 Commission to adopt rules, initiate enforcement pro-
25 ceedings, or take any other action with respect to a

1 person regulated by the Commodity Futures Trading
2 Commission. The CFPA shall have no authority to
3 exercise any power to enforce this title with respect
4 to a person regulated by the Commodity Futures
5 Trading Commission.

6 (2) CONSULTATION AND COORDINATION.—Not-
7 withstanding paragraph (1), the Commodity Futures
8 Trading Commission shall consult and coordinate
9 with the CFPA with respect to any rule (including
10 any advance notice of proposed rulemaking) regard-
11 ing a product or service that is the same type of
12 product as, or that competes directly with, a con-
13 sumer financial product or service that is subject to
14 the jurisdiction of the CFPA under this title or
15 under any other law.

16 (i) INSURANCE.—

17 (1) IN GENERAL.—Except with respect to in-
18 surance activities described in section 1002, the
19 CFPA may not define as a financial activity, by reg-
20 ulation or otherwise, engaging in the business of in-
21 surance.

22 (2) NO AUTHORITY TO ESTABLISH RATES OR
23 PREMIUMS FOR COVERED INSURANCE ACTIVITIES.—
24 Nothing in this title may be construed as conferring
25 authority on the CFPA to approve or establish rates

1 or premiums with respect to an insurance product or
2 service described in section 1002.

3 (j) **NO AUTHORITY TO IMPOSE USURY LIMIT.**—No
4 provision of this title shall be construed as conferring au-
5 thority on the CFPB to establish a usury limit applicable
6 to an extension of credit offered or made by a covered per-
7 son to a consumer, unless explicitly authorized by law.

8 (k) **ATTORNEY GENERAL.**—No provision of this title
9 shall affect the authorities of the Attorney General under
10 otherwise applicable provisions of law.

11 (l) **SECRETARY OF THE TREASURY.**—No provision of
12 this title shall affect the authorities of the Secretary, in-
13 cluding with respect to prescribing rules, initiating en-
14 forcement proceedings, or taking other actions with re-
15 spect to a person that performs income tax preparation
16 activities for consumers.

17 **SEC. 1025. MONITORING; ASSESSMENTS OF SIGNIFICANT**
18 **RULES; REPORTS.**

19 (a) **MONITORING.**—

20 (1) **IN GENERAL.**—The CFPB shall monitor for
21 risks to consumers in the provision of consumer fi-
22 nancial products or services, including developments
23 in markets for such products or services.

24 (2) **MEANS OF MONITORING.**—Such monitoring
25 may be conducted by examinations of covered per-

1 sons or service providers, analysis of reports ob-
2 tained from covered persons or service providers, as-
3 sessment of consumer complaints, surveys and inter-
4 views of covered persons and consumers, and review
5 of available databases.

6 (3) CONSIDERATIONS.—In allocating its re-
7 sources to perform the monitoring required by this
8 section, the CFPA may consider, among other fac-
9 tors—

10 (A) likely risks and costs to consumers as-
11 sociated with buying or using a type of con-
12 sumer financial product or service;

13 (B) understanding by consumers of the
14 risks of a type of consumer financial product or
15 service;

16 (C) the state of the law that applies to the
17 provision of a consumer financial product or
18 service, including the extent to which the law is
19 likely to adequately protect consumers;

20 (D) rates of growth in the provision of a
21 consumer financial product or service;

22 (E) the extent, if any, to which the risks
23 of a consumer financial product or service may
24 disproportionately affect traditionally under-
25 served consumers, if any; or

1 (F) the types, number, and other pertinent
2 characteristics of covered persons that provide
3 the product or service.

4 (4) REPORTS.—The CFPA shall publish at not
5 fewer than 1 report of significant findings of its
6 monitoring required by this subsection in each cal-
7 endar year, beginning with the first calendar year
8 that begins at least 1 year after the designated
9 transfer date.

10 (b) ASSESSMENT OF SIGNIFICANT RULES.—

11 (1) IN GENERAL.—The CFPA shall conduct an
12 assessment of each significant rule or order adopted
13 by the CFPA under this title, the authorities trans-
14 ferred under subtitles F and H, or any enumerated
15 consumer law that addresses, among other relevant
16 factors, the effectiveness of the rule in meeting the
17 purposes and objectives of this Act and the specific
18 goals stated by the CFPA. The assessment shall re-
19 flect available evidence and any data that the CFPA
20 reasonably may collect.

21 (2) REPORTS.—The CFPA shall publish a re-
22 port of its assessment under this subsection not
23 later than 3 years after the effective date of the rule
24 or order, unless the CFPA determines that 3 years
25 is not sufficient time to study or review the impact

1 of the rule, but in no event shall the CFPA publish
2 such report more than 5 years after the effective
3 date of the rule or order.

4 (3) PUBLIC COMMENT REQUIRED.—Before pub-
5 lishing a report of its assessment, the CFPA shall
6 invite public comment on recommendations for modi-
7 fying, expanding, or eliminating the newly adopted
8 significant rule or order.

9 (c) INFORMATION GATHERING.—In conducting any
10 monitoring or assessment required by this section, the
11 CFPA may gather information through a variety of meth-
12 ods, including by conducting surveys or interviews of con-
13 sumers.

14 **SEC. 1026. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
15 **PUTE ARBITRATION.**

16 (a) IN GENERAL.—The CFPA, by regulation, may
17 prohibit or impose conditions or limitations on the use of
18 an agreement between a covered person and a consumer
19 for a consumer financial product or service providing for
20 arbitration of any future dispute between the parties, if
21 the CFPA finds that such a prohibition or imposition of
22 conditions or limitations are in the public interest and for
23 the protection of consumers.

24 (b) EFFECTIVE DATE.—Notwithstanding any other
25 provision of law, any regulation prescribed by the CFPA

1 under subsection (a) shall apply, consistent with the terms
2 of the regulation, to any agreement between a consumer
3 and a covered person entered into after the end of the
4 180-day period beginning on the effective date of the regu-
5 lation, as established by the CFPA.

6 **SEC. 1027. SUPERVISION OF NONDEPOSITORY COVERED**
7 **PERSONS.**

8 (a) **IN GENERAL.**—The CFPA shall develop risk-
9 based programs to supervise covered persons that are not
10 credit unions or depository institutions by prescribing reg-
11 istration requirements, reporting requirements, and exam-
12 ination standards and procedures. The risk-based super-
13 visory programs, shall be based on—

14 (1) relevant registration and reporting informa-
15 tion about such covered persons, as determined by
16 the CFPA; and

17 (2) the assessment by the CFPA of risks posed
18 to consumers in the relevant geographic markets and
19 markets for consumer financial products and serv-
20 ices.

21 (b) **REGISTRATION.**—

22 (1) **IN GENERAL.**—The CFPA shall prescribe
23 rules regarding registration requirements for covered
24 persons that are not credit unions or depository in-
25 stitutions.

1 (2) CONSULTATION WITH STATE AGENCIES.—

2 In developing and implementing registration require-
3 ments under this subsection, the CFPA shall consult
4 with State agencies regarding requirements or sys-
5 tems for registration (including coordinated or com-
6 bined systems), where appropriate.

7 (3) EXCEPTION FOR RELATED PERSONS.—The
8 CFPA may not impose requirements under this sec-
9 tion regarding the registration of a related person.

10 (4) REGISTRATION INFORMATION.—Subject to
11 rules prescribed by the CFPA, the CFPA shall pub-
12 licly disclose the registration information about a
13 covered person which is not a bank holding com-
14 pany, credit union, or depository institution for the
15 purpose of facilitating the ability of consumers to
16 identify the covered person as registered with the
17 CFPA.

18 (c) REPORTING REQUIREMENTS.—

19 (1) IN GENERAL.—The CFPA may require re-
20 ports from covered persons that are not credit
21 unions or depository institutions, or service providers
22 thereto, for the purposes of facilitating supervision
23 of such covered persons or service providers. The
24 CFPA shall impose reporting requirements under
25 this paragraph that are consistent with the risk-

1 based standards developed and implemented under
2 this section and the registration information per-
3 taining to the relevant types or classes of covered
4 persons.

5 (2) CONTENTS OF REPORTS.—Reporting re-
6 quirements imposed under this subsection may in-
7 clude information regarding—

8 (A) the nature of the business of the cov-
9 ered person;

10 (B) the name, legal form, ownership and
11 management structure, and related persons of
12 the covered person;

13 (C) the locations of operation of the cov-
14 ered person;

15 (D) the types and number of consumer fi-
16 nancial products and services provided by the
17 covered person;

18 (E) compliance with any requirement im-
19 posed or enforced by the CFPA, including any
20 requirement relating to registration, licensing,
21 fees, or assessments; and

22 (F) the financial condition of such covered
23 person, including a related person, for the pur-
24 pose of assessing the ability of such person to
25 perform its obligation to consumers.

1 (3) EXCEPTION FOR RELATED PERSONS.—

2 Other than reports permitted under paragraph
3 (2)(F), or in connection with a supervisory action or
4 examination, or pursuant to the powers granted
5 under subtitle E, the CFPA may not impose require-
6 ments regarding reports of related persons.

7 (d) EXAMINATIONS.—The CFPA shall conduct ex-
8 aminations of covered persons that are not credit unions
9 or depository institutions as part of the programs imple-
10 mented under paragraphs (2) and (3) of section 1022(c).
11 The CFPA shall establish risk-based standards and proce-
12 dures for conducting examinations of such covered per-
13 sons, including the frequency and scope of such examina-
14 tions, except that the CFPA shall conduct examinations
15 of such covered persons that are determined to pose the
16 highest risk to consumers based on factors determined by
17 the CFPA, such as the operations, sales practices, or con-
18 sumer financial products or services provided by such cov-
19 ered persons.

20 (e) AUTHORITY TO COLLECT INFORMATION REGARD-
21 ING FEES OR ASSESSMENTS.—To the extent permitted by
22 Federal law, the CFPA may obtain from the Department
23 of the Treasury information relating to a covered person
24 which is not a bank holding company, credit union, or de-
25 pository institution, including information regarding com-

1 pliance with a reporting or registration requirement under
2 the Bank Secrecy Act, for the purpose of, and only to the
3 extent necessary in, investigating, determining, or enforce-
4 ing compliance with a requirement relating to any fee or
5 assessment imposed by the CFPA under this title.

6 **SEC. 1028. EFFECTIVE DATE.**

7 This subtitle shall become effective on the designated
8 transfer date.

9 **Subtitle C—Specific CFPA**
10 **Authorities**

11 **SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**
12 **ACTS OR PRACTICES.**

13 (a) **IN GENERAL.**—The CFPA may take any action
14 authorized under subtitle E to prevent a person from com-
15 mitting or engaging in an unfair, deceptive, or abusive act
16 or practice under Federal law in connection with any
17 transaction with a consumer for a consumer financial
18 product or service, or the offering of a consumer financial
19 product or service.

20 (b) **RULEMAKING.**—The CFPA may prescribe rules
21 identifying as unlawful unfair, deceptive, or abusive acts
22 or practices in connection with any transaction with a con-
23 sumer for a consumer financial product or service, or the
24 offering of a consumer financial product or service. Rules

1 under this section may include requirements for the pur-
2 pose of preventing such acts or practices.

3 (c) UNFAIRNESS.—

4 (1) IN GENERAL.—The CFPA shall have no au-
5 thority under this section to declare an act or prac-
6 tice in connection with a transaction with a con-
7 sumer for a consumer financial product or service,
8 or the offering of a consumer financial product or
9 service, to be unlawful on the grounds that such act
10 or practice is unfair, unless the CFPA has a reason-
11 able basis to conclude that—

12 (A) the act or practice causes or is likely
13 to cause substantial injury to consumers which
14 is not reasonably avoidable by consumers; and

15 (B) such substantial injury is not out-
16 weighed by countervailing benefits to consumers
17 or to competition.

18 (2) CONSIDERATION OF PUBLIC POLICIES.—In
19 determining whether an act or practice is unfair, the
20 CFPA may consider established public policies as
21 evidence to be considered with all other evidence.

22 (d) CONSULTATION.—In prescribing rules under this
23 section, the CFPA shall consult with the Federal banking
24 agencies, or other Federal agencies, as appropriate, con-
25 cerning the consistency of the proposed rule with pruden-

1 tial, market, or systemic objectives administered by such
2 agencies.

3 **SEC. 1032. DISCLOSURES.**

4 (a) **IN GENERAL.**—The CFPA may prescribe rules
5 to ensure the appropriate and effective disclosure to con-
6 sumers of the costs, benefits, and risks associated with
7 any consumer financial product or service.

8 (b) **REASONABLE DISCLOSURES.**—Subject to rules
9 prescribed by the CFPA, a covered person shall, with re-
10 spect to disclosures regarding any consumer financial
11 product or service, make or provide to a consumer disclo-
12 sures that reasonably communicate to consumers the
13 terms, costs, benefits, and risks of the product or service,
14 in light of all of the facts and circumstances.

15 (c) **BASIS FOR RULEMAKING.**—In prescribing rules
16 under this section, the CFPA shall consider available evi-
17 dence about consumer awareness, understanding of, and
18 responses to disclosures or communications about the
19 risks, costs, and benefits of consumer financial products
20 or services.

21 (d) **COMBINED MORTGAGE LOAN DISCLOSURE.**—Not
22 later than 1 year after the designated transfer date, the
23 CFPA shall propose for public comment rules and model
24 disclosures that combine the disclosures required under
25 the Truth in Lending Act and the Real Estate Settlement

1 Procedures Act of 1974 into a single, integrated disclosure
2 for mortgage loan transactions covered by those laws, un-
3 less the CFPA determines that any proposal issued by the
4 Board of Governors and the Secretary of Housing and
5 Urban Development carries out the same purpose.

6 **SEC. 1033. SALES PRACTICES.**

7 The CFPA may prescribe rules and issue orders and
8 guidance regarding the manner, settings, and cir-
9 cumstances for the provision of any consumer financial
10 product or service to ensure that the risks, costs, and ben-
11 efits of the products or services, both initially and over
12 the term of the products or services, are fully and accu-
13 rately represented to consumers.

14 **SEC. 1034. CONSUMER TESTING AND PILOT DISCLOSURES.**

15 (a) **PILOT DISCLOSURES.**—The CFPA shall establish
16 standards and procedures for approval of pilot disclosures
17 to be provided or made available by a covered person to
18 consumers in connection with the provision of a consumer
19 financial product or service for the purpose of improving
20 disclosures.

21 (b) **REQUIREMENTS.**—The standards and procedures
22 required by this section shall provide—

23 (1) that a pilot disclosure must be limited in
24 time and scope and reasonably designed to con-
25 tribute materially to the understanding of consumer

1 awareness and understanding of, and responses to,
2 disclosures or communications about the risks, costs,
3 and benefits of consumer financial products or serv-
4 ices;

5 (2) that the pilot disclosure be reasonably likely
6 to satisfy several or all of the criteria described in
7 paragraph (1), based on testing with consumer focus
8 groups or other appropriate testing methods; and

9 (3) for public disclosure of pilots, but the
10 CFPB may limit disclosure to the extent necessary
11 to encourage covered persons to conduct effective pi-
12 lots.

13 **SEC. 1035. ADOPTING OPERATIONAL STANDARDS TO**
14 **DETER UNFAIR, DECEPTIVE, OR ABUSIVE**
15 **PRACTICES.**

16 (a) STATE AUTHORITY TO PRESCRIBE STAND-
17 ARDS.—The States are encouraged to prescribe standards
18 applicable to covered persons who are not insured deposi-
19 tory institutions, credit unions, or service providers, to
20 deter and detect unfair, deceptive, abusive, fraudulent, or
21 illegal transactions in the provision of consumer financial
22 products or services, including standards for—

23 (1) background checks for principals, officers,
24 directors, or key personnel;

25 (2) registration, licensing, or certification;

1 (3) bond or other appropriate financial require-
2 ments to provide reasonable assurance of the ability
3 to perform its obligations to consumers;

4 (4) creating and maintaining records of trans-
5 actions or accounts; and

6 (5) procedures and operations relating to the
7 provision of, or maintenance of accounts for, con-
8 sumer financial products or services.

9 (b) **CFPA AUTHORITY TO PRESCRIBE STAND-**
10 **ARDS.—**

11 (1) **IN GENERAL.—**The CFPA may prescribe
12 rules establishing minimum standards described in
13 subsection (a) for any class of covered persons, other
14 than covered persons that are subject to the jurisdic-
15 tion of a Federal banking agency or a State banking
16 agency, or for any service provider.

17 (2) **REGISTRATION AND LICENSING STAND-**
18 **ARDS.—**In addition to prescribing minimum stand-
19 ards for the purposes described in subsection (a),
20 the CFPA may prescribe registration or licensing
21 standards applicable to covered persons for the pur-
22 poses of imposing fees or assessments in accordance
23 with this title.

24 (3) **ENFORCEMENT OF STANDARDS.—**The
25 CFPA may enforce under subtitle E compliance with

1 standards adopted by the CFPA or a State pursuant
2 to this section for covered persons or service pro-
3 viders operating in that State.

4 (c) CONSULTATION.—In prescribing minimum stand-
5 ards under this section, the CFPA shall consult with the
6 State authorities, the Federal banking agencies, or other
7 Federal agencies, as appropriate, concerning the consist-
8 ency of the proposed rule with prudential, market, or sys-
9 temic objectives administered by such State authorities or
10 such agencies.

11 **SEC. 1036. DUTIES OF COVERED PERSONS.**

12 (a) RULEMAKING REQUIRED.—The CFPA shall pre-
13 scribe rules imposing duties on a covered person, or an
14 employee of a covered person, or an agent or independent
15 contractor for a covered person, who deals or commu-
16 nicates directly with consumers in the provision of a con-
17 sumer financial product or service, as the CFPA deter-
18 mines appropriate or necessary to ensure fair dealing with
19 consumers.

20 (b) CONSIDERATIONS FOR DUTIES.—In prescribing
21 rules under this section, the CFPA shall consider wheth-
22 er—

23 (1) the covered person, employee, agent, or
24 independent contractor represents implicitly or ex-

1 plicitly that it is acting in the interest of the con-
2 sumer with respect to any aspect of the transaction;

3 (2) the covered person, employee, agent, or
4 independent contractor provides the consumer with
5 advice with respect to any aspect of the transaction;

6 (3) use by the consumer of any advice from the
7 covered person, employee, agent, or independent con-
8 tractor would be reasonable and justifiable under the
9 circumstances;

10 (4) the benefits to consumers of imposing a
11 particular duty would outweigh the costs; and

12 (5) any other factors, as the CFPA considers
13 appropriate.

14 (c) **DUTIES RELATING TO COMPENSATION PRAC-**
15 **TICES.**—The CFPA may prescribe rules establishing du-
16 ties regarding compensation practices applicable to a cov-
17 ered person, employee, agent, or independent contractor
18 who deals or communicates directly with a consumer in
19 the provision of a consumer financial product or service
20 for the purpose of promoting fair dealing with consumers.
21 The CFPA may not prescribe a limit on the total dollar
22 amount of compensation paid to any covered person or af-
23 filiate thereof.

24 (d) **ADMINISTRATIVE PROCEEDINGS.**—Any rule pre-
25 scribed by the CFPA under this section shall be enforce-

1 able only by the CFPA through an adjudication pro-
2 ceeding under subtitle E or by a State regulator through
3 an appropriate administrative proceeding, as permitted
4 under State law. No action may be commenced in any
5 court to enforce any requirement of a rule prescribed
6 under this section, and no court may exercise supple-
7 mental jurisdiction over a claim asserted under a rule pre-
8 scribed under this section based on allegations or evidence
9 of conduct that otherwise may be subject to such rule. The
10 CFPA, the Attorney General of the United States, or any
11 State attorney general or State regulator shall not be pre-
12 cluded from enforcing any other provision of Federal or
13 State law against a person with respect to conduct that
14 may be subject to a rule prescribed by the CFPA under
15 this section.

16 (e) **EXCLUSIONS.**—This section does not authorize
17 the CFPA to prescribe rules applicable to—

18 (1) an attorney licensed to practice law and in
19 compliance with the applicable rules and standards
20 of professional conduct, but only to the extent that
21 the consumer financial product or service provided is
22 within the attorney-client relationship with the con-
23 sumer; or

24 (2) any trustee, custodian, or other person that
25 holds a fiduciary duty in connection with a trust, in-

1 including a fiduciary duty to a grantor or beneficiary
2 of a trust, that is subject to and in compliance with
3 the applicable law relating to such trust.

4 **SEC. 1037. CONSUMER RIGHTS TO ACCESS INFORMATION.**

5 (a) IN GENERAL.—Subject to rules prescribed by the
6 CFPB, a covered person shall make available to a con-
7 sumer, upon request, information in the control or posses-
8 sion of the covered person concerning the consumer finan-
9 cial product or service that the consumer obtained from
10 such covered person, including information relating to any
11 transaction, series of transactions, or to the account in-
12 cluding costs, charges and usage data. The information
13 shall be made available in an electronic form usable by
14 consumers.

15 (b) EXCEPTIONS.—A covered person may not be re-
16 quired by this section to make available to the consumer—

17 (1) any confidential commercial information, in-
18 cluding an algorithm used to derive credit scores or
19 other risk scores or predictors;

20 (2) any information collected by the covered
21 person for the purpose of preventing fraud or money
22 laundering, or detecting, or making any report re-
23 garding other unlawful or potentially unlawful con-
24 duct;

1 (3) any information required to be kept con-
2 fidential by any other provision of law; or

3 (4) any information that the covered person
4 cannot retrieve in the ordinary course of its business
5 with respect to that information.

6 (c) **NO DUTY TO MAINTAIN RECORDS.**—Nothing in
7 this section shall be construed to impose any duty on a
8 covered person to maintain or keep any information about
9 a consumer.

10 (d) **STANDARDIZED FORMATS FOR DATA.**—The
11 CFPA, by rule, shall prescribe standards applicable to cov-
12 ered persons to promote the development and use of stand-
13 ardized formats for information, including through the use
14 of machine readable files, to be made available to con-
15 sumers under this section.

16 (e) **CONSULTATION.**—The CFPA shall, when pre-
17 scribing any rule under this section, consult with the Fed-
18 eral banking agencies and the Federal Trade Commission
19 to ensure that the rules—

20 (1) impose substantively similar requirements
21 on covered persons;

22 (2) take into account conditions under which
23 covered persons do business both in the United
24 States and in other countries; and

1 (3) do not require or promote the use of any
2 particular technology in order to develop systems for
3 compliance.

4 **SEC. 1038. PROHIBITED ACTS.**

5 It shall be unlawful for any person—

6 (1) to advertise, market, offer, sell, enforce, or
7 attempt to enforce, any term, agreement, change in
8 terms, fee or charge in connection with a consumer
9 financial product or service that is not in conformity
10 with this title or applicable rules or orders issued by
11 the CFPA or to engage in any unfair, deceptive, or
12 abusive act or practice;

13 (2) to fail or refuse, as required by this title,
14 an enumerated consumer law, or pursuant to the au-
15 thorities transferred by subtitles F and H, or any
16 rule or order issued by the CFPA thereunder—

17 (A) to pay any fee or assessment imposed
18 by the CFPA under this title;

19 (B) to permit access to or copying of
20 records;

21 (C) to establish or maintain records; or

22 (D) to make reports or provide information
23 to the CFPA; or

24 (3) knowingly or recklessly to provide substan-
25 tial assistance to another person in violation of the

1 provisions of section 1031, or any rule or order
2 issued under thereunder, and the provider of such
3 substantial assistance shall be deemed to be in viola-
4 tion of that section to the same extent as the person
5 to whom such assistance is provided.

6 **SEC. 1039. EFFECTIVE DATE.**

7 This subtitle shall become effective on the designated
8 transfer date.

9 **Subtitle D—Preservation of State**
10 **Law**

11 **SEC. 1041. RELATION TO STATE LAW.**

12 (a) IN GENERAL.—

13 (1) RULE OF CONSTRUCTION.—This title does
14 not annul, alter, or affect, or exempt any person
15 subject to the provisions of this title from complying
16 with the statutes, regulations, orders, or interpreta-
17 tions in effect in any State, except to the extent that
18 such statute, regulation, order, or interpretation is
19 inconsistent with the provisions of this title, and
20 then only to the extent of the inconsistency.

21 (2) GREATER PROTECTION UNDER STATE
22 LAW.—For the purposes of this subsection, a stat-
23 ute, regulation, order, or interpretation in effect in
24 any State is not inconsistent with the provisions of
25 this title, if the protection that such statute, regula-

1 tion, order, or interpretation affords to consumers is
2 greater than the protection provided under this title.
3 A determination regarding whether a statute, regu-
4 lation, order, or interpretation in effect in any State
5 is inconsistent with the provisions of this title may
6 be made by the CFPA on its own motion or in re-
7 sponse to a non-frivolous petition initiated by any in-
8 terested person.

9 (b) **RELATION TO OTHER PROVISIONS OF ENUMER-**
10 **ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—**

11 Nothing in this title may be construed to modify, limit,
12 or supersede the operation of any provision of an enumer-
13 ated consumer law that relates to the application of State
14 law with respect to such Federal law (except as provided
15 in the amendments to the Alternative Mortgage Parity Act
16 of 1982 made by subtitle H of this title).

17 **SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF**
18 **STATES.**

19 (a) **IN GENERAL.—**Notwithstanding any other provi-
20 sion of this title—

21 (1) any State attorney general (or equivalent
22 State regulator) may bring a civil action in the name
23 of such State, as *parens patriae* on behalf of natural
24 persons residing in such State, in any district court
25 of the United States or State court having jurisdic-

1 tion over the defendant, to secure legal or equitable
2 relief for violation of any provisions of this title or
3 regulations issued thereunder; and

4 (2) nothing in this title may be construed to
5 modify, limit, or supersede the operation of any pro-
6 vision of an enumerated consumer law that relates
7 to the authority of a State attorney general or State
8 regulator to enforce such Federal law.

9 (b) CONSULTATION REQUIRED.—

10 (1) PRIOR NOTICE.—Before initiating any ac-
11 tion in a court or other administrative or regulatory
12 proceeding against any covered person to enforce
13 any provision of this title, including any rule pre-
14 scribed by the CFPA thereunder, a State attorney
15 general or State regulator shall timely provide a
16 copy of the complete complaint to be filed and writ-
17 ten notice describing such action or proceeding to
18 the CFPA, or the designee of the CFPA. If prior no-
19 tice is not practicable, the State attorney general or
20 State regulator shall provide a copy of the complete
21 complaint and the notice to the CFPA immediately
22 upon instituting the action or proceeding.

23 (2) CONTENT OF NOTIFICATION.—The notifica-
24 tion required under this section shall, at a minimum,
25 describe—

1 (A) the identity of the parties;

2 (B) the alleged facts underlying the pro-
3 ceeding; and

4 (C) whether there may be a need to coordi-
5 nate the prosecution of the proceeding so as not
6 to interfere with any action, including any rule-
7 making, undertaken by the CFPA or another
8 Federal agency.

9 (3) CFPA AUTHORITY.—In any action de-
10 scribed in paragraph (1), the CFPA may—

11 (A) intervene in the action as a party;

12 (B) upon intervening—

13 (i) remove the action to the appro-
14 priate United States district court, if the
15 action was not originally brought there;
16 and

17 (ii) be heard on all matters arising in
18 the action; and

19 (C) appeal any order or judgment to the
20 same extent as any other party in the pro-
21 ceeding may.

22 (c) RULEMAKING REQUIRED.—The CFPA shall
23 adopt rules to implement the requirements of this section
24 and, from time to time, provide guidance in order to fur-

1 ther coordinate actions with the State attorneys general
2 and other State regulators.

3 (d) PRESERVATION OF STATE CLAIMS.—

4 (1) IN GENERAL.—Nothing in this title may be
5 construed as altering, limiting, or affecting the au-
6 thority of a State attorney general or State regulator
7 to bring an action or other regulatory proceeding
8 arising solely under the law of that State.

9 (2) STATE SECURITIES REGULATORS.—No pro-
10 vision of this title may be construed as altering, lim-
11 iting, or affecting the authority of a State securities
12 commission (or any agency or office performing like
13 functions) under State law to adopt rules, initiate
14 enforcement proceedings, or take any other action
15 with respect to a person regulated by such commis-
16 sion (or agency).

17 (3) STATE INSURANCE REGULATORS.—No pro-
18 vision of this title may be construed as altering, lim-
19 iting, or affecting the authority of a State insurance
20 commission or State insurance regulator under State
21 law to adopt rules, initiate enforcement proceedings,
22 or take any other action with respect to a person
23 regulated by such commission or regulator.

1 **SEC. 1043. STATE LAW PREEMPTION STANDARDS FOR NA-**
2 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
3 **FIED.**

4 (a) IN GENERAL.—Chapter One of title LXII of the
5 Revised Statutes of the United States (12 U.S.C. 21 et
6 seq.) is amended by inserting after section 5136B the fol-
7 lowing new section:

8 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
9 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
10 **FIED.**

11 “(a) DEFINITIONS.—For purposes of this section, the
12 term—

13 “(1) ‘national bank’ includes—

14 “(A) any bank organized under the laws of
15 the United States;

16 “(B) any affiliate of a national bank;

17 “(C) any subsidiary of a national bank;

18 and

19 “(D) any Federal branch established in ac-
20 cordance with the International Banking Act of
21 1978;

22 “(2) ‘depository institution’, ‘affiliate’, ‘sub-
23 sidiary’, ‘includes’, and ‘including’ have the same
24 meanings as in section 3 of the Federal Deposit In-
25 surance Act;

1 “(3) ‘nondepository institution’ means any enti-
2 ty that is not a depository institution;

3 “(4) ‘FIRA’ means the Financial Institutions
4 Regulatory Administration; and

5 “(5) ‘State consumer law’ means any law of a
6 State that—

7 “(A) accords rights to or protects the
8 rights of its citizens or other persons in finan-
9 cial transactions concerning negotiation, sales,
10 solicitation, disclosure, terms and conditions,
11 advice, and remedies; or

12 “(B) prevents counterparties, successors,
13 and assigns of financial contracts from engag-
14 ing in unfair or deceptive acts or practices with
15 respect to such financial transactions.

16 “(b) STATE CONSUMER LAWS OF GENERAL APPLI-
17 CATION.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), and notwithstanding any other provision
20 of Federal law, any consumer protection provision in
21 a State consumer law of general application, includ-
22 ing any law relating to unfair or deceptive acts or
23 practices, any consumer fraud law, and repossession,
24 foreclosure, and collection law, shall apply to any na-
25 tional bank.

1 “(2) EXCEPTIONS.—

2 “(A) IN GENERAL.—Paragraph (1) does
3 not apply with respect to any State consumer
4 law, if—

5 “(i) the State consumer law discrimi-
6 nates against national banks; or

7 “(ii) the State consumer law is incon-
8 sistent with provisions of Federal law other
9 than this title, but only to the extent of the
10 inconsistency (as determined in accordance
11 with the provision of the other Federal
12 law).

13 “(B) DETERMINATION OF INCONSIST-
14 ENCY.—For purposes of this paragraph, a State
15 consumer law is not inconsistent with Federal
16 law if the protection that the State consumer
17 law affords consumers is greater than the pro-
18 tection provided under Federal law, as deter-
19 mined by the CFPA.

20 “(c) STATE BANKING LAWS ENACTED PURSUANT TO
21 FEDERAL LAW.—

22 “(1) IN GENERAL.—Except as provided in para-
23 graph (2), and notwithstanding any other provision
24 of Federal law, each national bank shall be subject
25 to any State consumer law that—

1 “(A) is applicable to State banks; and

2 “(B) was enacted pursuant to or in accord-
3 ance with, and is not inconsistent with, an Act
4 of Congress, including the Gramm-Leach-Bliley
5 Act, the Consumer Credit Protection Act, and
6 the Real Estate Settlement Procedures Act of
7 1974, that explicitly or by implication, permits
8 States to exceed or supplement the require-
9 ments of any comparable provision of Federal
10 law.

11 “(2) EXCEPTIONS.—

12 “(A) IN GENERAL.—Paragraph (1) does
13 not apply with respect to any provision of State
14 law, if—

15 “(i) the State consumer law discrimi-
16 nates against national banks; or

17 “(ii) the State consumer law is incon-
18 sistent with provisions of Federal law,
19 other than this title, but only to the extent
20 of the inconsistency (as determined in ac-
21 cordance with the other Federal law).

22 “(B) DETERMINATION OF INCONSIST-
23 ENCY.—For purposes of this paragraph, a State
24 consumer law is not inconsistent with Federal
25 law if the protection that the State consumer

1 law affords consumers is greater than the pro-
2 tection provided under Federal law, as deter-
3 mined by the CFPA.

4 “(d) NO NEGATIVE IMPLICATIONS FOR APPLICA-
5 BILITY OF OTHER STATE LAWS.—No provision of this
6 section may be construed as altering or affecting the appli-
7 cability to national banks of any provision of State law
8 that is not described in this section.

9 “(e) EFFECT OF TRANSFER OF TRANSACTION.—A
10 provision of State consumer law applicable to a trans-
11 action at the inception of the transaction may not be pre-
12 empted under Federal law solely because a national bank
13 subsequently acquires the asset or instrument that is the
14 subject of the transaction.

15 “(f) DENIAL OF PREEMPTION NOT A DEPRIVATION
16 OF A CIVIL RIGHT.—The preemption of any provision of
17 the law of any State with respect to any national bank
18 shall not be treated as a right, privilege, or immunity for
19 purposes of section 1979 of the Revised Statutes of the
20 United States (42 U.S.C. 1983).”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for chapter One of title LXII of the Revised Statutes of
23 the United States is amended by inserting after the item
24 relating to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries clarified.”.

1 **SEC. 1044. CLARIFICATION OF LAW APPLICABLE TO NON-**
2 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

3 Section 5136C of the Revised Statutes of the United
4 States (as added by section 1043 of this Act) is amended
5 by inserting after subsection (i) (as added by section
6 1044) the following new subsection:

7 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
8 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
9 ATES OF NATIONAL BANKS.—No provision of this title
10 shall be construed as annulling, altering, or affecting the
11 applicability of State law to any nondepository institution
12 or a subsidiary, other affiliate, or agent of a national
13 bank.”.

14 **SEC. 1045. 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) DEFINITIONS.—For purposes of this section—
23 “(1) ‘depository institution’, ‘affiliate’, ‘sub-
24 sidiary’, ‘includes’, and ‘including’ have the same
25 meanings as in section 3 of the Federal Deposit In-
26 surance Act;

1 “(2) ‘nondepository institution’ means any enti-
2 ty that is not a depository institution;

3 “(3) ‘CFPA’ means the Consumer Financial
4 Protection Agency;

5 “(4) ‘FIRA’ means the Financial Institutions
6 Regulatory Administration; and

7 “(5) ‘State consumer law’ means any law of a
8 State that—

9 “(A) accords rights to or protects the
10 rights of its citizens in financial transactions
11 concerning negotiation, sales, solicitation, dis-
12 closure, terms and conditions, advice, and rem-
13 edies; or

14 “(B) prevents counterparties, successors,
15 and assigns of financial contracts from engag-
16 ing in unfair or deceptive acts and practices.

17 “(b) STATE CONSUMER LAWS OF GENERAL APPLI-
18 CATION.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), and notwithstanding any other provision
21 of Federal law, any consumer protection provision in
22 a State consumer law of general application, includ-
23 ing any law relating to unfair or deceptive acts or
24 practices, any consumer fraud law and repossession,

1 foreclosure, and collection law, shall apply to any
2 Federal savings association.

3 “(2) EXCEPTIONS.—

4 “(A) IN GENERAL.—Paragraph (1) does
5 not apply with respect to any State consumer
6 law, if—

7 “(i) the State consumer law discrimi-
8 nates against Federal savings associations;
9 or

10 “(ii) the State consumer law is incon-
11 sistent with provisions of Federal law other
12 than this title, but only to the extent of the
13 inconsistency (as determined in accordance
14 with the provision of the other Federal
15 law).

16 “(B) DETERMINATION OF INCONSIST-
17 ENCY.—For purposes of this paragraph, a State
18 consumer law is not inconsistent with Federal
19 law if the protection that the State consumer
20 law affords consumers is greater than the pro-
21 tection provided under Federal law, as deter-
22 mined by the CFPB.

23 “(c) STATE BANKING OR THRIFT LAWS ENACTED
24 PURSUANT TO FEDERAL LAW.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), and notwithstanding any other provision
3 of Federal law, each Federal savings association
4 shall be subject to any State consumer law that—

5 “(A) is applicable to State savings associa-
6 tions (as that term is defined in section 3 of the
7 Federal Deposit Insurance Act); and

8 “(B) was enacted pursuant to or in accord-
9 ance with, and is not inconsistent with, an Act
10 of Congress, including the Gramm-Leach-Bliley
11 Act, the Consumer Credit Protection Act, and
12 the Real Estate Settlement Procedures Act of
13 1974, that explicitly or by implication, permits
14 States to exceed or supplement the require-
15 ments of any comparable Federal law.

16 “(2) EXCEPTIONS.—

17 “(A) IN GENERAL.—Paragraph (1) does
18 not apply with respect to any provision of State
19 law, if—

20 “(i) the State consumer law discrimi-
21 nates against Federal savings associations;
22 or

23 “(ii) the State consumer law is incon-
24 sistent with provisions of Federal law other
25 than this title, but only to the extent of the

1 inconsistency (as determined in accordance
2 with the provision of the other Federal
3 law).

4 “(B) DETERMINATION OF INCONSIST-
5 ENCY.—For this purposes of this paragraph, a
6 State consumer law is not inconsistent with
7 Federal law if the protection that the State con-
8 sumer law affords consumers is greater than
9 the protection provided under Federal law, as
10 determined by the CFPA.

11 “(d) NO NEGATIVE IMPLICATIONS FOR APPLICA-
12 BILITY OF OTHER STATE LAWS.—No provision of this
13 section may be construed as altering or affecting the appli-
14 cability to Federal savings associations, of any State law
15 which is not described in this section.

16 “(e) EFFECT OF TRANSFER OF TRANSACTION.—
17 State consumer law applicable to a transaction at the in-
18 ception of the transaction may not be preempted under
19 Federal law solely because a Federal savings association
20 subsequently acquires the asset or instrument that is the
21 subject of the transaction.

22 “(f) DENIAL OF PREEMPTION NOT A DEPRIVATION
23 OF A CIVIL RIGHT.—The preemption of any provision of
24 the law of any State with respect to any Federal savings
25 association shall not be treated as a right, privilege, or

1 immunity for purposes of section 1979 of the Revised
2 Statutes of the United States (42 U.S.C. 1983).”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for the Home Owners’ Loan Act (12 U.S.C. 1461 et seq.)
5 is amended by striking the item relating to section 6 and
6 inserting the following new item:

“6. State law preemption standards for Federal savings associations and subsidi-
aries clarified.”.

7 **SEC. 1046. VISITORIAL STANDARDS FOR NATIONAL BANKS**
8 **AND SAVINGS ASSOCIATIONS.**

9 (a) NATIONAL BANKS.—Section 5136C of the Re-
10 vised Statutes of the United States (as added by this sub-
11 title) is amended by adding at the end the following new
12 subsections:

13 “(g) VISITORIAL POWERS.—

14 “(1) IN GENERAL.—No provision of this title
15 which relates to visitorial powers or otherwise limits
16 or restricts the supervisory, examination, or regu-
17 latory authority to which any national bank is sub-
18 ject shall be construed as limiting or restricting the
19 authority of any attorney general (or other chief law
20 enforcement officer) of any State to bring any action
21 in any court of appropriate jurisdiction—

22 “(A) to require a national bank to produce
23 records relative to the investigation of violations

1 of State consumer law, or Federal consumer
2 laws;

3 “(B) to enforce any applicable provision of
4 Federal or State law, as authorized by such
5 law; or

6 “(C) on behalf of residents of such State,
7 to enforce any applicable provision of any Fed-
8 eral or State law against a national bank, as
9 authorized by such law, or to seek relief and re-
10 cover damages for such residents from any vio-
11 lation of any such law by any national bank.

12 “(2) PRIOR CONSULTATION WITH FIRA RE-
13 QUIRED.—The attorney general (or other chief law
14 enforcement officer) of any State shall consult with
15 FIRA before acting under paragraph (1).

16 “(h) ENFORCEMENT ACTIONS.—The ability of FIRA
17 to bring an enforcement action under this title or section
18 5 of the Federal Trade Commission Act does not preclude
19 any private party from enforcing rights granted under
20 Federal or State law in the 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 new subsections:

24 “(g) 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 require a Federal savings associa-
7 tion to produce records relative to the investiga-
8 tion of violations of State consumer law, or
9 Federal consumer laws;

10 “(B) to enforce any applicable provision of
11 Federal or State law, as authorized by such
12 law; or

13 “(C) on behalf of residents of such State,
14 to enforce any applicable provision of any Fed-
15 eral or State law against a Federal savings as-
16 sociation, as authorized by such law, or to seek
17 relief and recover damages for such residents
18 from any violation of any such law by any Fed-
19 eral savings association.

20 “(2) PRIOR CONSULTATION WITH FIRA RE-
21 QUIRED.—The attorney general (or other chief law
22 enforcement officer) of any State shall consult with
23 FIRA before acting under paragraph (1).

24 “(h) ENFORCEMENT ACTIONS.—The ability of FIRA
25 to bring an enforcement action under this Act or section

1 5 of the Federal Trade Commission Act does not preclude
2 any private party from enforcing rights granted under
3 Federal or State law in the courts.”.

4 **SEC. 1047. CLARIFICATION OF LAW APPLICABLE TO NON-**
5 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

6 Section 6 of the Home Owners’ Loan Act (as added
7 by section 1046 of this title) is amended by adding after
8 subsection (i) (as added by section 1047) the following
9 new subsection:

10 “(j) CLARIFICATION OF LAW APPLICABLE TO NON-
11 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
12 ATES OF FEDERAL SAVINGS ASSOCIATIONS.—No provi-
13 sion of this title may be construed as preempting the ap-
14 plicability of State law to any nondepository institution or
15 any subsidiary, other affiliate, or agent of a Federal sav-
16 ings association.”.

17 **SEC. 1048. EFFECTIVE DATE.**

18 This subtitle shall become effective on the designated
19 transfer date.

20 **Subtitle E—Enforcement Powers**

21 **SEC. 1051. DEFINITIONS.**

22 For purposes of this subtitle, the following definitions
23 shall apply:

1 (1) CIVIL INVESTIGATIVE DEMAND AND DE-
2 MAND.—The terms “civil investigative demand” and
3 “demand” mean any demand issued by the CFPA.

4 (2) CFPA INVESTIGATION.—The term “CFPA
5 investigation” means any inquiry conducted by a
6 CFPA investigator for the purpose of ascertaining
7 whether any person is or has been engaged in any
8 conduct that is a violation, as defined in this section.

9 (3) CFPA INVESTIGATOR.—The term “CFPA
10 investigator” means any attorney or investigator em-
11 ployed by the CFPA who is charged with the duty
12 of enforcing or carrying into effect any provisions of
13 this title, any enumerated consumer law, the au-
14 thorities transferred under subtitles F and H, or any
15 rule or order promulgated thereunder by the CFPA.

16 (4) CUSTODIAN.—The term “custodian” means
17 the custodian or any deputy custodian designated by
18 the CFPA.

19 (5) DOCUMENTARY MATERIAL.—The term
20 “documentary material” includes the original or any
21 copy of any book, document, record, report, memo-
22 randum, paper, communication, tabulation, chart,
23 logs, electronic files, or other data or data compila-
24 tions stored in any medium.

1 (2) FAILURE TO OBEY.—In case of contumacy
2 or refusal to obey a subpoena issued pursuant to
3 this paragraph and served upon any person, the dis-
4 trict court of the United States for any district in
5 which such person is found, resides, or transacts
6 business, upon application by the CFPA or a CFPA
7 investigator and after notice to such person, may
8 issue an order requiring such person to appear and
9 give testimony or to appear and produce documents
10 or other material.

11 (3) CONTEMPT.—Any failure to obey an order
12 of the court under this subsection may be punished
13 by the court as a contempt thereof.

14 (c) DEMANDS.—

15 (1) IN GENERAL.—Whenever the CFPA has
16 reason to believe that any person may be in posses-
17 sion, custody, or control of any documentary mate-
18 rial or tangible things, or may have any information,
19 relevant to a violation, the CFPA may, before the in-
20 stitution of any proceedings under this title or under
21 any enumerated consumer law or pursuant to the
22 authorities transferred under subtitles F and H,
23 issue in writing, and cause to be served upon such
24 person, a civil investigative demand requiring such
25 person to—

1 (A) produce such documentary material for
2 inspection and copying or reproduction in the
3 form or medium requested by the CFPA;

4 (B) submit such tangible things;

5 (C) file written reports or answers to ques-
6 tions;

7 (D) give oral testimony concerning docu-
8 mentary material, tangible things, or other in-
9 formation; or

10 (E) furnish any combination of such mate-
11 rial, answers, or testimony.

12 (2) REQUIREMENTS.—Each civil investigative
13 demand shall state the nature of the conduct consti-
14 tuting the alleged violation which is under investiga-
15 tion and the provision of law applicable to such vio-
16 lation.

17 (3) PRODUCTION OF DOCUMENTS.—Each civil
18 investigative demand for the production of documen-
19 tary material shall—

20 (A) describe each class of documentary
21 material to be produced under the demand with
22 such definiteness and certainty as to permit
23 such material to be fairly identified;

24 (B) prescribe a return date or dates which
25 will provide a reasonable period of time within

1 which the material so demanded may be assem-
2 bled and made available for inspection and
3 copying or reproduction; and

4 (C) identify the custodian to whom such
5 material shall be made available.

6 (4) PRODUCTION OF THINGS.—Each civil inves-
7 tigative demand for the submission of tangible
8 things shall—

9 (A) describe each class of tangible things
10 to be submitted under the demand with such
11 definiteness and certainty as to permit such
12 things to be fairly identified;

13 (B) prescribe a return date or dates which
14 will provide a reasonable period of time within
15 which the things so demanded may be assem-
16 bled and submitted; and

17 (C) identify the custodian to whom such
18 things shall be submitted.

19 (5) DEMAND FOR WRITTEN REPORTS OR AN-
20 SWERS.—Each civil investigative demand for written
21 reports or answers to questions shall—

22 (A) propound with definiteness and cer-
23 tainty the reports to be produced or the ques-
24 tions to be answered;

1 (B) prescribe a date or dates at which time
2 written reports or answers to questions shall be
3 submitted; and

4 (C) identify the custodian to whom such
5 reports or answers shall be submitted.

6 (6) ORAL TESTIMONY.—Each civil investigative
7 demand for the giving of oral testimony shall—

8 (A) prescribe a date, time, and place at
9 which oral testimony shall be commenced; and

10 (B) identify a CFPA investigator who shall
11 conduct the investigation and the custodian to
12 whom the transcript of such investigation shall
13 be submitted.

14 (7) SERVICE.—Any civil investigative demand
15 and any enforcement petition filed under this section
16 may be served—

17 (A) by any CFPA investigator at any place
18 within the territorial jurisdiction of any court of
19 the United States; and

20 (B) upon any person who is not found
21 within the territorial jurisdiction of any court of
22 the United States—

23 (i) in such manner as the Federal
24 Rules of Civil Procedure prescribe for serv-
25 ice in a foreign nation; and

1 (ii) to the extent that the courts of
2 the United States have authority to assert
3 jurisdiction over such person, consistent
4 with due process, the United States Dis-
5 trict Court for the District of Columbia
6 shall have the same jurisdiction to take
7 any action respecting compliance with this
8 section by such person that such district
9 court would have if such person were per-
10 sonally within the jurisdiction of such dis-
11 trict court.

12 (8) METHOD OF SERVICE.—Service of any civil
13 investigative demand or any enforcement petition
14 filed under this section may be made upon a person,
15 including any legal entity, by—

16 (A) delivering a duly executed copy of such
17 demand or petition to the individual or to any
18 partner, executive officer, managing agent, or
19 general agent of such person, or to any agent
20 of such person authorized by appointment or by
21 law to receive service of process on behalf of
22 such person;

23 (B) delivering a duly executed copy of such
24 demand or petition to the principal office or
25 place of business of the person to be served; or

1 (C) depositing a duly executed copy in the
2 United States mails, by registered or certified
3 mail, return receipt requested, duly addressed
4 to such person at the principal office or place
5 of business of such person.

6 (9) PROOF OF SERVICE.—

7 (A) IN GENERAL.—A verified return by the
8 individual serving any civil investigative demand
9 or any enforcement petition filed under this sec-
10 tion setting forth the manner of such service
11 shall be proof of such service.

12 (B) RETURN RECEIPTS.—In the case of
13 service by registered or certified mail, such re-
14 turn shall be accompanied by the return post
15 office receipt of delivery of such demand or en-
16 forcement petition.

17 (10) PRODUCTION OF DOCUMENTARY MATE-
18 RIAL.—The production of documentary material in
19 response to a civil investigative demand shall be
20 made under a sworn certificate, in such form as the
21 demand designates, by the person, if a natural per-
22 son, to whom the demand is directed or, if not a
23 natural person, by any person having knowledge of
24 the facts and circumstances relating to such produc-
25 tion, to the effect that all of the documentary mate-

1 rial required by the demand and in the possession,
2 custody, or control of the person to whom the de-
3 mand is directed has been produced and made avail-
4 able to the custodian.

5 (11) SUBMISSION OF TANGIBLE THINGS.—The
6 submission of tangible things in response to a civil
7 investigative demand shall be made under a sworn
8 certificate, in such form as the demand designates,
9 by the person to whom the demand is directed or,
10 if not a natural person, by any person having knowl-
11 edge of the facts and circumstances relating to such
12 production, to the effect that all of the tangible
13 things required by the demand and in the posses-
14 sion, custody, or control of the person to whom the
15 demand is directed have been submitted to the cus-
16 todian.

17 (12) SEPARATE ANSWERS.—Each reporting re-
18 quirement or question in a civil investigative demand
19 shall be answered separately and fully in writing
20 under oath, unless it is objected to, in which event
21 the reasons for the objection shall be stated in lieu
22 of an answer, and it shall be submitted under a
23 sworn certificate, in such form as the demand des-
24 ignates, by the person, if a natural person, to whom
25 the demand is directed or, if not a natural person,

1 by any person responsible for answering each report-
2 ing requirement or question, to the effect that all in-
3 formation required by the demand and in the posses-
4 sion, custody, control, or knowledge of the person to
5 whom the demand is directed has been submitted.

6 (13) TESTIMONY.—

7 (A) IN GENERAL.—

8 (i) OATH OR AFFIRMATION.—Any
9 CFPA investigator before whom oral testi-
10 mony is to be taken shall put the witness
11 under oath or affirmation, and shall per-
12 sonally, or by any individual acting under
13 the direction of and in the presence of the
14 CFPA investigator, record the testimony of
15 the witness.

16 (ii) TRANSCRIPTION.—The testimony
17 shall be taken stenographically and tran-
18 scribed.

19 (iii) TRANSMISSION TO CUSTODIAN.—
20 After the testimony is fully transcribed,
21 the CFPA investigator before whom the
22 testimony is taken shall promptly transmit
23 a copy of the transcript of the testimony to
24 the custodian.

1 (B) PARTIES PRESENT.—Any CFPA inves-
2 tigator before whom oral testimony is to be
3 taken shall exclude from the place where the
4 testimony is to be taken all other persons, ex-
5 cept the person giving the testimony, the attor-
6 ney of that person, the officer before whom the
7 testimony is to be taken, and any stenographer
8 taking such testimony.

9 (C) LOCATION.—The oral testimony of any
10 person taken pursuant to a civil investigative
11 demand shall be taken in the judicial district of
12 the United States in which such person resides,
13 is found, or transacts business, or in such other
14 place as may be agreed upon by the CFPA in-
15 vestigator before whom the oral testimony of
16 such person is to be taken and such person.

17 (D) ATTORNEY REPRESENTATION.—

18 (i) IN GENERAL.—Any person com-
19 pelled to appear under a civil investigative
20 demand for oral testimony pursuant to this
21 section may be accompanied, represented,
22 and advised by an attorney.

23 (ii) AUTHORITY.—The attorney may
24 advise a person described in clause (i), in
25 confidence, either upon the request of such

1 person or upon the initiative of the attor-
2 ney, with respect to any question asked of
3 such person.

4 (iii) OBJECTIONS.—A person de-
5 scribed in clause (i), or the attorney for
6 that person, may object on the record to
7 any question, in whole or in part, and such
8 person shall briefly state for the record the
9 reason for the objection. An objection may
10 properly be made, received, and entered
11 upon the record when it is claimed that
12 such person is entitled to refuse to answer
13 the question on grounds of any constitu-
14 tional or other legal right or privilege, in-
15 cluding the privilege against self-incrimina-
16 tion, but such person shall not otherwise
17 object to or refuse to answer any question,
18 and such person or attorney shall not oth-
19 erwise interrupt the oral examination.

20 (iv) REFUSAL TO ANSWER.—If a per-
21 son described in clause (i) refuses to an-
22 swer any question—

23 (I) the CFPA may petition the
24 district court of the United States
25 pursuant to this section for an order

1 compelling such person to answer
2 such question; and

3 (II) on grounds of the privilege
4 against self-incrimination, the testi-
5 mony of such person may be com-
6 pelled in accordance with the provi-
7 sions of section 6004 of title 18,
8 United States Code.

9 (E) TRANSCRIPTS.—For purposes of this
10 subsection—

11 (i) after the testimony of any witness
12 is fully transcribed, the CFPA investigator
13 shall afford the witness (who may be ac-
14 companied by an attorney) a reasonable
15 opportunity to examine the transcript;

16 (ii) the transcript shall be read to or
17 by the witness, unless such examination
18 and reading are waived by the witness;

19 (iii) any changes in form or substance
20 which the witness desires to make shall be
21 entered and identified upon the transcript
22 by the CFPA investigator, with a state-
23 ment of the reasons given by the witness
24 for making such changes;

1 (iv) the transcript shall be signed by
2 the witness, unless the witness in writing
3 waives the signing, is ill, cannot be found,
4 or refuses to sign; and

5 (v) if the transcript is not signed by
6 the witness during the 30-day period fol-
7 lowing the date on which the witness is
8 first afforded a reasonable opportunity to
9 examine the transcript, the CFPA investi-
10 gator shall sign the transcript and state on
11 the record the fact of the waiver, illness,
12 absence of the witness, or the refusal to
13 sign, together with any reasons given for
14 the failure to sign.

15 (F) CERTIFICATION BY INVESTIGATOR.—

16 The CFPA investigator shall certify on the
17 transcript that the witness was duly sworn by
18 him or her and that the transcript is a true
19 record of the testimony given by the witness,
20 and the CFPA investigator shall promptly de-
21 liver the transcript or send it by registered or
22 certified mail to the custodian.

23 (G) COPY OF TRANSCRIPT.—The CFPA
24 investigator shall furnish a copy of the tran-
25 script (upon payment of reasonable charges for

1 the transcript) to the witness only, except that
2 the CFPA may for good cause limit such wit-
3 ness to inspection of the official transcript of
4 his testimony.

5 (H) WITNESS FEES.—Any witness appear-
6 ing for the taking of oral testimony pursuant to
7 a civil investigative demand shall be entitled to
8 the same fees and mileage which are paid to
9 witnesses in the district courts of the United
10 States.

11 (d) CONFIDENTIAL TREATMENT OF DEMAND MATE-
12 RIAL.—

13 (1) IN GENERAL.—Documentary materials and
14 tangible things received as a result of a civil inves-
15 tigative demand shall be subject to requirements and
16 procedures regarding confidentiality, in accordance
17 with rules established by the CFPA.

18 (2) DISCLOSURE TO CONGRESS.—No rule es-
19 tablished by the CFPA regarding the confidentiality
20 of materials submitted to, or otherwise obtained by,
21 the CFPA shall be intended to prevent disclosure to
22 either House of Congress or to an appropriate com-
23 mittee of the Congress, except that the CFPA is per-
24 mitted to adopt rules allowing prior notice to any
25 party that owns or otherwise provided the material

1 to the CFPA and had designated such material as
2 confidential.

3 (e) PETITION FOR ENFORCEMENT.—

4 (1) IN GENERAL.—Whenever any person fails
5 to comply with any civil investigative demand duly
6 served upon him under this section, or whenever sat-
7 isfactory copying or reproduction of material re-
8 quested pursuant to the demand cannot be accom-
9 plished and such person refuses to surrender such
10 material, the CFPA, through such officers or attor-
11 neys as it may designate, may file, in the district
12 court of the United States for any judicial district
13 in which such person resides, is found, or transacts
14 business, and serve upon such person, a petition for
15 an order of such court for the enforcement of this
16 section.

17 (2) SERVICE OF PROCESS.—All process of any
18 court to which application may be made as provided
19 in this subsection may be served in any judicial dis-
20 trict.

21 (f) PETITION FOR ORDER MODIFYING OR SETTING
22 ASIDE DEMAND.—

23 (1) IN GENERAL.—Not later than 20 days after
24 the service of any civil investigative demand upon
25 any person under subsection (b), or at any time be-

1 fore the return date specified in the demand, which-
2 ever period is shorter, or within such period exceed-
3 ing 20 days after service or in excess of such return
4 date as may be prescribed in writing, subsequent to
5 service, by any CFPA investigator named in the de-
6 mand, such person may file with the CFPA a peti-
7 tion for an order by the CFPA modifying or setting
8 aside the demand.

9 (2) COMPLIANCE DURING PENDENCY.—The
10 time permitted for compliance with the demand in
11 whole or in part, as determined proper and ordered
12 by the CFPA, shall not run during the pendency of
13 a petition under paragraph (1) at the CFPA, except
14 that such person shall comply with any portions of
15 the demand not sought to be modified or set aside.

16 (3) SPECIFIC GROUNDS.—A petition under
17 paragraph (1) shall specify each ground upon which
18 the petitioner relies in seeking relief, and may be
19 based upon any failure of the demand to comply
20 with the provisions of this section, or upon any con-
21 stitutional or other legal right or privilege of such
22 person.

23 (g) CUSTODIAL CONTROL.—At any time during
24 which any custodian is in custody or control of any docu-
25 mentary material, tangible things, reports, answers to

1 questions, or transcripts of oral testimony given by any
2 person in compliance with any civil investigative demand,
3 such person may file, in the district court of the United
4 States for the judicial district within which the office of
5 such custodian is situated, and serve upon such custodian,
6 a petition for an order of such court requiring the per-
7 formance by such custodian of any duty imposed upon him
8 by this section or rule promulgated by the CFPA.

9 (h) JURISDICTION OF COURT.—

10 (1) IN GENERAL.—Whenever any petition is
11 filed in any district court of the United States under
12 this section, such court shall have jurisdiction to
13 hear and determine the matter so presented, and to
14 enter such order or orders as may be required to
15 carry out the provisions of this section.

16 (2) APPEAL.—Any final order entered as de-
17 scribed in paragraph (1) shall be subject to appeal
18 pursuant to section 1291 of title 28, United States
19 Code.

20 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

21 (a) IN GENERAL.—The CFPA is authorized to con-
22 duct hearings and adjudication proceedings with respect
23 to any person in the manner prescribed by chapter 5 of
24 title 5, United States Code in order to ensure or enforce
25 compliance with—

1 (1) the provisions of this title, including any
2 rules prescribed by the CFPA under this title; and

3 (2) any other Federal law that the CFPA is au-
4 thorized to enforce, including an enumerated con-
5 sumer law, and any regulations or order prescribed
6 thereunder, unless such Federal law specifically lim-
7 its the CFPA from conducting a hearing or adju-
8 dication proceeding and only to the extent of such
9 limitation.

10 (b) SPECIAL RULES FOR CEASE-AND-DESIST PRO-
11 CEEDINGS.—

12 (1) ORDERS AUTHORIZED.—

13 (A) IN GENERAL.—If, in the opinion of the
14 CFPA, any covered person or service provider is
15 engaging or has engaged in an activity that vio-
16 lates a law, rule, or any condition imposed in
17 writing on the person by the CFPA, the CFPA
18 may issue and serve upon the covered person or
19 service provider a notice of charges in respect
20 thereof.

21 (B) CONTENT OF NOTICE.—The notice
22 under subparagraph (A) shall contain a state-
23 ment of the facts constituting the alleged viola-
24 tion or violations, and shall fix a time and place
25 at which a hearing will be held to determine

1 whether an order to cease and desist should
2 issue against the covered person or service pro-
3 vider, such hearing to be held not earlier than
4 30 days nor later than 60 days after the date
5 of service of such notice, unless an earlier or a
6 later date is set by the CFPA, at the request
7 of any party so served.

8 (C) CONSENT.—Unless the party or par-
9 ties served under subparagraph (B) appear at
10 the hearing personally or by a duly authorized
11 representative, such person shall be deemed to
12 have consented to the issuance of the cease-and-
13 desist order.

14 (D) PROCEDURE.—In the event of consent
15 under subparagraph (C), or if, upon the record,
16 made at any such hearing, the CFPA finds that
17 any violation specified in the notice of charges
18 has been established, the CFPA may issue and
19 serve upon the covered person or service pro-
20 vider an order to cease and desist from the vio-
21 lation or practice. Such order may, by provi-
22 sions which may be mandatory or otherwise, re-
23 quire the covered person or service provider to
24 cease and desist from the subject activity, and

1 to take affirmative action to correct the condi-
2 tions resulting from any such violation.

3 (2) **EFFECTIVENESS OF ORDER.**—A cease-and-
4 desist order shall become effective at the expiration
5 of 30 days after the date of service of an order
6 under paragraph (1) upon the covered person or
7 service provider concerned (except in the case of a
8 cease-and-desist order issued upon consent, which
9 shall become effective at the time specified therein),
10 and shall remain effective and enforceable as pro-
11 vided therein, except to such extent as the order is
12 stayed, modified, terminated, or set aside by action
13 of the CFPA or a reviewing court.

14 (3) **DECISION AND APPEAL.**—Any hearing pro-
15 vided for in this subsection shall be held in the Fed-
16 eral judicial district or in the territory in which the
17 residence or principal office or place of business of
18 the person is located unless the person consents to
19 another place, and shall be conducted in accordance
20 with the provisions of chapter 5 of title 5 of the
21 United States Code. After such hearing, and within
22 90 days after the CFPA has notified the parties that
23 the case has been submitted to the CFPA for final
24 decision, the CFPA shall render its decision (which
25 shall include findings of fact upon which its decision

1 is predicated) and shall issue and serve upon each
2 party to the proceeding an order or orders consistent
3 with the provisions of this section. Judicial review of
4 any such order shall be exclusively as provided in
5 this subsection. Unless a petition for review is timely
6 filed in a court of appeals of the United States, as
7 provided in paragraph (4), and thereafter until the
8 record in the proceeding has been filed as provided
9 in paragraph (4), the CFPA may at any time, upon
10 such notice and in such manner as the CFPA shall
11 determine proper, modify, terminate, or set aside
12 any such order. Upon filing of the record as pro-
13 vided, the CFPA may modify, terminate, or set aside
14 any such order with permission of the court.

15 (4) APPEAL TO COURT OF APPEALS.—Any
16 party to any proceeding under this subsection may
17 obtain a review of any order served pursuant to this
18 subsection (other than an order issued with the con-
19 sent of the person concerned) by the filing in the
20 court of appeals of the United States for the circuit
21 in which the principal office of the covered person is
22 located, or in the United States Court of Appeals for
23 the District of Columbia Circuit, within 30 days
24 after the date of service of such order, a written pe-
25 tition praying that the order of the CFPA be modi-

1 fied, terminated, or set aside. A copy of such peti-
2 tion shall be forthwith transmitted by the clerk of
3 the court to the CFPA, and thereupon the CFPA
4 shall file in the court the record in the proceeding,
5 as provided in section 2112 of title 28 of the United
6 States Code. Upon the filing of such petition, such
7 court shall have jurisdiction, which upon the filing of
8 the record shall except as provided in the last sen-
9 tence of paragraph (3) be exclusive, to affirm, mod-
10 ify, terminate, or set aside, in whole or in part, the
11 order of the CFPA. Review of such proceedings shall
12 be had as provided in chapter 7 of title 5 of the
13 United States Code. The judgment and decree of the
14 court shall be final, except that the same shall be
15 subject to review by the Supreme Court upon certio-
16 rari, as provided in section 1254 of title 28 of the
17 United States Code.

18 (5) NO STAY.—The commencement of pro-
19 ceedings for judicial review under paragraph (4)
20 shall not, unless specifically ordered by the court,
21 operate as a stay of any order issued by the CFPA.

22 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-
23 DESIST PROCEEDINGS.—

24 (1) IN GENERAL.—Whenever the CFPA deter-
25 mines that the violation specified in the notice of

1 charges served upon a person, including a service
2 provider, pursuant to subsection (b), or the continu-
3 ation thereof, is likely to cause the person to be in-
4 solvent or otherwise prejudice the interests of con-
5 sumers before the completion of the proceedings con-
6 ducted pursuant to subsection (b), the CFPA may
7 issue a temporary order requiring the person to
8 cease and desist from any such violation or practice
9 and to take affirmative action to prevent or remedy
10 such insolvency or other condition pending comple-
11 tion of such proceedings. Such order may include
12 any requirement authorized under this subtitle. Such
13 order shall become effective upon service upon the
14 person and, unless set aside, limited, or suspended
15 by a court in proceedings authorized by paragraph
16 (2), shall remain effective and enforceable pending
17 the completion of the administrative proceedings
18 pursuant to such notice and until such time as the
19 CFPA shall dismiss the charges specified in such no-
20 tice, or if a cease-and-desist order is issued against
21 the person, until the effective date of such order.

22 (2) APPEAL.—Not later than 10 days after the
23 covered person or service provider concerned has
24 been served with a temporary cease-and-desist order,
25 the person may apply to the United States district

1 court for the judicial district in which the residence
2 or principal office or place of business of the person
3 is located, or the United States District Court for
4 the District of Columbia, for an injunction setting
5 aside, limiting, or suspending the enforcement, oper-
6 ation, or effectiveness of such order pending the
7 completion of the administrative proceedings pursu-
8 ant to the notice of charges served upon the person
9 under subsection (b), and such court shall have ju-
10 risdiction to issue such injunction.

11 (3) INCOMPLETE OR INACCURATE RECORDS.—

12 (A) TEMPORARY ORDER.—If a notice of
13 charges served under subsection (b) specifies,
14 on the basis of particular facts and cir-
15 cumstances, that the books and records of a
16 covered person or service provider are so incom-
17 plete or inaccurate that the CFPA is unable to
18 determine the financial condition of that person
19 or the details or purpose of any transaction or
20 transactions that may have a material effect on
21 the financial condition of that person, the
22 CFPA may issue a temporary order requiring—

23 (i) the cessation of any activity or
24 practice which gave rise, whether in whole

1 or in part, to the incomplete or inaccurate
2 state of the books or records; or

3 (ii) affirmative action to restore such
4 books or records to a complete and accu-
5 rate state, until the completion of the pro-
6 ceedings under subsection (b)(1).

7 (B) EFFECTIVE PERIOD.—Any temporary
8 order issued under subparagraph (A)—

9 (i) shall become effective upon service;
10 and

11 (ii) unless set aside, limited, or sus-
12 pended by a court in proceedings under
13 paragraph (2), shall remain in effect and
14 enforceable until the earlier of—

15 (I) the completion of the pro-
16 ceeding initiated under subsection (b)
17 in connection with the notice of
18 charges; or

19 (II) the date the CFPA deter-
20 mines, by examination or otherwise,
21 that the books and records of the cov-
22 ered person or service provider are ac-
23 curate and reflect the financial condi-
24 tion thereof.

1 (d) SPECIAL RULES FOR ENFORCEMENT OF OR-
2 DERS.—

3 (1) IN GENERAL.—The CFPA may in its dis-
4 cretion apply to the United States district court
5 within the jurisdiction of which the principal office
6 or place of business of the person is located, for the
7 enforcement of any effective and outstanding notice
8 or order issued under this section, and such court
9 shall have jurisdiction and power to order and re-
10 quire compliance herewith.

11 (2) EXCEPTION.—Except as otherwise provided
12 in this subsection, no court shall have jurisdiction to
13 affect by injunction or otherwise the issuance or en-
14 forcement of any notice or order or to review, mod-
15 ify, suspend, terminate, or set aside any such notice
16 or order.

17 (e) RULES.—The CFPA shall prescribe rules estab-
18 lishing such procedures as may be necessary to carry out
19 this section.

20 **SEC. 1054. LITIGATION AUTHORITY.**

21 (a) IN GENERAL.—If any person violates a provision
22 of this title, any enumerated consumer law, any law for
23 which authorities were transferred under subtitles F and
24 H, or any rule or order prescribed by the CFPA there-
25 under, then the CFPA may commence a civil action

1 against such person to impose a civil penalty or to seek
2 all appropriate legal and equitable relief including a per-
3 manent or temporary injunction as permitted by law.

4 (b) REPRESENTATION.—The CFPA may act in its
5 own name and through its own attorneys in enforcing any
6 provision of this title, rules thereunder, or any other law
7 or regulation, or in any action, suit, or proceeding to which
8 the CFPA is a party.

9 (c) COMPROMISE OF ACTIONS.—The CFPA may
10 compromise or settle any action if such compromise is ap-
11 proved by the court.

12 (d) NOTICE TO THE ATTORNEY GENERAL.—When
13 commencing a civil action under this title, any enumerated
14 consumer law, any law for which authorities were trans-
15 ferred under subtitles F and H, or any rule thereunder,
16 the CFPA shall notify the Attorney General.

17 (e) APPEARANCE BEFORE THE SUPREME COURT.—
18 The CFPA may represent itself in its own name before
19 the Supreme Court of the United States, provided that
20 the CFPA makes a written request to the Attorney Gen-
21 eral within the 10-day period which begins on the date
22 of entry of the judgment which would permit any party
23 to file a petition for writ of certiorari, and the Attorney
24 General concurs with such request or fails to take action
25 within 60 days of the request of the CFPA.

1 (f) FORUM.—Any civil action brought under this title
2 may be brought in a United States district court or in
3 any court of competent jurisdiction of a state in a district
4 in which the defendant is located or resides or is doing
5 business, and such court shall have jurisdiction to enjoin
6 such person and to require compliance with this title, any
7 enumerated consumer law, any law for which authorities
8 were transferred under subtitles F and H, or rule or order
9 of the CFPA thereunder.

10 (g) TIME FOR BRINGING ACTION.—

11 (1) IN GENERAL.—Except as otherwise per-
12 mitted by law or equity, no action may be brought
13 under this title more than 3 years after the date of
14 discovery of the violation to which an action relates.

15 (2) LIMITATIONS UNDER OTHER FEDERAL
16 LAWS.—

17 (A) IN GENERAL.—For purposes of this
18 section, an action arising under this title does
19 not include claims arising solely under enumer-
20 ated consumer laws.

21 (B) CFPA AUTHORITY.—In any action
22 arising solely under an enumerated consumer
23 law, the CFPA may commence, defend, or in-
24 tervene in the action in accordance with the re-

1 requirements of that provision of law, as applica-
2 ble.

3 (C) TRANSFERRED AUTHORITY.—In any
4 action arising solely under the laws for which
5 authorities were transferred by subtitles F and
6 H, the CFPA may commence, defend, or inter-
7 vene in the action in accordance with the re-
8 quirements of that provision of law, as applica-
9 ble.

10 **SEC. 1055. RELIEF AVAILABLE.**

11 (a) ADMINISTRATIVE PROCEEDINGS OR COURT AC-
12 TIONS.—

13 (1) JURISDICTION.—The court (or the CFPA,
14 as the case may be) in an action or adjudication pro-
15 ceeding brought under this title, any enumerated
16 consumer law, or any law for which authorities were
17 transferred by subtitles F and H, shall have jurisdic-
18 tion to grant any appropriate legal or equitable relief
19 with respect to a violation of this title, any enumer-
20 ated consumer law, and any law for which authori-
21 ties were transferred by subtitles F and H, including
22 a violation of a rule or order prescribed under this
23 title, any enumerated consumer law and any law for
24 which authorities were transferred by subtitles F
25 and H.

1 (2) **RELIEF.**—Relief under this section may in-
2 clude, without limitation—

3 (A) rescission or reformation of contracts;

4 (B) refund of moneys or return of real
5 property;

6 (C) restitution;

7 (D) disgorgement or compensation for un-
8 just enrichment;

9 (E) payment of damages or other mone-
10 tary relief;

11 (F) public notification regarding the viola-
12 tion, including the costs of notification;

13 (G) limits on the activities or functions of
14 the person; and

15 (H) civil money penalties, as set forth
16 more fully in subsection (c).

17 (3) **NO EXEMPLARY OR PUNITIVE DAMAGES.**—

18 Nothing in this subsection shall be construed as au-
19 thorizing the imposition of exemplary or punitive
20 damages.

21 (b) **RECOVERY OF COSTS.**—In any action brought by
22 the CFPA, a State attorney general, or any State regu-
23 lator to enforce any provision of this title, any enumerated
24 consumer law, any law for which authorities were trans-
25 ferred by subtitles F and H, or any rule or order pre-

1 scribed by the CFPA thereunder, the CFPA, the State at-
2 torney general, or the State regulator may recover its costs
3 in connection with prosecuting such action if the CFPA,
4 the State attorney general, or the State regulator is the
5 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 this
10 title, any enumerated consumer law, or any rule or
11 order prescribed under this title shall forfeit and pay
12 a civil penalty pursuant to this subsection.

13 (2) PENALTY AMOUNTS.—

14 (A) FIRST TIER.—For any violation of a
15 law, rule, or final order or condition imposed in
16 writing by the CFPA, or for any failure to pay
17 any fee or assessment imposed by the CFPA
18 (including any fee or assessment for which a re-
19 lated person may be liable), a civil penalty
20 under this subsection may not exceed \$5,000
21 for each day during which such violation or fail-
22 ure to pay continues.

23 (B) SECOND TIER.—Notwithstanding
24 paragraph (A), for any violation of a rule pre-
25 scribed under section 1036 or for any person

1 that recklessly engages in a violation of this
2 title, any enumerated consumer law, or any rule
3 or order prescribed under this title, a civil pen-
4 alty under this subsection may not exceed
5 \$25,000 for each day during which such viola-
6 tion continues.

7 (C) **THIRD TIER.**—Notwithstanding sub-
8 paragraphs (A) and (B), for any person that
9 knowingly violates this title, any enumerated
10 consumer law, or a rule or order prescribed
11 under this title, a civil penalty under this sub-
12 section may not exceed \$1,000,000 for each day
13 during which such violation continues.

14 (3) **MITIGATING FACTORS.**—In determining the
15 amount of any penalty assessed under paragraph
16 (2), the CFPA or the court shall take into account
17 the appropriateness of the penalty with respect to—

18 (A) the size of financial resources and good
19 faith of the person charged;

20 (B) the gravity of the violation or failure
21 to pay;

22 (C) the severity of the risks to or losses of
23 the consumer, which may take into account the
24 number of products or services sold or provided;

25 (D) the history of previous violations; and

1 (E) such other matters as justice may re-
2 quire.

3 (4) **AUTHORITY TO MODIFY OR REMIT PEN-**
4 **ALTY.**—The CFPA may compromise, modify, or
5 remit any penalty which may be assessed or had al-
6 ready been assessed under paragraph (2). The
7 amount of such penalty, when finally determined,
8 shall be exclusive of any sums owed by the person
9 to the United States in connection with the costs of
10 the proceeding, and may be deducted from any sums
11 owing by the United States to the person charged.

12 (5) **NOTICE AND HEARING.**—No civil penalty
13 may be assessed under this subsection with respect
14 to a violation of this title, any enumerated consumer
15 law, or any rule or order prescribed by the CFPA,
16 unless—

17 (A) the CFPA gives notice and an oppor-
18 tunity for a hearing to the person accused of
19 the violation; or

20 (B) the appropriate court has ordered such
21 assessment and entered judgment in favor of
22 the CFPA.

23 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

24 If the CFPA obtains evidence that any person, do-
25 mestic or foreign, has engaged in conduct that may con-

1 stitute a violation of Federal criminal law, the CFPA shall
2 have the power to transmit such evidence to the Attorney
3 General of the United States, who may institute criminal
4 proceedings under appropriate law. Nothing in this section
5 affects any other authority of the CFPA to disclose infor-
6 mation.

7 **SEC. 1057. EMPLOYEE PROTECTION.**

8 (a) IN GENERAL.—No covered person or service pro-
9 vider shall terminate or in any other way discriminate
10 against, or cause to be terminated or discriminated
11 against, any covered employee or any authorized rep-
12 resentative of covered employees by reason of the fact that
13 such employee or representative, whether at the initiative
14 of the employee or in the ordinary course of the duties
15 of the employee (or any person acting pursuant to a re-
16 quest of the employee), has—

17 (1) provided information to the CFPA or to any
18 other State, local, or Federal, government authority
19 or law enforcement agency relating to any violation
20 of, or any act or omission that the employee reason-
21 ably believes to be a violation of, any provision of
22 this title or any other provision of law that is subject
23 to the jurisdiction of the CFPA, or any rule, order,
24 standard, or prohibition prescribed by the CFPA;

1 (2) testified or will testify in any proceeding re-
2 sulting from the administration or enforcement of
3 any provision of this title or any other provision of
4 law that is subject to the jurisdiction of the CFPA,
5 or any rule, order, standard, or prohibition pre-
6 scribed by the CFPA;

7 (3) filed, instituted or caused to be filed or in-
8 stituted any proceeding under any enumerated con-
9 sumer law or any provision of law for which authori-
10 ties were transferred by subtitles F and H; or

11 (4) objected to, or refused to participate in, any
12 activity, policy, practice, or assigned task that the
13 employee (or other such person) reasonably believed
14 to be in violation of any law, rule, order, standard,
15 or prohibition, subject to the jurisdiction of, or en-
16 forceable by, the CFPA.

17 (b) DEFINITION OF COVERED EMPLOYEE.—For the
18 purposes of this section, the term “covered employee”
19 means any individual performing tasks related to the pro-
20 vision of a financial product or service to a consumer.

21 (c) PROCEDURES AND TIMETABLES.—

22 (1) COMPLAINT.—

23 (A) IN GENERAL.—A person who believes
24 that he or she has been discharged or otherwise
25 discriminated against by any person in violation

1 of subsection (a) may, not later than 180 days
2 after the date on which such alleged violation
3 occurs, file (or have any person file on his or
4 her behalf) a complaint with the Secretary of
5 Labor alleging such discharge or discrimination
6 and identifying the person responsible for such
7 act.

8 (B) ACTIONS OF SECRETARY OF LABOR.—
9 Upon receipt of such a complaint, the Secretary
10 of Labor shall notify, in writing, the person
11 named in the complaint who is alleged to have
12 committed the violation, of —

- 13 (i) the filing of the complaint;
14 (ii) the allegations contained in the
15 complaint;
16 (iii) the substance of evidence sup-
17 porting the complaint; and
18 (iv) opportunities that will be afforded
19 to such person under paragraph (2).

20 (2) INVESTIGATION BY SECRETARY OF
21 LABOR.—

22 (A) IN GENERAL.—Not later than 60 days
23 after the date of receipt of a complaint filed
24 under paragraph (1), and after affording the
25 complainant and the person named in the com-

1 plaintiff who is alleged to have committed the vio-
2 lation that is the basis for the complaint an op-
3 portunity to submit to the Secretary of Labor
4 a written response to the complaint and an op-
5 portunity to meet with a representative of the
6 Secretary of Labor to present statements from
7 witnesses, the Secretary of Labor shall—

8 (i) initiate an investigation and deter-
9 mine whether there is reasonable cause to
10 believe that the complaint has merit; and

11 (ii) notify the complainant and the
12 person alleged to have committed the viola-
13 tion of subsection (a), in writing, of such
14 determination.

15 **(B) NOTICE OF RELIEF AVAILABLE.**—If
16 the Secretary of Labor concludes that there is
17 reasonable cause to believe that a violation of
18 subsection (a) has occurred, the Secretary of
19 Labor shall, together with the notice under sub-
20 paragraph (A)(ii), issue a preliminary order
21 providing the relief prescribed by paragraph
22 (4)(B).

23 **(C) REQUEST FOR HEARING.**—Not later
24 than 30 days after the date of receipt of notifi-
25 cation of a determination of the Secretary of

1 Labor under this paragraph, either the person
2 alleged to have committed the violation or the
3 complainant may file objections to the findings
4 or preliminary order, or both, and request a
5 hearing on the record. The filing of such objec-
6 tions shall not operate to stay any reinstatement
7 remedy contained in the preliminary
8 order. Any such hearing shall be conducted ex-
9 pediently, and if a hearing is not requested in
10 such 30-day period, the preliminary order shall
11 be deemed a final order that is not subject to
12 judicial review.

13 (3) **GROUND**S FOR DETERMINATION OF COM-
14 **PLAIN**TS.—

15 (A) **IN GENERAL**.—The Secretary of Labor
16 shall dismiss a complaint filed under this sub-
17 section, and shall not conduct an investigation
18 otherwise required under paragraph (2), unless
19 the complainant makes a prima facie showing
20 that any behavior described in paragraphs (1)
21 through (4) of subsection (a) was a contrib-
22 uting factor in the unfavorable personnel action
23 alleged in the complaint.

24 (B) **REBUTTAL EVIDENCE**.—Notwith-
25 standing a finding by the Secretary of Labor

1 that the complainant has made the showing re-
2 quired under subparagraph (A), no investiga-
3 tion otherwise required under paragraph (2)
4 shall be conducted, if the employer dem-
5 onstrates, by clear and convincing evidence,
6 that the employer would have taken the same
7 unfavorable personnel action in the absence of
8 that behavior.

9 (C) EVIDENTIARY STANDARDS.—The Sec-
10 retary of Labor may determine that a violation
11 of subsection (a) has occurred only if the com-
12 plainant demonstrates that any behavior de-
13 scribed in paragraphs (1) through (4) of sub-
14 section (a) was a contributing factor in the un-
15 favorable personnel action alleged in the com-
16 plaint. Relief may not be ordered under sub-
17 paragraph (A) if the employer demonstrates by
18 clear and convincing evidence that the employer
19 would have taken the same unfavorable per-
20 sonnel action in the absence of that behavior.

21 (4) ISSUANCE OF FINAL ORDERS; REVIEW PRO-
22 CEDURES.—

23 (A) TIMING.—Not later than 120 days
24 after the date of conclusion of any hearing
25 under paragraph (2), the Secretary of Labor

1 shall issue a final order providing the relief pre-
2 scribed by this paragraph or denying the com-
3 plaint. At any time before issuance of a final
4 order, a proceeding under this subsection may
5 be terminated on the basis of a settlement
6 agreement entered into by the Secretary of
7 Labor, the complainant, and the person alleged
8 to have committed the violation.

9 (B) PENALTIES.—If, in response to a com-
10 plaint filed under paragraph (1), the Secretary
11 of Labor determines that a violation of sub-
12 section (a) has occurred, the Secretary of Labor
13 shall order the person who committed such vio-
14 lation—

15 (i) to take affirmative action to abate
16 the violation;

17 (ii) to reinstate the complainant to his
18 or her former position, together with com-
19 pensation (including back pay) and restore
20 the terms, conditions, and privileges associ-
21 ated with his or her employment; and

22 (iii) to provide compensatory damages
23 to the complainant. If such an order is
24 issued under this paragraph, the Secretary
25 of Labor, at the request of the complain-

1 ant, shall assess against the person against
2 whom the order is issued a sum equal to
3 the aggregate amount of all costs and ex-
4 penses (including attorneys' and expert
5 witness fees) reasonably incurred, as deter-
6 mined by the Secretary of Labor, by the
7 complainant for, or in connection with, the
8 bringing of the complaint upon which the
9 order was issued.

10 (C) PENALTY FOR FRIVOLOUS CLAIMS.—If
11 the Secretary of Labor finds that a complaint
12 under paragraph (1) is frivolous or has been
13 brought in bad faith, the Secretary of Labor
14 may award to the prevailing employer a reason-
15 able attorney fee, not exceeding \$1,000, to be
16 paid by the complainant.

17 (D) DE NOVO REVIEW.—

18 (i) FAILURE OF THE SECRETARY TO
19 ACT.—If the Secretary of Labor has not
20 issued a final order within 210 days after
21 the date of filing of a complaint under this
22 subsection, or within 90 days after the
23 date of receipt of a written determination,
24 the complainant may bring an action at
25 law or equity for de novo review in the ap-

1 appropriate district court of the United
2 States having jurisdiction, which shall have
3 jurisdiction over such an action without re-
4 gard to the amount in controversy, and
5 which action shall, at the request of either
6 party to such action, be tried by the court
7 with a jury.

8 (ii) PROCEDURES.—A proceedings
9 under clause (i) shall be governed by the
10 same legal burdens of proof specified in
11 paragraph (3). The court shall have juris-
12 diction to grant all relief necessary to
13 make the employee whole, including injunc-
14 tive relief and compensatory damages, in-
15 cluding—

16 (I) reinstatement with the same
17 seniority status that the employee
18 would have had, but for the discharge
19 or discrimination;

20 (II) the amount of back pay, with
21 interest; and

22 (III) compensation for any spe-
23 cial damages sustained as a result of
24 the discharge or discrimination, in-

1 including litigation costs, expert witness
2 fees, and reasonable attorney fees.

3 (E) OTHER APPEALS.—Unless the com-
4 plainant brings an action under subparagraph
5 (D), any person adversely affected or aggrieved
6 by a final order issued under subparagraph (A)
7 may file a petition for review of the order in the
8 United States Court of Appeals for the circuit
9 in which the violation with respect to which the
10 order was issued, allegedly occurred or the cir-
11 cuit in which the complainant resided on the
12 date of such violation, not later than 60 days
13 after the date of the issuance of the final order
14 of the Secretary of Labor under subparagraph
15 (A). Review shall conform to chapter 7 of title
16 5, United States Code. The commencement of
17 proceedings under this subparagraph shall not,
18 unless ordered by the court, operate as a stay
19 of the order. An order of the Secretary of
20 Labor with respect to which review could have
21 been obtained under this subparagraph shall
22 not be subject to judicial review in any criminal
23 or other civil proceeding.

24 (5) FAILURE TO COMPLY WITH ORDER.—

1 (A) ACTIONS BY THE SECRETARY.—If any
2 person has failed to comply with a final order
3 issued under paragraph (4), the Secretary of
4 Labor may file a civil action in the United
5 States district court for the district in which
6 the violation was found to have occurred, or in
7 the United States district court for the District
8 of Columbia, to enforce such order. In actions
9 brought under this paragraph, the district
10 courts shall have jurisdiction to grant all appro-
11 priate relief including injunctive relief and com-
12 pensatory damages.

13 (B) CIVIL ACTIONS TO COMPEL COMPLI-
14 ANCE.—A person on whose behalf an order was
15 issued under paragraph (4) may commence a
16 civil action against the person to whom such
17 order was issued to require compliance with
18 such order. The appropriate United States dis-
19 trict court shall have jurisdiction, without re-
20 gard to the amount in controversy or the citi-
21 zenship of the parties, to enforce such order.

22 (C) AWARD OF COSTS AUTHORIZED.—The
23 court, in issuing any final order under this
24 paragraph, may award costs of litigation (in-
25 cluding reasonable attorney and expert witness

1 fees) to any party, whenever the court deter-
2 mines such award is appropriate.

3 (D) MANDAMUS PROCEEDINGS.—Any non-
4 discretionary duty imposed by this section shall
5 be enforceable in a mandamus proceeding
6 brought under section 1361 of title 28, United
7 States Code.

8 (d) UNENFORCEABILITY OF CERTAIN AGREE-
9 MENTS.—

10 (1) NO WAIVER OF RIGHTS AND REMEDIES.—
11 Except as provided under paragraph (4), and not-
12 withstanding any other provision of law, the rights
13 and remedies provided for in this section may not be
14 waived by any agreement, policy, form, or condition
15 of employment, including by any predispute arbitra-
16 tion agreement.

17 (2) NO PREDISPUTE ARBITRATION AGREE-
18 MENTS.—Except as provided under paragraph (3),
19 and notwithstanding any other provision of law, no
20 predispute arbitration agreement shall be valid or
21 enforceable if it requires arbitration of a dispute
22 arising under this section.

23 (3) EXCEPTION.—Notwithstanding paragraphs
24 (1) and (2), an arbitration provision in a collective
25 bargaining agreement shall be enforceable as to dis-

1 putes arising under subsection (a)(2), unless the
2 CFPB determines, by rule, that such provision is in-
3 consistent with the purposes of this Act.

4 **SEC. 1058. EFFECTIVE DATE.**

5 This subtitle shall become effective on the designated
6 transfer date.

7 **Subtitle F—Transfer of Functions**
8 **and Personnel; Transitional**
9 **Provisions**

10 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**
11 **TION FUNCTIONS.**

12 (a) **DEFINED TERMS.**—For purposes of this sub-
13 title—

14 (1) the term “consumer financial protection
15 functions” means research, rulemaking, issuance of
16 orders or guidance, supervision, examination, and
17 enforcement activities, powers, and duties relating to
18 the provision of consumer financial products or serv-
19 ices, including the authority to assess and collect
20 fees for those purposes; and

21 (2) the terms “transferor agency” and “trans-
22 feror agencies” mean, respectively—

23 (A) the Board of Governors (and any Fed-
24 eral reserve bank, as the context requires), the
25 Federal Deposit Insurance Corporation, the

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1 Federal Trade Commission, the National Credit
2 Union Administration, the Office of the Comp-
3 troller of the Currency, the Office of Thrift Su-
4 pervision, and the Department of Housing and
5 Urban Development, and the heads of those
6 agencies; and

7 (B) the agencies listed in subparagraph
8 (A), collectively.

9 (b) IN GENERAL.—Except as provided in subsection
10 (c), consumer financial protection functions are trans-
11 ferred as follows:

12 (1) BOARD OF GOVERNORS.—

13 (A) TRANSFER OF FUNCTIONS.—All con-
14 sumer financial protection functions of the
15 Board of Governors are transferred to the
16 CFPA.

17 (B) BOARD OF GOVERNORS AUTHORITY.—
18 The CFPA shall have all powers and duties
19 that were vested in the Board of Governors, re-
20 lating to consumer financial protection func-
21 tions, on the day before the designated transfer
22 date.

23 (2) COMPTROLLER OF THE CURRENCY.—

24 (A) TRANSFER OF FUNCTIONS.—All con-
25 sumer financial protection functions of the

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1 Comptroller of the Currency are transferred to
2 the CFPA.

3 (B) COMPTROLLER AUTHORITY.—The
4 CFPA shall have all powers and duties that
5 were vested in the Comptroller of the Currency,
6 relating to consumer financial protection func-
7 tions, on the day before the designated transfer
8 date.

9 (3) DIRECTOR OF THE OFFICE OF THRIFT SU-
10 PERVISION.—

11 (A) TRANSFER OF FUNCTIONS.—All con-
12 sumer financial protection functions of the Di-
13 rector of the Office of Thrift Supervision are
14 transferred to the CFPA.

15 (B) DIRECTOR AUTHORITY.—The CFPA
16 shall have all powers and duties that were vest-
17 ed in the Director of the Office of Thrift Super-
18 vision, relating to consumer financial protection
19 functions, on the day before the designated
20 transfer date.

21 (4) FEDERAL DEPOSIT INSURANCE CORPORA-
22 TION.—

23 (A) TRANSFER OF FUNCTIONS.—All con-
24 sumer financial protection functions of the Fed-

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1 eral Deposit Insurance Corporation are trans-
2 ferred to the CFPA.

3 (B) CORPORATION AUTHORITY.—The
4 CFPA shall have all powers and duties that
5 were vested in the Federal Deposit Insurance
6 Corporation, relating to consumer financial pro-
7 tection functions, on the day before the des-
8 ignated transfer date.

9 (5) FEDERAL TRADE COMMISSION.—

10 (A) TRANSFER OF FUNCTIONS.—Except as
11 provided in subparagraph (C), all consumer fi-
12 nancial protection functions of the Federal
13 Trade Commission are transferred to the
14 CFPA.

15 (B) COMMISSION AUTHORITY.—Except as
16 provided in subparagraph (C), the CFPA shall
17 have all powers and duties that were vested in
18 the Federal Trade Commission relating to con-
19 sumer financial protection functions on the day
20 before the designated transfer date.

21 (C) CONTINUATION OF CERTAIN COMMIS-
22 SION AUTHORITIES.—Notwithstanding subpara-
23 graphs (A) and (B), the Federal Trade Com-
24 mission shall continue to have authority to en-
25 force, and issue rules with respect to—

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1 (i) the Credit Repair Organizations
2 Act (15 U.S.C. 1679 et seq.);

3 (ii) section 5 of the Federal Trade
4 Commission Act (15 U.S.C. 45); and

5 (iii) the Telemarketing and Consumer
6 Fraud and Abuse Prevention Act (15
7 U.S.C. 6101 et seq.).

8 (6) NATIONAL CREDIT UNION ADMINISTRA-
9 TION.—

10 (A) TRANSFER OF FUNCTIONS.—All con-
11 sumer financial protection functions of the Na-
12 tional Credit Union Administration are trans-
13 ferred to the CFPA.

14 (B) NATIONAL CREDIT UNION ADMINIS-
15 TRATION AUTHORITY.—The CFPA shall have
16 all powers and duties that were vested in the
17 National Credit Union Administration, relating
18 to consumer financial protection functions, on
19 the day before the designated transfer date.

20 (7) DEPARTMENT OF HOUSING AND URBAN DE-
21 VELOPMENT.—

22 (A) TRANSFER OF FUNCTIONS.—All con-
23 sumer protection functions of the Secretary of
24 the Department of Housing and Urban Devel-
25 opment relating to the Real Estate Settlement

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1 Procedures Act of 1974 (12 U.S.C. 2601 et
2 seq.) and the Secure and Fair Enforcement for
3 Mortgage Licensing Act of 2008 (12 U.S.C.
4 5102 et seq.) are transferred to the CFPA.

5 (B) DEPARTMENT OF HOUSING AND
6 URBAN DEVELOPMENT'S AUTHORITY.—The
7 CFPA shall have all powers and duties that
8 were vested in the Secretary of the Department
9 of Housing and Urban Development relating to
10 the Real Estate Settlement Procedures Act of
11 1974, and the Secure and Fair Enforcement for
12 Mortgage Licensing Act of 2008, on the day be-
13 fore the designated transfer date.

14 (c) TRANSFERS OF FUNCTIONS SUBJECT TO BACK-
15 STOP ENFORCEMENT AUTHORITY REMAINING WITH
16 TRANSFEROR AGENCIES.—The transfers of functions in
17 subsection (b) do not affect the authority of the agencies
18 identified in subsection (b) from initiating enforcement
19 proceedings under the circumstances described in section
20 1022(e)(3).

21 (d) TERMINATION OF AUTHORITY OF TRANSFEROR
22 AGENCIES TO COLLECT FEES FOR CONSUMER FINAN-
23 CIAL PROTECTION PURPOSES.—Authorities of the agen-
24 cies identified in subsection (b) to assess and collect fees
25 to cover the cost of conducting consumer financial protec-

1 tion functions shall terminate on the day before the des-
2 ignated transfer date.

3 (e) **EFFECTIVE DATE.**—Subsections (b) and (c) shall
4 become effective on the designated transfer date.

5 **SEC. 1062. DESIGNATED TRANSFER DATE.**

6 (a) **IN GENERAL.**—Not later than 60 days after the
7 date of enactment of this Act, the Secretary shall—

8 (1) in consultation with the Chairman of the
9 Board of Governors, the Chairperson of the Cor-
10 poration, the Chairman of the Federal Trade Com-
11 mission, the Chairman of the National Credit Union
12 Administration Board, the Comptroller of the Cur-
13 rency, the Director of the Office of Thrift Super-
14 vision, the Secretary of the Department of Housing
15 and Urban Development, and the Director of the Of-
16 fice of Management and Budget, designate a single
17 calendar date for the transfer of functions to the
18 CFPA under section 1061; and

19 (2) publish notice of that designated date in the
20 Federal Register.

21 (b) **CHANGING DESIGNATION.**—The Secretary—

22 (1) may, in consultation with the Chairman of
23 the Board of Governors, the Chairperson of the Fed-
24 eral Deposit Insurance Corporation, the Chairman
25 of the Federal Trade Commission, the Chairman of

1 the National Credit Union Administration Board,
2 the Comptroller of the Currency, the Director of the
3 Office of Thrift Supervision, the Secretary of the
4 Department of Housing and Urban Development,
5 and the Director of the Office of Management and
6 Budget, change the date designated under sub-
7 section (a); and

8 (2) shall publish notice of any changed des-
9 ignated date in the Federal Register.

10 (c) PERMISSIBLE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), any date designated under this section
13 shall be not earlier than 180 days, nor later than 18
14 months, after the date of enactment of this Act.

15 (2) EXTENSION OF TIME.—The Secretary may
16 designate a date that is later than 18 months after
17 the date of enactment of this Act if the Secretary
18 transmits to appropriate committees of Congress—

19 (A) a written determination that orderly
20 implementation of this title is not feasible be-
21 fore the date that is 18 months after the date
22 of enactment of this Act;

23 (B) an explanation of why an extension is
24 necessary for the orderly implementation of this
25 title; and

1 (C) a description of the steps that will be
2 taken to effect an orderly and timely implemen-
3 tation of this title within the extended time pe-
4 riod.

5 (3) EXTENSION LIMITED.—In no case may any
6 date designated under this section be later than 24
7 months after the date of enactment of this Act.

8 **SEC. 1063. SAVINGS PROVISIONS.**

9 (a) BOARD OF GOVERNORS.—

10 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
11 TIONS NOT AFFECTED.—Section 1061(b)(1) does
12 not affect the validity of any right, duty, or obliga-
13 tion of the United States, the Board of Governors
14 (or any Federal reserve bank), or any other person
15 that—

16 (A) arises under any provision of law relat-
17 ing to any consumer financial protection func-
18 tion of the Board of Governors transferred to
19 the CFPB by this title; and

20 (B) existed on the day before the des-
21 ignated transfer date.

22 (2) CONTINUATION OF SUITS.—No provision of
23 this Act shall abate any proceeding commenced by
24 or against the Board of Governors (or any Federal
25 reserve bank) before the designated transfer date

1 with respect to any consumer financial protection
2 function of the Board of Governors (or any Federal
3 reserve bank) transferred to the CFPA by this title,
4 except that the CFPA shall be substituted for the
5 Board of Governors (or Federal reserve bank) as a
6 party to any such proceeding as of the designated
7 transfer date.

8 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

9 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
10 TIONS NOT AFFECTED.—Section 1061(b)(4) does
11 not affect the validity of any right, duty, or obliga-
12 tion of the United States, the Federal Deposit In-
13 surance Corporation, the Board of Directors of that
14 Corporation, or any other person, that—

15 (A) arises under any provision of law relat-
16 ing to any consumer financial protection func-
17 tion of the Federal Deposit Insurance Corpora-
18 tion transferred to the CFPA by this title; and

19 (B) existed on the day before the des-
20 ignated transfer date.

21 (2) CONTINUATION OF SUITS.—No provision of
22 this Act shall abate any proceeding commenced by
23 or against the Federal Deposit Insurance Corpora-
24 tion (or the Board of Directors of that Corporation)
25 before the designated transfer date with respect to

1 any consumer financial protection function of the
2 Federal Deposit Insurance Corporation transferred
3 to the CFPA by this title, except that the CFPA
4 shall be substituted for the Federal Deposit Insur-
5 ance Corporation (or Board of Directors) as a party
6 to any such proceeding as of the designated transfer
7 date.

8 (c) FEDERAL TRADE COMMISSION.—

9 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
10 TIONS NOT AFFECTED.—Section 1061(b)(5) does
11 not affect the validity of any right, duty, or obliga-
12 tion of the United States, the Federal Trade Com-
13 mission, or any other person, that—

14 (A) arises under any provision of law relat-
15 ing to any consumer financial protection func-
16 tion of the Federal Trade Commission trans-
17 ferred to the CFPA by this title; and

18 (B) existed on the day before the des-
19 ignated transfer date.

20 (2) CONTINUATION OF SUITS.—No provision of
21 this Act shall abate any proceeding commenced by
22 or against the Federal Trade Commission before the
23 designated transfer date with respect to any con-
24 sumer financial protection function of the Federal
25 Trade Commission transferred to the CFPA by this

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1 title, except that the CFPA shall be substituted for
2 the Federal Trade Commission as a party to any
3 such proceeding as of the designated transfer date.

4 (d) NATIONAL CREDIT UNION ADMINISTRATION.—

5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
6 TIONS NOT AFFECTED.—Section 1061(b)(6) does
7 not affect the validity of any right, duty, or obliga-
8 tion of the United States, the National Credit Union
9 Administration, the National Credit Union Adminis-
10 tration Board, 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 National Credit Union Administra-
14 tion transferred to the CFPA 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 National Credit Union Administration
20 (or the National Credit Union Administration
21 Board) before the designated transfer date with re-
22 spect to any consumer financial protection function
23 of the National Credit Union Administration trans-
24 ferred to the CFPA by this title, except that the
25 CFPA shall be substituted for the National Credit

1 Union Administration (or National Credit Union Ad-
2 ministration Board) as a party to any such pro-
3 ceeding as 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 CFPA by this title; and

16 (B) existed on the day before the des-
17 igned 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 CFPA by this title before the designated trans-
25 fer date, except that the CFPA shall be substituted

1 for the Comptroller of the Currency (or the Office
2 of the Comptroller of the Currency) as a party to
3 any such proceeding as of the designated transfer
4 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 CFPA by this title;
16 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 CFPA by this title before

1 the designated transfer date, except that the CFPA
2 shall be substituted for the Director (or the Office
3 of Thrift Supervision) as a party to any such pro-
4 ceeding as of the designated transfer date.

5 (g) DEPARTMENT OF HOUSING AND URBAN DEVEL-
6 OPMENT.—

7 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
8 TIONS NOT AFFECTED.—Section 1061(b)(7) shall
9 not affect the validity of any right, duty, or obliga-
10 tion of the United States, the Secretary of the De-
11 partment of Housing and Urban Development (or
12 the Department of Housing and Urban Develop-
13 ment), or any other person, that—

14 (A) arises under any provision of law relat-
15 ing to any function of the Secretary of the De-
16 partment of Housing and Urban Development
17 with respect to the Real Estate Settlement Pro-
18 cedures Act of 1974 (12 U.S.C. 2601 et seq.)
19 or the Secure and Fair Enforcement for Mort-
20 gage Licensing Act of 2008 (12 U.S.C. 5102 et
21 seq.) transferred to the CFPA by this title; and

22 (B) existed on the day before the des-
23 igned transfer date.

24 (2) CONTINUATION OF SUITS.—This title shall
25 not abate any proceeding commenced by or against

1 the Secretary of the Department of Housing and
2 Urban Development (or the Department of Housing
3 and Urban Development) with respect to any con-
4 sumer financial protection function of the Secretary
5 of the Department of Housing and Urban Develop-
6 ment transferred to the CFPA by this title before
7 the designated transfer date, except that the CFPA
8 shall be substituted for the Secretary of the Depart-
9 ment of Housing and Urban Development (or the
10 Department of Housing and Urban Development) as
11 a party to any such proceeding as of the designated
12 transfer date.

13 (h) CONTINUATION OF EXISTING ORDERS, RULES,
14 DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—
15 All orders, resolutions, determinations, agreements, and
16 rules that have been issued, made, prescribed, or allowed
17 to become effective by any transferor agency or by a court
18 of competent jurisdiction, in the performance of consumer
19 financial protection functions that are transferred by this
20 title and that are in effect on the day before the designated
21 transfer date, shall continue in effect according to the
22 terms of those orders, resolutions, determinations, agree-
23 ments, and rules, and shall not be enforceable by or
24 against the CFPA.

1 (i) IDENTIFICATION OF RULES CONTINUED.—Not
2 later than the designated transfer date, the CFPA—

3 (1) shall, after consultation with the head of
4 each transferor agency, identify the rules continued
5 under subsection (g) that will be enforced by the
6 CFPA; and

7 (2) shall publish a list of such rules in the Fed-
8 eral Register.

9 (j) STATUS OF RULES PROPOSED OR NOT YET EF-
10 FECTIVE.—

11 (1) PROPOSED RULES.—Any proposed rule of a
12 transferor agency which that agency, in performing
13 consumer financial protection functions transferred
14 by this title, has proposed before the designated
15 transfer date, but has not published as a final rule
16 before that date, shall be deemed to be a proposed
17 rule of the CFPA.

18 (2) RULES NOT YET EFFECTIVE.—Any interim
19 or final rule of a transferor agency which that agen-
20 cy, in performing consumer financial protection
21 functions transferred by this title, has published be-
22 fore the designated transfer date, but which has not
23 become effective before that date, shall become effec-
24 tive as a rule of the CFPA according to its terms.

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1 SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.**2 (a) IN GENERAL.—****3 (1) CERTAIN FEDERAL RESERVE SYSTEM EM-**
4 PLOYEES TRANSFERRED.—**5 (A) IDENTIFYING EMPLOYEES FOR TRANS-**
6 FER.—The CFPA and the Board of Governors
7 shall—**8 (i) jointly determine the number of**
9 employees of the Board necessary to per-
10 form or support the consumer financial
11 protection functions of the Board of Gov-
12 ernors that are transferred to the CFPA
13 by this title; and**14 (ii) consistent with the number deter-**
15 mined under clause (i), jointly identify em-
16 ployees of the Board of Governors for
17 transfer to the CFPA, in a manner that
18 the CFPA and the Board of Governors, in
19 their sole discretion, determine equitable.**20 (B) IDENTIFIED EMPLOYEES TRANS-**
21 FERRED.—All employees of the Board of Gov-
22 ernors identified under subparagraph (A)(ii)
23 shall be transferred to the CFPA for employ-
24 ment.**25 (C) FEDERAL RESERVE BANK EMPLOY-**
26 EES.—Employees of any Federal reserve bank

1 who, on the day before the designated transfer
2 date, are performing consumer financial protec-
3 tion functions on behalf of the Board of Gov-
4 ernors shall be treated as employees of the
5 Board of Governors for purposes of subpara-
6 graphs (A) and (B).

7 (2) CERTAIN FDIC EMPLOYEES TRANS-
8 FERRED.—

9 (A) IDENTIFYING EMPLOYEES FOR TRANS-
10 FER.—The CFPA and the Board of Directors
11 of the Federal Deposit Insurance Corporation
12 shall—

13 (i) jointly determine the number of
14 employees of that Corporation necessary to
15 perform or support the consumer financial
16 protection functions of the Corporation
17 that are transferred to the CFPA by this
18 title; and

19 (ii) consistent with the number deter-
20 mined under clause (i), jointly identify em-
21 ployees of the Corporation for transfer to
22 the CFPA, in a manner that the CFPA
23 and the Board of Directors of the Corpora-
24 tion, in their sole discretion, determine eq-
25 uitable.

1 (B) IDENTIFIED EMPLOYEES TRANS-
2 FERRED.—All employees of the Corporation
3 identified under subparagraph (A)(ii) shall be
4 transferred to the CFPA for employment.

5 (3) CERTAIN NCUA EMPLOYEES TRANS-
6 FERRED.—

7 (A) IDENTIFYING EMPLOYEES FOR TRANS-
8 FER.—The CFPA and the National Credit
9 Union Administration Board shall—

10 (i) jointly determine the number of
11 employees of the National Credit Union
12 Administration necessary to perform or
13 support the consumer financial protection
14 functions of the National Credit Union Ad-
15 ministration that are transferred to the
16 CFPA by this title; and

17 (ii) consistent with the number deter-
18 mined under clause (i), jointly identify em-
19 ployees of the National Credit Union Ad-
20 ministration for transfer to the CFPA, in
21 a manner that the CFPA and the National
22 Credit Union Administration Board, in
23 their sole discretion, determine equitable.

24 (B) IDENTIFIED EMPLOYEES TRANS-
25 FERRED.—All employees of the National Credit

1 Union Administration identified under subpara-
2 graph (A)(ii) shall be transferred to the CFPA
3 for employment.

4 (4) CERTAIN EMPLOYEES OF DEPARTMENT OF
5 HOUSING AND URBAN DEVELOPMENT TRANS-
6 FERRED.—

7 (A) IDENTIFYING EMPLOYEES FOR TRANS-
8 FER.—The CFPA and the Secretary of the De-
9 partment of Housing and Urban Development
10 shall—

11 (i) jointly determine the number of
12 employees of the Department of Housing
13 and Urban Development necessary to per-
14 form or support the consumer protection
15 functions of the Department that are
16 transferred to the CFPA by this title; and

17 (ii) consistent with the number deter-
18 mined under clause (i), jointly identify em-
19 ployees of the Department of Housing and
20 Urban Development for transfer to the
21 CFPA in a manner that the CFPA and the
22 Secretary of the Department of Housing
23 and Urban Development, in their sole dis-
24 cretion, deem equitable.

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1 (B) IDENTIFIED EMPLOYEES TRANS-
2 FERRED.—All employees of the Department of
3 Housing and Urban Development identified
4 under subparagraph (A)(ii) shall be transferred
5 to the CFPA for employment.

6 (5) APPOINTMENT AUTHORITY FOR EXCEPTED
7 SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-
8 FERRED.—

9 (A) IN GENERAL.—In the case of employee
10 occupying a position in the excepted service or
11 the Senior Executive Service, any appointment
12 authority established pursuant to law or regula-
13 tions of the Office of Personnel Management
14 for filling such positions shall be transferred,
15 subject to subparagraph (B).

16 (B) DECLINING TRANSFERS ALLOWED.—
17 An agency or entity may decline to make a
18 transfer of authority under subparagraph (A)
19 (and the employees appointed pursuant thereto)
20 to the extent that such authority relates to posi-
21 tions excepted from the competitive service be-
22 cause of their confidential, policy-making, pol-
23 icy-determining, or policy-advocating character,
24 and non-career positions in the Senior Execu-

1 tive Service (within the meaning of section
2 3132(a)(7) of title 5, United States Code).

3 (b) **TIMING OF TRANSFERS AND POSITION ASSIGN-**
4 **MENTS.**—Each employee to be transferred under this sec-
5 tion shall—

6 (1) be transferred not later than 90 days after
7 the designated transfer date; and

8 (2) receive notice of a position assignment not
9 later than 120 days after the effective date of his or
10 her transfer.

11 (c) **TRANSFER OF FUNCTION.**—

12 (1) **IN GENERAL.**—Notwithstanding any other
13 provision of law, the transfer of employees shall be
14 deemed a transfer of functions for the purpose of
15 section 3503 of title 5, United States Code.

16 (2) **PRIORITY OF THIS TITLE.**—If any provi-
17 sions of this title conflict with any protection pro-
18 vided to transferred employees under section 3503 of
19 title 5, United States Code, the provisions of this
20 title shall control.

21 (d) **EQUAL STATUS AND TENURE POSITIONS.**—

22 (1) **EMPLOYEES TRANSFERRED FROM FDIC,**
23 **FTC, HUD, NCUA, OCC, AND OTS.**—Each employee
24 transferred from the Federal Deposit Insurance Cor-
25 poration, the Federal Trade Commission, the Na-

1 tional Credit Union Administration, the Office of the
2 Comptroller of the Currency, the Office of Thrift
3 Supervision, or the Department of Housing and
4 Urban Development shall be placed in a position at
5 the CFPA with the same status and tenure as that
6 employee held on the day before the designated
7 transfer date.

8 (2) EMPLOYEES TRANSFERRED FROM THE
9 FEDERAL RESERVE SYSTEM.—

10 (A) COMPARABILITY.—Each employee
11 transferred from the Board of Governors or
12 from a Federal reserve bank shall be placed in
13 a position with the same status and tenure as
14 that of an employee transferring to the CFPA
15 from the Office of the Comptroller of the Cur-
16 rency who perform similar functions and have
17 similar periods of service.

18 (B) SERVICE PERIODS CREDITED.—For
19 purposes of this paragraph, periods of service
20 with the Board of Governors or a Federal re-
21 serve bank shall be credited as periods of serv-
22 ice with a Federal agency.

23 (e) ADDITIONAL CERTIFICATION REQUIREMENTS
24 LIMITED.—Examiners transferred to the CFPA are not
25 subject to any additional certification requirements before

1 being placed in a comparable examiner position at the
2 CFPA examining the same types of institutions as they
3 examined before they were transferred.

4 (f) PERSONNEL ACTIONS LIMITED.—

5 (1) 2-YEAR PROTECTION.—Except as provided
6 in paragraph (2), each transferred employee holding
7 a permanent position on the day before the des-
8 ignated transfer date may not, during the 2-year pe-
9 riod beginning on the designated transfer date, be
10 involuntarily separated, or involuntarily reassigned
11 outside his or her local locality pay area, as defined
12 by the Office of Personnel Management.

13 (2) EXCEPTIONS.—Paragraph (1) does not
14 limit the right of the CFPA—

15 (A) to separate an employee for cause or
16 for unacceptable performance;

17 (B) to terminate an appointment to a posi-
18 tion excepted from the competitive service be-
19 cause of its confidential policy-making, policy-
20 determining, or policy-advocating character; or

21 (C) to reassign a supervisory employee out-
22 side his or her locality pay area, as defined by
23 the Office of Personnel Management, when the
24 CFPA determines that the reassignment is nec-
25 essary for the efficient operation of the CFPA.

1 (g) PAY.—

2 (1) 2-YEAR PROTECTION.—Except as provided
3 in paragraph (2), each transferred employee shall,
4 during the 2-year period beginning on the des-
5 ignated transfer date, receive pay at a rate equal to
6 not less than the basic rate of pay (including any ge-
7 ographic differential) that the employee received
8 during the 2-year period immediately before the
9 transfer.

10 (2) EXCEPTIONS.—Paragraph (1) does not
11 limit the right of the CFPA to reduce the rate of
12 basic pay of a transferred employee—

13 (A) for cause;

14 (B) for unacceptable performance; or

15 (C) with the consent of the employee.

16 (3) PROTECTION ONLY WHILE EMPLOYED.—
17 Paragraph (1) applies to a transferred employee
18 only while that employee remains employed by the
19 CFPA.

20 (4) PAY INCREASES PERMITTED.—Paragraph
21 (1) does not limit the authority of the CFPA to in-
22 crease the pay of a transferred employee.

23 (h) REORGANIZATION.—

24 (1) BETWEEN 1ST AND 3RD YEAR.—

1 (A) IN GENERAL.—If the CFPA deter-
2 mines, during the 2-year period beginning 1
3 year after the designated transfer date, that a
4 reorganization of the staff of the CFPA is re-
5 quired—

6 (i) that reorganization shall be
7 deemed a “major reorganization” for pur-
8 poses of affording affected employees re-
9 tirement under section 8336(d)(2) or
10 8414(b)(1)(B) of title 5, United States
11 Code;

12 (ii) before the reorganization occurs,
13 all employees in the same locality pay area
14 as defined by the Office of Personnel Man-
15 agement shall be placed in a uniform posi-
16 tion classification system; and

17 (iii) any resulting reduction in force
18 shall be governed by the provisions of
19 chapter 35 of title 5, United States Code,
20 except that the CFPA shall—

21 (I) establish competitive areas
22 (as that term is defined in regulations
23 issued by the Office of Personnel
24 Management) to include at a min-
25 imum all employees in the same local-

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1 ity pay area as defined by the Office
2 of Personnel Management;

3 (II) establish competitive levels
4 (as that term is defined in regulations
5 issued by the Office of Personnel
6 Management) without regard to
7 whether the particular employees have
8 been appointed to positions in the
9 competitive service or the excepted
10 service; and

11 (III) afford employees appointed
12 to positions in the excepted service
13 (other than to a position excepted
14 from the competitive service because
15 of its confidential policy-making, pol-
16 icy-determining, or policy-advocating
17 character) the same assignment rights
18 to positions within the CFPA as em-
19 ployees appointed to positions in the
20 competitive service.

21 (B) SERVICE CREDIT FOR REDUCTIONS IN
22 FORCE.—For purposes of this paragraph, peri-
23 ods of service with a Federal home loan bank,
24 a joint office of the Federal home loan banks,
25 the Board of Governors, a Federal reserve

1 bank, the Federal Deposit Insurance Corpora-
2 tion, or the National Credit Union Administra-
3 tion shall be credited as periods of service with
4 a Federal agency.

5 (2) AFTER 3RD YEAR.—

6 (A) IN GENERAL.—If the CFPA deter-
7 mines, at any time after the 3-year period be-
8 ginning on the designated transfer date, that a
9 reorganization of the staff of the CFPA is re-
10 quired, any resulting reduction in force shall be
11 governed by the provisions of chapter 35 of title
12 5, United States Code, except that the CFPA
13 shall establish competitive levels (as that term
14 is defined in regulations issued by the Office of
15 Personnel Management) without regard to
16 types of appointment held by particular employ-
17 ees transferred under this section.

18 (B) SERVICE CREDIT FOR REDUCTIONS IN
19 FORCE.—For purposes of this paragraph, peri-
20 ods of service with a Federal home loan bank,
21 a joint office of the Federal home loan banks,
22 the Board of Governors, a Federal reserve
23 bank, the Federal Deposit Insurance Corpora-
24 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 CFPA.

14 (ii) **EMPLOYER CONTRIBUTION.—**The
15 CFPA 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 CFPA
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) CFPA PARTICIPATION IN FEDERAL
13 RESERVE SYSTEM RETIREMENT PLAN.—

14 (i) SEPARATE ACCOUNT IN FEDERAL
15 RESERVE SYSTEM RETIREMENT PLAN ES-
16 TABLISHED.—A separate account in the
17 Federal Reserve System retirement plan
18 shall be established for CFPA employees
19 who do not make the election under sub-
20 paragraph (B).

21 (ii) FUNDS ATTRIBUTABLE TO TRANS-
22 FERRED EMPLOYEES REMAINING IN FED-
23 ERAL RESERVE SYSTEM RETIREMENT
24 PLAN TRANSFERRED.—The proportionate
25 share of funds in the Federal Reserve Sys-

1 tem retirement plan, including the propor-
2 tionate share of any funding surplus in
3 that plan, attributable to a transferred em-
4 ployee who does not make the election
5 under subparagraph (B), shall be trans-
6 ferred to the account established under
7 clause (i).

8 (iii) EMPLOYER CONTRIBUTIONS DE-
9 POSITED.—The CFPA shall deposit into
10 the account established under clause (i)
11 the employer contributions that the CFPA
12 makes on behalf of employees who do not
13 make the election under subparagraph (B).

14 (iv) ACCOUNT ADMINISTRATION.—The
15 CFPA shall administer the account estab-
16 lished under clause (i) as a participating
17 employer in the Federal Reserve System
18 retirement plan.

19 (D) DEFINITIONS.—For purposes of this
20 paragraph—

21 (i) the term “existing retirement
22 plan” means, with respect to any employee
23 transferred under this section, the par-
24 ticular retirement plan (including the Fi-
25 nancial Institutions Retirement Fund) and

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1 any associated thrift savings plan of the
2 agency or Federal reserve bank from which
3 the employee was transferred, which the
4 employee was enrolled in on the day before
5 the designated transfer date; and

6 (ii) the term “Federal employee re-
7 tirement program” means the retirement
8 program for Federal employees established
9 by chapter 84 of title 5, United States
10 Code.

11 (2) BENEFITS OTHER THAN RETIREMENT BEN-
12 EFITS FOR TRANSFERRED EMPLOYEES.—

13 (A) DURING 1ST YEAR.—

14 (i) EXISTING PLANS CONTINUE.—
15 Each transferred employee may, for 1 year
16 after the designated transfer date, retain
17 membership in any other employee benefit
18 program of the agency or bank from which
19 the employee transferred, including a den-
20 tal, vision, long term care, or life insurance
21 program, to which the employee belonged
22 on the day before the designated transfer
23 date.

24 (ii) EMPLOYER CONTRIBUTION.—The
25 CFPA shall reimburse the agency or bank

1 from which an employee was transferred
2 for any cost incurred by that agency or
3 bank in continuing to extend coverage in
4 the benefit program to the employee, as re-
5 quired under that program or negotiated
6 agreements.

7 (B) DENTAL, VISION, OR LIFE INSURANCE
8 AFTER 1ST YEAR.—If, after the 1-year period
9 beginning on the designated transfer date, the
10 CFPA decides not to continue participation in
11 any dental, vision, or life insurance program of
12 an agency or bank from which an employee
13 transferred, a transferred employee who is a
14 member of such a program may, before the de-
15 cision of the CFPA takes effect, elect to enroll,
16 without regard to any regularly scheduled open
17 season, in—

18 (i) the enhanced dental benefits estab-
19 lished by chapter 89A of title 5, United
20 States Code;

21 (ii) the enhanced vision benefits estab-
22 lished by chapter 89B of title 5, United
23 States Code; or

24 (iii) the Federal Employees Group
25 Life Insurance Program established by

1 chapter 87 of title 5, United States Code,
2 without regard to any requirement of in-
3 surability.

4 (C) LONG TERM CARE INSURANCE AFTER
5 1ST YEAR.—If, after the 1-year period begin-
6 ning on the designated transfer date, the CFPA
7 decides not to continue participation in any
8 long term care insurance program of an agency
9 or bank from which an employee transferred, a
10 transferred employee who is a member of such
11 a program may, before the decision of the
12 CFPA takes effect, elect to apply for coverage
13 under the Federal Long Term Care Insurance
14 Program established by chapter 90 of title 5,
15 United States Code, under the underwriting re-
16 quirements applicable to a new active workforce
17 member (as defined in part 875, title 5, Code
18 of Federal Regulations).

19 (D) EMPLOYEE CONTRIBUTION.—An indi-
20 vidual enrolled in the Federal Employees
21 Health Benefits program shall pay any em-
22 ployee contribution required by the plan.

23 (E) ADDITIONAL FUNDING.—The CFPA
24 shall transfer to the Federal Employees Health
25 Benefits Fund established under section 8909

1 of title 5, United States Code, an amount deter-
2 mined by the Director of the Office of Per-
3 sonnel Management, after consultation with the
4 CFPA and the Office of Management and
5 Budget, to be necessary to reimburse the Fund
6 for the cost to the Fund of providing benefits
7 under this paragraph.

8 (F) CREDIT FOR TIME ENROLLED IN
9 OTHER PLANS.—For employees transferred
10 under this title, enrollment in a health benefits
11 plan administered by a transferor agency imme-
12 diately before enrollment in a health benefits
13 plan under chapter 89 of title 5, United States
14 Code, shall be considered as enrollment in a
15 health benefits plan under that chapter for pur-
16 poses of section 8905(b)(1)(A) of title 5, United
17 States Code.

18 (G) SPECIAL PROVISIONS TO ENSURE CON-
19 TINUATION OF LIFE INSURANCE BENEFITS.—

20 (i) IN GENERAL.—An annuitant (as
21 defined in section 8901(3) of title 5,
22 United States Code) who is enrolled in a
23 life insurance plan administered by a
24 transferor agency on the day before the
25 designated transfer date shall be eligible

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1 for coverage by a life insurance plan under
2 sections 8706(b), 8714a, 8714b, and
3 8714c of title 5, United States Code, or in
4 a life insurance plan established by the
5 CFPA, without regard to any regularly
6 scheduled open season and requirement of
7 insurability.

8 (ii) EMPLOYEE CONTRIBUTION.—An
9 individual enrolled in a life insurance plan
10 under this subparagraph shall pay any em-
11 ployee contribution required by the plan.

12 (iii) ADDITIONAL FUNDING.—The
13 CFPA shall transfer to the Employees'
14 Life Insurance Fund established under sec-
15 tion 8714 of title 5, United States Code,
16 an amount determined by the Director of
17 the Office of Personnel Management, after
18 consultation with the CFPA and the Office
19 of Management and Budget, to be nec-
20 essary to reimburse the Fund for the cost
21 to the Fund of providing benefits under
22 this subparagraph not otherwise paid for
23 by the employee under clause (ii).

24 (iv) CREDIT FOR TIME ENROLLED IN
25 OTHER PLANS.—For employees transferred

1 under this title, enrollment in a life insur-
2 ance plan administered by a transferor
3 agency immediately before enrollment in a
4 life insurance plan under chapter 87 of
5 title 5, United States Code, shall be con-
6 sidered as enrollment in a life insurance
7 plan under that chapter for purposes of
8 section 8706(b)(1)(A) of title 5, United
9 States Code.

10 (3) OPM RULES.—The Office of Personnel
11 Management shall issue such rules as are necessary
12 to carry out this subsection.

13 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
14 FICATION SYSTEM.—Not later than 2 years after the des-
15 ignated transfer date, the CFPA shall implement a uni-
16 form pay and classification system for all employees trans-
17 ferred under this title.

18 (k) EQUITABLE TREATMENT.—In administering the
19 provisions of this section, the CFPA—

20 (1) shall take no action that would unfairly dis-
21 advantage transferred employees relative to each
22 other based on their prior employment by the Board
23 of Governors, the Federal Deposit Insurance Cor-
24 poration, the Federal Trade Commission, the Na-
25 tional Credit Union Administration, the Office of the

1 Comptroller of the Currency, the Office of Thrift
2 Supervision, a Federal reserve bank, a Federal home
3 loan bank, or a joint office of the Federal home loan
4 banks; and

5 (2) may take such action as is appropriate in
6 individual cases so that employees transferred under
7 this section receive equitable treatment, with respect
8 to the status, tenure, pay, benefits (other than bene-
9 fits under programs administered by the Office of
10 Personnel Management), and accrued leave or vaca-
11 tion time of those employees, for prior periods of
12 service with any Federal agency, including the
13 Board of Governors of the Federal Reserve System,
14 the Federal Deposit Insurance Corporation, the Fed-
15 eral Trade Commission, the National Credit Union
16 Administration, the Office of the Comptroller of the
17 Currency, the Office of Thrift Supervision, a Federal
18 reserve bank, a Federal home loan bank, or a joint
19 office of the Federal home loan banks.

20 (l) IMPLEMENTATION.—In implementing the provi-
21 sions of this section, the CFPB shall coordinate with the
22 Office of Personnel Management and other entities having
23 expertise in matters related to employment to ensure a
24 fair and orderly transition for affected employees.

1 **SEC. 1065. INCIDENTAL TRANSFERS.**

2 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Di-
3 rector of the Office of Management and Budget, in con-
4 sultation with the Secretary, shall make such additional
5 incidental transfers and dispositions of assets and liabil-
6 ities held, used, arising from, available, or to be made
7 available, in connection with the functions transferred by
8 this title, as the Director may determine necessary to ac-
9 complish the purposes of this title.

10 (b) SUNSET.—The authority provided in this section
11 shall terminate 5 years after the date of enactment of this
12 Act.

13 **SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.**

14 (a) IN GENERAL.—The Secretary is authorized to
15 perform the functions of the CFPA under this subtitle
16 until 3 of the appointed Board members are confirmed
17 by the Senate in accordance with section 1012.

18 (b) INTERIM ADMINISTRATIVE SERVICES BY THE
19 DEPARTMENT OF THE TREASURY.—The Department of
20 the Treasury may provide administrative services nec-
21 essary to support the CFPA before the designated transfer
22 date.

23 (c) INTERIM FUNDING FOR THE DEPARTMENT OF
24 THE TREASURY.—

1 (1) IN GENERAL.—There are authorized to be
2 appropriated to the Department of the Treasury
3 such sums as are necessary to carry out this section.

4 (2) APPORTIONMENT AND RESTRICTIONS.—
5 Notwithstanding any other provision of law,
6 amounts appropriated under paragraph (1) shall be
7 subject to apportionment under section 1517 of title
8 31, United States Code, and restrictions that gen-
9 erally apply to the use of appropriated funds in title
10 31, United States Code, and other laws.

11 **Subtitle G—Regulatory**
12 **Improvements**

13 **SEC. 1071. COLLECTION OF DEPOSIT ACCOUNT DATA.**

14 (a) PURPOSE.—The purpose of this section is to pro-
15 mote awareness and understanding of the access of indi-
16 viduals and communities to financial services, and to iden-
17 tify business and community development needs and op-
18 portunities.

19 (b) IN GENERAL.—

20 (1) RECORDS REQUIRED.—For each branch,
21 automated teller machine at which deposits are ac-
22 cepted, and other deposit taking service facility with
23 respect to any financial institution, the financial in-
24 stitution shall maintain a record of the number and
25 dollar amounts of deposit accounts of customers.

1 (2) GEO-CODED ADDRESSES OF DEPOSITORS.—

2 Customer addresses shall be geo-coded for the collec-
3 tion of data regarding the census tracts of the resi-
4 dences or business locations of customers.

5 (3) IDENTIFICATION OF DEPOSITOR TYPE.—In
6 maintaining records on any deposit account under
7 this section, the financial institution shall record
8 whether the deposit account is for a residential or
9 commercial customer.

10 (4) PUBLIC AVAILABILITY.—

11 (A) IN GENERAL.—Each financial institu-
12 tion shall make publicly available on an annual
13 basis, from information collected under this sec-
14 tion—

15 (i) the address and census tract of
16 each branch, automated teller machine at
17 which deposits are accepted, and other de-
18 posit taking service facility with respect to
19 the financial institution;

20 (ii) the type of deposit account, in-
21 cluding whether the account was a check-
22 ing or savings account; and

23 (iii) data on the number and dollar
24 amount of the accounts, presented by cen-

1 sus tract location of the residential and
2 commercial customer.

3 (B) PROTECTION OF IDENTITY.—In mak-
4 ing data publicly available, any personally iden-
5 tifiable data element shall be removed so as to
6 protect the identities of the commercial and res-
7 idential customers.

8 (c) AVAILABILITY OF INFORMATION.—

9 (1) SUBMISSION TO AGENCIES.—The data re-
10 quired to be compiled and maintained under this
11 section by any financial institution shall be sub-
12 mitted annually to the CFPA, or to a Federal bank-
13 ing agency, in accordance with rules prescribed by
14 the CFPA.

15 (2) AVAILABILITY OF INFORMATION.—Informa-
16 tion compiled and maintained under this section
17 shall be retained for not less than 3 years after the
18 date of preparation and shall be made available to
19 the public, upon request, in the form required under
20 rules prescribed by the CFPA.

21 (d) CFPA USE.—The CFPA—

22 (1) shall use the data on branches and deposit
23 accounts acquired under this section as part of the
24 examination of a financial institution under the
25 Community Reinvestment Act of 1977;

1 (2) shall assess the distribution of residential
2 and commercial accounts at such financial institu-
3 tion across income and minority level of census
4 tracts; and

5 (3) may use the data for any other purpose as
6 permitted by law.

7 (e) **RULES AND GUIDANCE.**—The CFPA shall pre-
8 scribe such rules and issue guidance as may be necessary
9 to carry out, enforce, and compile data pursuant to this
10 section. The CFPA shall prescribe rules regarding the pro-
11 vision of data compiled under this section to the Federal
12 banking agencies to carry out the purposes of this section,
13 and shall issue guidance to financial institutions regarding
14 measures to facilitate compliance with the this section and
15 the requirements of rules prescribed thereunder.

16 (f) **DEFINITIONS.**—For purposes of this section, the
17 following definitions shall apply:

18 (1) **DEPOSIT ACCOUNT.**—The term “deposit ac-
19 count” includes any checking account, savings ac-
20 count, credit union share account, and other type of
21 account as defined by the CFPA.

22 (2) **FINANCIAL INSTITUTION.**—The term “fi-
23 nancial institution”—

1 (A) has the meaning given to the term “in-
2 sured depository institution” in section 3(e)(2)
3 of the Federal Deposit Insurance Act; and

4 (B) includes any credit union.

5 (g) EFFECTIVE DATE.—This section shall become ef-
6 fective on the designated transfer date.

7 **SEC. 1072. SMALL BUSINESS DATA COLLECTION.**

8 (a) IN GENERAL.—The Equal Credit Opportunity
9 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
10 section 704A the following new section:

11 **“SEC. 740B. SMALL BUSINESS LOAN DATA COLLECTION.**

12 “(a) PURPOSE.—The purpose of this section is to fa-
13 cilitate enforcement of fair lending laws and enable com-
14 munities, governmental entities, and creditors to identify
15 business and community development needs and opportu-
16 nities of women-owned and minority-owned small busi-
17 nesses.

18 “(b) IN GENERAL.—Subject to the requirements of
19 this section, in the case of any application to a financial
20 institution for credit for a small business, the financial in-
21 stitution shall—

22 “(1) inquire whether the small business is a
23 women- or minority-owned small business, without
24 regard to whether such application is received in
25 person, by mail, by telephone, by electronic mail or

1 other form of electronic transmission, or by any
2 other means, and whether or not such application is
3 in response to a solicitation by the financial institu-
4 tion; and

5 “(2) maintain a record of the responses to such
6 inquiry, separate from the application and accom-
7 panying information.

8 “(c) **RIGHT TO REFUSE.**—Any applicant for credit
9 may refuse to provide any information requested pursuant
10 to subsection (b) in connection with any application for
11 credit.

12 “(d) **NO ACCESS BY UNDERWRITERS.**—

13 “(1) **LIMITATION.**—Where feasible, no loan un-
14 derwriter or other officer or employee of a financial
15 institution, or any affiliate of a financial institution,
16 involved in making any determination concerning an
17 application for credit shall have access to any infor-
18 mation provided by the applicant pursuant to a re-
19 quest under subsection (b) in connection with such
20 application.

21 “(2) **LIMITED ACCESS.**—If a financial institu-
22 tion determines that loan underwriter or other offi-
23 cer or employee of a financial institution, or any af-
24 filiate of a financial institution, involved in making
25 any determination concerning an application for

1 credit should have access to any information pro-
2 vided by the applicant pursuant to a request under
3 subsection (b), the financial institution shall provide
4 notice to the applicant of the access of the under-
5 writer to such information, along with notice that
6 the financial institution may not discriminate on this
7 basis of such information.

8 “(e) FORM AND MANNER OF INFORMATION.—

9 “(1) IN GENERAL.—Each financial institution
10 shall compile and maintain, in accordance with regu-
11 lations of the CFPA, a record of the information
12 provided by any loan applicant pursuant to a request
13 under subsection (b).

14 “(2) ITEMIZATION.—Information compiled and
15 maintained under paragraph (1) shall be itemized in
16 order to clearly and conspicuously disclose, to the ex-
17 tent available—

18 “(A) the number of the application and the
19 date on which the application was received;

20 “(B) the type and purpose of the loan or
21 other credit being applied for;

22 “(C) the amount of the credit or credit
23 limit applied for, and the amount of the credit
24 transaction or the credit limit approved for such
25 applicant;

1 “(D) the type of action taken with respect
2 to such application, and the date of such action;

3 “(E) the census tract in which is located
4 the principal place of business of the small busi-
5 ness loan applicant;

6 “(F) the gross annual revenue of the busi-
7 ness in the last fiscal year of the small business
8 loan applicant preceding the date of the appli-
9 cation;

10 “(G) the race and ethnicity of the principal
11 owners of the business; and

12 “(H) any additional data that the CFPA
13 determines would aid in fulfilling the purposes
14 of this section.

15 “(3) NO PERSONALLY IDENTIFIABLE INFORMA-
16 TION.—In compiling and maintaining any record of
17 information under this section, a financial institution
18 may not include in such record the name, specific
19 address (other than the census tract required under
20 paragraph (1)(E)), telephone number, electronic
21 mail address, or any other personally identifiable in-
22 formation concerning any individual who is, or is
23 connected with, the small business loan applicant.

24 “(4) DISCRETION TO DELETE OR MODIFY PUB-
25 LICLY-AVAILABLE DATA.—The CFPA may, at its

1 discretion, delete or modify data collected under this
2 section which is or will be available to the public, if
3 the CFPA determines that the deletion or modifica-
4 tion of the data would advance a compelling privacy
5 interest.

6 “(f) AVAILABILITY OF INFORMATION.—

7 “(1) SUBMISSION TO CFPA.—The data required
8 to be compiled and maintained under this section by
9 any financial institution shall be submitted annually
10 to the CFPA.

11 “(2) AVAILABILITY OF INFORMATION.—Infor-
12 mation compiled and maintained under this section
13 shall be—

14 “(A) retained for not less than 3 years
15 after the date of preparation;

16 “(B) made available to the any member of
17 the public, upon request, in the form required
18 under regulations prescribed by the CFPA;

19 “(C) annually made available to the public
20 generally by the CFPA, in such form and in
21 such manner as is determined appropriate by
22 the CFPA.

23 “(3) COMPILATION OF AGGREGATE DATA.—The
24 CFPA may, at its discretion—

1 “(A) compile and aggregate data collected
2 under this section for its own use; and

3 “(B) make public such compilations of ag-
4 gregate data.

5 “(g) DEFINITIONS.—For purposes of this section, the
6 following definitions shall apply:

7 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
8 nancial institution’ means any partnership, com-
9 pany, corporation, association (incorporated or unin-
10 corporated), trust, estate, cooperative organization,
11 or other entity that engages in any financial activity.

12 “(2) MINORITY-OWNED SMALL BUSINESS.—The
13 term ‘minority-owned small business’ means a small
14 business—

15 “(A) more than 50 percent of the owner-
16 ship or control of which is held by 1 or more
17 minority individuals; and

18 “(B) more than 50 percent of the net prof-
19 it or loss of which accrues to 1 or more minor-
20 ity individuals.

21 “(3) WOMEN-OWNED SMALL BUSINESS.—The
22 term ‘women-owned small business’ means a busi-
23 ness—

1 “(A) more than 50 percent of the owner-
2 ship or control of which is held by 1 or more
3 women; and

4 “(B) more than 50 percent of the net prof-
5 it or loss of which accrues to 1 or more women.

6 “(4) **MINORITY.**—The term ‘minority’ has the
7 same meaning as in section 1204(c)(3) of the Finan-
8 cial Institutions Reform, Recovery and Enforcement
9 Act of 1989.

10 “(5) **SMALL BUSINESS LOAN.**—The term ‘small
11 business loan’ shall be defined by the CFPA, which
12 may take into account—

13 “(A) the gross revenues of the borrower;

14 “(B) the total number of employees of the
15 borrower;

16 “(C) the industry in which the borrower
17 has its primary operations; and

18 “(D) the size of the loan.

19 “(h) **CFPA ACTION.**—

20 “(1) **IN GENERAL.**—The CFPA 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 CFPA, 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 CFPA deems necessary or appro-
5 priate to carry out the purposes of this section.

6 “(3) **GUIDANCE.**—The CFPA 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 (b) **TECHNICAL AND CONFORMING AMENDMENTS.**—
13 Section 701(b) of the Equal Credit Opportunity Act (15
14 U.S.C. 1691(b)) is amended—

15 (1) in paragraph (3), by striking “or” at the
16 end;

17 (2) in paragraph (4), by striking the period at
18 the end and inserting “; or”; and

19 (3) by inserting after paragraph (4), the fol-
20 lowing:

21 “(5) to make an inquiry under section 704B, in
22 accordance with the requirements of that section.”.

23 (c) **CLERICAL AMENDMENT.**—The table of sections
24 for title VII of the Consumer Credit Protection Act is

1 amended by inserting after the item relating to section
2 704A the following new item:

“704B. Small business loan data collection.”.

3 (d) **EFFECTIVE DATE.**—This section shall become ef-
4 fective on the designated transfer date.

5 **SEC. 1073. OFFICE OF FINANCIAL LITERACY.**

6 (a) **ESTABLISHMENT.**—The CFPA shall establish an
7 Office of Financial Literacy, which shall be responsible for
8 developing and implementing initiatives intended to edu-
9 cate and empower consumers to make better informed fi-
10 nancial decisions.

11 (b) **OTHER DUTIES.**—The Office of Financial Lit-
12 eracy shall develop and implement a strategy to improve
13 the financial literacy of consumers that includes measur-
14 able goals and objectives, in consultation with the Finan-
15 cial Literacy and Education Commission, consistent with
16 the National Strategy for Financial Education, through
17 activities including providing opportunities for consumers
18 to access—

19 (1) financial counseling;

20 (2) information to assist with the evaluation of
21 credit products and the understanding of credit his-
22 tories and scores;

23 (3) savings, borrowing, and other services found
24 at mainstream financial institutions;

25 (4) activities intended to—

1 (A) prepare for educational expenses and
2 the submission of financial aid applications, and
3 other major purchases;

4 (B) reduce debt; and

5 (C) improve the financial situation of the
6 consumer;

7 (5) assistance in developing long-term savings
8 strategies; and

9 (6) wealth building and financial services dur-
10 ing the preparation process to claim earned income
11 tax credits and Federal benefits.

12 (c) COORDINATION.—The Office of Financial Lit-
13 eracy shall coordinate with other units within the CFPA
14 in carrying out its functions, including—

15 (1) working with the Community Affairs Office
16 to implement the strategy to improve financial lit-
17 erary of consumers; and

18 (2) working with the research unit established
19 by the CFPA to conduct research related to con-
20 sumer financial education and counseling.

21 (d) REPORT.—Not later than 18 months after the
22 date of enactment of this Act, and annually thereafter,
23 the CFPA shall submit a report on its financial literacy
24 activities and strategy to improve financial literacy of con-
25 sumers to—

1 (1) the Committee on Banking, Housing, and
2 Urban Affairs of the Senate; and

3 (2) the Committee on Financial Services of the
4 House of Representatives.

5 (e) MEMBERSHIP IN FINANCIAL LITERACY AND
6 EDUCATION COMMISSION.—Section 513(c)(1) of the Fi-
7 nancial Literacy and Education Improvement Act (20
8 U.S.C. 9702(c)(1)) is amended—

9 (1) in subparagraph (B), by striking “‘and’”
10 at the end;

11 (2) by redesignating subparagraph (C) as sub-
12 paragraph (D); and

13 (3) by inserting after subparagraph (B) the fol-
14 lowing new subparagraph:

15 “(C) the Director of the Consumer Finan-
16 cial Protection Agency; and”.

17 **Subtitle H—Conforming**
18 **Amendments**

19 **SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL**
20 **ACT.**

21 Effective on the date of enactment of this Act, section
22 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C.
23 App. 3) is amended by inserting “the Consumer Financial
24 Protection Agency,” before “the Consumer Product Safety
25 Commission,”.

1 **SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

2 Effective on the date of enactment of this Act, section
3 552a of title 5, United States Code, is amended by adding
4 at the end the following:

5 “(w) **APPLICABILITY TO CONSUMER FINANCIAL PRO-**
6 **TECTION AGENCY.**—Except as provided in the Consumer
7 Financial Protection Agency Act of 2009, this section
8 shall apply with respect to the Consumer Financial Protec-
9 tion Agency.”.

10 **SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORT-**
11 **GAGE TRANSACTION PARITY ACT OF 1982.**

12 (a) **IN GENERAL.**—The Alternative Mortgage Trans-
13 action Parity Act of 1982 (12 U.S.C. 3801 et seq.) is
14 amended—

15 (1) in section 803 (12 U.S.C. 3802(1)), by
16 striking “1974” and all that follows through “de-
17 scribed and defined” and inserting the following:
18 “1974), in which the interest rate or finance charge
19 may be adjusted or renegotiated, described and de-
20 fined”; and

21 (2) in section 804 (12 U.S.C. 3803)—

22 (A) in subsection (a)—

23 (i) in each of paragraphs (1), (2), and
24 (3), by inserting after “transactions made”
25 each place that term appears “on or before
26 the designated transfer date, as deter-

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1 mined under section 1062 of the Consumer
2 Financial Protection Agency Act of
3 2009,”;

4 (ii) in paragraph (2), by striking
5 “and” at the end;

6 (iii) in paragraph (3), by striking the
7 period at the end and inserting “; and”;
8 and

9 (iv) by adding at the end the following
10 new paragraph:

11 “(4) with respect to transactions made after the
12 designated transfer date, only in accordance with
13 regulations governing alternative mortgage trans-
14 actions, as issued by the Consumer Financial Pro-
15 tection Agency for federally chartered housing credi-
16 tors, in accordance with the rulemaking authority
17 granted to the Consumer Financial Protection Agen-
18 cy with regard to federally chartered housing credi-
19 tors under provisions of law other than this sec-
20 tion.”;

21 (B) by striking subsection (c) and insert-
22 ing the following:

23 “(c) **PREEMPTION OF STATE LAW.**—An alternative
24 mortgage transaction may be made by a housing creditor
25 in accordance with this section, notwithstanding any State

1 constitution, law, or regulation that prohibits an alter-
2 native mortgage transaction. For purposes of this sub-
3 section, a State constitution, law, or regulation that pro-
4 hibits an alternative mortgage transaction does not in-
5 clude any State constitution, law, or regulation that regu-
6 lates mortgage transactions generally, including any re-
7 striction on prepayment penalties or late charges.”; and

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

9 “(d) **CFPA ACTIONS.**—The Consumer Financial
10 Protection Agency shall—

11 “(1) review the regulations identified by the
12 Comptroller of the Currency, the National Credit
13 Union Administration, and the Director of the Office
14 of Thrift Supervision (as those rules exist on the
15 designated transfer date), as applicable under para-
16 graphs (1) through (3) of subsection (a);

17 “(2) determine whether such regulations are
18 fair and not deceptive and otherwise meet the objec-
19 tives of section 1021 of the Consumer Financial
20 Protection Agency Act of 2009; and

21 “(3) promulgate regulations under subsection
22 (a)(4) after the designated transfer date.

23 “(e) **DESIGNATED TRANSFER DATE.**—As used in
24 this section, the term ‘designated transfer date’ means the

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1 date determined under section 1062 of the Consumer Fi-
2 nancial Protection Agency Act of 2009.”.

3 (b) **EFFECTIVE DATE.**—This section and the amend-
4 ments made by this section shall become effective on the
5 designated transfer date.

6 (c) **RULE OF CONSTRUCTION.**—The amendments
7 made by subsection (a) shall not affect any transaction
8 covered by the Alternative Mortgage Transaction Parity
9 Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on
10 or before the designated transfer date.

11 **SEC. 1084. AMENDMENTS TO THE COMMUNITY REINVEST-**
12 **MENT ACT OF 1977.**

13 (a) **IN GENERAL.**—The Community Reinvestment
14 Act of 1977 (12 U.S.C. 2901 et seq.) is amended—

15 (1) by striking “each appropriate Federal finan-
16 cial supervisory agency” and inserting “the Con-
17 sumer Financial Protection Agency”;

18 (2) by striking “appropriate Federal financial
19 supervisory agency” each place that term appears
20 and inserting “CFPA”;

21 (3) in section 803 (12 U.S.C. 2902)—

22 (A) in paragraph (2), by striking “and” at
23 the end;

24 (B) in paragraph (3), by striking the pe-
25 riod at the end and inserting a semicolon;

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1 (C) in paragraph (4)—

2 (i) by striking “A” and inserting “a”;

3 and

4 (ii) by striking the period at the end

5 and inserting “; and”; and

6 (D) by adding at the end the following:

7 “(5) the term ‘CFPA’ means the Consumer Fi-
8 nancial Protection Agency.”;

9 (4) in section 804 (12 U.S.C. 2903)—

10 (A) by striking subsection (a) and insert-

11 ing the following:

12 “(a) IN GENERAL.—In connection with its examina-
13 tion of a financial institution—

14 “(1) the CFPA shall assess the record of the
15 institution of meeting the credit needs of its entire
16 community, including low- and moderate-income
17 neighborhoods, consistent with the safe and sound
18 operation of such institution; and

19 “(2) the FIRA shall take such assessment into
20 account in its evaluation of an application for a de-
21 posit facility by such institution.”; and

22 (B) in subsection (c)(2)(B), by striking

23 “such agency” and inserting “the CFPA”;

24 (5) in section 805 (12 U.S.C. 2904), by striking

25 “Each” and inserting “The”;

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1 (6) in section 806 (12 U.S.C. 2905), by striking
2 “Regulations” and all that follows through the end
3 and inserting the following: “The CFPA shall pre-
4 scribe rules to carry out this title.”; and

5 (7) in section 807 (12 U.S.C. 2906)—

6 (A) in subsection (b)—

7 (i) by striking “appropriate Federal
8 financial supervisory agency’s conclusions”
9 and inserting “conclusions of the CFPA”;
10 and

11 (ii) by striking “Federal financial su-
12 pervisory agencies” and inserting “CFPA”;

13 (B) in subsection (c)(1), by inserting be-
14 fore the period “or to the CFPA”; and

15 (C) in subsection (d), by striking “Federal
16 financial supervisory agency” and inserting
17 “CFPA”.

18 **SEC. 1085. AMENDMENTS TO THE ELECTRONIC FUND**
19 **TRANSFER ACT.**

20 The Electronic Fund Transfer Act (15 U.S.C. 1693
21 et seq.) is amended—

22 (1) by striking “Board” each place that term
23 appears and inserting “CFPA”;

24 (2) in section 903 (15 U.S.C. 1693a), by strik-
25 ing paragraph (3) and inserting the following:

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1 “(3) the term ‘CFPA’ means the Consumer Fi-
2 nancial Protection Agency;”;

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 “CONSUMER FINANCIAL
8 PROTECTION AGENCY”; and

9 (B) by striking “Federal Reserve System”
10 and inserting “Consumer Financial Protection
11 Agency”; 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 “Subject to section 1022 of the
17 Consumer Financial Protection Agency Act
18 of 2009, compliance”;

19 (ii) in paragraph (1)(A), by striking
20 “Office of the Comptroller of the Cur-
21 rency” and inserting “Financial Institu-
22 tions Regulatory Administration”; and

23 (iii) by striking paragraph (2) and in-
24 serting the following:

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1 “(2) subtitle E of the Consumer Financial Pro-
2 tection Agency Act of 2009, by the CFPA;”;

3 (B) by striking subsection (c) and insert-
4 ing the following:

5 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
6 FEDERAL TRADE COMMISSION.—Except to the extent
7 that enforcement of the requirements imposed under this
8 title is specifically committed to some other Government
9 agency under subsection (a), and subject to section 1022
10 of the Consumer Financial Protection Agency Act of 2009,
11 the Federal Trade Commission shall enforce such require-
12 ments. For the purpose of the exercise by the Federal
13 Trade Commission of its functions and powers under the
14 Federal Trade Commission Act, a violation of any require-
15 ment imposed under this title shall be deemed a violation
16 of a requirement imposed under that Act. All of the func-
17 tions and powers of the Federal Trade Commission under
18 the Federal Trade Commission Act are available to the
19 Federal Trade Commission to enforce compliance by any
20 person subject to the jurisdiction of the Federal Trade
21 Commission with the requirements imposed under this
22 title, irrespective of whether that person is engaged in
23 commerce or meets any other jurisdictional tests under the
24 Federal Trade Commission Act.”.

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1 **SEC. 1086. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
2 **TUNITY ACT.**

3 The Equal Credit Opportunity Act (15 U.S.C. 1691
4 et seq.) is amended—

5 (1) by striking “Board” each place that term
6 appears and inserting “CFPA”;

7 (2) in section 702 (15 U.S.C. 1691a), by strik-
8 ing subsection (c) and inserting the following:

9 “(c) The term ‘CFPA’ means the Consumer Finan-
10 cial Protection Agency.”;

11 (3) in section 703 (15 U.S.C. 1691b)—

12 (A) by striking the section heading and in-
13 sserting the following:

14 **“SEC. 703. PROMULGATION OF REGULATIONS BY THE**
15 **CFPA.”;**

16 (B) by striking “(a) REGULATIONS.—”;

17 (C) by striking subsection (b);

18 (D) by redesignating paragraphs (1)
19 through (5) as subsections (a) through (e), re-
20 spectively; and

21 (E) in subsection (e), as so redesignated,
22 by striking “paragraph (2)” and inserting “sub-
23 section (b)”;

24 (4) in section 704 (15 U.S.C. 1691e)—

25 (A) in subsection (a)—

1 (i) by striking “Compliance” and in-
2 sserting “Subject to section 1022 of the
3 Consumer Financial Protection Agency Act
4 of 2009, compliance”;

5 (ii) in paragraph (1)(A), by striking
6 “Office of the Comptroller of the Cur-
7 rency” and inserting “Financial Institu-
8 tions Regulatory Administration”;

9 (iii) by striking paragraph (2) and in-
10 sserting the following:

11 “(2) Subtitle E of the Consumer Financial Pro-
12 tection Agency Act of 2009, by the CFPA.”; and

13 (B) by striking subsection (c) and insert-
14 ing the following:

15 “(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
16 ERAL TRADE COMMISSION.—Except to the extent that en-
17 forcement of the requirements imposed under this title is
18 specifically committed to some other Government agency
19 under subsection (a), and subject to section 1022 of the
20 Consumer Financial Protection Agency Act of 2009, the
21 Federal Trade Commission shall enforce such require-
22 ments. For the purpose of the exercise by the Federal
23 Trade Commission of its functions and powers under the
24 Federal Trade Commission Act, a violation of any require-
25 ment imposed under this title shall be deemed a violation

1 of a requirement imposed under that Act. All of the func-
2 tions and powers of the Federal Trade Commission under
3 the Federal Trade Commission Act are available to the
4 Federal Trade Commission to enforce compliance by any
5 person with the requirements imposed under this title, ir-
6 respective of whether that person is engaged in commerce
7 or meets any other jurisdictional tests under the Federal
8 Trade Commission Act, including the power to enforce any
9 rule prescribed by the CFPA under this title in the same
10 manner as if the violation had been a violation of a Fed-
11 eral Trade Commission trade regulation rule.”; and

12 (5) in section 706(e) (15 U.S.C. 1691e(e))—

13 (A) in the subsection heading—

14 (i) by striking “BOARD” each place
15 that term appears and inserting “CFPA”;

16 and

17 (ii) by striking “FEDERAL RESERVE
18 SYSTEM” and inserting “CONSUMER FI-
19 NANCIAL PROTECTION AGENCY”; and

20 (B) by striking “Federal Reserve System”

21 and inserting “Consumer Financial Protection
22 Agency”.

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1 **SEC. 1087. AMENDMENTS TO THE EXPEDITED FUNDS**
2 **AVAILABILITY ACT.**

3 (a) AMENDMENT TO SECTION 603.—Section
4 603(d)(1) of the Expedited Funds Availability Act (12
5 U.S.C. 4002) is amended by inserting after “Board” the
6 following “, jointly with the Director of the Consumer Fi-
7 nancial Protection Agency,”.

8 (b) AMENDMENTS TO SECTION 604.—Section 604 of
9 the Expedited Funds Availability Act (12 U.S.C. 4003)
10 is amended—

11 (1) by inserting after “Board” each place that
12 term appears, other than in subsection (f), the fol-
13 lowing: “, jointly with the Director of the Consumer
14 Financial Protection Agency,”; and

15 (2) in subsection (f), by striking “Board.” each
16 place that term appears and inserting the following:
17 “Board, jointly with the Director of the Consumer
18 Financial Protection Agency.”.

19 (c) AMENDMENTS TO SECTION 605.—Section 605 of
20 the Expedited Funds Availability Act (12 U.S.C. 4004)
21 is amended—

22 (1) by inserting after “Board” each place that
23 term appears the following: “, jointly with the Direc-
24 tor of the Consumer Financial Protection Agency,”;
25 and

1 (2) in subsection (f), in the subsection heading,
2 by inserting “AND CFPA” after “BOARD”.

3 (d) AMENDMENTS TO SECTION 609.—Section 609 of
4 the Expedited Funds Availability Act (12 U.S.C. 4008)
5 is amended:

6 (1) in subsection (a), by inserting after
7 “Board” the following “, jointly with the Director of
8 the Consumer Financial Protection Agency,”; and

9 (2) by striking subsection (e) and inserting the
10 following:

11 “(e) CONSULTATIONS.—In prescribing regulations
12 under subsection (a) and (b) of this section, the Board
13 and the Director of the Consumer Financial Protection
14 Agency, in the case of subsection (a), and the Board, in
15 the case of subsection (b), shall consult with the Chair-
16 person of FIRA, the Board of Directors of the Federal
17 Deposit Insurance Corporation, and the National Credit
18 Union Administration Board.”.

19 **SEC. 1088. AMENDMENTS TO THE FAIR CREDIT BILLING**
20 **ACT.**

21 The Fair Credit Billing Act (15 U.S.C. 1666–1666j)
22 is amended by striking “Board” each place that term ap-
23 pears and inserting “CFPA”.

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1 **SEC. 1089. AMENDMENTS TO THE FAIR CREDIT REPORTING**
2 **ACT AND THE FAIR AND ACCURATE CREDIT**
3 **TRANSACTIONS ACT.**

4 (a) FAIR CREDIT REPORTING ACT.—The Fair Credit
5 Reporting Act (15 U.S.C. 1681 et seq.) is amended—

6 (1) in section 603 (15 U.S.C. 1681a)—

7 (A) by redesignating subsections (w) and
8 (x) as subsections (x) and (y), respectively; and

9 (B) by inserting after subsection (v) the
10 following:

11 “(w) The term ‘CFPA’ means the Consumer Finan-
12 cial Protection Agency.”; and

13 (2) except as otherwise specifically provided in
14 this subsection—

15 (A) by striking “Federal Trade Commis-
16 sion” each place that term appears and insert-
17 ing “CFPA”;

18 (B) by striking “FTC” each place that
19 term appears and inserting “CFPA”;

20 (C) by striking “the Commission” each
21 place that term appears and inserting “the
22 CFPA”; and

23 (D) by striking “The Federal banking
24 agencies, the National Credit Union Adminis-
25 tration, and the Commission shall jointly” each

1 place that term appears and inserting “The
2 CFPA shall”;

3 (3) in section 603(k)(2) (15 U.S.C.
4 1681a(k)(2)), by striking “Board of Governors of
5 the Federal Reserve System” and inserting
6 “CFPA”;

7 (4) in section 604(g) (15 U.S.C.1681b(g))—

8 (A) in paragraph (3), by striking subpara-
9 graph (C) and inserting the following:

10 “(C) as otherwise determined to be nec-
11 essary and appropriate, by regulation or order,
12 by the CFPA (consistent with the enforcement
13 authorities prescribed under section 621(b)), or
14 the applicable State insurance authority (with
15 respect to any person engaged in providing in-
16 surance or annuities).”;

17 (B) by striking paragraph (5) and insert-
18 ing the following:

19 “(5) REGULATIONS AND EFFECTIVE DATE FOR
20 PARAGRAPH (2).—

21 “(A) REGULATIONS REQUIRED.—The
22 CFPA may, after notice and opportunity for
23 comment, prescribe regulations that permit
24 transactions under paragraph (2) that are de-
25 termined to be necessary and appropriate to

1 protect legitimate operational, transactional,
2 risk, consumer, and other needs (and which
3 shall include permitting actions necessary for
4 administrative verification purposes), consistent
5 with the intent of paragraph (2) to restrict the
6 use of medical information for inappropriate
7 purposes.”; and

8 (C) by striking paragraph (6);

9 (5) in section 611(e)(2) (15 U.S.C.1681i(e)), by
10 striking paragraph (2) and inserting the following:

11 “(2) **EXCLUSION.**—Complaints received or ob-
12 tained by the CFPA pursuant to its investigative au-
13 thority under the Consumer Financial Protection
14 Agency Act of 2009 shall not be subject to para-
15 graph (1).”;

16 (6) in section 615(h)(6) (15 U.S.C.
17 1681m(h)(6)), by striking subparagraph (A) and in-
18 serting the following:

19 “(A) **RULES REQUIRED.**—The CFPA shall
20 prescribe rules to carry out this subsection.”;

21 (7) in section 621 (15 U.S.C.1681s)—

22 (A) by striking subsection (a) and insert-
23 ing the following:

24 “(a) **ENFORCEMENT BY FEDERAL TRADE COMMIS-**
25 **SION.**—

1 “(1) IN GENERAL.—Subject to section 1022 of
2 the Consumer Financial Protection Agency Act of
3 2009, compliance with the requirements imposed
4 under this title shall be enforced under the Federal
5 Trade Commission Act (15 U.S.C. 41 et seq.) by the
6 Federal Trade Commission, with respect to con-
7 sumer reporting agencies and all other persons sub-
8 ject thereto, except to the extent that enforcement of
9 the requirements imposed under this title is specifi-
10 cally committed to some other Government agency
11 under subsection (b). For the purpose of the exercise
12 by the Federal Trade Commission of its functions
13 and powers under the Federal Trade Commission
14 Act, a violation of any requirement or prohibition
15 imposed under this title shall constitute an unfair or
16 deceptive act or practice in commerce, in violation of
17 section 5(a) of the Federal Trade Commission Act
18 (15 U.S.C. 45(a)), and shall be subject to enforce-
19 ment by the Federal Trade Commission under sec-
20 tion 5(b) of that Act with respect to any consumer
21 reporting agency or person that is subject to en-
22 forcement by the Federal Trade Commission pursu-
23 ant to this subsection, irrespective of whether that
24 person is engaged in commerce or meets any other
25 jurisdictional tests under the Federal Trade Com-

1 mission Act. The CFPA shall have such procedural,
2 investigative, and enforcement powers (subject to
3 section 1022 of the Consumer Financial Protection
4 Agency Act of 2009), including the power to issue
5 procedural rules in enforcing compliance with the re-
6 quirements imposed under this title and to require
7 the filing of reports, the production of documents,
8 and the appearance of witnesses, as though the ap-
9 plicable terms and conditions of the Federal Trade
10 Commission Act were part of this title.

11 “(2) PENALTIES.—

12 “(A) KNOWING VIOLATIONS.—Subject to
13 section 1022 of the Consumer Financial Protec-
14 tion Agency Act of 2009, in the event of a
15 knowing violation, which constitutes a pattern
16 or practice of violations of this title, the Federal
17 Trade Commission may commence a civil action
18 to recover a civil penalty in a district court of
19 the United States against any person that vio-
20 lates this title. In such action, such person shall
21 be liable for a civil penalty of not more than
22 \$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 prior such 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.—Subject to section 1022 of
21 the Consumer Financial Protection Agency Act of
22 2009, compliance with the requirements imposed
23 under this title with respect to consumer reporting
24 agencies, persons who use consumer reports from
25 such agencies, persons who furnish information to

1 such agencies, and users of information that are
2 subject to section 615(d) shall be enforced under—

3 “(A) section 8 of the Federal Deposit In-
4 surance Act (12 U.S.C. 1818), in the case of—

5 “(i) any national bank, and any Fed-
6 eral branch or Federal agency of a foreign
7 bank, by the Financial Institutions Regu-
8 latory Administration (hereafter in this
9 title referred to as ‘FIRA’);

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

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1 bank, by the Board of Directors of the
2 Federal Deposit Insurance Corporation;

3 “(B) subtitle E of the Consumer Financial
4 Protection Agency Act of 2009, by the CFPA;

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 subject to the jurisdic-
5 tion 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 CFPA shall
16 prescribe such regulations as are necessary to carry out
17 the purposes of this Act. The regulations prescribed by
18 the CFPA 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.—

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1 “(i) DUTY OF CFPA.—The CFPA
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 CFPA.

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 CFPA 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 CFPA shall, with re-
24 spect to persons or entities that are subject to the

1 enforcement authority of the CFPA 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 CFPA 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 “The Federal banking
16 agencies, the National Credit Union Administration, and
17 the Commission, with respect to the entities that are sub-
18 ject to their respective enforcement authority under sec-
19 tion 621 of the Fair Credit Reporting Act and” and insert-
20 ing “The Consumer Financial Protection Agency, with re-
21 spect to a person that is subject to its enforcement author-
22 ity, the Commodity Futures Trading Commission, and”.

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1 **SEC. 1090. AMENDMENTS TO THE FAIR DEBT COLLECTION**
2 **PRACTICES ACT.**

3 The Fair Debt Collection Practices Act (15 U.S.C.
4 1692 et seq.) is amended—

5 (1) by striking “Commission” each place that
6 term appears and inserting “CFPA”;

7 (2) in section 803 (15 U.S.C. 1692a)—

8 (A) by striking paragraph (1) and insert-
9 ing the following:

10 “(1) The term ‘CFPA’ means the Consumer Fi-
11 nancial Protection Agency.”;

12 (3) in section 814 (15 U.S.C. 1692l)—

13 (A) by striking subsection (a) and insert-
14 ing the following:

15 “(a) FEDERAL TRADE COMMISSION.—Subject to sec-
16 tion 1022 of the Consumer Financial Protection Agency
17 Act of 2009, compliance with this title shall be enforced
18 by the Federal Trade Commission, except to the extent
19 that enforcement of the requirements imposed under this
20 title is specifically committed to another Government
21 agency under subsection (b). For purpose of the exercise
22 by the Federal Trade Commission of its functions and
23 powers under the Federal Trade Commission Act, a viola-
24 tion of this title shall be deemed an unfair or deceptive
25 act or practice in violation of that Act. All of the functions
26 and powers of the Federal Trade Commission under the

1 Federal Trade Commission Act are available to the Fed-
2 eral Trade Commission to enforce compliance by any per-
3 son with this title, irrespective of whether that person is
4 engaged in commerce or meets any other jurisdictional
5 tests under the Federal Trade Commission Act, including
6 the power to enforce the provisions of this title, in the
7 same manner as if the violation had been a violation of
8 a Federal Trade Commission trade regulation rule.”; and

9 (B) in subsection (b)—

10 (i) by striking “Compliance” and in-
11 serting “Subject to section 1022 of the
12 Consumer Financial Protection Agency Act
13 of 2009, compliance”;

14 (ii) in paragraph (1)(A), by striking
15 “Office of the Comptroller of the Cur-
16 rency;” and inserting “Financial Institu-
17 tions Regulatory Administration”; and

18 (iii) by striking paragraph (2) and in-
19 serting the following:

20 “(2) subtitle E of the Consumer Financial Pro-
21 tection Agency Act of 2009, by the CFPA;”;

22 (4) in subsection (d), by striking “Neither the
23 Commission” and all that follows through the end of
24 the subsection and inserting the following: “The
25 CFPA may prescribe rules with respect to the collec-

1 tion of debts by debt collectors, as defined in this
2 Act.”.

3 **SEC. 1091. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
4 **SURANCE ACT.**

5 The Federal Deposit Insurance Act (12 U.S.C. 1811
6 et seq.) is amended—

7 (1) in section 8(t) (12 U.S.C. 1818(t)), by add-
8 ing at the end the following:

9 “(6) REFERRAL TO CONSUMER FINANCIAL PRO-
10 TECTION AGENCY.—Each appropriate Federal bank-
11 ing agency shall make a referral to the Consumer
12 Financial Protection Agency when the Federal bank-
13 ing agency has a reasonable belief that a violation of
14 an enumerated consumer law, as defined the Con-
15 sumer Financial Protection Agency Act of 2009, has
16 been committed by any insured depository institu-
17 tion or institution-affiliated party within the jurisdic-
18 tion of that appropriate Federal banking agency.”;
19 and

20 (2) in section 43 (2 U.S.C. 1831t)—

21 (A) in subsection (c), by striking “Federal
22 Trade Commission” and inserting “CFPA”;

23 (B) in subsection (d), by striking “Federal
24 Trade Commission” and inserting “CFPA”;

25 (C) in subsection (e)—

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1 (i) in paragraph (2), by striking
2 “Federal Trade Commission” and insert-
3 ing “CFPA”; and

4 (ii) by adding at the end the following
5 new paragraph:

6 “(5) CFPA.—The term ‘CFPA’ means the
7 Consumer Financial Protection Agency.”; and

8 (D) in subsection (f)—

9 (i) by striking paragraph (1) and in-
10 sserting the following:

11 “(1) LIMITED ENFORCEMENT AUTHORITY.—
12 Compliance with the requirements of subsections (b),
13 (c) and (e), and any regulation prescribed or order
14 issued under such subsection, shall be enforced
15 under the Consumer Financial Protection Agency
16 Act of 2009, by the CFPA, with respect to any per-
17 son (and without regard to the provision of a con-
18 sumer financial product or service).”; and

19 (ii) in paragraph (2), by striking sub-
20 paragraph (C) and inserting the following:

21 “(C) LIMITATION ON STATE ACTION
22 WHILE FEDERAL ACTION PENDING.—If the
23 CFPA has instituted an enforcement action for
24 a violation of this section, no appropriate State
25 supervisory agency may, during the pendency of

1 such action, bring an action under this section
2 against any defendant named in the complaint
3 of the CFPA for any violation of this section
4 that is alleged in that complaint.”.

5 **SEC. 1092. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
6 **ACT.**

7 Title V of the Gramm-Leach-Bliley Act (15 U.S.C.
8 6801 et seq.) is amended—

9 (1) in section 504(a)(1) (15 U.S.C.
10 6804(a)(1))—

11 (A) by striking “The Federal banking
12 agencies, the National Credit Union Adminis-
13 tration, the Secretary of the Treasury,” and in-
14 serting “The Consumer Financial Protection
15 Agency and”; and

16 (B) by striking “, and the Federal Trade
17 Commission”;

18 (2) in section 505(a) (15 U.S.C. 6805(a))—

19 (A) by striking “This subtitle and the reg-
20 ulations prescribed thereunder shall be enforced
21 by” and inserting “Subject to section 1022 of
22 the Consumer Financial Protection Agency Act
23 of 2009, this subtitle and the regulations pre-
24 scribed thereunder shall be enforced by the
25 Consumer Financial Protection Agency,”;

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1 (B) in paragraph (1)—

2 (i) in subparagraph (B), by inserting

3 “and” after the semicolon;

4 (ii) in subparagraph (C), by striking

5 “; and” and inserting a period; and

6 (iii) by striking subparagraph (D);

7 and

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

9 “(8) Under the Consumer Financial Protection
10 Agency Act of 2009, by the Consumer Financial
11 Protection Agency, in the case of any financial insti-
12 tution and other covered person or service provider
13 that is subject to the jurisdiction of the CFPA under
14 that Act, but not with respect to the standards
15 under section 501.”; and

16 (3) in section 505(b)(1) (15 U.S.C.
17 6805(b)(1)), by inserting “, other than the Con-
18 sumer Financial Protection Agency,” after “sub-
19 section (a)”.

20 **SEC. 1093. AMENDMENTS TO THE HOME MORTGAGE DIS-**
21 **CLOSURE ACT.**

22 The Home Mortgage Disclosure Act of 1975 (12
23 U.S.C. 2801 et seq.) is amended—

1 (1) except as otherwise specifically provided in
2 this section, by striking “Board” each place that
3 term appears and inserting “CFPA”;

4 (2) in section 303 (12 U.S.C. 2802)—

5 (A) by redesignating paragraphs (1)
6 through (6) as paragraphs (2) through (7), re-
7 spectively; and

8 (B) by inserting before paragraph (2) the
9 following:

10 “(1) the term ‘CFPA’ means the Consumer Fi-
11 nancial Protection Agency;”;

12 (3) in section 304 (12 U.S.C. 2803)—

13 (A) in subsection (b)—

14 (i) in paragraph (4), by inserting
15 “age,” before “and gender”;

16 (ii) in paragraph (3), by striking
17 “and” at the end; and

18 (iii) in paragraph (4), by striking the
19 period at the end and inserting the fol-
20 lowing: “; and

21 “(5) the number and dollar amount of mort-
22 gage loans grouped according to measurements of—

23 “(A) the total points and fees payable at
24 origination in connection with the mortgage as

1 determined by the CFPB, taking into account
2 15 U.S.C. 1602(aa)(4);

3 “(B) the difference between the annual
4 percentage rate associated with the loan and a
5 benchmark rate or rates for all loans;

6 “(C) the term in months of any prepay-
7 ment penalty or other fee or charge payable on
8 repayment of some portion of principal or the
9 entire principal in advance of scheduled pay-
10 ments; and

11 “(D) such other information as the CFPB
12 may require; and

13 “(6) the number and dollar amount of mort-
14 gage loans and completed applications grouped ac-
15 cording to measurements of—

16 “(A) the value of the real property pledged
17 or proposed to be pledged as collateral;

18 “(B) the actual or proposed term in
19 months of any introductory period after which
20 the rate of interest may change;

21 “(C) the presence of contractual terms or
22 proposed contractual terms that would allow the
23 mortgagor or applicant to make payments other
24 than fully amortizing payments during any por-
25 tion of the loan term;

1 “(D) the actual or proposed term in
2 months of the mortgage loan;

3 “(E) the channel through which applica-
4 tion was made, including retail, broker, and
5 other relevant categories;

6 “(F) as the CFPA may determine to be
7 appropriate, a unique identifier that identifies
8 the loan originator as set forth in Section 1503
9 of the S.A.F.E. Mortgage Licensing Act of
10 2008;

11 “(G) as the CFPA may determine to be
12 appropriate, a universal loan identifier;

13 “(H) as the CFPA may determine to be
14 appropriate, the parcel number that cor-
15 responds to the real property pledged or pro-
16 posed to be pledged as collateral;

17 “(I) the credit score of mortgage appli-
18 cants and mortgagors, in such form as the
19 CFPA may prescribe, except that the CFPA
20 shall modify or require modification of credit
21 score data that is or will be available to the
22 public to protect the compelling privacy interest
23 of the mortgage applicant or mortgagors; and

24 “(J) such other information as the CFPA
25 may require.”;

1 (B) in subsection (i), by striking “sub-
2 section (b)(4)” and inserting “subsections
3 (b)(4), (b)(5), and (b)(6)”;

4 (C) in subsection (j)—

5 (i) in paragraph (1), by striking “(as”
6 and inserting “(containing loan-level and
7 application-level information relating to
8 disclosures required under subsections (a)
9 and (b) and as otherwise”;

10 (ii) by striking paragraph (3) and in-
11 sserting the following:

12 “(3) CHANGE OF FORM NOT REQUIRED.—A de-
13 pository institution meets the disclosure requirement
14 of paragraph (1) if the institution provides the infor-
15 mation required under such paragraph in such for-
16 mats as the CFPA may require”; and

17 (iii) in paragraph (2)(A), by striking
18 “in the format in which such information
19 is maintained by the institution” and in-
20 sserting “in such formats as the CFPA may
21 require”;

22 (D) in subsection (m), by striking para-
23 graph (2) and inserting the following:

24 “(2) FORM OF INFORMATION.—In complying
25 with paragraph (1), a depository institution shall

1 provide the person requesting the information with
2 a copy of the information requested in such formats
3 as the CFPA may require”;

4 (E) by striking subsection (h) and insert-
5 ing the following:

6 “(h) SUBMISSION TO AGENCIES.—

7 “(1) IN GENERAL.—The data required to be
8 disclosed under subsection (b) shall be submitted to
9 the CFPA or to the appropriate agency for the insti-
10 tution reporting under this title, in accordance with
11 rules prescribed by the CFPA. Notwithstanding the
12 requirement of subsection (a)(2)(A) for disclosure by
13 census tract, the CFPA, in cooperation with other
14 appropriate regulators described in paragraph (2),
15 shall develop regulations that—

16 “(A) prescribe the format for such disclo-
17 sures, the method for submission of the data to
18 the appropriate regulatory agency, and the pro-
19 cedures for disclosing the information to the
20 public;

21 “(B) require the collection of data required
22 to be disclosed under subsection (b) with re-
23 spect to loans sold by each institution reporting
24 under this title;

1 “(C) require disclosure of the class of the
2 purchaser of such loans; and

3 “(D) permit any reporting institution to
4 submit in writing to the CFPB or to the appro-
5 priate agency such additional data or expla-
6 nations as it deems relevant to the decision to
7 originate or purchase mortgage loans.

8 “(2) OTHER APPROPRIATE AGENCIES.—The ap-
9 propriate regulators described in this paragraph
10 are—

11 “(A) the Financial Institutions Regulatory
12 Administration (hereafter in this Act referred
13 to as ‘FIRA’) for national banks and Federal
14 branches, Federal agencies of foreign banks,
15 and savings associations;

16 “(B) the Federal Deposit Insurance Cor-
17 poration for banks insured by the Federal De-
18 posit Insurance Corporation (other than mem-
19 bers of the Federal Reserve System), mutual
20 savings banks, insured State branches of for-
21 eign banks, and any other depository institution
22 described in section 303(2)(A) which is not oth-
23 erwise referred to in this paragraph;

24 “(C) the National Credit Union Adminis-
25 tration Board for credit unions; and

1 “(D) the Secretary of Housing and Urban
2 Development for other lending institutions not
3 regulated by the agencies referred to in sub-
4 paragraphs (A) through (C).”; and

5 (F) by adding at the end the following:

6 “(n) **TIMING OF CERTAIN DISCLOSURES.**—The data
7 required to be disclosed under subsection (b) shall be sub-
8 mitted to the CFPA or to the appropriate agency for any
9 institution reporting under this title, in accordance with
10 regulations prescribed by the CFPA. Institutions shall not
11 be required to report new data required under section
12 188(e) before the first January 1 that occurs after the
13 end of the 9-month period beginning on the date on which
14 regulations are issued by the CFPA in final form.”;

15 (4) in section 305 (12 U.S.C. 2804)—

16 (A) by striking subsection (b) and insert-
17 ing the following:

18 “(b) **POWERS OF CERTAIN OTHER AGENCIES.**—

19 “(1) **IN GENERAL.**—Compliance with the re-
20 quirements of this title shall be enforced under—

21 “(A) section 8 of the Federal Deposit In-
22 surance Act, in the case of—

23 “(i) any national bank, and any Fed-
24 eral branch or Federal agency of a foreign
25 bank, by FIRA;

1 “(ii) any member bank of the Federal
2 Reserve System (other than a national
3 bank), branch or agency of a foreign bank
4 (other than a Federal branch, Federal
5 agency, and insured State branch of a for-
6 eign bank), commercial lending company
7 owned or controlled by a foreign bank, and
8 any organization operating under section
9 25 or 25(a) of the Federal Reserve Act, by
10 the Board; and

11 “(iii) any bank insured by the Federal
12 Deposit Insurance Corporation (other than
13 a member of the Federal Reserve System),
14 any mutual savings bank as, defined in
15 section 3(f) of the Federal Deposit Insur-
16 ance Act (12 U.S.C. 1813(f)), any insured
17 State branch of a foreign bank, and any
18 other depository institution not referred to
19 in this paragraph or subparagraph (B) or
20 (C), by the Federal Deposit Insurance Cor-
21 poration;

22 “(B) subtitle E of the Consumer Financial
23 Protection Agency Act of 2009, by the CFPA;

24 “(C) the Federal Credit Union Act, by the
25 Administrator of the National Credit Union Ad-

1 ministration with respect to any insured credit
2 union; and

3 “(D) other lending institutions, by the Sec-
4 retary of Housing and Urban Development.

5 “(2) INCORPORATED DEFINITIONS.—The terms
6 used in paragraph (1) that are not defined in this
7 title or otherwise defined in section 3(s) of the Fed-
8 eral Deposit Insurance Act (12 U.S.C. 1813(s))
9 shall have the same meanings as in section 1(b) of
10 the International Banking Act of 1978 (12 U.S.C.
11 3101).”; and

12 (B) by adding at the end the following:

13 “(d) OVERALL ENFORCEMENT AUTHORITY OF THE
14 CONSUMER FINANCIAL PROTECTION AGENCY.—Subject
15 to section 1022 of the Consumer Financial Protection
16 Agency Act of 2009, enforcement of the requirements im-
17 posed under this title is committed to each of the agencies
18 under subsection (b). The CFPA may exercise its authori-
19 ties under the Consumer Financial Protection Agency Act
20 of 2009 to exercise principal authority to examine and en-
21 force compliance by any person with the requirements of
22 this title.”;

23 (5) in section 306 (12 U.S.C. 2805(b)), by
24 striking subsection (b) and inserting the following:

1 “(b) **EXEMPTION AUTHORITY.**—The CFPA may, by
2 regulation, exempt from the requirements of this title any
3 State chartered depository institution within any State or
4 subdivision thereof, if the agency determines that, under
5 the law of such State or subdivision, that institution is
6 subject to requirements that are substantially similar to
7 those imposed under this title, and that such law contains
8 adequate provisions for enforcement. Notwithstanding any
9 other provision of this subsection, compliance with the re-
10 quirements imposed under this subsection shall be en-
11 forced by FIRA under section 8 of the Federal Deposit
12 Insurance Act, in the case of national banks and savings
13 association the deposits of which are insured by the Fed-
14 eral Deposit Insurance Corporation.”; and

15 (6) by striking section 307 (12 U.S.C. 2806)
16 and inserting the following:

17 **“SEC. 307. COMPLIANCE IMPROVEMENT METHODS.**

18 “(a) **IN GENERAL.**—

19 “(1) **CONSULTATION REQUIRED.**—The Director
20 of the Consumer Financial Protection Agency, with
21 the assistance of the Secretary, the Director of the
22 Bureau of the Census, the Board of Governors of
23 the Federal Reserve System, the Federal Deposit In-
24 surance Corporation, and such other persons, as the
25 CFPA deems appropriate, shall develop or assist in

1 the improvement of, methods of matching addresses
2 and census tracts to facilitate compliance by deposi-
3 tory institutions in as economical a manner as pos-
4 sible with the requirements of this title.

5 “(2) AUTHORIZATION OF APPROPRIATIONS.—
6 There are authorized to be appropriated, such sums
7 as may be necessary to carry out this subsection.

8 “(3) CONTRACTING AUTHORITY.—The Director
9 of the Consumer Financial Protection Agency is au-
10 thorized to utilize, contract with, act through, or
11 compensate any person or agency in order to carry
12 out this subsection.

13 “(b) RECOMMENDATIONS TO CONGRESS.—The Di-
14 rector of the Consumer Financial Protection Agency shall
15 recommend to the Committee on Banking, Housing, and
16 Urban Affairs of the Senate and the Committee on Finan-
17 cial Services of the House of Representatives, such addi-
18 tional legislation as the Director of the Consumer Finan-
19 cial Protection Agency deems appropriate to carry out the
20 purpose of this title.”.

21 **SEC. 1094. AMENDMENTS TO THE HOME OWNERS PROTEC-**
22 **TION ACT OF 1998.**

23 Section 10 of the Homeowners Protection Act of
24 1998 (12 U.S.C. 4909) is amended—

25 (1) in subsection (a)—

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1 (A) by striking “Compliance” and insert-
2 ing “Subject to section 1022 of the Consumer
3 Financial Protection Agency Act of 2009, com-
4 pliance”;

5 (B) in paragraph (2), by striking “and” at
6 the end;

7 (C) in paragraph (3), by striking the pe-
8 riod at the end and inserting “; and”; and

9 (D) by adding at the end the following:

10 “(4) subtitle E of title X of the Consumer Fi-
11 nancial Protection Agency Act of 2009, by the Con-
12 sumer Financial Protection Agency.”; and

13 (2) in subsection (b)(2), by inserting before the
14 period at the end the following: “, subject to section
15 1022 of the Consumer Financial Protection Agency
16 Act of 2009”.

17 **SEC. 1095. AMENDMENTS TO THE HOME OWNERSHIP AND**
18 **EQUITY PROTECTION ACT OF 1994.**

19 The Home Ownership and Equity Protection Act of
20 1994 (15 U.S.C. 1601 note) is amended—

21 (1) in section 158(a), by striking “Consumer
22 Advisory Council of the Board” and inserting “Advi-
23 sory Board to the CFPA”; and

24 (2) by striking “Board” each place that term
25 appears and inserting “CFPA”.

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1 **SEC. 1096. AMENDMENTS TO THE OMNIBUS APPROPRIA-**
2 **TIONS ACT, 2009.**

3 Section 626 of the Omnibus Appropriations Act,
4 2009 (Public Law 111–8) is amended—

5 (1) in subsection (a), by striking paragraph (1)
6 and inserting the following:

7 “(1) The Consumer Financial Protection Agen-
8 cy shall have authority to prescribe rules with re-
9 spect to mortgage loans in accordance with section
10 553 of title 5, United States Code. Such rulemaking
11 shall relate to unfair or deceptive acts or practices
12 regarding mortgage loans, which may include unfair
13 or deceptive acts or practices involving loan modi-
14 fication and foreclosure rescue services. Any viola-
15 tion of a rule prescribed under this paragraph shall
16 be treated as a violation of a rule prohibiting unfair,
17 deceptive, or abusive acts or practices under the
18 Consumer Financial Protection Agency Act of
19 2009.”; and

20 (2) by striking paragraphs (2) through (4) and
21 inserting the following:

22 “(2) The Consumer Financial Protection Agen-
23 cy shall enforce the rules issued under paragraph (1)
24 in the same manner, by the same means, and with
25 the same jurisdiction, powers, and duties, as though
26 all applicable terms and provisions of the Consumer

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1 Financial Protection Agency Act of 2009 were incor-
2 porated into and made part of this subsection.”; and

3 (3) in subsection (b)—

4 (A) by striking “Federal Trade Commis-
5 sion” and inserting “Consumer Financial Pro-
6 tection Agency”;

7 (B) by striking “the Commission” and in-
8 serting “the Consumer Financial Protection
9 Agency”; and

10 (C) by striking “primary Federal regu-
11 lator” and inserting “Consumer Financial Pro-
12 tection Agency”.

13 **SEC. 1097. AMENDMENTS TO THE REAL ESTATE SETTLE-**
14 **MENT PROCEDURES ACT.**

15 The Real Estate Settlement Procedures Act of 1974
16 (12 U.S.C. 2601 et seq.) is amended—

17 (1) in section 3 (12 U.S.C. 2602)—

18 (A) in paragraph (7), by striking “and” at
19 the end;

20 (B) in paragraph (8), by striking the pe-
21 riod at the end and inserting “; and”; and

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

23 “(9) the term ‘CFPA’ means the Consumer Fi-
24 nancial Protection Agency.”;

25 (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
3 CFPA shall publish a single, integrated disclo-
4 sure for mortgage loan transactions (including
5 real estate settlement cost statements) which
6 includes the disclosure requirements of this
7 title, in conjunction with the disclosure require-
8 ments of the Truth in Lending Act that, taken
9 together, may apply to a transaction that is
10 subject 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 “CFPA”; 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 “CFPA”; and

1 (B) in subsection (a), by striking the first
2 sentence and inserting the following: “The
3 CFPA shall prepare and distribute booklets
4 jointly complying with the requirements of the
5 Truth in Lending Act and the provisions of this
6 title, in order to help persons borrowing money
7 to finance the purchase of residential real estate
8 better to understand the nature and costs of
9 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 “CFPA”; 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 “CFPA”;

17 (6) in section 8(d) (12 U.S.C. 2607(d))—

18 (A) in the subsection heading, by inserting
19 “CFPA AND” before “SECRETARY”;

20 (B) in paragraph (4)—

21 (i) by striking “The Secretary,” and
22 inserting “The CFPA, the Secretary,”; and

23 (ii) by inserting before the period the
24 following: “, except that, to the extent that
25 a Federal law authorizes the CFPA and

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1 other Federal and State agencies to en-
2 force or administer the law, the CFPA
3 shall have primary authority to enforce or
4 administer this section in accordance with
5 section 1022 of the Consumer Financial
6 Protection Agency Act of 2009.”;

7 (7) in section 10(c) (12 U.S.C. 2609(c) and
8 (d)), by striking “Secretary” and inserting “CFPA”;

9 (8) in section 16 (12 U.S.C. 2614), by inserting
10 “the CFPA,” before “the Secretary”;

11 (9) in section 18 (12 U.S.C. 2616), by striking
12 “Secretary” each place that term appears and in-
13 serting “CFPA”; and

14 (10) in section 19 (12 U.S.C. 2617)—

15 (A) in the section heading by striking
16 “**SECRETARY**” and inserting “**CFPA**”; and

17 (B) by striking “Secretary” each place
18 that term appears and inserting “CFPA”.

19 **SEC. 1098. AMENDMENTS TO THE RIGHT TO FINANCIAL**
20 **PRIVACY ACT OF 1978.**

21 The Right to Financial Privacy Act of 1978 (12
22 U.S.C. 3401 et seq.) is amended—

23 (1) in section 1101 (12 U.S.C. 3401)—

24 (A) by striking paragraph (1) and insert-
25 ing the following:

1 “(1) ‘financial institution’ means any national
2 bank, card issuer (as defined in section 103(n) of
3 the Truth in Lending Act), credit union, or con-
4 sumer finance institution located in any State or ter-
5 ritory of the United States, the District of Columbia,
6 Puerto Rico, Guam, American Samoa, or the Virgin
7 Islands;”;

8 (B) in paragraph (6)—

9 (i) in subparagraph (A), by inserting
10 “and” after the semicolon;

11 (ii) in subparagraph (B), by striking
12 “and” at the end; and

13 (iii) by striking subparagraph (C);
14 and

15 (C) in paragraph (7)—

16 (i) by striking subparagraph (B) and
17 inserting the following:

18 “(B) the Financial Institutions Regulatory
19 Administration (hereafter in this title referred
20 to as ‘FIRA’);”;

21 (ii) by striking subparagraph (E) and
22 inserting the following:

23 “(E) the Consumer Financial Protection
24 Agency;”;

1 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
2 striking “and the Commodity Futures Trading Com-
3 mission is permitted” and inserting “the Commodity
4 Futures Trading Commission, and the Consumer Fi-
5 nancial Protection Agency is permitted”; and

6 (3) in section 1113 (12 U.S.C. 3413), by add-
7 ing at the end the following new subsection:

8 “(r) DISCLOSURE TO THE CONSUMER FINANCIAL
9 PROTECTION AGENCY.—Nothing in this title shall apply
10 to the examination by or disclosure to the Consumer Fi-
11 nancial Protection Agency of financial records or informa-
12 tion in the exercise of its authority with respect to a finan-
13 cial institution.”.

14 **SEC. 1099. AMENDMENTS TO THE SECURE AND FAIR EN-
15 FORCEMENT FOR MORTGAGE LICENSING ACT
16 OF 2008.**

17 The S.A.F.E. Mortgage Licensing Act of 2008 (12
18 U.S.C. 5101 et seq.) is amended—

19 (1) by striking “a Federal banking agency”
20 each place that term appears, other than in para-
21 graphs (7) and (11) of section 1503 and section
22 1507(a)(1), and inserting “the CFPA”;

23 (2) by striking “Federal banking agencies”
24 each place that term appears and inserting
25 “CFPA”; and

1 (3) by striking “Secretary” each place that
2 term appears and inserting “Director”;

3 (4) in section 1503 (12 U.S.C. 5102)—

4 (A) by redesignating paragraphs (2)
5 through (12) as (3) through (13), respectively;

6 (B) by striking paragraph (1) and insert-
7 ing the following:

8 “(1) CFPA.—The term ‘CFPA’ means the
9 Consumer Financial Protection Agency.

10 “(2) FEDERAL BANKING AGENCY.—The term
11 ‘Federal banking agency’ means the Board of Gov-
12 ernors of the Federal Reserve System, the Financial
13 Institutions Regulatory Agency, the National Credit
14 Union Administration, and the Federal Deposit In-
15 surance Corporation.”; and

16 (C) by striking paragraph (10), as so re-
17 designated by this section, and inserting the fol-
18 lowing:

19 “(10) DIRECTOR.—The term ‘Director’ means
20 the Director of the Consumer Financial Protection
21 Agency.”; and

22 (5) in section 1507 (12 U.S.C. 5106)—

23 (A) in subsection (a)—

24 (i) by striking paragraph (1) and in-
25 serting the following:

1 “(1) IN GENERAL.—The CFPB shall develop
2 and maintain a system for registering employees of
3 a depository institution, employees of a subsidiary
4 that is owned and controlled by a depository institu-
5 tion and regulated by a Federal banking agency, or
6 employees of an institution regulated by the Farm
7 Credit Administration, as registered loan originators
8 with the Nationwide Mortgage Licensing System and
9 Registry. The system shall be implemented before
10 the end of the 1-year period beginning on the date
11 of enactment of the Consumer Financial Protection
12 Agency Act of 2009.”; and

13 (ii) in paragraph (2)—

14 (I) by striking “appropriate Fed-
15 eral banking agency and the Farm
16 Credit Administration” and inserting
17 “CFPB”; and

18 (II) by striking “employees’s
19 identity” and inserting “identity of
20 the employee”; and

21 (B) in subsection (b), by striking “through
22 the Financial Institutions Examination Council,
23 and the Farm Credit Administration”, and in-
24 serting “and the Consumer Financial Protec-
25 tion Agency”;

1 (6) in section 1508 (12 U.S.C. 5107)—

2 (A) by striking the section heading and in-
3 serting the following:

4 **“SEC. 1508. CONSUMER FINANCIAL PROTECTION AGENCY**
5 **BACKUP AUTHORITY TO ESTABLISH LOAN**
6 **ORIGINATOR LICENSING SYSTEM.”; and**

7 (B) by adding at the end the following:

8 “(f) REGULATION AUTHORITY.—

9 “(1) IN GENERAL.—The CFPB is authorized to
10 promulgate regulations setting minimum net worth
11 or surety bond requirements for residential mortgage
12 loan originators and minimum requirements for re-
13 covery funds paid into by loan originators.

14 “(2) CONSIDERATIONS.—In issuing regulations
15 under paragraph (1), the CFPB shall take into ac-
16 count the need to provide originators adequate in-
17 centives to originate affordable and sustainable
18 mortgage loans, as well as the need to ensure a com-
19 petitive origination market that maximizes consumer
20 access to affordable and sustainable mortgage
21 loans.”;

22 (7) by striking section 1510 (12 U.S.C. 5109)
23 and inserting the following:

1 **“SEC. 1510. FEES.**

2 “The CFPA, the Farm Credit Administration, and
3 the Nationwide Mortgage Licensing System and Registry
4 may charge reasonable fees to cover the costs of maintain-
5 ing and providing access to information from the Nation-
6 wide Mortgage Licensing System and Registry, to the ex-
7 tent that such fees are not charged to consumers for ac-
8 cess to such system and registry.”;

9 (8) by striking section 1513 (12 U.S.C. 5112)
10 and inserting the following:

11 **“SEC. 1513. LIABILITY PROVISIONS.**

12 “The CFPA, any State official or agency, or any or-
13 ganization serving as the administrator of the Nationwide
14 Mortgage Licensing System and Registry or a system es-
15 tablished by the Director under section 1509, or any offi-
16 cer or employee of any such entity, shall not be subject
17 to any civil action or proceeding for monetary damages
18 by reason of the good faith action or omission of any offi-
19 cer or employee of any such entity, while acting within
20 the scope of office or employment, relating to the collec-
21 tion, furnishing, or dissemination of information con-
22 cerning persons who are loan originators or are applying
23 for licensing or registration as loan originators.”; and

24 (9) in section 1514 (12 U.S.C. 5113) in the
25 section heading, by striking “**UNDER HUD BACKUP**

1 **LICENSING SYSTEM**” and inserting “**BY THE**
2 **CFPA**”.

3 **SEC. 1100. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

4 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
5 is amended—

6 (1) in section 103 (5 U.S.C. 1602)—

7 (A) by redesignating subsections (b)
8 through (bb) as subsections (c) through (cc),
9 respectively; and

10 (B) by inserting after subsection (a) the
11 following:

12 “(b) CFPA.—The term ‘CFPA’ means the Consumer
13 Financial Protection Agency.”;

14 (2) by striking “Board” each place that term
15 appears, other than in section 140(d) and section
16 108(a), as amended by this section, and inserting
17 “CFPA”;

18 (3) by striking “Federal Trade Commission”
19 each place that term appears, other than in section
20 108(c) and section 129(m), as amended by this Act,
21 and other than in the context of a reference to the
22 Federal Trade Commission Act, and inserting
23 “CFPA”;

24 (4) in section 105(b) (15 U.S.C. 1604(b)), by
25 striking the first sentence and inserting the fol-

1 lowing: “The CFPA shall publish a single, inte-
2 grated disclosure for mortgage loan transactions (in-
3 cluding real estate settlement cost statements) which
4 includes the disclosure requirements of this title in
5 conjunction with the disclosure requirements of the
6 Real Estate Settlement Procedures Act of 1974
7 that, taken together, may apply to a transaction that
8 is subject to both or either provisions of law. The
9 purpose of such model disclosure shall be to facili-
10 tate compliance with the disclosure requirements of
11 this title and the Real Estate Settlement Procedures
12 Act of 1974, and to aid the borrower or lessee in un-
13 derstanding the transaction by utilizing readily un-
14 derstandable language to simplify the technical na-
15 ture of the disclosures.”;

16 (5) in section 108 (15 U.S.C. 1607)—

17 (A) by striking subsection (a) and insert-
18 ing the following:

19 “(a) ENFORCING AGENCIES.—Subject to section
20 1022 of the Consumer Financial Protection Agency Act
21 of 2009, compliance with the requirements imposed under
22 this title shall be enforced under—

23 “(1) section 8 of the Federal Deposit Insurance
24 Act, in the case of—

1 “(A) any national bank, and Federal
2 branch or Federal agency of a foreign bank, by
3 the Financial Institutions Regulatory Adminis-
4 tration (hereafter in this title referred to as
5 ‘FIRA’);

6 “(B) any member bank of the Federal Re-
7 serve System (other than a national bank), any
8 branch or agency of a foreign bank (other than
9 a Federal branch, Federal agency, or insured
10 State branch of a foreign bank), any commer-
11 cial lending company owned or controlled by a
12 foreign bank, and organizations operating
13 under section 25 or 25(a) of the Federal Re-
14 serve Act, by the Board; and

15 “(C) any bank insured by the Federal De-
16 posit Insurance Corporation (other than a
17 member of the Federal Reserve System) and an
18 insured State branch of a foreign bank, by the
19 Board of Directors of the Federal Deposit In-
20 surance Corporation;

21 “(2) subtitle E of the Consumer Financial Pro-
22 tection Agency Act of 2009, by the CFPA;

23 “(3) the Federal Credit Union Act, by the Di-
24 rector of the National Credit Union Administration,
25 with respect to any Federal credit union;

1 “(4) the Federal Aviation Act of 1958, by the
2 Secretary of Transportation, with respect to any air
3 carrier or foreign air carrier subject to that Act;

4 “(5) the Packers and Stockyards Act, 1921 (ex-
5 cept as provided in section 406 of that Act), by the
6 Secretary of Agriculture, with respect to any activi-
7 ties subject to that Act; and

8 “(6) the Farm Credit Act of 1971, by the Farm
9 Credit Administration with respect to any Federal
10 land bank, Federal land bank association, Federal
11 intermediate credit bank, or production credit asso-
12 ciation.”; and

13 (B) by striking subsection (c) and insert-
14 ing the following:

15 “(c) **OVERALL ENFORCEMENT AUTHORITY OF THE**
16 **FEDERAL TRADE COMMISSION.**—Except to the extent
17 that enforcement of the requirements imposed under this
18 title is specifically committed to some other Government
19 agency under subsection (a), and subject to section 1022
20 of the Consumer Financial Protection Agency Act of 2009,
21 the Federal Trade Commission shall enforce such require-
22 ments. For the purpose of the exercise by the Federal
23 Trade Commission of its functions and powers under the
24 Federal Trade Commission Act, a violation of any require-
25 ment imposed under this title shall be deemed a violation

1 of a requirement imposed under that Act. All of the func-
2 tions and powers of the Federal Trade Commission under
3 the Federal Trade Commission Act are available to the
4 Commission to enforce compliance by any person with the
5 requirements under this title, irrespective of whether that
6 person is engaged in commerce or meets any other juris-
7 dictional tests under the Federal Trade Commission Act.”;

8 (6) in section 129 (15 U.S.C. 1639), by striking
9 subsection (m) and inserting the following:

10 “(m) CIVIL PENALTIES IN FEDERAL TRADE COM-
11 MISSION ENFORCEMENT ACTIONS.—For purposes of en-
12 forcement by the Federal Trade Commission, any violation
13 of a regulation issued by the CFPA pursuant to subsection
14 (l)(2) shall be treated as a violation of a rule promulgated
15 under section 18 of the Federal Trade Commission Act
16 (15 U.S.C. 57a) regarding unfair or deceptive acts or
17 practices.”; and

18 (7) in chapter 5 (15 U.S.C. 1667 et seq.)—

19 (A) by striking “the Board” each place
20 that term appears and inserting “the CFPA”;
21 and

22 (B) by striking “The Board” each place
23 that term appears and inserting “The CFPA”.

1 **SEC. 1101. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

2 The Truth in Savings Act (15 U.S.C. 4301 et seq.)
3 is amended—

4 (1) by striking “Board” each place that term
5 appears, other than in sections 264, 268, 270(a),
6 and 270(f), and inserting “CFPA”;

7 (2) in section 270(a) (12 U.S.C. 4309)—

8 (A) by striking “Compliance” and insert-
9 ing “Subject to section 1022 of the Consumer
10 Financial Protection Agency Act of 2009, com-
11 pliance”;

12 (B) in paragraph (1)—

13 (i) by striking subparagraph (A) and
14 inserting the following:

15 “(A) by the Chairperson of the Financial
16 Institutions Regulatory Administration (here-
17 after in this title referred to as ‘FIRA’) for na-
18 tional banks, and Federal branches and Federal
19 agencies of foreign banks; and”;

20 (ii) in subparagraph (B), by striking
21 “and” at the end; and

22 (iii) by striking subparagraph (C);

23 (C) in paragraph (2), by striking the pe-
24 riod at the end and inserting “; and”; and

25 (D) by adding at the end, the following:

1 “(3) subtitle E of the Consumer Financial Pro-
2 tection Agency Act of 2009, by the CFPA.”;

3 (3) in section 272(b) (12 U.S.C. 4311(b)), by
4 striking “regulation prescribed by the Board” each
5 place that term appears and inserting “regulation
6 prescribed by the CFPA”; and

7 (4) in section 274 (12 U.S.C. 4313), by striking
8 paragraph (4) and inserting the following:

9 “(4) CFPA.—The term ‘CFPA’ means the
10 Consumer Financial Protection Agency.”.

11 **SEC. 1102. TELEMARKETING AND CONSUMER FRAUD AND**
12 **ABUSE PREVENTION ACT.**

13 (a) AMENDMENTS TO SECTION 3.—Section 3 of the
14 Telemarketing and Consumer Fraud and Abuse Preven-
15 tion Act (15 U.S.C. 6102) is amended by striking sub-
16 sections (b) and (c) and inserting the following:

17 “(b) RULEMAKING AUTHORITY.—The Commission
18 shall have authority to prescribe rules under subsection
19 (a), in accordance with section 553 of title 5, United
20 States Code. In prescribing a rule under this section that
21 relates to the provision of a consumer financial product
22 or service that is subject to the Consumer Financial Pro-
23 tection Agency Act of 2009, including any enumerated
24 consumer law thereunder, the Commission shall consult
25 with the Consumer Financial Protection Agency regarding

1 the consistency of a proposed rule with standards, pur-
2 poses, or objectives administered by the Consumer Finan-
3 cial Protection Agency.

4 “(c) VIOLATIONS.—Any violation of any rule pre-
5 scribed under subsection (a)—

6 “(1) shall be treated as a violation of a rule
7 under section 18 of the Federal Trade Commission
8 Act regarding unfair or deceptive acts or practices;
9 and

10 “(2) that is committed by a person subject to
11 the Consumer Financial Protection Agency Act of
12 2009 shall be treated as a violation of a rule under
13 section 1031 of that Act regarding unfair, deceptive,
14 or abusive acts or practices.”.

15 (b) AMENDMENTS TO SECTION 4.—Section 4(d) of
16 the Telemarketing and Consumer Fraud and Abuse Pre-
17 vention Act (15 U.S.C. 6103(d)) is amended by inserting
18 after “Commission” each place that term appears the fol-
19 lowing: “or the Consumer Financial Protection Agency”.

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 by inserting after
23 “Commission” each place that term appears the following:
24 “or the Consumer Financial Protection Agency”.

1 (d) (D) AMENDMENT TO SECTION 6.—Section 6 of
2 the Telemarketing and Consumer Fraud and Abuse Pre-
3 vention Act (15 U.S.C. 6105) is amended by adding at
4 the end the following:

5 “(d) ENFORCEMENT BY CFPA.—Except as otherwise
6 provided in sections 3(d), 3(e), 4, and 5, this Act shall
7 be enforced by the Consumer Financial Protection Agency
8 under subtitle E of title X of the Consumer Financial Pro-
9 tection Agency Act of 2009.”.

10 **SEC. 1103. AMENDMENTS TO THE PAPERWORK REDUCTION**
11 **ACT.**

12 (a) NO PRIOR REVIEW OF RULES, ORDERS, LEGIS-
13 LATIVE RECOMMENDATIONS, TESTIMONY, OR COM-
14 MENTS.—No officer or agency of the United States shall
15 have any authority to require the CFPA to submit pro-
16 posed or final rules, proposed or final orders, legislative
17 recommendations, testimony, or comments on legislation
18 to any officer or agency of the United States for approval,
19 comments, or review prior to the publication or submission
20 of such proposed or final rules, proposed or final orders,
21 legislative recommendations, testimony, or comments on
22 legislation, except that any such recommendations, testi-
23 mony, or comments to the Congress shall include a state-
24 ment that the views expressed therein are those of the

1 CFPB and do not necessarily represent the views of the
2 President.

3 (b) DESIGNATION AS AN INDEPENDENT AGENCY.—
4 Section 2(5) of the Paperwork Reduction Act (44 U.S.C.
5 3502(5)) is amended by inserting “the Consumer Finan-
6 cial Protection Agency,” after “the Securities and Ex-
7 change Commission,”.

8 **SEC. 1104. EFFECTIVE DATE.**

9 The amendments made by this subtitle shall become
10 effective on the designated transfer date.

11 **TITLE XI—FINANCIAL REGULATORY AGENCIES TRANSI-**
12 **LATION OVERSIGHT COMMISSION**

13 **SEC. 1151. FINANCIAL REGULATORY AGENCIES TRANSI-**
14 **TION OVERSIGHT COMMISSION.**

15 (a) DEFINITIONS.—In this section—

16 (1) the term “new agencies” means the Agency,
17 FIRA, and the CFPB, as established by titles I, III,
18 and X, respectively; and

19 (2) the term “Oversight Commission” means
20 the Financial Regulatory Agencies Transition Over-
21 sight Commission.
22
23

1 (b) IN GENERAL.—There is established the Financial
2 Regulatory Agencies Transition Oversight Commission,
3 the purpose of which is to ensure that the new agencies—

- 4 (1) have an orderly and organized start up;
5 (2) attract and retain qualified workforces; and
6 (3) establish comprehensive employee training
7 and benefits programs.

8 (c) MEMBERSHIP.—

9 (1) COMPOSITION.—

10 (A) IN GENERAL.—The Oversight Commis-
11 sion shall be composed of 5 members appointed
12 by the President, by and with the advice and
13 consent of the Senate.

14 (B) CHAIRPERSON.—The Oversight Com-
15 mission shall select a Chairperson from among
16 its members.

17 (2) QUALIFICATIONS.—Members of the Over-
18 sight Commission shall be appointed on the basis of
19 their professional experience in—

20 (A) public sector workforce management,
21 including labor relations;

22 (B) financial institution supervision or reg-
23 ulations;

24 (C) consumer protection in connection with
25 financial products or services;

1 (D) information technology;

2 (E) training and workforce development;

3 or

4 (F) the compensation, benefits, and work-
5 ing conditions for Federal employees.

6 (3) PERIOD OF APPOINTMENT.—Members shall
7 be appointed for the life of the Oversight Commis-
8 sion.

9 (4) VACANCY.—Any vacancy on the Oversight
10 Commission shall not affect its powers, but shall be
11 filled in the same manner as the original appoint-
12 ment.

13 (d) RESPONSIBILITIES OF THE OVERSIGHT COMMIS-
14 SION.—

15 (1) GENERAL RESPONSIBILITIES.—

16 (A) OVERSIGHT.—The Oversight Commis-
17 sion shall oversee—

18 (i) the transition of responsibilities
19 and employees to the new agencies in ac-
20 cordance with this Act; and

21 (ii) subsequent administration, man-
22 agement, conduct, direction, and imple-
23 mentation of the organizational missions of
24 the new agencies.

1 (B) COOPERATION.—The Oversight Com-
2 mission shall work with the new agencies to de-
3 velop a strategic plan to comply with the re-
4 quirements of this section.

5 (2) SPECIFIC RESPONSIBILITIES.—

6 (A) TRAINING AND WORKFORCE DEVELOP-
7 MENT.—The Oversight Commission shall review
8 and approve training and workforce develop-
9 ment plans of the new agencies that include, to
10 the extent practicable—

11 (i) identification of skill and technical
12 expertise needs and action taken to meet
13 those requirements;

14 (ii) steps taken to foster innovation
15 and creativity;

16 (iii) leadership development and suc-
17 cession planning; and

18 (iv) effective use of technology by
19 agency employees.

20 (B) WORKPLACE FLEXIBILITIES RE-
21 VIEW.—The Oversight Commission shall review
22 and approve workforce flexibility plans of the
23 new agencies that include, to the extent prac-
24 ticable—

25 (i) telework;

- 1 (ii) flexible work schedules;
- 2 (iii) phased retirement;
- 3 (iv) reemployed annuitants;
- 4 (v) part-time work;
- 5 (vi) job sharing;
- 6 (vii) parental leave benefits and
- 7 childcare assistance;
- 8 (viii) domestic partner benefits;
- 9 (ix) other workplace flexibilities as de-
- 10 termined appropriate by the Oversight
- 11 Commission; or
- 12 (x) any combination of the items de-
- 13 scribed in clauses (i) through (ix).

14 (C) RECRUITMENT AND RETENTION.—

15 (i) REVIEW REQUIRED.—The Over-

16 sight Commission shall review and approve

17 the recruitment and retention plans of the

18 new agencies, including the process and

19 criteria used to identify which employees of

20 existing Federal agencies will be trans-

21 ferred to the new agency.

22 (ii) PLAN CONTENT.—Each recruit-

23 ment and retention plan of a new agency

24 shall include, to the extent practicable, pro-

25 visions relating to—

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1 (I) the steps necessary to target
2 highly qualified applicant pools with
3 diverse backgrounds;

4 (II) streamlined employment ap-
5 plication processes;

6 (III) the provision of timely noti-
7 fication of the status of employment
8 applications to applicants; and

9 (IV) the collection of information
10 to measure indicators of hiring effec-
11 tiveness.

12 (e) OVERSIGHT COMMISSION PERSONNEL MAT-
13 TERS.—

14 (1) TRAVEL EXPENSES.—Each member of the
15 Oversight Commission shall receive travel expenses,
16 including per diem in lieu of subsistence, at rates
17 authorized for employees of agencies under sub-
18 chapter I of chapter 57 of title 5, United States
19 Code, while away from their homes or regular places
20 of business in the performance of services for the
21 Oversight Commission.

22 (2) STAFF.—

23 (A) IN GENERAL.—The Chairperson of the
24 Oversight Commission may appoint and termi-
25 nate an executive director and such other per-

1 sonnel as may be necessary to enable the Over-
2 sight Commission to perform the duties of the
3 Oversight Commission.

4 (B) **DETAIL OF GOVERNMENT EMPLOY-**
5 **EES.**—Upon request of the Oversight Commis-
6 sion, the head of any Federal agency or depart-
7 ment may detail, on a reimbursable basis, any
8 of the personnel of that agency or department
9 to assist the Oversight Commission in carrying
10 out the duties of the Oversight Commission.

11 (C) **PROCUREMENT OF TEMPORARY AND**
12 **INTERMITTENT SERVICES.**—The Chairperson of
13 the Oversight Commission may procure tem-
14 porary and intermittent services under section
15 3109(b) of title 5, United States Code, at rates
16 for individuals which do not exceed the daily
17 equivalent of the annual rate of basic pay pre-
18 scribed for level V of the Executive Schedule
19 under section 5136 of such title.

20 (f) **ADMINISTRATIVE MATTERS.**—

21 (1) **CHAIRPERSON.**—

22 (A) **POWERS.**—Except as otherwise pro-
23 vided by a majority vote of the Oversight Com-
24 mission, the powers of the Chairperson shall in-
25 clude—

1 (i) establishing Committees, as nec-
2 essary;

3 (ii) setting meeting places and times;

4 (iii) establishing meeting agendas; and

5 (iv) developing procedures for the con-
6 duct of business.

7 (B) MEETINGS.—The Oversight Commis-
8 sion shall meet not less frequently than quar-
9 terly, and otherwise at the call of the Chair-
10 person.

11 (2) REPORT.—The Oversight Commission shall
12 submit an annual report to the Committee on Bank-
13 ing, Housing, and Urban Affairs of the Senate, and
14 the Committee on Financial Services of the House of
15 Representatives that includes an analysis of the ac-
16 tivities required of the new agencies under this title.

17 (g) TERMINATION OF THE OVERSIGHT COMMIS-
18 SION.—The Oversight Commission shall terminate 3 years
19 after the date of enactment of this Act.

1 **TITLE XII—FEDERAL RESERVE**
2 **SYSTEM PROVISIONS**

3 **SEC. 1201. FEDERAL RESERVE ACT AMENDMENTS ON**
4 **EMERGENCY LENDING AUTHORITY.**

5 The third undesignated paragraph of section 13 of
6 the Federal Reserve Act (12 U.S.C. 343) (relating to
7 emergency lending authority) is amended—

8 (1) by inserting “(3)(A)” before “In unusual”;

9 (2) by striking “individual, partnership, or cor-
10 poration” each place that term appears and insert-
11 ing the following: “financial utilities or payment,
12 clearing, or settlement activities that the Agency for
13 Financial Stability determines are, or are likely to
14 become, systemically important, or any program or
15 facility with broad-based participation”;

16 (3) by striking “exchange for an individual or
17 a partnership or corporation” and inserting “ex-
18 change,”; and

19 (4) by striking “may prescribe.” and inserting
20 the following: “may prescribe.

21 “(B) The Board shall provide to the Committee
22 on Banking, Housing, and Urban Affairs of the Sen-
23 ate and the Committee on Financial Services of the
24 House of Representatives—

1 “(i) not later than 7 days after providing
2 any loan or other financial assistance under this
3 paragraph, a report that includes—

4 “(I) the justification for the exercise
5 of authority to provide such assistance;

6 “(II) the identity of the recipients of
7 such assistance, subject to subparagraph
8 (C);

9 “(III) the date and amount of the as-
10 sistance, and form in which the assistance
11 was provided; and

12 “(IV) the terms of the assistance, in-
13 cluding—

14 “(aa) duration;

15 “(bb) collateral pledged and the
16 value thereof;

17 “(cc) all interest, fees, and other
18 revenue or items of value to be re-
19 ceived in exchange for the assistance;

20 “(dd) any requirements imposed
21 on the recipient with respect to em-
22 ployee compensation, distribution of
23 dividends, or any other corporate deci-
24 sion in exchange for the assistance;
25 and

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1 “(ee) the expected costs to the
2 taxpayers of such assistance; and

3 “(ii) once every 30 days, with respect to
4 any outstanding loan or other financial assist-
5 ance under this paragraph, written updates
6 on—

7 “(I) the value of collateral;

8 “(II) the amount of interest, fees, and
9 other revenue or items of value received in
10 exchange for the assistance; and

11 “(III) the expected or final cost to the
12 taxpayers of such assistance.

13 “(C) The Board may postpone releasing the
14 identity of a recipient, and may withhold any detail
15 about pledged collateral that would identify the re-
16 cipient, for a period of not longer than 1 year, be-
17 ginning on the date on which such assistance is first
18 received.”.

19 **SEC. 1202. SELECTION OF BOARDS OF DIRECTORS OF FED-**
20 **ERAL RESERVE BANKS.**

21 Section 4 of the Federal Reserve Act (12 U.S.C. 301
22 et seq.) is amended—

23 (1) in the 9th undesignated paragraph (12
24 U.S.C. 302) (relating to Class A directors), by strik-

1 ing “chosen by” and inserting “appointed by the
2 Board of Governors of the Federal Reserve System”;

3 (2) in the 10th undesignated paragraph (12
4 U.S.C. 302) (relating to Class B directors), by strik-
5 ing “elected” and inserting “appointed by the Board
6 of Governors of the Federal Reserve System”;

7 (3) by striking the 11th undesignated para-
8 graph (relating to Class C directors) and inserting
9 the following:

10 “Class C shall consist of 3 members. One mem-
11 ber shall be the chairman of the board, who shall be
12 appointed by the President, by and with the advice
13 and consent of the Senate. Upon the expiration of
14 the term of office of the chairman, the chairman
15 shall continue to serve until the successor of the
16 chairman is appointed and qualified. The 2 Class C
17 members who are not the chairman shall be des-
18 ignated by the Board of Governors of the Federal
19 Reserve System. Each class C member shall be cho-
20 sen to represent the public, without discrimination
21 on the basis of race, creed, color, sex, or national or-
22 igin, and with due (but not exclusive) consideration
23 to the interests of agriculture, commerce, industry,
24 services, labor, and consumers. When the necessary
25 subscriptions to the capital stock have been obtained

1 for the organization of any Federal reserve bank, the
2 President shall appoint the class C member who
3 shall serve as chairman, and the Board of Governors
4 of the Federal Reserve System shall appoint the 2
5 class C members who are not the chairman. Pending
6 the appointment and qualification of the chairman,
7 the organization committee shall exercise the powers
8 and duties appertaining to the office of chairman in
9 the organization of the Federal reserve bank.”;

10 (4) by striking the 16th undesignated para-
11 graph (12 U.S.C. 304) (relating to the nomination
12 and election of directors of Class A and Class B);

13 (5) by striking the 17th undesignated para-
14 graph (12 U.S.C. 304) (relating to the requirement
15 for a preferential ballot);

16 (6) by striking the 18th undesignated para-
17 graph (12 U.S.C. 304) (relating to eligibility of can-
18 didates serving more than 1 member bank);

19 (7) by striking the 19th undesignated para-
20 graph (12 U.S.C. 304) (relating to counting the bal-
21 lots) and inserting the following:

22 “The Board of Governors of the Federal Re-
23 serve System shall establish a public process for so-
24 liciting comments relating to the selection of Class
25 B and Class C directors of the Federal reserve

1 banks, to ensure that the interests of agriculture,
2 commerce, industry, services, labor, and consumers
3 are adequately represented.”; and

4 (8) by striking the 22nd undesignated para-
5 graph (12 U.S.C. 305) (relating to Class C direc-
6 tors, selection, and Federal reserve agent) and in-
7 serting the following:

8 “The Class C directors shall have been, for not
9 less than 2 years, residents of the district for which
10 they are appointed. The chairman of the board of di-
11 rectors shall be designated as ‘Federal reserve
12 agent’. The individual appointed as chairman shall
13 be a person with relevant expertise in economic pol-
14 icy, business, banking, or financial markets, and in
15 addition to the duties of the individual as chairman
16 of the board of directors of the Federal reserve
17 bank, such individual shall be required to maintain,
18 under regulations established by the Board of Gov-
19 ernors of the Federal Reserve System, a local office
20 of said board on the premises of the Federal reserve
21 bank. The chairman shall make regular reports to
22 the Board of Governors of the Federal Reserve Sys-
23 tem, and shall act as its official representative for
24 the performance of the functions conferred upon the
25 Board of Governors of the Federal Reserve System

1 by this Act. The chairman shall receive an annual
2 compensation to be fixed by the Board of Governors
3 of the Federal Reserve System and paid monthly by
4 the Federal reserve bank to which the chairman is
5 appointed. One of the class C directors shall be ap-
6 pointed by the Board of Governors of the Federal
7 Reserve System as deputy chairman, to exercise the
8 powers of the chairman of the board in the case of
9 the absence or unavailability of the chairman. In
10 case of the absence or unavailability of the chairman
11 and deputy chairman, the class C director who is not
12 the chairman or the deputy chairman shall preside
13 at meetings of the board of directors.”.

14 **SEC. 1203. REVIEWS OF SPECIAL FEDERAL RESERVE CRED-**
15 **IT FACILITIES.**

16 (a) REVIEWS.—Section 714 of title 31, United States
17 Code, is amended by adding at the end the following:

18 “(f) REVIEWS OF CREDIT FACILITIES OF THE FED-
19 ERAL RESERVE SYSTEM.—

20 “(1) DEFINITION.—In this subsection, the term
21 ‘credit facility’ means an entity established by or on
22 behalf of the Board or a Federal reserve bank, in-
23 cluding—

24 “(A) the Money Market Investor Funding
25 Facility;

1 “(B) the Asset-Backed Commercial Paper
2 Money Market Mutual Fund Liquidity Facility;

3 “(C) the Term Asset-Backed Securities
4 Loan Facility;

5 “(D) the Primary Dealer Credit Facility;

6 “(E) the Commercial Paper Funding Fa-
7 cility; and

8 “(F) any other utility, activity, program,
9 facility, or special purpose vehicle that is ap-
10 proved by or receives assistance from the Board
11 under the 3rd undesignated paragraph of sec-
12 tion 13 of the Federal Reserve Act (12 U.S.C.
13 343), other than a credit facility that is subject
14 to the requirements of subsection (e).

15 “(2) IN GENERAL.—Subject to paragraph (3),
16 and notwithstanding any limitation in subsection (b)
17 on the auditing and oversight of certain functions of
18 the Board or any Federal reserve bank, the Comp-
19 troller General may conduct reviews, including onsite
20 examinations, if the Comptroller General determines
21 that such examinations are appropriate, of the ac-
22 counting, financial reporting, and internal controls
23 of any credit facility, including when such facilities
24 are established or operated by or on behalf of the
25 Board or any official of a Federal reserve bank.

1 “(3) REPORTS AND DELAYED DISCLOSURE.—

2 “(A) REPORTS REQUIRED.—A report on
3 each review conducted under paragraph (2)
4 shall be submitted by the Comptroller General
5 to the Congress before the end of the 90-day
6 period beginning on the date on which such re-
7 view is completed.

8 “(B) CONTENTS.—The report under sub-
9 paragraph (A) shall include a detailed descrip-
10 tion of the findings and conclusions of the
11 Comptroller General with respect to the review
12 that is the subject of the report, together with
13 such recommendations for legislative or admin-
14 istrative action as the Comptroller General may
15 determine to be appropriate.

16 “(C) DELAYED RELEASE OF CERTAIN IN-
17 FORMATION.—

18 “(i) IN GENERAL.—The Comptroller
19 General shall not disclose to any person or
20 entity, including to the Congress, the
21 names or identifying details of specific par-
22 ticipants in any of the audited facilities or
23 identifying details regarding assets or col-
24 lateral held by, under, or in connection
25 with any of the audited facilities, and any

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1 report provided under subparagraph (A)
2 shall be redacted to ensure that such de-
3 tails are not disclosed.

4 “(ii) DELAYED RELEASE.—The non-
5 disclosure obligation under clause (i) shall
6 expire with respect to any participant after
7 a period of not longer than 1 year, begin-
8 ning on the earlier of the date on which—

9 “(I) assistance is first received;

10 or

11 “(II) the Board discloses the
12 identity of the subject participant.

13 “(iii) GENERAL RELEASE.—The
14 Comptroller General shall release a non-
15 redacted version of any reports on specific
16 credit facilities, 1 year after the termi-
17 nation of the relevant credit facility.”.

18 (b) ACCESS TO RECORDS.—Section 714(d) of title
19 31, United States Code, is amended—

20 (1) in paragraph (2), by inserting “or any sin-
21 gle and specific partnership or corporation (as speci-
22 fied in subsection (e)) or any facility established by
23 an agency (as specified in subsection (f))” after
24 “used by an agency”;

1 (2) in paragraph (3), by inserting “or (f)” after
2 “subsection (e)” each place that term appears; and
3 (3) in paragraph (3)(B), by adding at the end
4 the following: “The Comptroller General may make
5 and retain copies of books, accounts, and other
6 records provided under subparagraph (A) as the
7 Comptroller General deems appropriate. The Com-
8 ptroller General shall have access to the officers, em-
9 ployees, contractors, and other agents and represent-
10 atives of any single and specific partnership or cor-
11 poration (as specified in subsection (e)) or any credit
12 facility established by an agency (as specified in sub-
13 section (f)) at any reasonable time, as the Com-
14 ptroller General may request. The Comptroller Gen-
15 eral shall provide to any such partnership, corpora-
16 tion, or credit facility a current list of officers and
17 employees to whom, with proper identification,
18 records and property may be made available, and
19 who may make notes or copies necessary to carry
20 out a review or examination under this subsection.”.

21 **SEC. 1204. PUBLIC ACCESS TO INFORMATION.**

22 Section 2B of the Federal Reserve Act (12 U.S.C.
23 225b) is amended by adding at the end the following:

24 “(c) PUBLIC ACCESS TO INFORMATION.—The Board
25 shall place on its home Internet website, a link entitled

1 ‘Audit’, which shall link to a webpage that shall serve as
2 a repository of information made available to the public
3 for a reasonable period of time, not less than 6 months
4 following the date of release of the relevant information,
5 including—

6 “(1) the reports prepared by the Comptroller
7 General under section 714 of title 31, United States
8 Code;

9 “(2) the annual financial statements prepared
10 by an independent auditor for the Board in accord-
11 ance with section 11B;

12 “(3) the reports to the Committee on Banking,
13 Housing, and Urban Affairs of the Senate required
14 under the third undesignated paragraph of section
15 13 (relating to emergency lending authority); and

16 “(4) such other information as the Board rea-
17 sonably believes is necessary or helpful to the public
18 in understanding the accounting, financial reporting,
19 and internal controls of the Board and the Federal
20 reserve banks.”.