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H. R. 4173

To provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 2, 2009

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Agriculture, Energy and Commerce, the Judiciary, Rules, the Budget, Oversight and Government Reform, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''The Wall Street Reform and Consumer Protection Act of 2009''.

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TITLE I—FINANCIAL STABILITY IMPROVEMENT ACT

SEC. 1000. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the ''Financial Stability Improvement Act of 2009''.

(b) DEFINITIONS.—For purposes of this title, the following definitions shall apply:

(1) The term ''Board'' means the Board of Governors of the Federal Reserve System.

(2) The term ''Council'' means the Financial Services Oversight Council established under section 1001.

(3) The term ''Federal financial regulatory agency'' means any agency that has a voting member of the Council as set forth in section 1001(b)(1).

(4) The term ''financial company'' means a company or other entity—

(A) that is—

(i) incorporated or organized under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, Amer-

ican Samoa, or the United States Virgin Islands; or

(ii) a company incorporated in or organized in a country other than the United States that has significant operations in the United States through—

(I) a Federal or State branch or agency of a foreign bank as such terms are defined in the International Banking Act of 1978 (12 U.S.C. 3101 et seq.); or

(II) a United States affiliate or other United States operating entity of a company that is incorporated or organized in a country other than the United States; and

(B) that is, in whole or in part, directly or indirectly, engaged in financial activities.

(5) FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—The term ''financial holding company subject to stricter standards'' means—

(A) a financial company that has been subjected to stricter prudential standards under subtitle B; or

(B) in the case of a financial company described in subparagraph (A) that is required to establish an intermediate holding company under section 6 of the Bank Holding Company Act, the section 6 holding company through which the financial company is required to conduct its financial activities.

(6) The term ''primary financial regulatory agency'' means the following:

(A) The Comptroller of the Currency, with respect to any national bank, any Federal branch or Federal agency of a foreign bank, and, after the date on which the functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision are transferred under subtitle C, a Federal savings association.

(B) The Board, with respect to—

(i) any State member bank;

(ii) any bank holding company and any subsidiary of such company (as such terms are defined in the Bank Holding Company Act), other than a subsidiary that is described in any other subparagraph of this paragraph to the extent that

the subsidiary is engaged in an activity described in such subparagraph;

(iii) any financial holding company subject to stricter standards and any subsidiary (as such term is defined in the Bank Holding Company Act) of such company, other than a subsidiary that is described in any other subparagraph of this paragraph to the extent that the subsidiary is engaged in an activity described in such subparagraph;

(iv) any organization organized and operated under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq. or 611 et seq.); and

(v) any foreign bank or company that is treated as a bank holding company under subsection (a) of section 8 of the International Banking Act of 1978 and any subsidiary (other than a bank or other subsidiary that is described in any other subparagraph of this paragraph) of any such foreign bank or company.

(C) The Federal Deposit Insurance Corporation, with respect to a State nonmember

bank, any insured State branch of a foreign bank (as such terms are defined in section 3 of the Federal Deposit Insurance Act), and, after the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C, any State savings association.

(D) The National Credit Union Administration, with respect to any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.).

(E) The Securities and Exchange Commission, with respect to—

(i) any broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(ii) any investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.);

(iii) any investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) with re-

spect to the investment advisory activities of such company and activities incidental to such advisory activities;

(iv) any clearing agency (as defined in section 3(a)(23) of the Securities Exchange Act of 1934;

(v) any exchange registered as a national securities exchange with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vi) any credit rating agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vii) any securities information processor registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

(viii) any transfer agent registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(F) The Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant, any commodity trading adviser, and any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the commodities activities of such entity and activities incidental to such commodities activities; and

(ii) any derivatives clearing organization (as defined in the Commodity Exchange Act).

(G) The Federal Housing Finance Agency with respect to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks.

(H) The State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law.

(I) The Office of Thrift Supervision, with respect to any Federal savings association, State savings association, or savings and loan holding company, until the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C.

(7) TERMS DEFINED IN OTHER LAWS.—

(A) AFFILIATE.—The term ''affiliate'' has the meaning given such term in section 2(k) of the Bank Holding Company Act of 1956.

(B) STATE MEMBER BANK, STATE NONMEMBER BANK.—The terms ''State member bank'' and ''State nonmember bank'' have the same meanings as in subsections (d)(2) and (e)(2), respectively, of section 3 of the Federal Deposit Insurance Act.

SEC. 1000A. RESTRICTIONS ON THE FEDERAL RESERVE SYSTEM PENDING AUDIT REPORT.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Comptroller General of the United States shall perform an audit of all actions taken by the Board of Governors of the Federal Reserve System and the Federal reserve banks during the current economic crisis pursuant to the authority granted under section 13(c) of the Federal Reserve Act. Such audit shall be completed as ex-

peditiously as possible after the date of the enactment of the Financial Stability Improvement Act of 2009.

(b) REPORT.—

(1) REQUIRED.—Not later than the end of the 90-day period beginning on the date the audit referred to in subsection (a) is completed, the Comptroller General of the United States shall submit a report to the Congress, and make such report available to the public.

(2) CONTENTS.—The report under paragraph (1) shall include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit that is the subject of the report, together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

Subtitle A—The Financial Services Oversight Council

SEC. 1001. FINANCIAL SERVICES OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Immediately upon enactment of this title, there is established a Financial Services Oversight Council.

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

(1) VOTING MEMBERS.—Voting members, who shall each have one vote on the Council, as follows:

(A) The Secretary of the Treasury, who shall serve as the Chairman of the Council.

(B) The Chairman of the Board of Governors of the Federal Reserve System.

(C) The Comptroller of the Currency.

(D) The Director of the Office of Thrift Supervision, until the functions of the Director of the Office of Thrift Supervision are transferred to pursuant to subtitle C.

(E) The Chairman of the Securities and Exchange Commission.

(F) The Chairman of the Commodity Futures Trading Commission.

(G) The Chairperson of the Federal Deposit Insurance Corporation.

(H) The Director of the Federal Housing Finance Agency.

(I) The Chairman of the National Credit Union Administration.

(2) NONVOTING MEMBERS.—Nonvoting members, who shall serve in an advisory capacity:

(A) A State insurance commissioner, to be designated by a selection process determined by

the State insurance commissioners, provided that the term for which a State insurance commissioner may serve shall last no more than the 2-year period beginning on the date that the commissioner is selected.

(B) A State banking supervisor, to be designated by a selection process determined by the State bank supervisors, provided that the term for which a State banking supervisor may serve shall last no more than the 2-year period beginning on the date that the supervisor is selected.

(c) DUTIES.—The Council shall have the following duties:

(1) To advise the Congress on financial domestic and international regulatory developments, including insurance and accounting developments, and make recommendations that will enhance the integrity, efficiency, orderliness, competitiveness, and stability of the United States financial markets.

(2) To monitor the financial services marketplace to identify potential threats to the stability of the United States financial system.

(3) To identify potential threats to the stability of the United States financial system that do not arise out of the financial services marketplace.

(4) To develop plans (and conduct exercises in furtherance of those plans) to prepare for potential threats identified under paragraphs (2) and (3).

(5) To subject financial companies and financial activities to stricter prudential standards in order to promote financial stability and mitigate systemic risk in accordance with subtitle B.

(6) To issue formal recommendations that a Council member agency adopt stricter prudential standards for firms it regulates to mitigate systemic risk in accordance with subtitle B of this title.

(7) To monitor international regulatory developments, including both insurance and accounting developments, and to identify those developments that may conflict with the policies of the United States or place United States financial services firms or United States financial markets at a competitive disadvantage.

(8) To facilitate information sharing and coordination among the members of the Council regarding financial services policy development,

rulemakings, examinations, reporting requirements, and enforcement actions.

(9) To provide a forum for discussion and analysis of emerging market developments and financial regulatory issues among its members.

(10) At the request of an agency that is a Council member, to resolve a jurisdictional dispute between that agency and another agency that is a Council member in accordance with section 1002.

(11) To review and submit comments to the Securities and Exchange Commission and any standards setting body with respect to an existing or proposed accounting principle, standard, or procedure.

SEC. 1002. RESOLUTION OF DISPUTES AMONG FEDERAL FINANCIAL REGULATORY AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more Federal financial regulatory agencies if—

(1) a Federal financial regulatory agency has a dispute with another Federal financial regulatory agency about the agencies' respective jurisdiction over a particular financial company or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute among themselves; and

(3) any of the Federal financial regulatory agencies involved in the dispute—

(A) provides all other disputants prior notice of its intent to request dispute resolution by the Council; and

(B) requests in writing, no earlier than 14 days after providing the notice described in paragraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall decide the dispute—

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

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

(3) by agreeing with 1 of the disputants regarding the entirety of the matter or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall be in writing and include an explanation and shall be binding on all Federal financial regulatory agencies that are parties to the dispute.

SEC. 1003. TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.

The Council is authorized to appoint—

(1) subsidiary working groups composed of Council members and their staff, Council staff, or a combination; and

(2) such temporary special advisory, technical, or professional committees as may be useful in carrying out its functions, which may be composed of Council members and their staff, other persons, or a combination.

SEC. 1004. FINANCIAL SERVICES OVERSIGHT COUNCIL MEETINGS AND COUNCIL GOVERNANCE.

(a) MEETINGS.—The Council shall meet as frequently as the Chairman deems necessary, but not less than quarterly.

(b) VOTING.—Unless otherwise provided, the Council shall make all decisions the Council is required or authorized to make by a majority of the total voting membership of the Council under section 1001(b)(1).

SEC. 1005. COUNCIL STAFF AND FUNDING.

(a) DEPARTMENT OF THE TREASURY.—The Secretary of the Treasury shall—

(1) detail permanent staff from the Department of the Treasury to provide the Council (and any temporary special advisory, technical, or professional

committees appointed by the Council) with professional and expert support; and

(2) provide such other services and facilities necessary for the performance of the Council's functions and fulfillment of the duties and mission of the Council.

(b) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in subsection (a), departments and agencies of the United States may, with the approval of the Secretary of the Treasury—

(1) detail department or agency staff on a temporary basis to provide additional support to the Council (and any special advisory, technical, or professional committees appointed by the Council); and

(2) provide such services, and facilities as the other departments or agencies may determine advisable.

(c) STAFF STATUS; COUNCIL FUNDING.—

(1) STATUS.—Staff detailed to the Council by the Secretary of the Treasury and other United States departments or agencies shall—

(A) report to and be subject to oversight by the Council during their assignment to the Council; and

(B) be compensated by the department of agency from which the staff was detailed.

(2) FUNDING.—The administrative expense of the Council shall be paid by the departments and agencies represented by voting members of the Council on an equal basis.

SEC. 1006. REPORTS TO THE CONGRESS.

(a) IN GENERAL.—Semiannually the Council shall submit a report to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Comptroller General of the United States that—

(1) describes significant financial and regulatory developments, including insurance and accounting regulations and standards, and assesses the impact of those developments on the stability of the financial system;

(2) recommends actions that will improve financial stability;

(3) details the size, scale, scope, concentration, activities, and interconnectedness of the 50 largest financial institutions, by total assets, in the United States;

(4) describes plans developed by the Council to respond to potential threats to the stability of the

United States financial system and the outcome of exercises conducted in furtherance of those plans;

(5) describes the nature and scope of any company or activities identified under subtitle B and steps taken to address them; and

(6) describes any dispute resolutions undertaken under section 1002 and the result of such resolutions.

(b) EVALUATION OF ANNUAL REPORT BY GAO.—Not later than 120 days after receiving the report required by subsection (a), the Comptroller General of the United States shall submit an evaluation of such report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(c) STATEMENTS BY VOTING MEMBERS OF THE COUNCIL.—At the time each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to prevent systemic risk that would negatively affect the economy, submit a signed statement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Hous-

ing, and Urban Affairs of the Senate stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(d) TESTIMONY BY THE CHAIRMAN.—The Chairman of the Council shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at a semi-annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

SEC. 1007. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) The Federal Advisory Committee Act shall not apply to the Financial Services Oversight Council, or any special advisory, technical, or professional committees ap-

pointed by the Council (except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States government, the Council shall publish a list of the names of the members of such committee).

(b) The Council shall not be deemed an ''agency'' for purposes of any State or Federal law.

SEC. 1008. OVERSIGHT BY GAO.

(a) AUTHORITY TO AUDIT.—The Comptroller General of the United States may audit the activities and financial transactions of—

(1) the Council; and

(2) any person or entity acting on behalf of or under the authority of the Council, to the extent such activities and financial transactions relate to such person's or entity's work for the Council.

(b) ACCESS TO INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Comptroller General of the United States shall have access, upon request and at such reasonable time and in such reasonable form as the Comptroller General may request, to—

(A) any records or other information under the control of the Council; and

(B) any records or other information under the control of a person or entity acting on behalf of or under the authority of the Council, to the extent such records or other information is relevant to an audit under subsection (a).

(2) CERTAIN INFORMATION SPECIFIED.—Access under paragraph (1) includes access to—

(A) information provided to the Council by its voting and nonvoting members under section 1101; and

(B) the identity of each financial holding company subject to stricter standards.

(c) PERIODIC EVALUATIONS.—The Comptroller General of the United States shall periodically evaluate the processes and activities of the Council and the extent to which the Council is fulfilling its duties under this title. The Comptroller General shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of each such evaluation.

(d) CONFIDENTIALITY.—Any committees or Members of Congress receiving reports or other information from the Comptroller General of the United States shall

maintain the confidentiality of any such information relating to—

(1) dispute resolutions undertaken under section 1002, including the result of such dispute resolutions; and

(2) financial holding companies subject to stricter standards.

Subtitle B—Prudential Regulation of Companies and Activities for Financial Stability Purposes

SEC. 1101. COUNCIL AND BOARD AUTHORITY TO OBTAIN INFORMATION.

(a) IN GENERAL.—The Council and the Board are authorized to receive, and may request the production of, any data or information from members of the Council, as necessary—

(1) to monitor the financial services marketplace to identify potential threats to the stability of the United States financial system;

(2) to identify global trends and developments that could pose systemic risks to the stability of the economy of the United States or other economies; or

(3) to otherwise carry out any of the provisions of this title, including to ascertain a primary finan-

cial regulatory agency's implementation of recommended prudential standards under this subtitle.

(b) SUBMISSION BY COUNCIL MEMBERS.—Notwithstanding any provision of law, any voting or nonvoting member of the Council is authorized to provide information to the Council, and the members of the Council shall maintain the confidentiality of such information.

(c) FINANCIAL COMPANY DATA COLLECTION.—

(1) IN GENERAL.—The Council or the Board may require the submission of periodic and other reports from any financial company solely for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the company itself, poses a threat to financial stability.

(2) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from financial companies that are regulated by the primary financial regulatory agencies, the Council or the Board shall coordinate with such agencies and shall, whenever possible, rely on information already being collected by such agencies.

(d) CONSULTATION WITH AGENCIES AND ENTITIES.—The Council or the Board, as appropriate, may

consult with Federal and State agencies and other entities to carry out any of the provisions of this subtitle.

(e) ADDITIONAL PROVISIONS.—

(1) DATA AND INFORMATION SHARING.—The Chairman of the Council, in consultation with the other members of the Council may—

(A) establish procedures to share data and information collected by the Council under this section with the members of the Council;

(B) develop an electronic process for sharing all information collected by the Council with the Chairman of the Board on a real-time basis; and

(C) issue any regulations necessary to carry out this subsection; and

(D) designate the format in which requested data and information must be submitted to the Council, including any electronic, digital, or other format that facilitates the use of such data by the Council in its analysis.

(2) APPLICABLE PRIVILEGES NOT WAIVED.—A Federal financial regulator, State financial regulator, United States financial company, foreign financial company operating in the United States, financial market utility, or other person shall not be

deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by—

(A) the Council;

(B) any Federal financial regulator or State financial regulator, in any capacity; or

(C) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

(3) DISCLOSURE EXEMPTION.—Any information obtained by the Council under this section shall be exempt from the disclosure requirements under section 552 of title 5, United States Code.

(4) CONSULTATION WITH FOREIGN GOVERNMENTS.—Under the supervision of the President, and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Chairman of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(5) REPORT.—Not later than 6 months after the date of the enactment of this title, the Chairman of the Council shall report to the Financial Services Committee of the House of Representatives and the Banking, Housing, and Urban Affairs Committee of the Senate the opinion of the Council as to whether setting up an electronic database as described in paragraph (1)(B) would aid the Council in carrying out this section.

SEC. 1102. COUNCIL PRUDENTIAL REGULATION RECOMMENDATIONS TO FEDERAL FINANCIAL REGULATORY AGENCIES.

(a) IN GENERAL.—The Council is authorized to issue formal recommendations, publicly or privately, that a Federal financial regulatory agency adopt stricter prudential standards for firms it regulates to mitigate systemic risk.

(b) AGENCY AUTHORITY TO IMPLEMENT STANDARDS.—A Federal financial regulatory agency specifically is authorized to impose, require reports regarding, examine for compliance with, and enforce stricter prudential standards and safeguards for the firms it regulates to mitigate systemic risk. This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an entity with actions taken by a Federal financial regulatory agency under this

section shall be enforceable in accordance with the statutes governing the respective Federal financial regulatory agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(c) AGENCY NOTICE TO COUNCIL.—A Federal financial regulatory agency shall, within 60 days of receiving a Council recommendation under this section, notify the Council in writing regarding—

(1) the actions the Federal financial regulatory agency has taken in response to the Council's recommendation, additional actions contemplated, and timetables therefore; or

(2) the reason the Federal financial regulatory agency has failed to respond to the Council's request.

SEC. 1103. SUBJECTING FINANCIAL COMPANIES TO STRICTER PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council shall, in consultation with the Board and any other primary financial regulatory agency that regulates the financial company or a subsidiary of such company, subject a financial company to stricter prudential standards under this subtitle if the Council determines that—

(1) material financial distress at the company could pose a threat to financial stability or the economy; or

(2) the nature, scope, size, scale, concentration, and interconnectedness, or mix of the company's activities could pose a threat to financial stability or the economy.

(b) CRITERIA.—In making a determination under subsection (a), the Council shall consider the following criteria:

(1) The amount and nature of the company's financial assets.

(2) The amount and nature of the company's liabilities, including the degree of reliance on short-term funding.

(3) The extent of the company's leverage.

(4) The extent and nature of the company's off-balance sheet exposures.

(5) The extent and nature of the company's transactions and relationships with other financial companies.

(6) The company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system.

(7) The nature, scope, and mix of the company's activities.

(8) The degree to which the company is already regulated by one or more Federal financial regulatory agencies.

(9) Any other factors that the Council deems appropriate.

(c) NOTIFICATION OF DECISION.—The Board, in an executive capacity on behalf of the Council, shall immediately upon the Council's decision notify the financial company by order, which shall be public, that the financial company is subject to stricter prudential standards, as prescribed by the Board in accordance with section 1104.

(d) PERIODIC REVIEW AND RESCISSION OF FINDINGS.—

(1) SUBMISSION OF ASSESSMENT.—The Board shall periodically submit a report to the Council containing an assessment of whether each company subjected to stricter prudential standards should continue to be subject to such standards.

(2) REVIEW AND RESCISSION.—The Council shall—

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the

Council regarding whether a financial holding company subject to stricter standards continues to merit stricter prudential standards; and

(B) rescind the action subjecting a company to stricter prudential standards if the Council determines that the company no longer meets the conditions for being subjected to stricter prudential standards in subsections (a) and (b).

(e) EMERGENCY EXCEPTION TO MAJORITY VOTE OF COUNCIL REQUIREMENT.—If each of the Secretary of the Treasury, the Board, and the Federal Deposit Insurance Corporation determines that a financial company must be subjected to stricter prudential standards in accordance with this section immediately to prevent destabilization of the financial system or economy, the Secretary, the Board, and the Corporation may, upon approval by the President, subject such company to stricter prudential standards under this section.

(f) APPEAL.—

(1) ADMINISTRATIVE.—The Council and the Board, in an executive capacity on behalf of the Council, shall establish a procedure through which a financial company that has been subjected to stricter prudential standards in accordance with this section

may appeal being subjected to stricter prudential standards.

(2) JUDICIAL REVIEW.—Any financial company which has been subjected to stricter prudential standards may seek judicial review by filing a petition for such review in the United States Court of Appeals for the District of Columbia.

(g) EFFECT OF COUNCIL DECISION.—

(1) APPLICATION OF THE BANK HOLDING COMPANY ACT.—A financial company that is not a bank holding company as defined in the Bank Holding Company Act at the time the financial company is subjected to stricter prudential standards in accordance with this section, shall—

(A) if such company conducts at the time such company is subjected to stricter prudential standards in accordance with this section only activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, be treated as a bank holding company that has elected to be a financial holding company for purposes of the Bank Holding Company Act of 1956, the Federal Deposit Insurance Act, and all other Federal laws and regulations gov-

erning bank holding companies and financial holding companies and be the financial holding company subject to stricter standards for purposes of this subtitle; or

(B) if such company conducts at the time that such company is subjected to stricter prudential standards in accordance with this section activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act, be required to establish and conduct all its activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956 in an intermediate holding company established under section 6 of the Bank Holding Company Act of 1956, which intermediate holding company shall be treated as a bank holding company that has elected to be a financial holding company for purposes of the Bank Holding Company Act of 1956, the Federal Deposit Insurance Act, and all other Federal laws and regulations governing bank holding companies and financial holding companies, and such section 6 holding company shall be a financial

holding company subject to stricter standards for purposes of this title.

(2) EXEMPTIVE AUTHORITY.—Notwithstanding any provision of the Bank Holding Company Act of 1956, the Board may, if it determines such action is necessary to ensure appropriate stricter prudential supervision, issue such exemptions from that Act as may be necessary with regard to financial holding companies subject to stricter standards that do not control an insured depository institution.

(3) LEVERAGE LIMITATION.—The Board shall require each financial holding company subject to stricter standards to maintain a debt to equity ratio of no more than 15 to 1, and the Board shall issue regulations containing procedures and timelines for how a financial holding company subject to stricter standards with a debt to equity ratio of more than 15 to 1 at the time such company becomes a financial holding company subject to stricter standards shall reduce such ratio.

SEC. 1104. STRICTER PRUDENTIAL STANDARDS FOR CERTAIN FINANCIAL HOLDING COMPANIES FOR FINANCIAL STABILITY PURPOSES.

(a) STRICTER PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—To mitigate risks to financial stability and the economy posed by a financial holding company that has been subjected to stricter prudential standards in accordance with section 1103, the Board shall impose stricter prudential standards on such company. Such standards shall be designed to maximize financial stability taking costs to long-term financial and economic growth into account, be heightened when compared to the standards that otherwise would apply to financial holding companies that are not subjected to stricter prudential standards pursuant to this subtitle (including by addressing additional or different types of risks than otherwise applicable standards), and reflect the potential risk posed to financial stability by the financial holding company subject to stricter standards.

(2) STANDARDS.—

(A) REQUIRED STANDARDS.—The heightened standards imposed by the Board under this section shall include—

(i) risk-based capital requirements;

(ii) leverage limits;

(iii) liquidity requirements;

(iv) concentration requirements (as specified in subsection (c));

(v) prompt corrective action requirements (as specified in subsection (e));

(vi) resolution plan requirements (as specified in subsection (f));

(vii) overall risk management requirements; and

(viii) and may establish short-term debt limits in accordance with subsection (d).

(B) ADDITIONAL STANDARDS.—The heightened standards imposed by the Board under this section also may include any other prudential standards that the Board deems advisable, including taking actions to mitigate systemic risk.

(C) CONSULTATION WITH FEDERAL FINANCIAL REGULATORY AGENCIES.—The Board, in developing stricter prudential standards under this subsection, shall consult with other Federal financial regulatory agencies with respect to any standard that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial holding company that is sub-

ject to stricter prudential standards under this title.

(3) APPLICATION OF REQUIRED STANDARDS.—In imposing prudential standards under this subsection, the Board may differentiate among financial holding companies subject to stricter standards on an individual basis or by category, taking into consideration their capital structure, risk, complexity, financial activities, the financial activities of their subsidiaries, and any other factors that the Board deems appropriate.

(4) WELL CAPITALIZED AND WELL MANAGED.—A financial holding company subject to stricter standards shall at all times after it is subject to such standards be well capitalized and well managed as defined by the Board.

(5) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board shall prescribe regulations regarding the application of stricter prudential standards to financial companies that are organized or incorporated in a country other than the United States, and that own or control a Federal or State branch, subsidiary, or operating entity that is a financial holding company subject to stricter standards, giving due regard to the principle of national

treatment and equality of competitive opportunity and taking into account the extent to which such companies are subject to home country standards comparable to those applied to financial holding companies in the United States.

(6) INCLUSION OF OFF BALANCE SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

(A) IN GENERAL.—In the case of any financial holding company subject to stricter standards, the computation of capital requirements shall take into account off balance sheet activities for such a company.

(B) EXEMPTION.—If the Board determines that an exemption from the requirements under subparagraph (A) is appropriate, the Board may exempt a financial holding company subject to stricter standards from the requirements under subparagraph (A) or any transaction or transactions engaged in by such a company.

(C) OFF BALANCE SHEET ACTIVITIES DEFINED.—For purposes of this paragraph, the term ''off balance sheet activities'' means a liability that is not currently a balance sheet liability but may become one upon the happening of some future event, including the following

transactions, to the extent they may create a liability:

(i) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(ii) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(iii) Risk participation in bankers' acceptances.

(iv) Sale and repurchase agreements.

(v) Asset sales with recourse against the seller.

(vi) Interest rate swaps.

(vii) Credit swaps.

(viii) Commodity contracts.

(ix) Forward contracts.

(x) Securities contracts.

(xi) Such other activities or transactions as the Board may, by rule, define.

(b) PRUDENTIAL STANDARDS AT FUNCTIONALLY REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSITORY INSTITUTIONS.—

(1) BOARD AUTHORITY TO RECOMMEND STANDARDS.—With respect to a functionally regulated sub-

sidiary (as such term is defined in section 5 of the Bank Holding Company Act) or a subsidiary depository institution of a financial holding company subject to stricter standards, the Board may recommend that the relevant Federal financial regulatory agency for such functionally regulated subsidiary or subsidiary depository institution prescribe stricter prudential standards on such functionally regulated subsidiary or subsidiary depository institution. Any standards recommended by the Board under this section shall be of the same type as those described in subsection (a)(2) that the Board is required or authorized to impose directly on the financial holding company subject to stricter standards.

(2) AGENCY AUTHORITY TO IMPLEMENT HEIGHTENED STANDARDS AND SAFEGUARDS.—Each Federal financial regulatory agency that receives a Board recommendation under paragraph (1) is authorized to impose, require reports regarding, examine for compliance with, and enforce standards under this subsection with respect to the entities such agency regulates, as such entities are described in section 1006(b)(6). This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an

entity with actions taken by a Federal financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective agency's jurisdiction over the entity as if the agency action were taken under those statutes.

(3) IMPOSITION OF STANDARDS.—Standards imposed by a Federal financial regulatory agency under this subsection shall be the standards recommended by the Board in accordance with paragraph (1) or any other similar standards that the Board deems acceptable after consultation between the Board and the primary financial regulatory agency.

(4) FEDERAL FINANCIAL REGULATORY AGENCY RESPONSE; NOTICE TO COUNCIL AND BOARD.—A Federal financial regulatory agency shall notify the Council and the Board in writing on whether and to what extent the agency has imposed the stricter prudential standards described in paragraph (3) within 60 days of the Board's recommendation under paragraph (1). A Federal financial regulatory agency that fails to impose such standards shall provide specific justification for such failure to act in the written notice from the agency to the Council and Board.

(c) CONCENTRATION LIMITS FOR FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—

(1) STANDARDS.—In order to limit the risks that the failure of any company could pose to a financial holding company subject to stricter standards and to the stability of the United States financial system, the Board, by regulation, shall prescribe standards that limit the risks posed by the exposure of a financial holding company subject to stricter standards to any other company.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board shall prohibit each financial holding company subject to stricter standards from having credit exposure to any unaffiliated company that exceeds 25 percent of capital stock and surplus of the financial holding company subject to stricter standards, or such lower amount as the Board may determine by regulation to be necessary to mitigate risks to financial stability.

(3) CREDIT EXPOSURE.—For purposes of this subsection and with respect to a financial holding company subject to stricter standards, the term ''credit exposure'' to a company means—

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

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

(C) all securities borrowing and lending transactions with the company to the extent that such transactions create credit exposure of the financial holding company subject to stricter standards to the company;

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

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

(F) counterparty credit exposure to the company in connection with a derivative transaction between the financial holding company subject to stricter standards and the company; and

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

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a financial holding company subject to stricter standards with any person is deemed a transaction with a company to the

extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board may issue such regulations and orders, including definitions consistent with this subsection, as may be necessary to administer and carry out the purpose of this subsection.

(6) EXEMPTIONS.—

(A) IN GENERAL.—

(i) FEDERAL HOME LOAN BANKS.—This subsection shall not apply to any Federal home loan bank, but Federal home loan banks are not exempt from any other provision of this title.

(ii) APPLICABILITY TO OTHER ENTITIES.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not exempt from any provision of this title.

(B) REGULATIONS.—The Board may, by regulation or order, exempt transactions, in whole or in part, from the definition of credit exposure if it finds that the exemption is in the public interest and consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—This subsection and any regulations and orders of the Board under the authority of this subsection shall not take effect until the date that is 3 years from the date of the enactment of this subsection. The Board may extend the effective date for up to 2 additional years to promote financial stability.

(d) SHORT-TERM DEBT LIMITS FOR CERTAIN FINANCIAL HOLDING COMPANIES.—

(1) IN GENERAL.—In order to limit the risks that an overaccumulation of short-term debt could pose to financial holding companies and to the stability of the United States financial system, the Board shall by regulation prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any financial holding company subject to stricter standards for purposes of this title.

(2) BASIS OF LIMIT.—The limit prescribed under paragraph (1) shall be based on a financial holding company's short-term debt as a percentage of its capital stock and surplus or on such other measure as the Board considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term ''short-term debt''

means such liabilities with short-dated maturity that the Board identifies by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board may prescribe such regulations, including definitions consistent with this subsection, and issue such orders as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a financial holding company that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(6) TRANSITION PERIOD.—This subsection and any regulation or order of the Board under this subsection shall take effect 3 years after the date of the enactment of this title. The Board may postpone the date when this subsection takes effect by not more than 2 years in order to promote financial stability.

(e) PROMPT CORRECTIVE ACTION FOR FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—

(1) PROMPT CORRECTIVE ACTION REQUIRED.—The Board shall take prompt corrective action to resolve the problems of financial holding companies subject to stricter standards. Except as specifically provided otherwise, this subsection shall apply only to financial holding companies that are incorporated or organized under United States laws.

(2) DEFINITIONS.—For purposes of this section—

(A) CAPITAL CATEGORIES.—

(i) WELL CAPITALIZED.—A financial holding company subject to stricter standards is ''well capitalized'' if it exceeds the required minimum level for each relevant capital measure.

(ii) UNDERCAPITALIZED.—A financial holding company subject to stricter standards is ''undercapitalized'' if it fails to meet the required minimum level for any relevant capital measure.

(iii) SIGNIFICANTLY UNDERCAPITALIZED.—A financial holding company sub-

ject to stricter standards is ''significantly undercapitalized'' if it is significantly below the required minimum level for any relevant capital measure.

(iv) CRITICALLY UNDERCAPITALIZED.—A financial holding company subject to stricter standards is ''critically undercapitalized'' if it fails to meet any level specified in paragraph (4)(C)(i).

(3) OTHER DEFINITIONS.—

(A) AVERAGE.—The ''average'' of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

(B) CAPITAL DISTRIBUTION.—The term ''capital distribution'' means—

(i) a distribution of cash or other property by a financial holding company subject to stricter standards to its owners made on account of that ownership, but not including any dividend consisting only of shares of the financial holding company

subject to stricter standards or rights to purchase such shares;

(ii) a payment by a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance any person's acquisition of those shares or interests; and

(iii) a transaction that the Board determines, by order or regulation, to be in substance a distribution of capital to the owners of the financial holding company subject to stricter standards.

(C) CAPITAL RESTORATION PLAN.—The term ''capital restoration plan'' means a plan submitted under paragraph (6)(B).

(D) COMPENSATION.—The term ''compensation'' includes any payment of money or provision of any other thing of value in consideration of employment.

(E) RELEVANT CAPITAL MEASURE.—The term ''relevant capital measure'' means the measures described in paragraph (4).

(F) REQUIRED MINIMUM LEVEL.—The term ''required minimum level'' means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the Board by regulation.

(G) SENIOR EXECUTIVE OFFICER.—The term ''senior executive officer'' has the same meaning as the term ''executive officer'' in section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

(4) CAPITAL STANDARDS.—

(A) RELEVANT CAPITAL MEASURES.—

(i) IN GENERAL.—Except as provided in clause (ii)(II), the capital standards prescribed by the Board under section 1104(a)(2) shall include—

(I) a leverage limit; and

(II) a risk-based capital requirement.

(ii) OTHER CAPITAL MEASURES.—The Board may by regulation—

(I) establish any additional relevant capital measures to carry out this section; or

(II) rescind any relevant capital measure required under clause (i) upon determining that the measure is no longer an appropriate means for carrying out this section.

(B) CAPITAL CATEGORIES GENERALLY.—The Board shall, by regulation, specify for each relevant capital measure the levels at which a financial holding company subject to stricter standards is well capitalized, undercapitalized, and significantly undercapitalized.

(C) CRITICAL CAPITAL.—

(i) BOARD TO SPECIFY LEVEL.—

(I) LEVERAGE LIMIT.—The Board shall, by regulation, specify the ratio of tangible equity to total assets at which a financial holding company subject to stricter standards is critically undercapitalized.

(II) OTHER RELEVANT CAPITAL MEASURES.—The Board may, by regulation, specify for 1 or more other relevant capital measures, the level at which a financial holding company

subject to stricter standards is critically undercapitalized.

(ii) LEVERAGE LIMIT RANGE.—The level specified under clause (i)(I) shall require tangible equity in an amount—

(I) not less than 2 percent of total assets; and

(II) except as provided in subclause (I), not more than 65 percent of the required minimum level of capital under the leverage limit.

(5) CAPITAL DISTRIBUTIONS RESTRICTED.—

(A) IN GENERAL.—A financial holding company subject to stricter standards shall make no capital distribution if, after making the distribution, the financial holding company subject to stricter standards would be undercapitalized.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Board may permit a financial holding company subject to stricter standards to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(i) is made in connection with the issuance of additional shares or obligations of the financial holding company subject to stricter standards in at least an equivalent amount; and

(ii) will reduce the financial obligations of the financial holding company subject to stricter standards or otherwise improve the financial condition of the financial holding company subject to stricter standards.

(6) PROVISIONS APPLICABLE TO UNDERCAPITALIZED FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—

(A) MONITORING REQUIRED.—The Board shall—

(i) closely monitor the condition of any undercapitalized financial holding company subject to stricter standards;

(ii) closely monitor compliance by any undercapitalized financial holding company subject to stricter standards with capital restoration plans, restrictions, and requirements imposed under this section; and

(iii) periodically review the plan, restrictions, and requirements applicable to any undercapitalized financial holding company subject to stricter standards to determine whether the plan, restrictions, and requirements are effective.

(B) CAPITAL RESTORATION PLAN REQUIRED.—

(i) IN GENERAL.—Any undercapitalized financial holding company subject to stricter standards shall submit an acceptable capital restoration plan to the Board within the time allowed by the Board under clause (iv).

(ii) CONTENTS OF PLAN.—The capital restoration plan shall—

(I) specify—

(aa) the steps the financial holding company subject to stricter standards will take to become well capitalized;

(bb) the levels of capital to be attained by the financial holding company subject to stricter

standards during each year in which the plan will be in effect;

(cc) how the financial holding company subject to stricter standards will comply with the restrictions or requirements then in effect under this section; and

(dd) the types and levels of activities in which the financial holding company subject to stricter standards will engage; and

(II) contain such other information that the Board may require.

(iii) CRITERIA FOR ACCEPTING PLAN.—The Board shall not accept a capital restoration plan unless it determines that the plan—

(I) complies with clause (ii);

(II) is based on realistic assumptions, and is likely to succeed in restoring the capital of the financial holding company subject to stricter standards; and

(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the financial holding company subject to stricter standards is exposed.

(iv) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The Board shall, by regulation, establish deadlines that—

(I) provide financial holding companies subject to stricter standards with reasonable time to submit capital restoration plans, and generally require a financial holding company subject to stricter standards to submit a plan not later than 45 days after it becomes undercapitalized; and

(II) require the Board to act on capital restoration plans expeditiously, and generally not later than 60 days after the plan is submitted.

(C) ASSET GROWTH RESTRICTED.—An undercapitalized financial holding company subject to stricter standards shall not permit its average total assets during any calendar quar-

ter to exceed its average total assets during the preceding calendar quarter unless—

(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards;

(ii) any increase in total assets is consistent with the plan; and

(iii) the ratio of tangible equity to total assets of the financial holding company subject to stricter standards increases during the calendar quarter at a rate sufficient to enable it to become well capitalized within a reasonable time.

(D) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS AND NEW LINES OF BUSINESS.—An undercapitalized financial holding company subject to stricter standards shall not, directly or indirectly, acquire any interest in any company or insured depository institution, or engage in any new line of business, unless—

(i) the Board has accepted the capital restoration plan of the financial holding company subject to stricter standards, the financial holding company subject to stricter standards is implementing the plan, and

the Board determines that the proposed action is consistent with and will further the achievement of the plan;

(ii) the Board determines that the specific proposed action is appropriate; or

(iii) the Board has exempted the financial holding company subject to stricter standards from the requirements of this paragraph with respect to the class of acquisitions that includes the proposed action.

(E) DISCRETIONARY SAFEGUARDS.—The Board may, with respect to any undercapitalized financial holding company subject to stricter standards, take actions described in any clause of paragraph (7)(B) if the Board determines that those actions are necessary.

(7) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS AND UNDERCAPITALIZED FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

(A) IN GENERAL.—This paragraph shall apply with respect to any financial holding company subject to stricter standards that—

(i) is significantly undercapitalized; or

(ii) is undercapitalized and—

(I) fails to submit an acceptable capital restoration plan within the time allowed by the Board under paragraph (6)(B)(iv); or

(II) fails in any material respect to implement a capital restoration plan accepted by the Board.

(B) SPECIFIC ACTIONS AUTHORIZED.—The Board shall carry out this paragraph by taking 1 or more of the following actions—

(i) REQUIRING RECAPITALIZATION.—Doing one or more of the following:

(I) Requiring the financial holding company subject to stricter standards to sell enough shares or obligations of the financial holding company subject to stricter standards so that the financial holding company subject to stricter standards will be well capitalized after the sale.

(II) Further requiring that instruments sold under subclause (I) be voting shares.

(III) Requiring the financial holding company subject to stricter standards to be acquired by or combine with another company.

(ii) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

(I) Requiring the financial holding company subject to stricter standards to comply with section 23A of the Federal Reserve Act (12 U.S.C. 371c), as if it were a member bank.

(II) Further restricting the transactions of the financial holding company subject to stricter standards with affiliates and insiders.

(iii) RESTRICTING ASSET GROWTH.—Restricting the asset growth of the financial holding company subject to stricter standards more stringently than paragraph (6)(C), or requiring the financial holding company subject to stricter standards to reduce its total assets.

(iv) RESTRICTING ACTIVITIES.—Requiring the financial holding company subject to stricter standards or any of its subsidiaries to alter, reduce, or terminate any activity that the Board determines poses excessive risk to the financial holding company subject to stricter standards.

(v) IMPROVING MANAGEMENT.—Doing one or more of the following:

(I) NEW ELECTION OF DIRECTORS.—Ordering a new election for the board of directors of the financial holding company subject to stricter standards.

(II) DISMISSING DIRECTORS OR SENIOR EXECUTIVE OFFICERS.—Requiring the financial holding company subject to stricter standards to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the financial holding company subject to stricter standards became undercapitalized. Dismissal under this clause shall not be construed to be a

removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(III) EMPLOYING QUALIFIED SENIOR EXECUTIVE OFFICERS.—Requiring the financial holding company subject to stricter standards to employ qualified senior executive officers (who, if the Board so specifies, shall be subject to approval by the Board).

(vi) REQUIRING DIVESTITURE.—Requiring the financial holding company subject to stricter standards to divest itself of or liquidate any subsidiary if the Board determines that the subsidiary is in danger of becoming insolvent, poses a significant risk to the financial holding company subject to stricter standards, or is likely to cause a significant dissipation of the assets or earnings of the financial holding company subject to stricter standards.

(vii) REQUIRING OTHER ACTION.—Requiring the financial holding company subject to stricter standards to take any other action that the Board determines will bet-

ter carry out the purpose of this section than any of the actions described in this subparagraph.

(C) PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with subparagraph (B), the Board shall take the following actions, unless the Board determines that the actions would not be appropriate—

(i) The action described in subclause (I) or (III) of subparagraph (B)(i) (relating to requiring the sale of shares or obligations, or requiring the financial holding company subject to stricter standards to be acquired by or combine with another company).

(ii) The action described in subparagraph (B)(ii) (relating to restricting transactions with affiliates).

(D) SENIOR EXECUTIVE OFFICERS' COMPENSATION RESTRICTED.—

(i) IN GENERAL.—The financial holding company subject to stricter standards shall not do any of the following without the prior written approval of the Board:

(I) Pay any bonus to any senior executive officer.

(II) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the financial holding company subject to stricter standards became undercapitalized.

(ii) FAILING TO SUBMIT PLAN.—The Board shall not grant any approval under clause (i) with respect to a financial holding company subject to stricter standards that has failed to submit an acceptable capital restoration plan.

(E) CONSULTATION WITH OTHER REGULATORS.—Before the Board makes a determination under subparagraph (B)(vi) with respect to a subsidiary that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the Board shall consult with the

Securities and Exchange Commission and, in the case of any other subsidiary which is subject to any financial responsibility or capital requirement, any other appropriate regulator of such subsidiary with respect to the proposed determination of the Board and actions pursuant to such determination.

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

(A) IN GENERAL.—If the Board determines (after notice and an opportunity for hearing) that a financial holding company subject to stricter standards is in an unsafe or unsound condition or, pursuant to section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8)), deems the financial holding company subject to stricter standards to be engaging in an unsafe or unsound practice, the Board may—

(i) if the financial holding company subject to stricter standards is well capitalized, require the financial holding company subject to stricter standards to comply with one or more provisions of paragraphs

(6) and (7), as if the institution were undercapitalized; or

(ii) if the financial holding company subject to stricter standards is undercapitalized, take any one or more actions authorized under paragraph (7)(B) as if the financial holding company subject to stricter standards were significantly undercapitalized.

(B) CONTENTS OF PLAN.—A plan that may be required pursuant to subparagraph (A)(i) shall specify the steps that the financial holding company subject to stricter standards will take to correct the unsafe or unsound condition or practice.

(9) IMPLEMENTATION.—The Board shall prescribe such regulations, issue such orders, and take such other actions the Board determines to be necessary to carry out this subsection.

(10) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the Board, any other Federal regulatory agency, or a State to take action in addition to (but not in derogation of) that required under this section.

(11) CONSULTATION.—The Board and the Secretary of the Treasury shall consult with their foreign counterparts and through appropriate multilateral organizations to reach agreement to extend comprehensive and robust prudential supervision and regulation to all highly leveraged and substantially interconnected financial companies.

(12) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

(A) TIMELY PETITION REQUIRED.—A director or senior executive officer dismissed pursuant to an order under paragraph (7)(B)(v)(II) may obtain review of that order by filing a written petition for reinstatement with the Board not later than 10 days after receiving notice of the dismissal.

(B) PROCEDURE.—

(i) HEARING REQUIRED.—The Board shall give the petitioner an opportunity to—

(I) submit written materials in support of the petition; and

(II) appear, personally or through counsel, before 1 or more

members of the Board or designated employees of the Board.

(ii) DEADLINE FOR HEARING.—The Board shall—

(I) schedule the hearing referred to in clause (i)(II) promptly after the petition is filed; and

(II) hold the hearing not later than 30 days after the petition is filed, unless the petitioner requests that the hearing be held at a later time.

(iii) DEADLINE FOR DECISION.—Not later than 60 days after the date of the hearing, the Board shall—

(I) by order, grant or deny the petition;

(II) if the order is adverse to the petitioner, set forth the basis for the order; and

(III) notify the petitioner of the order.

(C) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the burden of proving that the petitioner's continued em-

ployment would materially strengthen the ability of the financial holding company subject to stricter standards—

(i) to become well capitalized, to the extent that the order is based on the capital level of the financial holding company subject to stricter standards or such company's failure to submit or implement a capital restoration plan; and

(ii) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on paragraph (8)(A).

(13) ENFORCEMENT AUTHORITY FOR FOREIGN FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—

(A) TERMINATION AUTHORITY.—If the Board believes that a condition, practice, or activity of a foreign financial holding company subject to stricter standards does not comply with this title or the rules or orders prescribed by the Board under this title or otherwise poses a threat to financial stability, the Board may, after notice and opportunity for a hearing, take such actions as necessary to mitigate such risk,

including ordering a foreign financial holding company subject to stricter standards in the United States to terminate the activities of such branch, agency, or subsidiary.

(B) DISCRETION TO DENY HEARING.—The Board may issue an order under paragraph (1) without providing for an opportunity for a hearing if the Board determines that expeditious action is necessary in order to protect the public interest.

(f) REPORTS REGARDING RAPID AND ORDERLY RESOLUTION AND CREDIT EXPOSURE.—

(1) IN GENERAL.—The Board shall require each financial holding company subject to stricter standards incorporated or organized in the United States to report periodically to the Board on—

(A) its plan for rapid and orderly resolution in the event of severe financial distress;

(B) the nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies; and

(C) the nature and extent to which other significant financial companies have credit ex-

1 posure to the financial holding company subject
2 to stricter standards.
3 (2) NO LIMITING EFFECT.—A rapid resolution
4 plan submitted in accordance with this subsection
5 shall not be binding on a receiver appointed under
6 subtitle G, a bankruptcy court, or any other author-
7 ity that is authorized or required to resolve the fi-
8 nancial holding company subject to stricter stand-
9 ards or any of its subsidiaries or affiliates.
10 (3) REPORTING TRIGGERED BY STRESS TEST
11 RESULTS.—
12 (A) FINANCIAL HOLDING COMPANIES SUB-
13 JECT TO STRICTER STANDARDS.—Each time
14 the results of a quarterly stress test under base-
15 line or adverse conditions conducted by a finan-
16 cial holding company subject to stricter stand-
17 ards under section 1114(a) or the results of a
18 stress test of that financial holding company
19 subject to stricter standards conducted by the
20 Board under subsection (g) indicate that the fi-
21 nancial holding company subject to stricter
22 standards is, in the determination of the Board,
23 significantly or critically undercapitalized, that
24 financial holding company subject to stricter
25 standards shall submit a rapid resolution plan

in accordance with this subsection that has been revised to address the causes of those results.

(B) FINANCIAL COMPANIES THAT ARE NOT FINANCIAL HOLDING COMPANIES SUBJECT TO STRICTER STANDARDS.—Each time the results of a semiannual stress test under baseline or adverse conditions conducted by a financial company under section 1114(b) indicate that the financial company is, in the determination of the Board, significantly or critically undercapitalized, that financial company shall be required to report under this subsection. The Board shall prescribe regulations establishing expedited procedures for such reporting.

(C) TRANSPARENCY.—Any rapid resolution plan submitted pursuant to this paragraph shall be subject to any restrictions regarding the disclosure of any other rapid resolution plan submitted pursuant to this subsection.

(g) STRESS TESTS.—

(1) The Board, in coordination with the appropriate primary financial regulatory agency, shall conduct annual stress tests of each financial holding company subject to stricter standards. The Board

may, as the Board determines appropriate, conduct stress tests of financial companies that are not financial holding companies subject to stricter standards. The Board shall publish a summary of the results of such stress tests.

(2) The Board shall issue regulations to define the term ''stress test'' for purposes of this subsection. Such a definition shall provide for not less than 3 different sets of conditions under which a stress test should be conducted: baseline, adverse, and severely adverse scenarios.

(h) AVOIDING DUPLICATION.—The Board shall take any action the Board deems appropriate to avoid imposing duplicative requirements under this subtitle for financial holding companies subject to stricter standards that are also bank holding companies.

(i) RESOLUTION PLANS REQUIRED.—

(1) IN GENERAL.—The Corporation and the Board, after consultation with the Council, shall jointly issue regulations requiring financial holding companies subject to stricter standards to develop plans designed to assist in the rapid and orderly resolution of the company.

(2) STANDARDS FOR RESOLUTION PLANS.—The regulations required by paragraph (1) shall—

(A) define the scope of financial holding companies subject to stricter standards covered by these requirements and may exempt financial holding companies subject to stricter standards from the requirements of this subsection if the Corporation and the Board jointly determine that exemption is consistent with the purposes of this title;

(B) require each plan to demonstrate that any insured depository institution affiliated with a financial holding company subject to stricter standards is adequately insulated from the activities of any non-bank subsidiary of the institution or financial holding companies subject to stricter standards;

(C) require that each plan include information detailing—

(i) the nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies;

(ii) the nature and extent to which other significant financial companies have credit exposure to the financial holding company subject to stricter standards;

(iii) full descriptions of the financial holding company subject to stricter standards' ownership structure, assets, liabilities, and contractual obligations; and

(iv) the cross-guarantees tied to different securities, a list of major counterparties, and a process for determining where the financial holding company subject to stricter standards' collateral is pledged; and

(D) establish such other standards as the Corporation and the Board may jointly deem necessary to carry out this subsection.

(3) REVIEW OF PLANS.—

(A) SUBMISSION OF PLANS.—Each financial holding company subject to stricter standards that is subject to the requirement under paragraph (1) shall submit its plan to the Corporation and the Board.

(B) REVIEW.—Upon the submission of a plan pursuant to subparagraph (A), and not less often than annually thereafter, the Corporation and the Board, after consultation with any Federal financial regulatory agencies with jurisdiction over the financial holding company

subject to stricter standards, shall jointly review such plan and may require a financial holding company subject to stricter standards to revise its plan consistent with the standards established pursuant to paragraph (2).

(4) ENFORCEMENT.—

(A) IN GENERAL.—The Corporation, after consultation with the Board, shall have the authority to take any enforcement action in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) against any financial holding company subject to stricter standards that fails to comply with the requirements of this section or any regulations issued pursuant to this section.

(B) NO LIMITATION ON BOARD AUTHORITY.—Nothing under this subsection shall be construed as limiting any enforcement authority available to the Board under any other provision of law.

(5) NO LIMITING EFFECT ON RECEIVER.—A rapid resolution plan submitted under this section shall not be binding on a receiver appointed under subtitle G, a bankruptcy court, or any other authority that is authorized or required to resolve the fi-

nancial holding company subject to stricter standards or any of its subsidiaries or affiliates.

(6) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted under this section.

SEC. 1105. MITIGATION OF SYSTEMIC RISK.

(a) COUNCIL AUTHORITY TO RESTRICT OPERATIONS AND ACTIVITIES.—If the Council determines, after notice and an opportunity for hearing, that despite the higher prudential standards imposed pursuant to section 1104(a)(2), the size of a financial holding company subject to stricter standards or the scope, nature, scale, concentration, interconnectedness, or mix of activities directly or indirectly conducted by a financial holding company subject to stricter standards poses a grave threat to the financial stability or economy of the United States, the Council shall require the company to undertake 1 or more mitigatory actions described in subsection (d).

(b) CONSULTATION WITH FEDERAL FINANCIAL REGULATORY AGENCIES.—The Council, in determining whether to impose any requirement under this section that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial company subjected to stricter prudential

standards under this title, shall consult with the Federal financial regulatory agency for any such subsidiary.

(c) FACTORS FOR CONSIDERATION.—In reaching a determination described in subsection (a), the Council shall take into consideration the following factors, as appropriate—

(1) the amount and nature of the company's financial assets;

(2) the amount and nature of the company's liabilities, including the degree of reliance on short-term funding;

(3) the extent and nature of the company's off-balance sheet exposures;

(4) the company's reliance on leverage;

(5) the extent and nature of the company's transactions, relationships, and interconnectedness with other financial and non-financial companies;

(6) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(7) the scope, nature, size, scale, concentration, interconnectedness and mix of the company's activities;

(8) the extent to which prudential regulations mitigate the risk posed; and

(9) any other factors identified that the Council determines appropriate.

(d) MITIGATORY ACTIONS.—

(1) IN GENERAL.—Mitigatory action may include—

(A) modifying the prudential standards imposed pursuant to section 1104(a);

(B) terminating 1 or more activities;

(C) imposing conditions on the manner in which a financial holding company subject to stricter standards conducts 1 or more activities;

(D) limiting the ability to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(E) restricting the ability to offer a financial product or products; and

(F) in the event the Council deems subparagraphs (A) through (E) inadequate as a means to address the identified risks, selling, divesting, or otherwise transferring business units, branches, assets, or off-balance sheet items to unaffiliated companies.

(2) INTERNATIONAL COMPETITIVENESS CONSIDERATIONS.—In making any decision pursuant to paragraph (1), the Council shall consider—

(A) the need to maintain the international competitiveness of the United States financial services industry; and

(B) the extent to which other countries with a significant financial services industry have established corresponding regimes to mitigate threats to financial stability or the economy posed by financial companies.

(e) DUE PROCESS.—

(1) NOTICE AND HEARING.—The Council shall give notice to a financial company subject to stricter prudential standards, and opportunity for hearing if requested, that the financial company is being considered for mitigatory action pursuant to subsection (a). The hearing shall occur no later than 30 days after the financial company receives notice of the proposed action from the Council.

(2) NOTICE.—The Council shall notify the financial company subject to stricter prudential standards of the Council's determination, and, if the Council determines that mitigatory action is appro-

priate, require the company to submit a plan to the Council to implement the required mitigatory action.

(3) SUBMISSION OF PLAN.—The financial holding company subject to stricter standards shall submit its proposed plan to implement the required mitigatory action or actions to the Council within 60 days from the date it receives notice under paragraph (2) or such shorter timeframe as the Council may require, if the Council determines an emergency situation merits expeditious implementation.

(4) APPROVAL OR AMENDMENT OF THE PLAN.—The Council shall review the plan submitted pursuant to paragraph (3) and determine whether the plan achieves the goal of mitigating a grave threat to the financial stability or the economy of the United States. The Council may approve or disapprove the plan with or without amendment.

(5) EFFECT OF PLAN APPROVAL.—The Council shall—

(A) notify a financial holding company subject to stricter standards by order, which shall be public, that the Council has approved the plan with or without amendment; and

(B) direct the Board to require a financial holding company subject to stricter standards

to comply with the plan to implement mitigatory action or actions within a reasonable timeframe after the Council's approval and in accordance with such deadlines established in the plan.

(f) TREASURY SECRETARY CONCURRENCE.—Mitigatory action imposed by the Council involving the sale, divestiture, or transfer of more than $10,000,000,000 in total assets by a financial holding company subject to stricter standards shall require the Secretary of the Treasury's concurrence before the issuance of the notice in subsection (e)(5)(A). If the sale, divestiture, or transfer of total assets by a financial holding company subject to stricter standards exceeds $100,000,000,000, the Secretary of the Treasury shall consult with the President before concurrence.

(g) FAILURE TO IMPLEMENT THE PLAN.—If a financial holding company subject to stricter standards fails to implement a plan for mitigatory action imposed pursuant to subsection (e)(5) within a reasonable timeframe, the Council shall direct the Board to take such actions as necessary to ensure compliance with the plan.

(h) JUDICIAL REVIEW.—For any plan required under this section, a financial holding company subject to stricter standards may, not later than 30 days after receipt of

the Council's notice under subsection (e)(5), bring an action in the United States district court for the judicial district in which the home office of such company is located, or in the United States District Court for the District of Columbia, for an order requiring that the requirement for a mitigatory action be rescinded. Judicial review under this section shall be limited to the imposition of a mitigatory action. In reviewing the Council's imposition of a mitigatory action, the court shall rescind or dismiss only those mitigatory actions it finds to be imposed in an arbitrary and capricious manner.

SEC. 1106. SUBJECTING ACTIVITIES OR PRACTICES TO STRICTER PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may subject a financial activity or practice to stricter prudential standards under this subtitle if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among financial institutions or markets and local, minority, or underserved communities, and thereby threaten the stability of the financial system or economy.

(b) PERIODIC REVIEW OF ACTIVITY IDENTIFICATIONS.—

(1) SUBMISSION OF ASSESSMENT.—The Board shall periodically submit a report to the Council containing an assessment of whether each activity or practice subjected to stricter prudential standards should continue to be subject to such standards.

(2) REVIEW AND RECISION.—The Council shall—

(A) review the assessment submitted pursuant to paragraph (1) and any information or recommendation submitted by members of the Council regarding whether a financial activity subjected to stricter prudential standards continues to merit stricter prudential standards; and

(B) rescind the action subjecting an activity to heightened prudential supervision if the Council determines that the activity no longer meets the criteria in subsection (a).

(c) PROCEDURE FOR SUBJECTING OR CEASING TO SUBJECT AN ACTIVITY OR PRACTICE TO STRICTER PRUDENTIAL STANDARDS.—

(1) COUNCIL AND BOARD COORDINATION.—The Council shall inform the Board if the Council is con-

1 sidering whether to subject or cease to subject an
2 activity to stricter prudential standards in accord-
3 ance with this section.

4 (2) NOTICE AND OPPORTUNITY FOR CONSIDER-
5 ATION OF WRITTEN MATERIALS.—

6 (A) IN GENERAL.—The Board shall, in an
7 executive capacity on behalf of the Council, pro-
8 vide notice to financial companies that the
9 Council is considering whether to subject an ac-
10 tivity or practice to heightened prudential regu-
11 lation, and shall provide a financial company
12 engaged in such activity or practice 30 days to
13 submit written materials to inform the Coun-
14 cil's decision. The Council shall decide, and the
15 Board shall provide notice of the Council's deci-
16 sion, within 60 days of the due date for such
17 written materials.

18 (B) EMERGENCY EXCEPTION.—The Coun-
19 cil may waive or modify the requirements of
20 subparagraph (A) if the Council determines
21 that such waiver or modification is necessary or
22 appropriate to prevent or mitigate threats posed
23 by an activity to financial stability. The Board
24 shall, in an executive capacity on behalf of the
25 Council, provide notice of such waiver or modi-

fication to financial companies as soon as practicable, which shall be no later than 24 hours after the waiver or modification.

(3) FORM OF DECISION.—The Board shall provide all notices required under this subsection by posting a notice on the Board's web site and publishing a notice in the Federal Register.

SEC. 1107. STRICTER REGULATION OF ACTIVITIES AND PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) PRUDENTIAL STANDARDS.—

(1) BOARD AUTHORITY TO RECOMMEND.—

(A) IN GENERAL.—To mitigate the risks to United States financial stability and the United States economy posed by financial activities and practices that the Council identifies for stricter prudential standards under section 1106 the Board shall recommend prudential standards to the appropriate primary financial regulatory agencies to apply to such identified activities and practices.

(B) CONSULTATION WITH PRIMARY FINANCIAL REGULATORY AGENCIES.—The Board, in developing recommendations under this subsection, shall consult with the relevant primary

financial regulatory agencies with respect to any standard that is likely to have a significant effect on entities described in section 1000(b)(6).

(2) CRITERIA.—The actions recommended under paragraph (1)—

(A) shall be designed to maximize financial stability, taking costs to long-term financial and economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, nature, size, scale, concentration, or interconnectedness, or applying particular capital or risk-management requirements to the conduct of the activity) or prohibiting the activity or practice altogether.

(b) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—Each primary financial regulatory agency is authorized to impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities described in section 1000(b)(6) for which it is the primary financial regulatory agency. This au-

1 thority is in addition to and does not limit any other
2 authority of the primary financial regulatory agen-
3 cies. Compliance by an entity with actions taken by
4 a primary financial regulatory agency under this sec-
5 tion shall be enforceable in accordance with the stat-
6 utes governing the respective primary financial regu-
7 latory agency's jurisdiction over the entity as if the
8 agency action were taken under those statutes.

9 (2) IMPOSITION OF STANDARDS.—Standards
10 imposed under this subsection shall be the standards
11 recommended by the Board in accordance with sub-
12 section (a) or any other similar standards that the
13 Board deems acceptable after consultation between
14 the Board and the primary financial regulatory
15 agency.

16 (3) PRIMARY FINANCIAL REGULATORY AGENCY
17 RESPONSE.—A primary financial regulatory agency
18 shall notify the Council and the Board in writing on
19 whether and to what extent the agency has imposed
20 the stricter prudential standards described in para-
21 graph (2) within 60 days of the Board's rec-
22 ommendation. A primary financial regulatory agency
23 that fails to impose such standards shall provide
24 specific justification for such failure to act in the

written notice from the agency to the Council and Board.

SEC. 1108. EFFECT OF RESCISSION OF IDENTIFICATION.

(a) NOTICE.—When the Council determines that a company or activity or practice no longer is subject to heightened prudential scrutiny, the Board shall inform the relevant primary financial regulatory agency or agencies (if different from the Board) of that finding.

(b) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—A primary financial regulatory agency that has imposed stricter prudential standards for financial stability purposes under this subtitle shall determine whether standards that it has imposed under this subtitle should remain in effect.

SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.

(a) IN GENERAL.—Upon the written determination of the Council that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of the Council then serving) and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), the Corporation may create a widely-available program designed to avoid or mitigate adverse effects on systemic economic conditions or financial stability by guaranteeing ob-

1 ligations of solvent insured depository institutions or other
2 solvent companies that are predominantly engaged in ac-
3 tivities that are financial in nature or are incidental there-
4 to pursuant to section 4(k) of the Bank Holding Company
5 Act, if necessary to prevent systemic financial instability
6 during times of severe economic distress, except that a
7 guarantee of obligations under this section may not in-
8 clude provision of equity in any form.

9 (b) POLICIES AND PROCEDURES.—Prior to exercising
10 any authority under this section, the Corporation shall es-
11 tablish policies and procedures governing the issuance of
12 guarantees. The terms and conditions of any guarantees
13 issued shall be established by the Corporation with the ap-
14 proval of the Secretary of the Treasury and the Financial
15 Stability Oversight Council.

16 (c) FUNDING.—

17 (1) ADMINISTRATIVE EXPENSES AND COST OF
18 GUARANTEES.—A program established pursuant to
19 this section shall require funding only for the pur-
20 poses of paying administrative expenses and for pay-
21 ing a guarantee in the event that a guaranteed loan
22 defaults.

23 (2) FEES AND OTHER CHARGES.—The Corpora-
24 tion shall charge fees or other charges to all partici-
25 pants in such program established pursuant to this

1 section. To the extent that a program established
2 pursuant to this section has expenses or losses, the
3 program will be funded entirely through fees or
4 other charges assessed on participants in such pro-
5 gram.

6 (3) EXCESS FUNDS.—If at the conclusion of
7 such program there are any excess funds collected
8 from the fees associated with such program, the
9 funds will be deposited into the Systemic Resolution
10 Fund established pursuant to section 1609(n).

11 (4) AUTHORITY OF CORPORATION.—For pur-
12 poses of conducting a program established pursuant
13 to this section, the Corporation—

14 (A) may borrow funds from the Secretary
15 of the Treasury, which shall be repaid in full
16 with interest through fees and charges paid by
17 participants in accordance with paragraph (2),
18 and, to the extent such additional amounts are
19 necessary, assessments on large financial com-
20 panies under paragraph (5), and there shall be
21 available to the Corporation amounts in the
22 Treasury not otherwise appropriated, including
23 for the payment of reasonable administrative
24 expenses;

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act; and

(C) may not borrow funds from the Systemic Resolution Fund established pursuant to section 1609(n).

(5) BACK-UP SPECIAL ASSESSMENT.—To the extent that the funds collected pursuant to paragraph (2) are insufficient to cover any losses or expenses (including monies borrowed pursuant to paragraph (4)) arising from a program established pursuant to this section, the Corporation shall impose a special assessment on—

(A) large financial companies subject to assessments under section 1609(n) (whether or not such company participated in such program) in the manner provided in such section 1609(n); and

(B) participants in the program that are not large financial companies paying assessments pursuant to section 1609(n).

(d) PLAN FOR MAINTENANCE OR INCREASE OF LENDING.—In connection with any application or request to participate in such program authorized pursuant to this

1 section, a solvent company seeking to participate in such
2 program shall be required to submit to the Corporation
3 a plan detailing how the use of such guaranteed funds will
4 facilitate the increase or maintenance of such solvent com-
5 pany's level of lending to consumers or small businesses.
6 (e) DEFINITIONS.—For purposes of this section, the
7 following definitions apply:
8 (1) ACTIVITIES THAT ARE FINANCIAL IN NA-
9 TURE.—The term ''activities that are financial in
10 nature'' means activities that are determined to be
11 financial in nature, or incidental to such activities,
12 under section 4(k) of the Bank Holding Company
13 Act of 1956 (12 U.S.C. 1843(k)) and activities that
14 are identified for stricter prudential standards under
15 section 1106.
16 (2) COMPANY.—The term ''company'' means
17 any entity other than a natural person that is incor-
18 porated or organized under Federal law or the laws
19 of any State.
20 (3) CORPORATION.—The term ''Corporation''
21 means the Federal Deposit Insurance Corporation.
22 (4) INSURED DEPOSITORY INSTITUTION.—The
23 term ''insured depository institution'' shall have the
24 same meaning as in section 3 of the Federal Deposit
25 Insurance Act (12 U.S.C. 1813).

(5) SOLVENT.—The term ''solvent'' means assets are more than the obligations to creditors.

(f) SUNSET OF CORPORATION'S AUTHORITY.—The Corporation's authority under subsections (a) and (c) and the authority to borrow or obligate funds under section 1609(n) shall expire on December 31, 2013, unless the President transmits to the Congress a request for renewal of the authority and there is enacted a joint resolution, as defined in subsection (g).

(g) JOINT RESOLUTION.—

(1) TERMS.—For purposes of subsection (f), the term ''joint resolution'' means only a joint resolution which is introduced within a 2-day period beginning on the date on which the President transmits the request to the Congress under subsection (f), and—

(A) which does not have a preamble;

(B) the matter after the resolving clause of which is as follows: ''That Congress approves the request for renewal of authority provided under sections 1108 and 1609(n) of the Financial Stability Improvement Act of 2009 as submitted by the President on _____'', the blank space being filled in with the appropriate date; and

(C) the title of which is as follows: ''Joint resolution approving the renewal of financial stabilization authority.''.

(2) REFERRAL.—A resolution described in paragraph (1) that is introduced in the House of Representatives shall be referred to the Committee on Financial Services of the House of Representatives. A resolution described in paragraph (1) introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) DISCHARGE.—If the committee to which a resolution described in paragraph (1) is referred has not reported such resolution (or an identical resolution) by the end of the 2-day period beginning on the date on which the President transmits the request to the Congress under subsection (f), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(4) CONSIDERATION.—

(A) IN GENERAL.—On or after the day after the date on which the committee to which such a resolution is referred has reported, or

has been discharged (under paragraph (3)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the reso-

lution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(B) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion to limit further debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(C) VOTE.—Immediately following the conclusion of the debate on a resolution described in paragraph (1) and a single quorum call at the conclusion of the debate, if requested in accordance with the rules of the appropriate

House, the vote on final passage of the resolution shall occur.

(D) RULES APPEALS.—Appeals of the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

(5) CONSIDERATION BY OTHER HOUSE.—

(A) IN GENERAL.—If, before the passage by one House of a resolution of that House described in paragraph (1), that House receives from the other House a resolution described in paragraph (1), then the following procedures shall apply:

(i) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in clause (ii)(II).

(ii) With respect to a resolution described in paragraph (1) of the House receiving the resolution—

(I) the procedure in that House shall be the same as if no resolution

had been received from the other House; but

(II) the vote on final passage shall be on the resolution of the other House.

(B) CONSIDERATION.—Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(6) RULES OF THE SENATE AND HOUSE.—This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in paragraph (1), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and

to the same extent as in the case of any other rule of that House.

(7) EFFECTIVE PERIOD.—The Presidential request referred to in paragraph (1) shall specify the period of time that such authority is extended and the adoption of the joint resolution shall extend such powers for such period of time.

SEC. 1110. CORPORATION MUST RECEIVE WARRANTS WHEN PAYING OR RISKING TAXPAYER FUNDS.

(a) IN GENERAL.—The Federal Deposit Insurance Corporation (hereinafter in this section referred to as the ''Corporation'') may not provide any payment, credit extension, or guarantee, or make any such commitment under the authority of section 1109 or 1604, unless the Corporation receives from the financial company for which the credit extension or guarantee is intended, as fair market value consideration for such payment, credit extension or guarantee—

(1) in the case of a financial company, the securities of which are traded on a national securities exchange, a warrant giving the right to the Corporation to receive nonvoting common stock or preferred stock in such financial institution, or voting stock with respect to which, the Corporation agrees not to

exercise voting power, as the Corporation determines appropriate; or

(2) in the case of any financial company other than one described in paragraph (1), a warrant for common or preferred stock, or a senior debt instrument from such financial institution, as described in subsection (b)(3).

(b) TERMS AND CONDITIONS.—The terms and conditions of any warrant or senior debt instrument required under subsection (a) shall meet the following requirements:

(1) PURPOSES.—Such terms and conditions shall, at a minimum, be designed—

(A) to provide for reasonable participation by the Corporation, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity security, or a reasonable interest rate premium, in the case of a debt instrument; and

(B) to provide additional protection for the taxpayer against losses from such payment, extension of credit, or guarantee by the Corporation under this title.

(2) AUTHORITY TO SELL, EXERCISE, OR SURRENDER.—The Corporation may sell, exercise, or

1 surrender a warrant or any senior debt instrument
2 received under this subsection, based on the condi-
3 tions established under paragraph (1).

4 (3) CONVERSION.—The warrant shall provide
5 that if, after the warrant is received by the Corpora-
6 tion under this subsection, the financial company
7 that issued the warrant is no longer listed or traded
8 on a national securities exchange or securities asso-
9 ciation, as described in subsection (a)(1), such war-
10 rants shall convert to senior debt, or contain appro-
11 priate protections for the Corporation to ensure that
12 the Corporation is appropriately compensated for the
13 value of the warrant, in an amount determined by
14 the Corporation.

15 (4) PROTECTIONS.—Any warrant representing
16 securities to be received by the Corporation under
17 this subsection shall contain anti-dilution provisions
18 of the type employed in capital market transactions,
19 as determined by the Corporation. Such provisions
20 shall protect the value of the securities from market
21 transactions such as stock splits, stock distributions,
22 dividends, and other distributions, mergers, and
23 other forms of reorganization or recapitalization.

24 (5) EXERCISE PRICE.—The exercise price for
25 any warrant issued pursuant to this subsection shall

be set by the Corporation, in the interest of the taxpayers.

(6) SUFFICIENCY.—The financial company shall guarantee to the Corporation that it has authorized shares of nonvoting stock available to fulfill its obligations under this subsection. Should the financial company not have sufficient authorized shares, including preferred shares that may carry dividend rights equal to a multiple number of common shares, the Corporation may, to the extent necessary, accept a senior debt note in an amount, and on such terms as will compensate the Corporation with equivalent value, in the event that a sufficient shareholder vote to authorize the necessary additional shares cannot be obtained.

(c) EXCEPTIONS.—

(1) The Corporation shall establish an exception to the requirements of this section and appropriate alternative requirements for any participating financial company that is legally prohibited from issuing securities and debt instruments, so as not to allow circumvention of the requirements of this section.

(2) If the Corporation is providing a payment, extension of credit, or guarantee with regard to its authority under section 1604 and the Corporate de-

termines that it is certain that at the conclusion of the Resolution Process the shareholders of all classes shall lose their entire investment and receive nothing therefor, then the requirements of this section shall not apply.

SEC. 1111. EXAMINATIONS AND ENFORCEMENT ACTIONS FOR INSURANCE AND RESOLUTIONS PURPOSES.

(a) EXAMINATIONS FOR INSURANCE AND RESOLUTIONS PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking ''whenever the Board of Directors determines'' and all that follows through the period and inserting ''or financial holding company subject to stricter standards (as defined in section 1000(b)(5) of the Financial Stability Improvement Act of 2009) whenever the Board of Directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance or such financial holding company subject to stricter standards for resolution purposes.''.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (2)—

(A) at the end of subparagraph (B), by striking ''or'';

(B) at the end of subparagraph (C), by striking the period and inserting ''; or''; and

(C) by inserting at the end the following new subparagraph:

''(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund.''; and

(2) by adding at the end the following new paragraph:

''(6) For purposes of this subsection:

''(A) The Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

''(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.''.

SEC. 1112. STUDY OF THE EFFECTS OF SIZE AND COMPLEXITY OF FINANCIAL INSTITUTIONS ON CAPITAL MARKET EFFICIENCY AND ECONOMIC GROWTH.

(a) STUDY REQUIRED.—The Chairman of the Council shall carry out a study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the effect on the efficiency of capital markets, costs imposed on the financial sector, and on national economic growth, of—

(1) explicit or implicit limits on the maximum size of banks, bank holding companies, and other large financial institutions;

(2) limits on the organizational complexity and diversification of large financial institutions;

(3) requirements for operational separation between business units of large financial institutions in order to expedite resolution in case of failure;

(4) limits on risk transfer between business units of large financial institutions;

(5) requirements to carry contingent capital or similar mechanisms;

(6) limits on commingling of commercial and financial activities by large financial institutions;

(7) segregation requirements between traditional financial activities and trading or other high-risk operations in large financial institutions; and

(8) other limitations on the activities or structure of large financial institutions that may be useful to limit systemic risk.

The study shall include recommendations for the optimal structure of any limits considered in paragraphs (1) through (5) in order to maximize their effectiveness and minimize their economic impact.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

SEC. 1113. EXERCISE OF FEDERAL RESERVE AUTHORITY.

(a) NO DECISIONS BY FEDERAL RESERVE BANK PRESIDENTS.—No provision of this title relating to the authority of the Board shall be construed as conferring any decision-making authority on presidents of Federal reserve banks.

(b) VOTING DECISIONS BY BOARD.—The Board of Governors of the Federal Reserve System shall not delegate the authority to make any voting decision that the Board is authorized or required to make under this title

in contravention of section 11(k) of the Federal Reserve Act.

SEC. 1114. STRESS TESTS.

(a) A financial holding company subject to stricter standards shall—

(1) conduct quarterly stress tests; and

(2) submit a report on its quarterly stress test to the head of the primary financial regulatory agency and to the Board at such time, in such form, and containing such information as the head of the primary financial regulatory agency may require.

(b) A financial company that has more than $10,000,000,000 in total assets and is not a financial holding company subject to stricter standards shall—

(1) conduct semiannual stress tests; and

(2) submit a report on its semiannual stress test to the head of the primary financial regulatory agency and to the Board at such time, in such form, and containing such information as the head of the primary financial regulatory agency may require.

(c) A stress test under this section shall provide for testing under each of the following sets of conditions:

(1) Baseline.

(2) Adverse.

(3) Severely adverse.

(d) The head of each primary financial regulatory agency, in coordination with the Board, shall issue regulations to define the term ''stress test'' for purposes of this section.

SEC. 1115. CONTINGENT CAPITAL.

(a) IN GENERAL.—The Board, in coordination with the appropriate primary financial regulatory agency, may promulgate regulations that require a financial holding company subject to stricter standards to maintain a minimum amount of long-term hybrid debt that is convertible to equity when—

(1) a specified financial company fails to meet prudential standards established by the agency; and

(2) the agency has determined that threats to United States financial system stability make such a conversion necessary.

(b) FACTORS TO CONSIDER.—In establishing regulations under this section, the Board shall consider—

(1) an appropriate transition period for implementation of a conversion under this section;

(2) capital requirements applicable to the specified financial company and its subsidiaries; and

(3) any other factor that the Board deems appropriate.

(c) STUDY REQUIRED.—The Chairman of the Council shall carry out a study to determine an optimal implementation of contingent capital requirements to maximize financial stability, minimize the probability of drawing on the Systemic Resolution Fund established under section 1609(n) in a financial crisis, and minimize costs for financial holding companies subject to stricter standards. To the extent practicable, the study shall take place with input from industry participants and international financial regulators. Such study shall include—

(1) an evaluation of the characteristics and amounts of convertible debt that should be required, including possible tranche structure;

(2) an analysis of possible trigger mechanisms for debt conversion, including violation of regulatory capital requirements, failure of stress tests, declaration of systemic emergency by regulators, market-based triggers and other trigger mechanisms;

(3) an estimate of the costs of carrying contingent capital;

(4) an estimate of the effectiveness of contingent capital requirements in reducing losses to the systemic resolution fund in cases of single-firm or systemic failure; and

(5) recommendations for implementing legislation.

(d) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (c).

SEC. 1116. RESTRICTION ON PROPRIETARY TRADING BY DESIGNATED FINANCIAL HOLDING COMPANIES.

(a) IN GENERAL.—If the Board determines that propriety trading by a financial holding company subject to stricter standards poses an existing or foreseeable threat to the safety and soundness of such company or to the financial stability of the United States, the Board may prohibit such company from engaging in propriety trading.

(b) EXCEPTIONS PERMITTED.—The Board may exempt from the prohibition of subsection (a) proprietary trading that the Board determines to be ancillary to other operations of such company and not to pose a threat to the safety and soundness of such company or to the financial stability of the United States, including—

(1) making a market in securities issued by such company;

(2) hedging or managing risk;

(3) determining the market value of assets of such company; and

(4) propriety trading for such other purposes allowed by the Board by rule.

(c) RULEMAKING AUTHORITY.—The primary financial regulatory agencies of banks and bank holding companies shall jointly issue regulations to carry out this section.

(d) EFFECTIVE DATE.—The provisions of this section shall take effect after the end of the 180-day period beginning on the date of the enactment of this title.

(e) PROPRIETARY TRADING DEFINED.—For purposes of this section and with respect to a company, the term ''proprietary trading'' means the trading of stocks, bonds, options, commodities, derivatives, or other financial instruments with the company's own money and for the company's own account.

SEC. 1117. RULE OF CONSTRUCTION.

The authorities granted to agencies under this subtitle are in addition to any rulemaking, report-related, examination, enforcement, or other authority that such agencies may have under other law and in no way shall be construed to limit such other authority, except that any standards imposed for financial stability purposes under this subtitle shall supersede any conflicting less stringent

requirements of the primary financial regulatory agency but only the extent of the conflict.

Subtitle C—Improvements to Supervision and Regulation of Federal Depository Institutions

SEC. 1201. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) BOARD OF GOVERNORS.—The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

(2) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(3) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—The term ''Office of the Comptroller of the Currency'' means the office established by section 324 of the Revised Statutes (12 U.S.C. 1).

(4) OFFICE OF THRIFT SUPERVISION.—The term ''Office of Thrift Supervision'' means the office established by section 3 of the Home Owners' Loan Act (12 U.S.C. 1462a).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(6) TRANSFER DATE.—The term ''transfer date'' has the meaning provided in section 1205.

(7) CERTAIN OTHER TERMS.—The terms ''affiliate'', ''bank holding company'', ''control'' (when used with respect to a depository institution), ''depository institution'', ''Federal banking agency'', ''Federal savings association'', ''including'', ''insured branch'', ''insured depository institution'', ''savings association'', ''State savings association'', and ''subsidiary'' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 1202. AMENDMENTS TO THE HOME OWNERS' LOAN ACT RELATING TO TRANSFER OF FUNCTIONS.

(a) AMENDMENTS TO SECTION 2.—Section 2 of the Home Owners' Loan Act (12 U.S.C. 1462) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

''(1) BOARD OF GOVERNORS.—The term 'Board of Governors' means the Board of Governors of the Federal Reserve System.''; and

(2) by striking paragraph (3) and inserting the following new paragraph:

''(3) [repealed]''.

(b) AMENDMENTS TO SECTION 3.—Section 3 of the Home Owners' Loan Act (12 U.S.C. 1462a) is amended—

(1) by striking subsection (a) and inserting the following new subsection:

1 "(a) ESTABLISHMENT OF DIVISION OF THRIFT SU-
2 PERVISION.—To carry out the purposes of this Act, there
3 is hereby established the Division of Thrift Supervision,
4 which shall be a division within the Office of the Comp-
5 troller of the Currency.";
6 (2) in subsection (b)—
7 (A) by striking paragraph (1) and insert-
8 ing the following new paragraph:
9 "(1) IN GENERAL.—The Division of Thrift Su-
10 pervision shall be headed by a Senior Deputy Comp-
11 troller of the Currency who shall be subject to the
12 general oversight of the Comptroller of the Cur-
13 rency.";
14 (B) in paragraph (2), by striking "Direc-
15 tor" and inserting "Comptroller of the Cur-
16 rency"; and
17 (C) by striking paragraphs (3) and (4);
18 (3) by striking subsections (c), (d), and (e) and
19 inserting the following new subsection:
20 "(c) POWERS OF THE COMPTROLLER OF THE CUR-
21 RENCY.—The Comptroller of the Currency shall have all
22 the powers, duties, and functions transferred by the Fi-
23 nancial Stability Improvement Act of 2009 to the Comp-
24 troller of the Currency to carry out this Act.";

(4) by redesignating subsections (f) and (i) as subsections (d) and (e), respectively;

(5) in subsection (d) (as so redesignated), by striking ''Director'' each place such term appears and inserting ''Comptroller of the Currency'';

(6) by striking subsections (g), (h), and (j); and

(7) in subsection (e) (as so redesignated), by striking ''compensation of the Director and other employees of the Office and all other expenses thereof'' and inserting ''expenses incurred by the Comptroller of the Currency in carrying out this Act''.

(c) AMENDMENTS TO SECTION 4.—Section 4 of the Home Owners' Loan Act (12 U.S.C. 1463) is amended by striking ''Director'' each time it appears and inserting ''Comptroller of the Currency''.

(d) AMENDMENTS TO SECTION 5.—

(1) UNIVERSAL.—Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended—

(A) by striking ''Director'' and ''Director of the Office of Thrift Supervision'' each place such terms appear and inserting ''Comptroller of the Currency''; and

(B) by striking ''Director's'' each place such term appears and inserting ''Comptroller of the Currency's''.

(2) SPECIFIC PROVISIONS.—

(A) Section 5(d)(2)(E) of the Home Owners' Loan Act is amended by striking ''or the Resolution Trust Corporation, as appropriate,'' each place such term appears.

(B) Section 5(d)(3)(B) of the Home Owners' Loan Act is amended by striking ''or the Resolution Trust Corporation''.

(e) AMENDMENTS TO SECTIONS 8 AND 9.—Sections 8 and 9 of the Home Owners' Loan Act (12 U.S.C. 1466a and 1467) are each amended by striking ''Director'' each place such term appears and inserting ''Comptroller of the Currency''.

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 3.—The heading for section 3 of the Home Owners' Loan Act is amended by striking ''**DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION**'' and inserting ''**DIVISION OF THRIFT SUPERVISION**''.

(2) SECTION 5.—The heading for paragraph (2)(E)(ii) of section 5(d) of the Home Owners' Loan Act and the heading for paragraph (3)(B) of such section are each amended by striking ''OR RTC''.

(g) CLERICAL AMENDMENT.—The table of contents section for the Home Owners' Loan Act is amended by

1 striking the item relating to section 3 and inserting the
2 following new item:

"Sec. 3. Division of Thrift Supervision.".

3 **SEC. 1203. AMENDMENTS TO THE REVISED STATUTES.**

4 (a) AMENDMENT TO SECTION 324.—Section 324 of
5 the Revised Statutes of the United States (12 U.S.C. 1)
6 is amended to read as follows:

7 **"SEC. 324. COMPTROLLER OF THE CURRENCY.**

8 "There shall be in the Department of the Treasury
9 a bureau, the chief officer of which bureau shall be called
10 the Comptroller of the Currency, and shall perform the
11 duties of the Comptroller of the Currency under the gen-
12 eral direction of the Secretary of the Treasury. The Comp-
13 troller of the Currency shall have the same authority over
14 matters as were vested in the Director of the Office of
15 Thrift Supervision or the Office of Thrift Supervision on
16 the day before the date of enactment of the Financial Sta-
17 bility Improvement Act of 2009 other than those authori-
18 ties with respect to savings and loan holding companies
19 and any affiliate of any such company (other than a sav-
20 ings association) as were vested in the Director of the Of-
21 fice of Thrift Supervision on such date. The Secretary of
22 the Treasury may not delay or prevent the issuance of any
23 rule or the promulgation of any regulation by the Comp-
24 troller of the Currency and may not intervene in any mat-
25 ter or proceeding before the Comptroller of the Currency

(including agency enforcement actions) unless otherwise specifically provided by law.''.

(b) AMENDMENTS TO SECTION 327.—Section 327 of the Revised Statutes of the United States (12 U.S.C. 4) is amended to read as follows:

"SEC. 327 DEPUTY COMPTROLLERS.

''(a) APPOINTMENT.—The Secretary of the Treasury shall appoint no more than 5 Deputy Comptrollers of the Currency—

''(1) 1 of whom shall be designated the Senior Deputy Comptroller for National Banks, who shall oversee the regulation and supervision of national banks; and

''(2) 1 of whom shall be designated the Senior Deputy Comptroller for Thrift Supervision, who shall oversee the regulation and supervision of Federal savings associations.

''(b) PAY.—The Secretary of the Treasury shall fix the compensation of the Deputy Comptrollers of the Currency and provide such other benefits as the Secretary may determine to be appropriate.

''(c) OATH OF OFFICE; DUTIES.—Each Deputy Comptroller shall take the oath of office and shall perform such duties as the Comptroller of the Currency shall direct.

"(d) SERVICE AS ACTING COMPTROLLER.—During a vacancy in the office or during the absence or disability of the Comptroller, each Deputy Comptroller shall possess the power and perform the duties attached by law to the Office of the Comptroller under such order of succession as the Comptroller shall direct.".

(c) AMENDMENT TO SECTION 329.—Section 329 of the Revised Statutes of the United States (12 U.S.C. 11) is amended by inserting "or any Federal savings association" before the period at the end.

(d) AMENDMENT TO SECTION 5240.—The fourth sentence of the second undesignated paragraph of Section 5240 of the Revised Statutes of the United States (12 U.S.C. 481) is amended by striking "Secretary of the Treasury;" and all that follows through the end of the sentence, and inserting "Secretary of the Treasury; the employment and compensation of examiners, chief examiners, reviewing examiners, assistant examiners, and of the other employees of the office of the Comptroller of the Currency whose compensation is and shall be paid from assessments on banks or affiliates thereof or from other fees or charges imposed pursuant to this subchapter shall be set and adjusted pursuant to chapter 71 of title 5, United States Code and without regard to the provisions of other laws applicable to officers or employees of the United States."

(e) AMENDMENT TO SECTION 5240.—The first sentence in the first undesignated paragraph of Section 5240 of the Revised Statutes of the United States (12 U.S.C. 482) is amended by inserting ''pursuant to chapter 71 of title 5, United States Code,'' after ''shall,''.

SEC. 1204. POWER AND DUTIES TRANSFERRED.

(a) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(1) TRANSFER OF FUNCTIONS.—Except as otherwise provided in this subtitle, all functions of the Director of the Office of Thrift Supervision are transferred to the Office of the Comptroller of the Currency.

(2) COMPTROLLER'S AUTHORITY.—Except as otherwise provided in this subtitle, the Comptroller of the Currency shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date other than those powers, authorities, rights, and duties with respect to savings and loan holding companies and any affiliate of any such company (other than a savings association) as were vested in the Director of the Office of Thrift Supervision on such date.

(3) FUNCTIONS RELATING TO SUPERVISION OF STATE SAVINGS ASSOCIATIONS.—

(A) TRANSFER OF FUNCTIONS.—All functions of the Director of the Office of Thrift Supervision relating to the supervision and regulation of State savings associations are transferred to the Corporation.

(B) CORPORATION'S AUTHORITY.—The Corporation shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date, relating to the supervision and regulation of State savings associations.

(b) APPROPRIATE FEDERAL BANKING AGENCY.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended in subsection (q)—

(1) by amending paragraph (1) to read as follows:

''(1) the Comptroller of the Currency in the case of any national bank, Federal savings association or any Federal branch or agency of a foreign bank;'';

(2) in paragraph (2)(F), by adding ''and'' at the end after the semicolon;

(3) by amending paragraph (3) to read as follows:

''(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank, a State savings association or a foreign bank having an insured branch.''; and

(4) by striking paragraph (4).

(c) TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.—Nothing in subsection (a) or (b) shall affect any transfer of consumer financial protection functions of the Comptroller of the Currency and the Director of the Office of Thrift Supervision to the Consumer Financial Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

(d) EFFECTIVE DATE.—Subsections (a) and (b) shall become effective on the transfer date.

SEC. 1205. TRANSFER DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the date for the transfer of functions to the Office of the Comptroller of the Currency and the Corporation under section 1204 shall be 1 year after the date of enactment of this title.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The Secretary, in consultation with the Comptroller of the Currency and the Director of the Office of Thrift Supervision, may designate a calendar date for the transfer of functions of the Office of Thrift Supervision to the Office of the Comptroller of the Currency, and the Corporation under section 1204 that is later than 1 year after the date of enactment of this title if the Secretary—

(A) transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) a written determination that orderly implementation of this subtitle is not feasible on the date that is 1 year after the date of enactment of this subtitle;

(ii) an explanation of why an extension is necessary for the orderly implementation of this subtitle; and

(iii) a description of the steps that will be taken to effect an orderly and timely implementation of this subtitle within the extended time period; and

(B) publishes notice of that designated later date in the Federal Register.

(2) EXTENSION LIMITED.—In no case shall any date designated under paragraph (1) be later than 18 months after the date of enactment of this subtitle.

(3) EFFECT ON REFERENCES TO ''TRANSFER DATE''.—If the Secretary takes the actions provided in paragraph (1) for designating a date for the transfer of functions to the Office of the Comptroller of the Currency, and the Corporation under section 1204, references in this title to ''transfer date'' shall mean the date designated by the Secretary.

SEC. 1206. EXPIRATION OF TERM OF COMPTROLLER.

(a) IN GENERAL.—Notwithstanding section 325 of the Revised Statutes of the United States, the term of the person serving as Comptroller on the date of the enactment of this title shall terminate as of such date.

(b) ACTING COMPTROLLER.—Subject to sections 3345, 3346, and 3347 of title 5, United States Code, the President may designate a person to serve as acting Comptroller and perform the functions and duties of the Comptroller until a Comptroller has been appointed and qualified in the manner established in section 325 of the Revised Statutes of the United States.

SEC. 1207. OFFICE OF THRIFT SUPERVISION ABOLISHED.

Effective 90 days after the transfer date, the position of Director of the Office of Thrift Supervision and the Office of Thrift Supervision are abolished.

SEC. 1208. SAVINGS PROVISIONS.

(a) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 1204(a) and 1207 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This subtitle shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that—

(A) for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision transferred to the Comptroller of the Currency by this title, the Comptroller of the Currency or the Office of the Comptroller of the Currency shall be substituted for the Director of the Office of Thrift Supervision or the Office of Thrift Supervision,

as the case may be, as a party to the action or proceeding as of the transfer date; and

(B) for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision transferred to the Corporation by this title, the Chairman of the Corporation shall be substituted for the Director of the Office of Thrift Supervision as a party to the action or proceeding as of the transfer date.

(b) CONTINUATION OF EXISTING OTS ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against—

(1) the Office of the Comptroller of the Currency, in the case of a function of the Director of the Office of Thrift Supervision transferred to the Comptroller of the Currency, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency, by any court of competent jurisdiction, or by operation of law; and

(2) the Corporation, in the case of a function of the Director of the Office of Thrift Supervision transferred to the Corporation, until modified, terminated, set aside, or superseded in accordance with applicable law by the Corporation, by any court of competent jurisdiction, or by operation of law.

(c) CONTINUATION OF EXISTING OTS ENFORCEMENT ACTIONS.—Any formal or informal enforcement action taken by the Director of the Office of Thrift Supervision with respect to a savings and loan holding company, a subsidiary of a savings and loan holding company (other than a savings association) or an institution-affiliated party of a savings and loan holding company or such a subsidiary, that is in effect on the day before the date of the enactment of this title shall continue to be effective and enforceable against such company, subsidiary, or institution-affiliated party after such date as if—

(1) such savings and loan holding company, or the savings and loan holding company related to such subsidiary or institution-affiliated party, had been a bank holding company on the effective date of the final enforcement action; and

(2) the action had been taken by the Board, unless otherwise terminated or modified by the Board.

(d) IDENTIFICATION OF REGULATIONS CONTINUED.—

(1) BY OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Not later than the transfer date, the Comptroller of the Currency shall—

(A) after consultation with the Chairperson of the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Office of the Comptroller of the Currency; and

(B) publish a list of such regulations in the Federal Register.

(2) BY THE CORPORATION.—Not later than the transfer date, the Corporation shall—

(A) after consultation with the Office of the Comptroller of the Currency, identify the regulations continued under subsection (b) that will be enforced by the Corporation; and

(B) publish a list of such regulations in the Federal Register.

(e) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision, which that agency, in performing functions transferred by this title, has proposed before the transfer date but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency, or the Corporation, as appropriate, according to its terms.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of Thrift Supervision, which that agency, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of the Office of the Comptroller of the Currency, or the Corporation, as appropriate, according to its terms.

SEC. 1209. REGULATIONS AND ORDERS.

In addition to any powers transferred to the Comptroller of the Currency by this title, the Comptroller of the Currency may prescribe such regulations and issue

such orders as the Comptroller of the Currency determines to be appropriate to carry out this title and the powers and duties transferred to the Comptroller of the Currency by this title.

SEC. 1210. COORDINATION OF TRANSITION ACTIVITIES.

Before the transfer date, the Comptroller of the Currency shall—

(1) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Comptroller of the Currency;

(2) determine and redetermine, from time to time—

(A) the amount of funds necessary to pay any expenses associated with the transfer of functions (including expenses for personnel, property, and administrative services) during the period beginning on the date of enactment of this title and ending on the transfer date;

(B) what personnel are appropriate to facilitate the orderly transfer of functions by this title; and

(C) what property and administrative services are necessary to support the Office of the Comptroller of the Currency during the period

beginning on the date of enactment of this title and ending on the transfer date; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

SEC. 1211. INTERIM RESPONSIBILITIES OF OFFICE OF THE COMPTROLLER OF THE CURRENCY AND OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—When requested by the Comptroller of the Currency to do so before the transfer date, the Office of Thrift Supervision shall—

(1) pay to the Comptroller of the Currency, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges that the Office of Thrift Supervision is authorized by law to impose, such amounts that the Comptroller of the Currency determines to be necessary under section 1210(2)(A);

(2) detail to the Office of the Comptroller of the Currency such personnel as the Comptroller of the Currency determines to be appropriate under section 1210(2)(B); and

(3) make available to the Office of the Comptroller of the Currency such property and provide the Office of the Comptroller of the Currency such administrative services as the Comptroller of the

Currency determines to be necessary under section 1210(2)(C).

(b) NOTICE REQUIRED.—The Comptroller of the Currency shall give the Office of Thrift Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency intends to make under subsection (a).

SEC. 1212. EMPLOYEES TRANSFERRED.

(a) IN GENERAL.—

(1) OTS EMPLOYEES.—

(A) IN GENERAL.—All employees of the Office of Thrift Supervision shall be transferred to either the Comptroller of the Currency or the Corporation for employment.

(B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support—

(I) the functions of the Office of Thrift Supervision that are trans-

ferred to the Office of the Comptroller of the Currency by this title; and

(II) the functions of the Office of Thrift Supervision that are transferred to the Corporation by this title;

(ii) consistent with the numbers determined under clause (ii), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation in a manner that the Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation, in their discretion, deem equitable.

(2) TRANSFER OF EMPLOYEES PERFORMING CONSUMER FINANCIAL PROTECTION FUNCTIONS.—Nothing in paragraph (1) shall affect the transfer of employees performing or supporting consumer financial protection functions of the Comptroller of the Currency and the Director of the Office of Thrift Supervision to the Consumer Financial Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

(3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employees occupying positions in the excepted service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—The Office of the Comptroller of the Currency and the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of his or her position assignment not later than 120 days after the effective date of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS SUBTITLE.—If any provision of this subtitle conflicts with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this subtitle shall control.

(d) EMPLOYEES' STATUS AND ELIGIBILITY.—The transfer of functions and employees under this title, and the abolition of the Office of Thrift Supervision, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

(e) EQUAL STATUS AND TENURE POSITIONS.—Each employee transferred from the Office of Thrift Supervision shall be placed in a position at either the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as he or she held on the day before the transfer date.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—Examiners transferred to the Office of the Comptroller of the Currency or the Corporation shall not

be subject to any additional certification requirements before being placed in a comparable examiner's position at the Office of the Comptroller of the Currency or the Corporation examining the same types of institutions as they examined before they were transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) 3-YEAR PROTECTION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each affected employee shall not, during the 3-year period beginning on the transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area as defined by the Office of Personnel Management.

(B) AFFECTED EMPLOYEES.—For purposes of this paragraph, the term ''affected employee'' means—

(i) an employee transferred from the Office of Thrift Supervision holding a permanent position on the day before the transfer date;

(ii) an employee of the Office of the Comptroller of the Currency holding a permanent position on the day before the transfer date; and

(iii) an employee of the Corporation holding a permanent position on the day before the transfer date.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to—

(A) separate an employee for cause or for unacceptable performance; or

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(h) PAY.—

(1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each employee transferred from the Office of Thrift Supervision shall, during the 1-year period beginning on the transfer date, receive pay at a rate not less than the basic rate of pay (including any geographic differential) that the employee received during the 1-year period immediately before the transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to reduce a transferred employee's rate of basic pay—

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee's consent.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Office of the Comptroller of the Currency or the Corporation.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Office of the Comptroller of the Currency or the Corporation to increase a transferred employee's pay.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each employee transferred from the Office of Thrift Supervision may remain enrolled in his or her existing retirement plan or plans as long as he or she remains employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) EMPLOYER'S CONTRIBUTION.—The Office of the Comptroller of the Currency or the Corporation shall pay any employer contributions to the existing retirement plan of each employee transferred from the Office of Thrift Supervision as required under that plan.

(B) DEFINITION.—For purposes of this paragraph, the term ''existing retirement plan'' means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency from which the employee was transferred, which the employee was enrolled in on the day before the transfer date.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the transfer date, retain membership in any other employee benefit program of the Office of Thrift Supervision, including a dental, vision, long term care, or life in-

1 surance program, to which the employee
2 belonged on the day before the transfer
3 date.
4 (ii) EMPLOYER'S CONTRIBUTION.—
5 The Office of the Comptroller of the Cur-
6 rency or the Corporation shall pay any em-
7 ployer cost in continuing to extend cov-
8 erage in the benefit program to the em-
9 ployee as required under that program or
10 negotiated agreements.
11 (B) DENTAL, VISION, OR LIFE INSURANCE
12 AFTER 1ST YEAR.—If, after the 1-year period
13 beginning on the transfer date, the Office of the
14 Comptroller of the Currency or the Corporation
15 decides not to continue participation in any
16 dental, vision, or life insurance program of the
17 Office of Thrift Supervision, an employee trans-
18 ferred from the Office of Thrift Supervision
19 pursuant to this title who is a member of such
20 a program may, before the decision of the Of-
21 fice of the Comptroller of the Currency or the
22 Corporation takes effect, elect to enroll, without
23 regard to any regularly scheduled open season,
24 in—

(i) the enhanced dental benefits program established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; and

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation decides not to continue participation in any long term care insurance program of the Office of Thrift Supervision, an employee transferred from the Office of Thrift Supervision pursuant to this title who is a member of such a program may, before the decision of the Office of the Comptroller of the Currency or the Corporation takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5,

United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in Part 875, title 5, Code of Federal Regulations).

(D) EMPLOYEE'S CONTRIBUTION.—

(i) IN GENERAL.—Subject to clause (ii), an individual enrolled in the Federal Employees Health Benefits program under this subparagraph shall pay any employee contribution required by the plan.

(ii) COST DIFFERENTIAL.—The difference in costs between the benefits that the Office of Thrift Supervision is providing on the date of enactment of this title and the benefits provided by this section shall be paid by the Comptroller of the Currency or the Corporation.

(iii) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Office

of the Comptroller of the Currency or the Corporation and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by the Office of Thrift Supervision on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Office of the Comptroller of the Currency or the Corporation, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE'S CONTRIBUTION.—

1 (I) IN GENERAL.—Subject to
2 subclause (II), an individual enrolled
3 in a life insurance plan under this
4 clause shall pay any employee con-
5 tribution required by the plan.
6 (II) COST DIFFERENTIAL.—The
7 difference in costs between the bene-
8 fits that the Office of Thrift Super-
9 vision is providing on the date of en-
10 actment of this title and the benefits
11 provided by this section shall be paid
12 by the Comptroller of the Currency or
13 the Corporation.
14 (III) FUNDS TRANSFER.—The
15 Office of the Comptroller of the Cur-
16 rency or the Corporation shall trans-
17 fer to the Employees' Life Insurance
18 Fund established under section 8714
19 of title 5, United States Code, an
20 amount determined by the Director of
21 the Office of Personnel Management,
22 after consultation with the Office of
23 the Comptroller of the Currency or
24 the Corporation and the Office of
25 Management and Budget, to be nec-

essary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a life insurance plan administered by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Corporation immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) EQUITABLE TREATMENT.—In administering the provisions of this section, the Office of the Comptroller of the Currency and the Corporation—

(1) shall take no action that would unfairly disadvantage transferred employees relative to other employees of the Office of the Comptroller of the

Currency or the Corporation based on their prior employment by the Office of Thrift Supervision;

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to those employees' status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time, for prior periods of service with any Federal agency;

(3) shall, jointly with the Director of the Office of Thrift Supervision, develop and adopt procedures and safeguards designed to ensure that the requirements of this subsection are met; and

(4) shall conduct a study detailing the position assignments of all employees transferred pursuant to subsection (a), describing the procedures and safeguards adopted pursuant to paragraph (3), and demonstrating that the requirements of this subsection have been met; and shall, not later than 365 days after the transfer date, submit a copy of such study to Congress.

SEC. 1213. PROPERTY TRANSFERRED.

(a) IN GENERAL.—Not later than 90 days after the transfer date, all property of the Office of Thrift Super-

vision shall be transferred to the Office of the Comptroller of the Currency or the Corporation, allocated in a manner consistent with section 1212(a).

(b) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—All contracts, agreements, leases, licenses, permits, and similar arrangements relating to property transferred to the Office of the Comptroller of the Currency or the Corporation by this section shall be transferred to the Office of the Comptroller of the Currency or the Corporation together with that property.

(c) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

(d) PROPERTY DEFINED.—For purposes of this section, the term ''property'' includes all real property (including leaseholds) and all personal property (including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers and correspondence related to such reports, and any other information or materials).

SEC. 1214. FUNDS TRANSFERRED.

Except to the extent needed to dispose of affairs under section 1215, all funds that, on the day before the transfer date, are available to the Director of the Office of Thrift Supervision to pay the expenses of the Office

of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation, allocated in a manner consistent with section 1212(a), on the transfer date.

SEC. 1215. DISPOSITION OF AFFAIRS.

(a) IN GENERAL.—During the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of the agency related to any function transferred to the Office of the Comptroller of the Currency or the Corporation by this subtitle—

(A) manage any employees of the Office of Thrift Supervision and provide for the payment of the compensation and benefits of any such employees that accrue before the transfer date; and

(B) manage any property of the Office of Thrift Supervision until the property is transferred under section 1213; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision relating to the transferred functions.

(b) AUTHORITY AND STATUS OF DIRECTOR.—

(1) IN GENERAL.—Notwithstanding the transfers of functions under this subtitle, the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, retain and may exercise any authority vested in the Director on the day before the transfer date that is necessary to carry out the requirements of this subtitle during that period.

(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

(A) treated as an officer of the United States; and

(B) entitled to receive compensation at the same annual rate of basic pay that he or she was receiving on the day before the transfer date.

SEC. 1216. CONTINUATION OF SERVICES.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of Thrift Supervision in connection with functions to be transferred

to the Office of the Comptroller of the Currency or the Corporation, shall—

(1) continue to provide those services, subject to reimbursement, until the transfer of those functions is complete; and

(2) consult with any such agency to coordinate and facilitate a prompt and orderly transition.

SEC. 1217. CONTRACTING AND LEASING AUTHORITY.

In addition to any powers transferred to the Comptroller of the Currency by this subtitle, the Comptroller of the Currency may—

(1) enter into and perform contracts, execute instruments, and acquire in any lawful manner such goods and services, or real or personal property, or interest in property, as the Comptroller of the Currency determines to be necessary or convenient to carry out the duties and responsibilities of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of any real or personal property or interest in property without regard to title 40, United States Code, title III of the Federal Properties and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), and other Federal laws of a similar type governing the procurement of goods and services or the

acquisition or disposition of any property or interest in property by Federal agencies.

SEC. 1218. TREATMENT OF SAVINGS AND LOAN HOLDING COMPANIES.

Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended as follows:

(1) In subsection (m)—

(A) in paragraph (2), by striking ''Director'' and inserting ''Comptroller'';

(B) in paragraph (2), by striking ''Director may grant'' and inserting ''Comptroller of the Currency may grant'';

(C) in paragraph (2), by striking ''the Director deems'' and inserting ''the Comptroller deems'';

(D) in paragraph (2)(A), by striking ''Director'' and inserting ''Comptroller'';

(E) in paragraph (2)(B), by striking ''Director'' and inserting ''Comptroller'';

(F) in paragraph (2)(B)(iii), by striking ''Director'' and inserting ''Comptroller'';

(G) by striking subparagraph (A) of paragraph (3) and inserting the following new subparagraph:

"(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall—

"(i) immediately be subject to the restrictions in subparagraph (B); and

"(ii) become one or more banks (other than a savings bank) within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, except as provided in subparagraph (C)(i).";

(H) by striking subclause (III) of paragraph (3)(B)(i) and inserting the following new subclause:

"(III) DIVIDENDS.—The savings association shall be prohibited from paying dividends except for such dividends—

"(aa) as would be permissible for a national bank;

"(bb) that are necessary to meet obligations of a company that controls such savings association; and

"(cc) that are specifically approved by the Comptroller and the Board of Governors after prior written request of at least 30 days to the Comptroller and the Board of Governors.";

(I) by striking clause (ii) of paragraph (3)(B);

(J) by striking subparagraphs (C) and (D) of paragraph (3) and inserting the following new subparagraphs:

"(C) REGULATORY AUTHORITY.—A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 5 of the Home Owners' Loan Act and subject to actions authorized by section 5(d) of the Home Owners' Loan Act.

"(D) REQUALIFICATIONS.—

"(i) A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (A)(ii) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on a monthly average

basis in 9 out of the preceding 12 months and remains a qualified thrift lender.

"(ii) If the savings association referred to in clause (i) (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender it shall immediately be subject to subparagraph (A)(ii) as if the one-year time period provided for in subparagraph (A)(ii) already has expired, and as if the exception in clause (i) was not applicable or available to such savings association.";

(K) in paragraph (4)(D) by striking "Director" and inserting "Comptroller";

(L) in paragraph (4)(E) by striking "Director" and inserting "Comptroller"; and

(M) in paragraph (7)(B) by striking "Director" and inserting "Comptroller".

(2) In subsection (o)—

(A) in paragraph (3) in the heading by striking "DIRECTOR" and inserting "BOARD";

(B) in paragraph (3)(A) by striking "Director" and inserting "Board";

(C) in paragraph (3)(B) by striking ''Director'' and inserting ''Board'';

(D) in paragraph (3)(C) by striking ''Director'' and inserting ''Board'';

(E) in paragraph (3)(D) by striking ''Director'' and inserting ''Comptroller'';

(F) in paragraph (5)(E), by striking ''activities described in subsection (c)(2) or (c)(9)(A)(ii)'' and inserting ''activities otherwise permissible for the company pursuant to, and in accordance with, section 4 of the Bank Holding Company Act of 1956'';

(G) in paragraph (7) by striking ''chartered by the Director'' and inserting ''chartered by the Comptroller''; and

(H) in paragraph (7) by striking ''regulations as the Director may'' and inserting ''regulations as the Board may''.

SEC. 1219. PRACTICES OF CERTAIN MUTUAL THRIFT HOLDING COMPANIES PRESERVED.

(a) TREATMENT OF DIVIDENDS BY CERTAIN MUTUAL HOLDING COMPANIES.—Section 3(g) of the Bank Holding Company Act of 1956 (12 U.S. C. 1842(g)) is amended by adding at the end the following new paragraphs:

"(3) DECLARATION OF DIVIDENDS.—Every subsidiary savings association of a mutual holding company shall give the Board not less than 30 days advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Board. Any such dividend declared within such period, or without the giving of such notice to the Board, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

"(4) WAIVER OF DIVIDENDS.—Any mutual thrift holding company organized under section 10(b) of the Home Owners' Loan Act shall be permitted to waive such company's right to receive any dividend declared by a subsidiary, if—

"(A) no insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

"(B) the mutual holding company provides the Board with written notice of its intent to

waive its right to receive dividends 30 days prior to the proposed date of payment of the dividend and the Board does not object.

"(5) STANDARDS FOR WAIVER OF DIVIDEND.—The Board shall not object to a notice of intent to waive dividends under paragraph (4) if—

"(A) the waiver would not be detrimental to the safe and sound operation of the savings association; and

"(B) the board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the directors' fiduciary duties to the mutual members of such company.

"(6) RESOLUTION INCLUDED IN WAIVER NOTICE.—A dividend waiver notice shall include a copy of the resolution of the board of directors of the mutual holding company, in form and substance satisfactory to the Board, together with any supporting materials relied upon by the board of directors, concluding that the proposed dividend waiver is consistent with the board of director's fiduciary duties to the mutual members of the mutual holding company.

"(7) VALUATION.—The Board will not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.".

SEC. 1220. IMPLEMENTATION PLAN AND REPORTS.

(a) PLAN SUBMISSION.—Within 90 days of the enactment of the Financial Stability Improvement Act of 2009, the Secretary and the Corporation, in consultation with the Office of the Comptroller of the Currency and the Office of Thrift Supervision, shall jointly submit a plan to the Congress and the Inspectors General of the Department of the Treasury and of the Corporation detailing the steps the Secretary, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision will take to implement the provisions of sections 1201 through 1216, and the provisions of the amendments made by such sections.

(b) INSPECTORS GENERAL REVIEW OF THE PLAN.—Within 60 days of the date on which the Congress receives the plan required under subsection (a), the Inspectors General of the Department of the Treasury and of the Corporation shall jointly provide a written report to the Secretary and the Corporation and shall submit a copy to the Congress detailing whether the plan conforms with the intent of the provisions of sections 1201 through 1216,

and the provisions of the amendments made by such sections, including—

(1) whether the plan sufficiently takes into consideration the orderly transfer of personnel;

(2) whether the plan describes procedures and safeguards to ensure that the Office of Thrift Supervision employees are not unfairly disadvantaged relative to employees of the Office of the Comptroller of the Currency and the Corporation;

(3) whether the plan sufficiently takes into consideration the orderly transfer of authority and responsibilities;

(4) whether the plan sufficiently takes into consideration the effective transfer of funds;

(5) whether the plan sufficiently takes in consideration the orderly transfer of property; and

(6) any additional recommendations for an orderly and effective process.

(c) IMPLEMENTATION REPORTS.—Not later than 6 months after the date on which the Congress receives the report required under subsection (b), and every 6 months thereafter until all aspects of the plan have been implemented, the Inspectors General of the Department of the Treasury and the Corporation shall jointly provide a written report on the status of the implementation of the plan

to the Secretary and the Corporation and shall submit a copy to the Congress.

SEC. 1221. COMPOSITION OF BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Chairman of the Board of Governors of the Federal Reserve System, or such other member of the Board of Governors as the Chairman of the Board of Governors shall designate'';

(2) by amending subsection (d)(2) to read as follows:

''(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency, the acting Comptroller of the Currency shall be a member of the Board of Directors in the place of the Comptroller of the Currency.''; and

(3) in subsection (f)(2), by striking ''or of the Office of Thrift Supervision''.

SEC. 1222. AMENDMENTS TO SECTION 3.

Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (b)(1)(C) (relating to the definition of the term ''savings association''), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(2) in subsection (l)(5) (relating to the definition of the term ''deposit''), in the introductory text, by striking ''Director of the Office of Thrift Supervision,''; and

(3) in subsection (z) (relating to the definition of the term ''Federal banking agency''), by striking ''the Director of the Office of Thrift Supervision,''.

SEC. 1223. AMENDMENTS TO SECTION 7.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

(1) in paragraph (2)(A)—

(A) in the first sentence, by striking ''the Director of the Office of Thrift Supervision'';

(B) in the second sentence, by striking ''the Director of the Office of Thrift Supervision,'';

(2) in paragraph (3), in the first sentence, by striking ", the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency and the Chairman of the Board of Governors of the Federal Reserve System"; and

(3) in paragraph (7), by striking ", the Director of the Office of Thrift Supervision,".

SEC. 1224. AMENDMENTS TO SECTION 8.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) in subsection (a)(8)(B)(ii), in the last sentence—

(A) by striking "Director of the Office of Thrift Supervision" each place it appears and inserting "Comptroller of the Currency"; and

(B) by inserting "the Office of Thrift Supervision, as a successor to" after "as a successor to";

(2) in subsection (o), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency"; and

(3) in subsection (w)(3)(A), by striking ''Office of Thrift Supervision'' and inserting ''Office of the Comptroller of the Currency''.

SEC. 1225. AMENDMENTS TO SECTION 11.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) in subsection (c)(6)—

(A) in the heading, by striking ''DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION'' and inserting ''COMPTROLLER OF THE CURRENCY'';

(B) in subparagraph (A), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(C) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(2) in subsection (d)—

(A) in paragraph (17)(A)—

(i) by striking '', or the Director of the Office of Thrift Supervision''; and

(ii) by striking ''appropriate''; and

(B) in paragraph (18)(B), by striking ''or the Director of the Office of Thrift Supervision''; and

(3) in subsection (n)—

(A) in paragraph (1)(A), by striking ''the Director of the Office of Thrift Supervision, with respect to 1 or more insured''

(B) in paragraph (2)(A), by striking ''the Director of the Office of Thrift Supervision'';

(C) in paragraph (4)(D), by striking ''and the Director of the Office of Thrift Supervision, as appropriate,'';

(D) in paragraph (4)(G), by striking ''and the Director of the Office of Thrift Supervision, as appropriate,''; and

(E) in paragraph (12)(B), by striking ''or the Director of the Office of Thrift Supervision, as appropriate,''.

SEC. 1226. AMENDMENTS TO SECTION 13.

Section 13(k)(1)(A)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(1)(A)(iv)) is amended by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1227. AMENDMENTS TO SECTION 18.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(1) in subsection (c)(2)—

(A) in subparagraph (A), by striking "bank;" and inserting "bank or a savings association; and";

(B) in subparagraph (B), by inserting "and" at the end after the semicolon;

(C) in subparagraph (C), by striking "bank (except a savings bank supervised by the Director of the Office of Thrift Supervision); and" and inserting "bank or State savings association."; and

(D) by striking subparagraph (D); and

(2) in subsection (g)(1), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency";

(3) in subsection (i)(2)—

(A) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) the Corporation, if the resulting institution is to be a State nonmember insured bank or insured State savings association."; and

(B) by striking subparagraph (C);

(4) in subsection (m)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "Director of the Office of Thrift Super-

vision'' and inserting ''Comptroller of the Currency''; and

(ii) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(ii) in subparagraph (B)—

(I) by striking ''Director of the Office of Thrift Supervision'' each place it appears and inserting ''Comptroller of the Currency''; and

(II) by striking ''Director may deem appropriate'' and inserting ''Comptroller may deem appropriate''; and

(C) in paragraph (3)—

(i) in subparagraph (A), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(ii) in subparagraph (B), by striking ''Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1228. AMENDMENTS TO SECTION 28.

Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

(1) in subsection (e)—

(A) in paragraph (2)—

(i) in subparagraph (A)(ii), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(ii) in subparagraph (C), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(iii) in subparagraph (F), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(ii) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(2) in subsection (h)(2), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1229. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) AMENDMENTS TO SECTION 802.—Section 802(a)(3) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801(a)(3)) is amended—

(1) by striking ''Comptroller of the Currency,'' and inserting ''Comptroller of the Currency and''; and

(2) by striking '', and the Director of the Office of Thrift Supervision''.

(b) AMENDMENTS TO SECTION 804.—Section 804(a) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803(a)) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) with respect to banks, savings associations, mutual savings banks, and savings banks, only to transactions made in accordance with regulations

governing alternative mortgage transactions as prescribed by the Comptroller of the Currency to the extent that such regulations are authorized by rulemaking authority granted to the Comptroller of the Currency under laws other than this section; and''; (2) in paragraph (2), by striking ''; and'' and inserting a period; and (3) by striking paragraph (3).

SEC. 1230. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

Section 4(f)(12)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(12)(A)) is amended striking ''the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or'' and inserting ''the Federal Deposit Insurance Corporation or''.

SEC. 1231. AMENDMENTS TO THE BANK PROTECTION ACT OF 1968.

Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—

(1) in paragraph (1), by striking ''national banks,'' and inserting ''national banks and federal savings associations,'';

(2) in paragraph (2), by inserting ''and'' at the end;

(3) in paragraph (3), by striking ", and" and inserting a period; and

(4) by striking paragraph (4).

SEC. 1232. AMENDMENTS TO THE BANK SERVICE COMPANY ACT.

Section 1(b) of the Bank Service Company Act (12 U.S.C. 1861(b)) is amended—

(1) in paragraph (4), by striking "insured bank," and inserting "insured bank or";

(2) by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency"; and

(3) by striking ", the Federal Savings and Loan Insurance Corporation,".

SEC. 1233. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.

Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking "national banks" and inserting "national banks or savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)"; and

(B) in subparagraph (B), by striking ''and bank holding companies;'' and inserting '', bank holding companies and savings and loan holding companies;''; and

(2) by striking the first paragraph (2) (relating to section 8 of the Federal Deposit Insurance Act).

SEC. 1234. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

(a) AMENDMENT TO SECTION 207.—Section 207 of the Depository Institution Management Interlocks Act (12 U.S.C. 3206) is amended—

(1) in paragraph (1), by striking ''national banks,'' and inserting ''national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),'';

(2) in paragraph (2), by striking ''and bank holding companies,'' and inserting '', bank holding companies, and savings and loan holding companies,''

(3) by striking paragraph (4); and

(4) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(b) AMENDMENT TO SECTION 209.—Section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207) is amended—

(1) in paragraph (1), by striking ''national banks,'' and inserting ''national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),'';

(2) in paragraph (2), by striking ''and bank holding companies,'' and inserting '', bank holding companies, and savings and loan holding companies,'';

(3) at the end of paragraph (3), by inserting ''and'' after the comma;

(4) by striking paragraph (4); and

(5) by redesignating paragraph (5) as paragraph (4).

(c) AMENDMENT TO SECTION 210.—Subsection 210(a) of the Depository Institution Management Interlocks Act (12 U.S.C. 3208(a)) is amended—

(1) by striking ''his'' and inserting ''the''; and

(2) by inserting ''of the Attorney General'' after ''enforcement functions''.

SEC. 1235. AMENDMENTS TO THE EMERGENCY HOMEOWNERS' RELIEF ACT.

Section 110 of the Emergency Homeowners' Relief Act (12 U.S.C. 2709) is amended—

(1) by striking the ''Federal Home Loan Bank Board'' and inserting ''Federal Housing Finance Agency''; and

(2) by striking ''the Federal Savings and Loan Insurance Corporation,''.

SEC. 1236. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

Section 704(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691c(a)) is amended—

(1) in paragraph (1)(A), by striking ''and Federal branches and Federal agencies of foreign banks,'' and inserting ''Federal branches and Federal agencies of foreign banks, or a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation,'';

(2) by striking paragraph (2); and

(3) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8).

SEC. 1237. AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.

(a) AMENDMENTS TO SECTION 206.—Section 206(g)(7) of the Federal Credit Union Act (12 U.S.C. 1786(g)(7)) is amended—

(1) in subparagraph (A)—

(A) in clause (v), by inserting ''and'' after the semicolon;

(B) in clause (vi)—

(i) by striking ''Federal Housing Finance Board'' and inserting ''Federal Housing Finance Agency''; and

(ii) by striking ''; and'' and inserting a period; and

(C) by striking clause (vii); and

(2) in subparagraph (D)—

(A) in clause (iii), by inserting ''and'' after the semicolon;

(B) in clause (iv), by striking ''; and'' and inserting a period; and

(C) by striking clause (v).

SEC. 1238. AMENDMENTS TO THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.

(a) AMENDMENT TO SECTION 1002.—Section 1002 of the Federal Financial Institutions Examination Council

Act of 1978 (12 U.S.C. 3301) is amended by striking ''Federal Home Loan Bank Board'' and inserting ''Federal Housing Finance Agency''.

(b) AMENDMENT TO SECTION 1003.—Section 1003(1) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302(1)) is amended by striking ''the Office of Thrift Supervision,''.

(c) AMENDMENTS TO SECTION 1004.—Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

SEC. 1239. AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.

(a) AMENDMENTS TO SECTION 18.—Section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is amended—

(1) by striking ''Director of the Office of Thrift Supervision'' each place it appears and inserting ''Comptroller of the Currency'';

(2) in paragraph (1)(B), by striking ''and the agencies under its administration or supervision''; and

(3) in paragraph (5), by striking ''and such agencies''.

(b) REPEAL OF SECTION 21A.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is hereby repealed.

SEC. 1240. AMENDMENTS TO THE FEDERAL RESERVE ACT.

Section 19(b) of the Federal Reserve Act (12 U.S.C. 461) is amended—

(1) in paragraph (1)(F), by striking ''the Director of the Office of Thrift Supervision'' and inserting ''the Comptroller of the Currency''; and

(2) in paragraph (4)(B), by striking ''the Director of the Office of Thrift Supervision'' and inserting ''the Comptroller of the Currency''.

SEC. 1241. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

(a) AMENDMENTS TO SECTION 302.—Section 302(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

(b) AMENDMENT TO SECTION 305.—Section 305(b)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended by striking ''Di-

rector of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

(c) AMENDMENT TO SECTION 308.—Section 308(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note) is amended by striking ''Director of the Office of Supervision'' and inserting ''Comptroller of the Currency''.

(d) AMENDMENTS TO SECTION 402.—Section 402 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1437 note) is amended—

(1) in subsection (a), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency'';

(2) in subsection (b), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(3) in subsection (e)—

(A) in paragraph (1), by striking ''Office of Thrift Supervision'' and inserting ''Office of the Comptroller of the Currency'';

(B) in paragraph (2), by striking ''Director of the Office of Thrift Supervision'' each place it appears and inserting ''Comptroller of the Currency'';

(C) in paragraph (3), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''; and

(D) in paragraph (4), by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

(e) AMENDMENT TO SECTION 1103.—Section 1103(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)(2)) is amended by striking ''and the Resolution Trust Corporation''.

(f) AMENDMENTS TO SECTION 1205.—Subsection 1205(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 note) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking ''Director of the Office of Thrift Supervision, or the Director's designee'' and inserting ''Comptroller of the Currency, or the Comptroller's designee'';

(B) by striking subparagraph (D); and

(C) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively;

(2) in paragraph (2), by striking ''paragraph (1)(F)'' and inserting ''paragraph (1)(E)'';

(3) in paragraph (3), by striking ''paragraph (1)(F)'' and inserting ''paragraph (1)(E)''; and

(4) in paragraph (5), by striking ''through (E)'' and inserting ''through (D)''.

(g) AMENDMENTS TO SECTION 1206.—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—

(1) by striking ''the Oversight Board of the Resolution Trust Corporation'' and inserting ''and''; and

(2) by striking '', and the Office of Thrift Supervision,''.

(h) AMENDMENTS TO SECTION 1216.—Section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2), (5), and (6);

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(C) in paragraph (2) (as redesignated), by adding ''and'' at the end;

(2) in subsection (c)—

(A) by striking ''the Director of the Office of Thrift Supervision,'' and inserting ''and''; and

(B) by striking '', the Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation''; and

(3) in subsection (d)—

(A) by striking paragraphs (3), (5) and (6); and

(B) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4), and (5), respectively.

SEC. 1242. AMENDMENTS TO THE HOUSING ACT OF 1948.

Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended in the introductory text by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1243. AMENDMENTS TO THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992 AND THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.

(a) AMENDMENTS TO SECTION 543 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.—Section

543 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended—

(1) in subsection (c)(1)—

(A) by striking subparagraphs (D) through (F); and

(B) by redesignating subparagraphs (G) and (H) as subparagraphs (D) and (E), respectively; and

(2) in subsection (f)—

(A) in paragraph (2)—

(i) by striking ''the Office of Thrift Supervision,''; and

(ii) in subparagraph (D), by striking ''the Office of Thrift Supervision,''; and

(B) in paragraph (3)—

(i) by striking ''the Office of Thrift Supervision,''; and

(ii) in subparagraph (D), by striking ''Office of Thrift Supervision,'' and inserting ''Comptroller of the Currency,''.

(b) AMENDMENT TO SECTION 1315 OF THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1315(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4515(b)) is amended by striking

"the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision." and inserting "and the Federal Deposit Insurance Corporation.".

(c) AMENDMENT TO SECTION 1317 OF THE FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1317(c) of the of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517(c)) is amended by striking "the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision" and inserting "or the Federal Deposit Insurance Corporation".

SEC. 1244. AMENDMENT TO THE HOUSING AND URBAN-RURAL RECOVERY ACT OF 1983.

Section 469 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701p–1) is amended in the first sentence by striking "Federal Home Loan Bank Board" and inserting "Federal Housing Finance Agency".

SEC. 1245. AMENDMENTS TO THE NATIONAL HOUSING ACT.

Section 202(f) of the National Housing Act is amended—

(1) by amending paragraph (5) to read as follows:

"(5) if the mortgagee is a national bank, a subsidiary or affiliate of such a bank, a Federal savings

association or a subsidiary or affiliate of a savings association, the Comptroller of the Currency;'';

(2) in paragraph (6), by adding ''and'' at the end;

(3) in paragraph (7)—

(A) by inserting ''or State savings association'' after ''State bank''; and

(B) by striking ''; and'' and inserting a period; and

(4) by striking paragraph (8).

SEC. 1246. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

Section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is amended by striking subparagraph (B).

SEC. 1247. AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

(a) AMENDMENTS TO SECTION 255.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by striking ''Office of Thrift Supervision (20–4108–0–3–373);''.

(b) AMENDMENTS TO SECTION 256.—Section 256(h)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

(1) by striking subparagraphs (C) and (G); and

(2) by redesignating subparagraphs (D), (E), (F), and (H) as subparagraphs (C) through (G), respectively.

SEC. 1248. AMENDMENTS TO THE CRIME CONTROL ACT OF 1990.

(a) AMENDMENTS TO SECTION 2539.—Section 2539(c)(2) of the Crime Control Act of 1990 (Public Law 101–647) is amended by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as subparagraphs (F) through (G), respectively.

(b) AMENDMENT TO SECTION 2554.—Section 2554(b)(2) of the Crime Control Act of 1990 (Public Law 101–647) is amended by striking ''Director of the Office of Thrift Supervision'' and inserting ''Comptroller of the Currency''.

SEC. 1249. AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.

Section 3(a)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking ''the Office of Thrift Supervision,''.

SEC. 1250. AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.

Section 6(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(3)) is amended by striking

"Federal Savings and Loan Insurance Corporation" and inserting "Comptroller of the Currency".

SEC. 1251. AMENDMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION ACT.

Section 606(c)(3) of the Neighborhood Reinvestment Corporation Act is amended by striking "Federal Home Loan Bank Board" and inserting "Federal Housing Finance Agency".

SEC. 1252. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) AMENDMENTS TO SECTION 3.—Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking "bank;" and inserting "bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;";

(B) in clause (iii), by adding "and" at the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv);

(2) in subparagraph (B)—

(A) in clause (i), by striking ''bank;'' and inserting ''bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;'';

(B) in clause (iii), by adding ''and'' and the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv);

(3) in subparagraph (C)—

(A) in clause (i), by striking ''bank;'' and inserting ''bank, or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding;'';

(B) in clause (iii), by adding ''and'' at the end;

(C) by striking clause (iv); and

(D) by redesignating clause (v) as clause (iv); and

(4) in subparagraph (F)—

(A) in clause (i), by striking ''bank;'' and inserting ''or a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (b))), the deposits of which are insured by the Federal Deposit Insurance Corporation;'';

(B) by striking clause (ii); and

(C) redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii) and (iv), respectively.

(b) AMENDMENTS TO SECTION 15C.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5) is amended in subsection (g)(1) by striking ''the Director of the Office of Thrift Supervision, the Federal Savings and Loan Insurance Corporation,''.

SEC. 1253. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

(a) AMENDMENT TO SECTION 212.—Section 212(c)(2) of title 18, United States Code, is amended—

(1) by striking subparagraph (C); and

(2) by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively.

(b) AMENDMENT TO SECTION 657.—Section 657 of title 18, United States Code, is amended by striking ''Office of Thrift Supervision, the Resolution Trust Corporation,''.

(c) AMENDMENT TO SECTION 981.—Section 981(a)(1)(D) of title 18, United States Code, is amended—

(1) by striking ''the Resolution Trust Corporation,''; and

(2) by striking ''or the Office of Thrift Supervision''.

(d) AMENDMENT TO SECTION 982.—Section 982(a)(3) of title 18, United States Code, is amended—

(1) by striking ''the Resolution Trust Corporation,'';and

(2) by striking ''or the Office of Thrift Supervision''.

(e) AMENDMENT TO SECTION 1006.—Section 1006 of title 18, United States Code, is amended—

(1) by striking ''Office of Thrift Supervision,''; and

(2) by striking ''the Resolution Trust Corporation,''.

(f) AMENDMENT TO SECTION 1014.—Section 1014 of title 18, United States Code, is amended—

(1) by striking ''the Office of Thrift Supervision,''; and

(2) by striking ''the Resolution Trust Corporation,''.

(g) AMENDMENT TO SECTION 1032.—Section 1032(1) of title 18, United States Code, is amended—

(1) by striking ''the Resolution Trust Corporation,''; and

(2) by striking ''or the Director of the Office of Thrift Supervision''.

SEC. 1254. AMENDMENTS TO TITLE 31, UNITED STATES CODE.

(a) AMENDMENT TO SECTION 309.—Section 309 of title 31, United States Code, is amended to read as follows:

''§ 309. Division of Thrift Supervision

''The Division of Thrift Supervision established under section 3(a) of the Home Owners' Loan Act shall be a division in the Office of the Comptroller of the Currency.''.

(b) AMENDMENTS TO SECTION 321.—Section 321 of title 31, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (1), by adding ''and'' at the end;

(B) in paragraph (2), by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(c) AMENDMENTS TO SECTION 714.—Section 714 of title 31, United States Code, is amended—

(1) in subsection (a), by striking ''the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.'' and inserting ''and the Office of the Comptroller of the Currency.'';

(2) in subsection (b), by striking all after ''has consented in writing.'' and inserting the following: ''Audits of the Federal Reserve Board and Federal reserve banks shall not include unreleased transcripts or minutes of meetings of the Board of Governors or of the Federal Open Market Committee. To the extent that an audit deals with individual market actions, records related to such actions shall only be released by the Comptroller General after

180 days have elapsed following the effective date of such actions.'';

(3) in subsection (c)(1), in the first sentence, by striking ''subsection,'' and inserting ''subsection or in the audits or audit reports referring or relating to the Federal Reserve Board or Reserve Banks,''; and

(4) by adding at the end the following:

''(f) AUDIT AND REPORT OF THE FEDERAL RESERVE SYSTEM.—

''(1) IN GENERAL.—An audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks under subsection (b) shall be completed within 12 months of the enactment of the Financial Stability Improvement Act of 2009.

''(2) REPORT.—

''(A) REQUIRED.—A report on the audit referred to in paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed and made available to—

''(i) the Speaker of the House of Representatives;

"(ii) the majority and minority leaders of the House of Representatives;

"(iii) the majority and minority leaders of the Senate;

"(iv) the Chairman and Ranking Member of the committee and each subcommittee of jurisdiction in the House of Representatives and the Senate; and

"(v) any other Member of Congress who requests it.

"(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit that is the subject of the report.

"(3) CONSTRUCTION.—Nothing in this subsection shall be construed—

"(A) as interference in or dictation of monetary policy to the Federal Reserve System by the Congress or the Government Accountability Office; or

"(B) to limit the ability of the Government Accountability Office to perform additional audits of the Board of Governors of the Federal

Reserve System or of the Federal reserve banks.''.

SEC. 1255. REQUIREMENT FOR COUNTERCYCLICAL CAPITAL REQUIREMENTS.

Section 908(a) of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)) is amended by adding at the end the following new paragraph:

''(3) Each appropriate Federal banking agency shall, in establishing capital requirements under this Act or other provisions of Federal law for banking institutions, seek to make such requirements countercyclical so that the amount of capital required to be maintained by a banking institution increases in times of economic expansion and may decrease in times of economic contraction, consistent with the safety and soundness of the institution.''.

SEC. 1256. TRANSFER OF AUTHORITY TO THE BOARD WITH RESPECT TO SAVINGS AND LOAN HOLDING COMPANIES.

(a) TRANSFER OF FUNCTIONS.—Notwithstanding any other provision of this subtitle, all functions of the Director of the Office of Thrift Supervision with respect to savings and loan holding companies that are, on a consolidated basis, predominantly engaged in the business of insurance are transferred to the Board.

(b) BOARD'S AUTHORITY.—Notwithstanding any other provision of this subtitle, the Board shall succeed to all powers, authorities, rights, and duties with respect to savings and loan holding companies that are, on a consolidated basis, predominantly engaged in the business of insurance that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners' Loan Act, on the day before the transfer date.

(c) SAVINGS AND LOAN HOLDING COMPANY DEFINED.—The term ''savings and loan holding company'' shall have the meaning given such term under section 10 of the Home Owners' Loan Act.

Subtitle D—Further Improvements to the Regulation of Bank Holding Companies and Depository Institutions

SEC. 1301. TREATMENT OF INDUSTRIAL LOAN COMPANIES, SAVINGS ASSOCIATIONS, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT.

(a) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(1) by striking subsection (a)(1) and inserting the following:

1 "(a) BANK HOLDING COMPANY.—

2 "(1) IN GENERAL.—Except as provided in para-
3 graph (5), the term 'bank holding company'
4 means—

5 "(A) any company, other than a company
6 described in section 4(p), which has control over
7 any bank or over any company that is or be-
8 comes a bank holding company by virtue of this
9 Act; and

10 "(B) any section 6 holding company estab-
11 lished by a company described in section
12 6(a)(1)(C).".

13 (2) in subsection (a)(5), by adding at the end
14 the following new subparagraph:

15 "(G) No company is a bank holding com-
16 pany by virtue of its ownership or control of a
17 section 6 holding company or any subsidiary of
18 a section 6 holding company, so long as the re-
19 quirements of sections 4(p) and 6 of this Act
20 are met, as applicable, by the section 6 holding
21 company;";

22 (3) in subsection (c)(1)(A), by striking "insured
23 bank" and inserting "insured depository institu-
24 tion", and by striking "section 3(h) of the Federal

Deposit Insurance Act'' and inserting ''section 3(c)(2) of the Federal Deposit Insurance Act'';

(4) in subsection (c)(2)—

(A) in subparagraph (B), by inserting before the period the following: ''that is controlled by a company that is, on a consolidated basis, predominantly engaged in the business of insurance''; and

(B) by striking subparagraph (H); and

(5) by adding at the end the following new subsection:

''(r) SECTION 6 HOLDING COMPANIES.—The term 'section 6 holding company' means a company that is required to be established as an intermediate holding company under section 6 of this Act.''.

(b) NONBANKING ACTIVITIES EXCEPTIONS.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(1) in subsection (f)(1)(B) by striking ''for purposes of this Act'' and inserting ''for purposes of section 4(a)''; and

(2) in subsection (f)(2)—

(A) in subparagraph (B)(ii), by striking ''; or'' and inserting a semicolon;

(B) in subparagraph (C), by striking the period and inserting "; or"; and

(C) by adding at the end the following new subparagraph:

"(D) such company fails to—

"(i) establish and register a section 6 holding company pursuant to section 6 of this Act within 180 days after the adoption of rules required by this section; and

"(ii) conduct such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as at least two-thirds of the assets or

1 two-thirds of the revenues generated from
2 the activity are from or attributable to the
3 company or an affiliate, subject to review
4 by the Board to determine whether engag-
5 ing in such activity presents undue risk to
6 the section 6 company or undue systemic
7 risk.''; and
8 (3) by inserting at the end the following new
9 subsections:
10 ''(p) CERTAIN COMPANIES NOT SUBJECT TO THIS
11 ACT.—
12 ''(1) IN GENERAL.—Except as provided in para-
13 graphs (6) and (7), any company which—
14 ''(A) was—
15 ''(i) a unitary savings and loan hold-
16 ing company on May 4, 1999, or became
17 a unitary savings and loan holding com-
18 pany pursuant to an application pending
19 before the Director of the Office of Thrift
20 Supervision on of before that date, and
21 that—
22 ''(I) on June 30, 2009, continued
23 to control not fewer than 1 savings
24 association that it controlled on May
25 4, 1999, or that such company ac-

quired pursuant to an application pending before the Director of the Office of Thrift Supervision on or before such date, which became a bank for purposes of the Bank Holding Company Act as a result of the enactment of section 1301(a)(4)(A); and

"(II) on June 30, 2009, and the date of enactment of the Financial Stability Improvement Act of 2009, such savings association subsidiary was and remains a qualified thrift lender (as determined by section 10 of the Home Owners' Loan Act); or

"(ii) on November 23, 2009—

"(I) controlled an institution which became a bank as a result of the enactment of section 1301(a)(3)(B) of the Financial Stability Improvement Act of 2009;

"(II) had an application pending, or approved but not executed, before the Federal Deposit Insurance Corporation, that, if approved, would permit the applicant to control an indus-

trial loan company, industrial bank, or other similar institution—

"(aa) that is a federally insured, State-chartered depository institution;

"(bb) that is organized under the laws of a State that on March 5, 1987, had in effect, or had under consideration in the legislature of such State, a statute that required such institution to obtain insurance under the Federal Deposit Insurance Act; and

"(cc) that—

"(AA) does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties; or

"(BB) maintains total assets of less than $100,000,000; or

"(III) controlled an institution it has continuously controlled since

March 5, 1987, which became a bank as a result of the enactment of the Competitive Equality Banking Act of 1987, pursuant to subsection (f);

"(B) was not on June 30, 2009—

"(i) a bank holding company; or

"(ii) subject to the Bank Holding Company Act of 1956 by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); and

"(C) on June 30, 2009, directly or indirectly controlled shares or engaged in activities that did not, on the day before the date of enactment of the Financial Stability Act of 2009, comply with the activity or investment restrictions on financial holding companies in section 4 in accordance with regulations prescribed by the Board,

shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company's control of such institution and control of a section 6 holding company established pursuant to section 6.

1 "(2) LOSS OF EXEMPTION.—A company de-
2 scribed in paragraph (1) shall no longer qualify for
3 the exemption provided under that paragraph if—
4 "(A) such company fails to—
5 "(i) establish and register a section 6
6 holding company pursuant to section 6 of
7 this Act within 180 days after adoption of
8 rules required by this section, unless the
9 Board grants an extension of such period
10 for compliance which shall not exceed 180
11 additional days; and
12 "(ii) maintain a section 6 holding
13 company in compliance with all the re-
14 quirements for a section 6 holding com-
15 pany under section 6 of this Act.
16 "(B) such company directly or indirectly
17 (including through the section 6 holding com-
18 pany it must form pursuant to this subsection
19 and section 6 of this Act) acquires control of an
20 additional bank or insured depository institu-
21 tion after June 30, 2009, provided that such
22 company directly or indirectly (including
23 through the section 6 holding company) may
24 acquire—

"(i) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

"(ii) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

"(iii) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

"(iv) shares held in an account solely for trading purposes;

"(v) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

"(vi) loans or other accounts receivable acquired from an insured depository institution in the normal course of business;

"(vii) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year pe-

riod beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

''(viii) shares or assets acquired directly or indirectly by a depository institution controlled by such company in a transaction involving an insured depository institution for which the Federal Deposit Insurance Corporation has been appointed as receiver or which has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act) by the appropriate Federal or State authority;

''(ix) shares or assets of another industrial loan company meeting the requirements of this Act if such company continuously controlled an industrial loan company since the date of enactment of the Financial Stability Improvement Act of 2009; and

''(x) shares or assets of a savings association acquired directly or indirectly by

the savings association controlled by such company if such company continuously controlled a savings association since the date of enactment of the Financial Stability Improvement Act of 2009;

"(C)(i) the section 6 holding company required to be established by such company, or any subsidiary bank of such company undergoes a change in control after the date of enactment of the Financial Stability Improvement Act of 2009, other than—

"(I) the merger or whole acquisition of such parent company in a bona fide merger or acquisition (as shall be determined by the Board, which is authorized to find that a transaction is not a bona fide merger or acquisition and thus results in the loss of exemption), with a company that is predominantly engaged in activities not permissible for a financial holding company pursuant to section 4(k), or

"(II) the acquisition of additional shares by a company that owned or controlled 7.5 percent or more of any class of such parent company's outstanding voting

stock on or before June 30, 2009, and continuously owned or controlled at least such 7.5 percent since June 30, 2009.

"(ii) Nothing in this subparagraph shall be construed as preventing the Board from requiring compliance with this subsection, section 6 or the requirements of the Change in Bank Control Act, as applicable to a company that is permitted to acquire control without loss of the exemption in this subsection 4(p)(2); or

"(D) any subsidiary bank of such company engages in any activity after the date of enactment of the Financial Stability Improvement Act of 2009 which would have caused such institution to be a bank (as defined in section 2(c) of this Act, as in effect before such date) if such activities had been engaged in before such date.

"(3) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under paragraph (1) by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period begin-

ning on the date on which the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless, before the end of such 180-day period, the company has—

"(A) either—

"(i) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; or

"(ii) submitted a plan to the Board for approval to cease the activity or correct the condition in a timely manner (which shall not exceed 1 year); and

"(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.

"(4) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—This subsection shall cease to apply to any company described in paragraph (1) if such company—

"(A) registers as a bank holding company under section 2(a) of this Act;

"(B) immediately upon such registration, complies with all of the requirements of this

chapter, and regulations prescribed by the Board pursuant to this chapter, including the nonbanking restrictions of this section; and

"(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

"(5) INFORMATION REQUIREMENT.—Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Financial Stability Improvement Act of 2009, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

"(6) EXAMINATIONS AND REPORTS.—The Board may, from time to time, examine a company described in paragraph (1) or a bank controlled by such a company, and may require reports under oath from a company described in paragraph (1), and appropriate officers or directors of such company, in each case solely for purposes of assuring

compliance with the provisions of this subsection and enforcing such compliance.

"(7) LIMITED ENFORCEMENT.—

"(A) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act, and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

"(B) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company described in paragraph (1) or any bank controlled by such a company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

"(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

"(q) PRESERVATION OF CERTAIN SAVINGS AND LOAN HOLDING COMPANY AUTHORITIES.—Notwithstanding subsection (a), a company that was a savings and loan holding company on June 30, 2009, that became a bank holding company by operation of section 1301 of the Financial Stability Improvement Act of 2009 may continue to engage in the following activities in which such company was continuously engaged on June 30, 2009 through the day of enactment of the Financial Stability Improvement Act of 2009:

"(1) Furnishing or performing management services for a savings association subsidiary of such company.

"(2) Conducting an insurance agency or escrow business.

"(3) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

"(4) Holding or managing properties used or occupied by a savings association subsidiary of such company.

"(5) Acting as trustee under deed of trust.

"(6) Any other activity in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.".

(c) SECTION 6 HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by inserting after section 5 the following new section:

"SEC. 6. SPECIAL-PURPOSE HOLDING COMPANIES.

"(a) ESTABLISHMENT, PURPOSE AND REQUIREMENTS OF SPECIAL PURPOSE HOLDING COMPANIES.—

"(1) REQUIREMENT.—A special purpose holding company (hereafter in this section referred to as a 'section 6 holding company') shall be established and maintained by a company—

"(A) described in section 4(f)(1) as required by section 4(f)(2)(D) of this Act;

"(B) described in section 4(p)(1) as required by section 4(p)(2)(A) of this Act; or

"(C) that—

"(i) is subject to stricter prudential standards under subtitle B of the Financial Stability Improvement Act of 2009;

"(ii) is not—

"(I) a bank holding company, or

"(II) subject to the Bank Holding Company Act by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); and

"(iii) directly or indirectly controlled shares or engaged in activities that did not, on the date the company is first subject to stricter prudential standards pursuant to subtitle B of the Financial Stability Improvement Act of 2009, comply with the activity or investment restrictions on financial holding companies in section 4 in accordance with regulations prescribed by the Board.

"(2) PURPOSE.—

"(A) The purpose of this section is to provide for consolidated supervision of certain financial companies by the Board.

"(B) A company that is required to form a section 6 holding company shall conduct such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affil-

1 iate and a nonaffiliate during the year prior to
2 date of enactment, the company (or an affiliate
3 not a subsidiary of the section 6 company) may
4 continue to engage in that activity so long as at
5 least two-thirds of the assets or two-thirds of
6 the revenues of generated from the activity are
7 from or attributable to the company or an affil-
8 iate, subject to review by the Board to deter-
9 mine whether engaging in such activity presents
10 undue risk to the section 6 company or undue
11 systemic risk.

12 ''(C) A section 6 holding company shall be
13 prohibited from conducting any nonbanking ac-
14 tivities or investing in any nonbank companies
15 other than those permissible for a financial
16 holding company under sections 3 and 4, unless
17 the Board specifically determines otherwise in
18 accordance with paragraph (6), and provided
19 that, for purposes of this paragraph, a company
20 designated as a section 6 holding company and
21 described under paragraph (4) (or any per-
22 mitted successor) is not prohibited from con-
23 tinuing to engage in any impermissible activity
24 in which it was engaged continuously during the
25 6 months prior to the date of enactment, from

owning any shares or types of assets related to such activity, or continuing to own such other shares or assets that it owned on the date of enactment.

"(3) REGISTRATION.—

"(A) A section 6 holding company required to be established by a company described in paragraph (1)(A) shall be established, and such company shall register with the Board as a bank holding company, pursuant to the requirements in section 4(f).

"(B) A section 6 holding company required to be established by a company described in paragraph (1)(B) shall be established, and such company shall register with the Board as a bank holding company, pursuant to the requirements in section 4(p).

"(C) A section 6 holding company required to be established by a company described in paragraph (1)(C) shall be—

"(i) established, and such company shall register with the Board, as a bank holding company within 90 days after such company or such company's parent holding company has been notified by the Board

that such company is subject to stricter prudential standards under subtitle B of the Financial Stability Improvement Act of 2009, unless the Board grants an extension of such period for compliance which shall not exceed 180 additional days;

"(ii) treated as a financial holding company under this Act; and

"(iii) subject to the authority of the Board to enforce compliance with the provisions of this section under section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if such company were a bank holding company.

"(4) RULE OF CONSTRUCTION.—For purposes of this section, designation of an already established intermediate holding company that will serve as the section 6 holding company shall satisfy the requirement to establish a section 6 holding company, provided that such existing intermediate holding company complies with all other provisions applicable to a section 6 holding company.

"(5) LIMITATIONS ON AUTHORITY OF COMMERCIAL PARENT.—A company that is not a bank hold-

ing company or treated as a bank holding company pursuant to section 8(a) of the International Bank Act of 1978 that has been notified that it is a financial holding company subject to stricter standards, pursuant to subtitle A of the Financial Stability Improvement Act of 2009, shall—

"(A) not be deemed to be, or treated as, a bank holding company, solely because of its ownership or control of a section 6 holding company; and

"(B) not be subject to this Act, except for such provisions as are explicitly made applicable in this section.

"(6) BOARD AUTHORITY.—

"(A) RULES AND EXEMPTIONS.—In addition to any other authority of the Board, the Board shall prescribe rules and regulations or issue orders providing for the establishment and registration of section 6 holding companies and shall provide exemptions from the requirements of this Act (including an order in response to a request from an affected company), including, but not limited to, exemptions—

"(i) with respect to the requirement to conduct such activities which are financial

in nature, as determined under section 4(k), other than financial activities conducted for such company or any affiliate, including any financial activity engaged in for both the company or an affiliate and a nonaffiliate as permitted under section 4(f)(2)(D) or section 6(a)(2)(B), through such section 6 holding company, if the Board makes a finding that such exemption—

"(I)(aa) would facilitate the extension of credit to individuals, households, and businesses; or

"(bb) would allow for greater efficiency, improved customer service, or other public benefits in the conduct of financial activities by affected companies;

"(II) would not threaten the safety and soundness of the section 6 holding company, or of any insured depository institution or other subsidiary of the section 6 holding company;

"(III) would not increase systemic risk or threaten the stability of the overall financial system;

"(IV) would not, as applied to the activities that are the subject of the rule, order or request, result in substantially lessening competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects are outweighed in the public interest by the probable effect of the exemption in meeting the convenience and needs of the community to be served; and

"(V) would meet the financial and managerial standards for financial holding companies described in subparagraphs (A) and (B) of section 4(j)(4); and

"(ii) from the affiliate transaction requirements of subsection (b), including but not limited to exemptions that would facilitate extensions of credit to unaffiliated

1 persons for the personal, household, or
2 business purposes of such unaffiliated per-
3 sons, unless the Board makes a finding
4 that such exemption—
5 ''(I) is not consistent with the
6 purposes of section 23A and section
7 23B of the Federal Reserve Act;
8 ''(II) would threaten the safety
9 and soundness of the section 6 hold-
10 ing company, or any insured deposi-
11 tory institution or other subsidiary of
12 the section 6 holding company;
13 ''(III) would increase systemic
14 risk or threaten the stability of the
15 overall financial system;
16 ''(IV) would not, as applied to
17 the activities that are the subject of
18 the rule, order or request result in
19 substantially lessening competition, or
20 to tend to create a monopoly, or which
21 in any other manner would be in re-
22 straint of trade, unless the Board
23 finds that the anticompetitive effects
24 are outweighed in the public interest
25 by the probable effect of the exemp-

tion in meeting the convenience and needs of the community to be served; or

"(V) would permit an unfair, deceptive, abusive, or unsafe-and-unsound act or practice.

"(B) PARENT COMPANY REPORTS.—The Board may, from time to time, require reports under oath from a company that controls a section 6 holding company, and appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section (including assessing the company's ability to serve as a source of financial strength pursuant to subsection (g)) and enforcing such compliance.

"(C) LIMITED PARENT COMPANY ENFORCEMENT.—

"(i) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit In-

surance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

"(ii) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company that controls a section 6 holding company or any bank controlled by such a company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of clause (i).

"(iii) NO EFFECT ON OTHER AUTHORITY.—No provision of this subparagraph shall be construed as limiting any authority of the Board or any other Federal agency under any other provision of law.

"(b) RESTRICTIONS ON AFFILIATE TRANSACTIONS.—

"(1) SECTION 23A AND 23B APPLICABILITY.—

"(A) IN GENERAL.—Transactions between a section 6 holding company (or any nonbank subsidiary thereof) and any affiliate not controlled by the section 6 holding company shall be subject to the restrictions and limitations

contained in section 23A and section 23B of the Federal Reserve Act as if the section 6 holding company were a member bank, provided, that a transaction that otherwise would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services but shall be subject to review under section 23A(f)(1) of such Act.

"(B) COVERED TRANSACTIONS.—A depository institution controlled by a section 6 holding company may not engage in a covered transaction (as defined in section 23A(b)(7) of the Federal Reserve Act) with any affiliate that is not the section 6 holding company or a subsidiary of the section 6 holding company; provided that, for purposes of the prohibition, a transaction that otherwise would be a covered transaction shall not be a covered transaction if the transaction is in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods or services, but shall be subject to review under section 23A(f)(1) of the Federal Reserve Act.

"(2) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting any subsidiary insured depository institution of a section 6 holding company from compliance with section 23A or 23B of the Federal Reserve Act with respect to each affiliate of such institution (as defined in section 23A or 23B of the Federal Reserve Act), including any affiliate that is the section 6 holding company or subsidiary of the section 6 holding company.

"(c) TYING PROVISIONS.—A company that directly or indirectly controls a section 6 holding company shall be—

"(1) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

"(2) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

"(d) FINANCIAL HOLDING COMPANY REQUIREMENTS.—A section 6 holding company shall be subject to—

"(1) the conditions for engaging in expanded financial activities in section 4(l); and

"(2) the provisions applicable to financial holding companies that fail to meet certain requirements in section 4(m).

"(e) INDEPENDENCE OF SECTION 6 HOLDING COMPANY.—

"(1) No less than 25 percent of the members of the board of directors of a section 6 holding company, and each subsidiary of a section 6 holding company, shall be independent of the parent company of the section 6 holding company and any subsidiary of such parent company. For purposes of this subsection, a director shall be independent of the parent company if such person is not currently serving, and has not within the previous two-year period served, as a director, officer, or employee of any affiliate of the section 6 holding company that is not a subsidiary of the section 6 holding company.

"(2) No executive officer of a section 6 holding company or any subsidiary of a section 6 holding company may serve as a director, officer, or em-

ployee of an affiliate of the section 6 holding company that is not a subsidiary of the section 6 holding company.

"(3) The Board shall issue regulations that require effective legal and operational separation of the functions of a section 6 holding company from its affiliates that are not subsidiaries of such section 6 holding company, provided, however that such rules shall not require operational separation of internal functions including, but not limited to, human resources management, employee benefit plans, and information technology.

"(f) SOURCE OF STRENGTH.—A company that directly or indirectly controls a section 6 holding company shall serve as a source of financial strength to its subsidiary section 6 holding company.".

(d) CONFORMING CHANGES.—Section 4(h) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(h)), is amended—

(1) in paragraph (1), by striking "subparagraph (D), (F), (G), or (H)" and inserting "subparagraph (C) or (D)"; and

(2) in paragraph (2), by striking "subparagraph (D), (F), (G), or (H)" and inserting "subparagraph (C) or (D)".

SEC. 1302. REGISTRATION OF CERTAIN COMPANIES AS BANK HOLDING COMPANIES.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by inserting at the end the following new subsection:

"(h) CONVERSION TO BANK HOLDING COMPANY BY OPERATION OF LAW.—

"(1) CONVERSION BY OPERATION OF LAW.—A company that, on the day before the date of enactment of the Financial Stability Improvement Act of 2009, was not a bank holding company but which, by reason of sections 4(p) and 6 becomes a bank holding company by operation of law, shall register as a bank holding company with the Board in accordance with section 5(a) within 90 days of the date of enactment of that Act.

"(2) COMPLIANCE WITH BANK HOLDING COMPANY ACT.—With respect to any company described in paragraph (1), the Board may grant temporary exemptions or provide other appropriate temporary relief to permit such company to implement measures necessary to comply with the requirements under the Bank Holding Company Act.".

SEC. 1303. REPORTS AND EXAMINATIONS OF BANK HOLDING COMPANIES; REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.

(a) REPORTS OF BANK HOLDING COMPANIES.—Sections 5(c)(1)(A) and (B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)(A) and (B)) are amended to read as follows:

"(A) IN GENERAL.—The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath that the Board determines are necessary or appropriate for the Board to carry out the purposes of this chapter, prevent evasions thereof, and monitor compliance by the company or subsidiary with the applicable provisions of law.

"(B) USE OF EXISTING REPORTS.—

"(i) IN GENERAL.—The Board shall, to the fullest extent possible, use:

"(I) reports that a bank holding company or any subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

"(II) information that is otherwise required to be reported publicly; and

"(III) externally audited financial statements.

"(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall promptly provide to the Board, at the request of the Board, a report referred to in clause (i)(I).".

(b) FUNCTIONALLY REGULATED SUBSIDIARY.—Section 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended by inserting at the end the following new subparagraph:

"(C) DEFINITION.—For purposes of this subsection and section 6, the term 'functionally regulated subsidiary' means any subsidiary (other than a depository institution) of a bank holding company that is—

"(i) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, for which the Securities and Exchange Commission is the Federal regulatory agency;

"(ii) an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency;

"(iii) an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; and

"(iv) a futures commission merchant, commodity trading advisor, and commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act, for which the Commodity Futures Trading Commission is the Federal regulatory agency, with respect to the commodities activities of such entity and activities incidental to such commodities activities.".

(c) EXAMINATIONS OF BANK HOLDING COMPANIES.—Sections 5(c)(2)(A) and (B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)(A) and (B)) are amended to read as follows:

"(A) IN GENERAL.—The Board may make examinations of a bank holding company and any subsidiary of such a company to carry out the purposes of this chapter, prevent evasions thereof, and monitor compliance by the company or subsidiary with applicable provisions of law.

"(B) FUNCTIONALLY REGULATED AND DEPOSITORY INSTITUTION SUBSIDIARIES.—The Board shall, to the fullest extent possible, use reports of examination of functionally regulated subsidiaries and subsidiary depository institutions made by other Federal or State regulatory authorities.".

(d) REGULATION OF FINANCIAL HOLDING COMPANIES.—Section 5(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended by striking subparagraphs (C), (D), and (E).

(e) AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12

U.S.C. 1841, et seq.) is amended by striking section 10A (12 U.S.C. 1848a).

SEC. 1304. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN WELL CAPITALIZED AND WELL MANAGED.

Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)) is amended—

(1) in subparagraph (B), by striking ''and'';

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following new subparagraph:

''(C) the bank holding company is well capitalized and well managed; and''; and

(4) in subparagraph (D) (as so redesignated) by amending clause (ii) to read as follows:

''(ii) a certification that the company meets the requirements of subparagraphs (A) through (C).''.

SEC. 1305. STANDARDS FOR INTERSTATE ACQUISITIONS.

(a) BANK HOLDING COMPANY ACT OF 1956 AMENDMENT.—Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended—

(1) by striking ''adequately capitalized'' and inserting ''well capitalized''; and

(2) by striking ''adequately managed'' and inserting ''well managed''.

(b) FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.—Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended to read as follows:

''(B) the responsible agency determines that the resulting bank will be well capitalized and well managed upon the consummation of the transaction.''.

SEC. 1306. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.

(a) Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (b)(1), by striking subparagraph (D) and inserting the following new subparagraph:

''(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and''

(2) in subsection (b)(7)(A), by inserting ''(including a purchase of assets subject to an agreement to repurchase)'' after ''affiliate'';

(3) in subsection (b)(7)(C), by striking ", including assets subject to an agreement to repurchase,";

(4) in subsection (b)(7)(D)—

(A) by inserting "or other debt obligations" after "acceptance of securities", and

(B) by striking "or" after the semicolon;

(5) in subsection (b)(7), by inserting at the end the following new subparagraphs:

"(F) any securities borrowing and lending transactions with an affiliate to the extent that the transactions create credit exposure of the member bank to the affiliate; or

"(G) current and potential future credit exposure to the affiliate on derivative transactions with the affiliate;";

(6) in subsection (c)(1), by striking "at the time of the transaction," and inserting "at all times";

(7) in subsection (c)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively;

(8) in subsection (c)(3) (as so redesignated by paragraph (7)), by inserting ''or other debt obligations'' after ''securities'';

(9) in subsection (f)(2), by inserting at the end the following: ''The Board may not, by regulation or order, grant an exemption under this section unless the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.''; and

(10) in subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4);

(B) and inserting after paragraph (2) the following new paragraph:

''(3) CONCURRENCE OF THE COMPTROLLER OF THE CURRENCY.—With respect to a transaction or relationship involving a national bank or Federal savings association, the Board may not grant an exemption under this section unless the Board obtains the concurrence of the Comptroller of the Currency (in addition to obtaining the concurrence of the Chairman of the Federal Deposit Insurance Corporation under paragraph (2)).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 23B(e) of the Federal Reserve Act (12 U.S.C.

371–1(e)), is amended by inserting at the end the following new paragraph:

"(3) The Board may not grant an exemption or exclusion under this section unless the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.".

SEC. 1307. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.

Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

SEC. 1308. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended—

(1) in subsection (b)(1), by striking "shall include all direct or indirect" and all that follows through "commitment;" and inserting: "shall include—

"(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

"(B) to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

"(C) credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;";

(2) in subsection (b)(2) by striking the period at the end and inserting "; and";

(3) in subsection (b), by inserting after paragraph (2) the following new paragraph:

"(3) the term 'derivative transaction' means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event

relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.''; and

(4) in subsection (d), by inserting after paragraph (2) the following new paragraph:

''(3) The Comptroller of the Currency shall prescribe rules to administer and carry out the purposes of this section with respect to credit exposures arising from any derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. Rules required to be prescribed under this paragraph (3) shall take effect, in final form, not later than 180 days after the date of enactment of the Financial Stability Improvement Act of 2009.''.

SEC. 1309. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS AND THRIFTS.

(a) CONVERSION OF A NATIONAL BANKING ASSOCIATION TO A STATE BANK.—The National Bank Consolidation and Merger Act (12 U.S.C. 215 et seq.) is amended by redesignating section 7 as section 8 and by inserting after section 6 the following:

''SEC. 7. PROHIBITION ON CERTAIN CONVERSIONS.

''A national bank may not convert to a State bank during any period of time in which it is subject to a cease

1 and desist order, memorandum of understanding, or other
2 enforcement action entered into with or issued by the
3 Comptroller of the Currency.''

4 (b) CONVERSION OF A STATE BANK TO A NATIONAL
5 BANK.—Section 5154 of the Revised Statutes (12 U.S.C.
6 35) is amended by adding at the end the following new
7 sentence: ''The Comptroller of the Currency shall not ap-
8 prove the conversion of a State bank to a national bank
9 during any period of time in which the State bank is sub-
10 ject to a cease and desist order, memorandum of under-
11 standing, or other enforcement action entered into or
12 issued by a State bank supervisor, the Federal Deposit
13 Insurance Corporation, the Board of Governors of the
14 Federal Reserve System or a Federal Reserve Bank.''.

15 (c) CONVERSION BETWEEN A FEDERAL SAVINGS AS-
16 SOCIATION AND A STATE SAVINGS ASSOCIATION.—Section
17 5(i) of the Home Owners' Loan Act (12 U.S.C. 1464(i))
18 is amended by adding at the end the following new para-
19 graph:

20 ''(6) PROHIBITION ON CERTAIN CONVER-
21 SIONS.—A Federal savings association may not con-
22 vert to a State savings association, and a State sav-
23 ings association may not convert to a Federal sav-
24 ings association, during any period of time in which
25 such savings association is subject to a cease and de-

sist order, memorandum of understanding, or other enforcement action entered into with or issued by the Director of the Office of Thrift Supervision or a State savings association supervisor.''.

SEC. 1310. LENDING LIMITS TO INSIDERS.

Section 22(h)(9)(D)(ii) of the Federal Reserve Act (12 U.S.C. 375b(h)(9)(D)(ii)) is amended by inserting '', except that a member bank shall be deemed to have extended credit to a person if the member bank has credit exposure to the person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person'' before the period at the end.

SEC. 1311. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.

(a) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by inserting after subsection (y) (as added by section 1408) the following new subsection:

''(z) GENERAL PROHIBITION.—An insured depository institution shall not purchase an asset from, or sell an asset to, one of its executive officers, directors, or principal shareholders or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve

Act) unless the transaction is on market terms and, if the transaction represents more than 10 percent of the institution's capital stock and surplus, the transaction has been approved in advance by a majority of the institution's board of directors (with interested directors of the insured depository institution not participating in the approval of the transaction).''.

(b) FDIC RULEMAKING AUTHORITY.—The Federal Deposit Insurance Corporation may prescribe rules to implement the requirements of subsection (a) and the amendments made by subsection (a).

(c) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 22 of the Federal Reserve Act (12 U.S.C. 375) is amended by striking subsection (d).

SEC. 1312. RULES REGARDING CAPITAL LEVELS OF BANK HOLDING COMPANIES.

Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended by inserting '', including regulations relating to the capital levels of bank holding companies'' before the period at the end.

SEC. 1313. ENHANCEMENTS TO FACTORS TO BE CONSIDERED IN CERTAIN ACQUISITIONS.

(a) BANK ACQUISITIONS.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is

amended by inserting at the end the following new paragraph:

"(7) FINANCIAL STABILITY.—

"(A) IN GENERAL.—In every case, the Board shall take into consideration the extent to which the proposed acquisition, merger, or consolidation may pose risk to the stability of the United States financial system or the economy of the United States , including the resulting scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature.

"(B) STANDARDS FOR APPROVAL.—The Board may in its sole discretion disapprove any acquisition, merger, or consolidation of, or by, a financial company subject to stricter prudential standards if the Board determines that the resulting concentration of liabilities on a consolidated basis is likely to pose a greater threat to financial stability during times of severe economic distress.".

(b) NONBANK ACQUISITIONS.—

(1) Section 4(j)(2)(A) of the Bank Holding Company is amended by—

(A) striking ''or'' before ''unsound banking practices''; and

(B) inserting before the period at the end the following: '', or risk to the stability of the United States financial system or the economy of the United States''.

(2) Section 4(k)(6) of the Bank Holding Company Act of 1956 is amended by striking subparagraph (B) and inserting the following new subparagraph:

''(B) A financial holding company may commence any activity or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board, except—

''(i) for a transaction in which the total assets to be acquired by the financial holding company exceed $25 billion; and

''(ii) as provided in subsection (j) with regard to the acquisition of a savings association.''.

(c) BANK MERGER ACT TRANSACTIONS.—Section 8(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(5)) is amended by—

(1) by striking ''and'' before ''the convenience and needs of the community to be served''; and

(2) by inserting before the period at the end the following: '', and the risk to the stability of the United States financial system and the economy of the United States based on, among other things, the scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature''.

SEC. 1314. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.

Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking subsection (i); and

(2) by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

SEC. 1315. EXAMINATION FEES FOR LARGE BANK HOLDING COMPANIES.

The Bank Holding Company Act of 1956 is amended by inserting after section 5 the following new section:

''SEC. 5A. EXAMINATION FEES.

''The Board of Governors of the Federal Reserve System or the Federal Reserve Banks shall assess fees on bank holding companies with total consolidated assets of $10 billion or more. Such fees shall be sufficient to defray

the cost of the examination of such bank holding companies.''.

Subtitle E—Improvements to the Federal Deposit Insurance Fund

SEC. 1401. ACCOUNTING FOR ACTUAL RISK TO THE DEPOSIT INSURANCE FUND.

(a) Section 7(b)(1)(C) of the Federal Deposit Insurance Act is amended to read as follows:

''(C) 'RISK-BASED ASSESSMENT SYSTEM' DEFINED.—For purposes of this paragraph, the term 'risk-based assessment system' means a system for calculating a depository institution's assessment based on—

''(i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution;

''(ii) the likely amount of any such loss;

''(iii) the risks to the Deposit Insurance Fund attributable to such depository institution, including risks posed by its affiliates to the extent the Corporation determines appropriate, taking into account—

''(I) the amount, different categories, and concentrations of assets

of the insured depository institution and its affiliates, including both on-balance sheet and off-balance sheet assets;

"(II) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the insured depository institution and its affiliates; and

"(III) any other factors the Corporation determines are relevant to assessing the risks; and

"(iv) the revenue needs of the Deposit Insurance Fund.".

(b) Section 7(b)(2) of the Federal Deposit Insurance Act is amended by striking subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

SEC. 1402. CREATING A RISK-FOCUSED ASSESSMENT BASE.

Section 7(b)(2) of such Act, as amended, is further amended by amending subparagraph (C) to read as follows:

"(C) ASSESSMENT.—The assessment of any insured depository institution imposed

under this subsection shall be an amount equal to the product of—

"(i) an assessment rate established by the Corporation; and

"(ii) the amount of the insured depository institution's average total assets during the assessment period minus the amount of the insured depository institution's average tangible equity during the assessment period.".

SEC. 1403. ELIMINATION OF PROCYCLICAL ASSESSMENTS.

Section 7(e) of the Federal Deposit Insurance Act is amended—

(1) in paragraph (2)—

(A) by amending subparagraph (B) to read as follows:

"(B) LIMITATION.—The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).";

(B) by amending subparagraph (C) to read as follows:

"(C) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe, by regulation, after notice and opportunity for

comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph''; and

(C) by striking subparagraphs (D) through (G); and

(2) in paragraph (4)(A) by striking ''paragraphs (2)(D) and'' and inserting ''paragraphs (2) and''.

SEC. 1404. ENHANCED ACCESS TO INFORMATION FOR DEPOSIT INSURANCE PURPOSES.

(a) Section 7(a)(2)(B) of the Federal Deposit Insurance Act is amended by striking '', after agreement with the Comptroller of the Currency, the Board of Governors of the Federal Reserve ystem, and the Director of the Office of Thrift Supervision, as appropriate,''.

(b) Section 7(b)(1)(E) of the Federal Deposit Insurance Act is amended—

(1) in clause (i), by striking ''such as'' and inserting ''including''; and

(2) by striking clause (iii).

SEC. 1405. TRANSITION RESERVE RATIO REQUIREMENTS TO REFLECT NEW ASSESSMENT BASE.

(a) Section 7(b)(3)(B) of the Federal Deposit Insurance Act is amended to read as follows:

"(B) MINIMUM RESERVE RATIO.—The reserve ratio designated by the Board of Directors for any year may not be less than 1.15 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).".

(b) Section 3(y)(3) of the Federal Deposit Insurance Act is amended by inserting ", or such comparable percentage of the assessment base set forth in section 7(b)(2)(C)" before the period.

(c) For a period of not less than 5 years after the date of the enactment of this title, the Federal Deposit Insurance Corporation shall make available to the public the reserve ratio and the designated reserve ratio using both estimated insured deposits and the assessment base under section 7(b)(2)(C) of the Federal Deposit Insurance Act.

Subtitle F—Improvements to the Asset-backed Securitization Process

SEC. 1501. SHORT TITLE.

This subtitle may be cited as the "Credit Risk Retention Act of 2009".

SEC. 1502. CREDIT RISK RETENTION.

(a) AMENDMENT.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 28 the following new section:

"SEC. 29. CREDIT RISK RETENTION.

"(a) IN GENERAL.—

"(1) INTEREST IN LOANS MADE BY CREDITORS.—Within 180 days of the date of the enactment of this section, the appropriate agencies shall prescribe regulations to require any creditor that makes a loan to retain an economic interest in a material portion of the credit risk of any such loan that the creditor transfers, sells, or conveys to a third party, including for the purpose of including such loan in a pool of loans backing an issuance of asset-backed securities.

"(2) INTEREST IN ASSETS BACKING ASSET-BACKED SECURITIES.—The appropriate agencies shall prescribe regulations to require any securitizer of asset-backed securities that are backed by assets not described in paragraph (1) to retain an economic interest in a material portion of any such asset used to back an issuance of securities.

"(b) ALTERNATIVE RISK RETENTION FOR CREDIT SECURITIZERS.—The appropriate agencies may apply the risk retention requirements of this section to securitizers

of loans or particular types of loans in addition to or in substitution for any or all of the requirements that apply to creditors that make such loans or types of loans, if the agencies determine that applying the requirements to such securitizers would—

"(1) be consistent with helping to ensure high quality underwriting standards for creditors, taking into account other applicable laws, regulations, and standards; and

"(2) facilitate appropriate risk management practices by such creditors, improve access of consumers to credit on reasonable terms, or otherwise serve the public interest.

"(c) STANDARDS FOR REGULATION.—Regulations prescribed under subsections (a) and (b) shall—

"(1) prohibit a creditor or securitizer from directly or indirectly hedging or otherwise transferring the credit risk such creditor or securitizer is required to retain under the regulations;

"(2) require a creditor or securitizer to retain 5 percent of the credit risk on any loan that is transferred, sold, or conveyed by such creditor or securitized by such securitizer except—

"(A) an appropriate agency may specify that the percentage of risk may be less than 5

1 percent of the credit risk, or exempt such cred-
2 itor or securitizer from the risk retention re-
3 quirement, if—
4 ''(i) the credit underwriting by the
5 creditor or the due diligence by the
6 securitizer meets such standards as an ap-
7 propriate agency prescribes; and
8 ''(ii) the loan that is transferred, sold,
9 or conveyed by such creditor or securitized
10 by such securitizer meets terms, condi-
11 tions, and characteristics that are deter-
12 mined by an appropriate agency to reflect
13 loans with reduced credit risk, such as
14 loans that meet certain interest rate
15 thresholds, loans that are fully amortizing,
16 and loans that are included in a
17 securitization in which a third-party pur-
18 chaser specifically negotiates for the pur-
19 chase of the first-loss position and provides
20 due diligence on all individual loans in the
21 pool prior to the issuance of the asset-
22 backed securities, and retains a first-loss
23 position; and
24 ''(B) an appropriate agency may specify
25 that the percentage of risk may be more than

5 percent of the credit risk if the underwriting by the creditor or due diligence by the securitizer is insufficient;

"(3) specify that the credit risk retained must be no less at risk for loss than the average of the credit risk not so retained; and

"(4) set the minimum duration of the required risk retention.

"(d) EXEMPTIONS AND ADJUSTMENTS.—

"(1) IN GENERAL.—The appropriate agencies shall have authority to provide exemptions or adjustments to the requirements of this section, including exemptions or adjustments relating to the percentage of risk retention required to be held and the hedging prohibition.

"(2) APPLICABLE STANDARDS.—Any exemptions or adjustments provided under paragraph (1) shall—

"(A) be consistent with the purpose of ensuring high quality underwriting standards for creditors, taking into account other applicable laws, regulations, or standards; and

"(B) facilitate appropriate risk management practices by such creditors, improve ac-

cess for consumers to credit on reasonable terms, or otherwise serve the public interest.

"(e) APPROPRIATE AGENCY DEFINED.—For purposes of this section, the term 'appropriate agency' means any of the following agencies with regard to the respective loans and asset-backed securities:

"(1) BANKING AGENCIES.—The Federal banking agencies, the National Credit Union Administration Board, and the Commission, with respect to any loan or asset-backed security for which there is no appropriate agency under paragraph (2).

"(2) OTHER AGENCIES.—

"(A) With regard to any mortgage insured under title II of the National Housing Act, the Secretary of Housing and Urban Development.

"(B) With regard to any loan meeting the conforming loan standards of the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation or any asset-backed security issued by either such corporation, the Federal Housing Finance Agency.

"(C) With regard to any loan insured by the Rural Housing Service, the Rural Housing Service.

1 "(f) JOINT APPROPRIATE AGENCY REGULATIONS.—
2 All regulations prescribed by the agencies identified in
3 subsection (e)(1) shall be prescribed jointly by such agen-
4 cies.
5 "(g) ENFORCEMENT.—
6 "(1) Compliance with the requirements imposed
7 under this section shall be enforced under—
8 "(A) section 8 of the Federal Deposit In-
9 surance Act (12 U.S.C. 1818), in the case of—
10 "(i) national banks, and Federal
11 branches and Federal agencies of foreign
12 banks, by the Office of the Comptroller of
13 the Currency;
14 "(ii) member banks of the Federal
15 Reserve System (other than national
16 banks), branches and agencies of foreign
17 banks (other than Federal branches, Fed-
18 eral agencies, and insured State branches
19 of foreign banks), commercial lending com-
20 panies owned or controlled by foreign
21 banks, and organizations operating under
22 section 25 or 25A of the Federal Reserve
23 Act, bank holding companies, and subsidi-
24 aries of bank holding companies (other

than insured depository institutions), by the Board; and

"(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

"(B) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation and a savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank); and

"(C) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any Federal credit union.

"(2) Except to the extent that enforcement of the requirements imposed under this section is specifically committed to some other Federal agency under paragraph (1), the Commission shall enforce such requirements.

"(3) The authority of the Commission under this section shall be in addition to its existing authority to enforce the securities laws.

"(h) EXCLUSIONS.—Notwithstanding any other provision of this section, the requirements of this section shall not apply to any loan—

"(1) insured, guaranteed, or administered by the Secretary of Education, the Secretary of Agriculture, the Secretary of Veterans Affairs, or the Small Business Administration; or

"(2) made, insured, guaranteed, or purchased by any person that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.

"(i) DEFINITIONS.—For purposes of this section:

"(1) The term 'asset-backed security' has the meaning given such term in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto.

"(2) The term 'Federal banking agencies' means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation.

"(3) The term 'insured depository institution' has the meaning given such term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

"(4) The term 'securitization vehicle' means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

"(A) is the issuer, or is created by the issuer, of pass-through certificates, participation certificates, asset-backed securities, or other similar securities backed by a pool of assets that includes loans; and

"(B) holds such loans.

"(5) The term 'securitizer' means the person that transfers, conveys, or assigns, or causes the transfer, conveyance, or assignment of, loans, including through a special purpose vehicle, to any securitization vehicle, excluding any trustee that holds such loans for the benefit of the securitization vehicle.".

(b) STUDY ON RISK RETENTION.—

(1) STUDY.—The Board, in coordination and consultation with the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Securities and Ex-

change Commission, shall conduct a study of the combined impact by each individual class of asset-backed security of—

(A) the new credit risk retention requirements contained in the amendment made by subsection (a); and

(B) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board.

(2) REPORT.—Not later than 90 days after the date of enactment of this title, the Board shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include statutory and regulatory recommendations for eliminating any negative impacts on the continued viability of the asset-backed securitization markets and on the availability of credit for new lending identified by the study conducted under paragraph (1).

SEC. 1503. PERIODIC AND OTHER REPORTING UNDER THE SECURITIES EXCHANGE ACT OF 1934 FOR ASSET-BACKED SECURITIES.

Section 15(d) of Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended—

(1) by inserting ", other than securities of any class of asset-backed security (as defined in section

229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto),'' after ''securities of each class'';

(2) by inserting at the end the following: ''The Commission may by rules and regulations provide for the suspension or termination of the duty to file under this subsection for any class of issuer of asset-backed security upon such terms and conditions and for such period or periods as it deems necessary or appropriate in the public interest or for the protection of investors. The Commission may, for the purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuer of asset-backed security.''; and

(3) by inserting after the fifth sentence the following: ''The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security. In adopting regulations under this subsection, the Commission shall set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes. The Commis-

sion shall require issuers of asset-backed securities at a minimum to disclose asset-level or loan-level data necessary for investors to independently perform due diligence. Asset-level or loan-level data shall include data with unique identifiers relating to loan brokers or originators, the nature and extent of the compensation of the broker or originator of the assets backing the security, and the amount of risk retention of the originator or the securitizer of such assets.''.

SEC. 1504. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.

The Commission shall prescribe regulations on the use of representations and warranties in the asset-backed securities market that—

(1) require credit rating agencies to include in reports accompanying credit ratings a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from representations, warranties, and enforcement mechanisms in similar issuances; and

(2) require disclosure on fulfilled repurchase requests across all trusts aggregated by originator, so that investors may identify asset originators with clear underwriting deficiencies.

SEC. 1505. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.

(a) IN GENERAL.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

(b) CONFORMING AMENDMENT.—Section 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking ''4(6)'' and inserting ''4(5)''.

SEC. 1506. STUDY ON THE MACROECONOMIC EFFECTS OF RISK RETENTION REQUIREMENTS.

(a) STUDY REQUIRED.—The Chairman of the Financial Services Oversight Council shall carry out a study on the macroeconomic effects of the risk retention requirements under this subtitle, and the amendments made by this subtitle, with emphasis placed on potential beneficial effects with respect to stabilizing the real estate market. Such study shall include—

(1) an analysis of the effects of risk retention on real estate asset price bubbles, including a retrospective estimate of what fraction of real estate losses may have been averted had such requirements been in force in recent years;

(2) an analysis of the feasibility of minimizing real estate price bubbles by proactively adjusting the percentage of risk retention that must be borne by creditors and securitizers of real estate debt, as a function of regional or national market conditions;

(3) a comparable analysis for proactively adjusting mortgage origination requirements;

(4) an assessment of whether such proactive adjustments should be made by an independent regulator, or in a formulaic and transparent manner;

(5) an assessment of whether such adjustments should take place independently or in concert with monetary policy; and

(6) recommendations for implementation and enabling legislation.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this title, the Chairman of the Financial Services Oversight Council shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

Subtitle G—Enhanced Dissolution Authority

SEC. 1601. SHORT TITLE.

This subtitle may be cited as the ''Dissolution Authority for Large, Interconnected Financial Companies Act of 2009''.

SEC. 1602. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) APPROPRIATE REGULATORY AGENCY.—

(A) CORPORATION AND COMMISSION.—The term ''appropriate regulatory agency'' means—

(i) the Corporation;

(ii) the Commission, if the financial company, or an affiliate thereof, is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) (other than an insured depository institution)); and

(iii) if the financial company or an affiliate of the financial company is an insurance company (other than an insured depository institution), the applicable State

1 insurance authority of the State in which
2 the insurance company is domiciled.
3 (B) RULES OF CONSTRUCTION.—More
4 than 1 agency may be an appropriate regu-
5 latory agency with respect to any given finan-
6 cial company. In such instances, the Commis-
7 sion shall be the appropriate regulatory agency
8 for purposes of section 1603 if the largest sub-
9 sidiary of the financial company is a broker or
10 dealer as measured by total assets as of the end
11 of the previous calendar quarter, the applicable
12 State insurance authority of the State in which
13 the insurance company is domiciled shall be the
14 appropriate regulatory agency for purposes of
15 section 1603 if the largest subsidiary of the fi-
16 nancial company is an insurance company as
17 measured by total assets as of the end of the
18 previous calendar quarter, and otherwise the
19 Corporation shall be the appropriate regulatory
20 agency for purposes of section 1603.
21 (2) BRIDGE FINANCIAL COMPANY.—The term
22 ''bridge financial company'' means a new financial
23 company organized in accordance with section
24 1609(h) by the Corporation.

(3) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(4) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(5) COVERED FINANCIAL COMPANY.—The term ''covered financial company'' means a financial company for which a determination has been made pursuant to and in accordance with section 1603(b).

(6) COVERED SUBSIDIARY.—The term ''covered subsidiary'' means a subsidiary covered in paragraph (9)(B)(v).

(7) CUSTOMER PROPERTY.—The term ''customer property'' has the meaning ascribed to it in the Securities Investor Protection Act of 1970.

(8) FEDERAL RESERVE BOARD.—The term ''Federal Reserve Board'' means the Board of Governors of the Federal Reserve System.

(9) FINANCIAL COMPANY.—The term ''financial company'' means any company that—

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

(B) is—

(i) any bank holding company as defined in section 2(a) of the Bank Holding

Company Act of 1956 (12 U.S.C. 1841(a));

(ii) any company that has been subjected to stricter prudential regulation under section 1103;

(iii) any insurance company;

(iv) any company predominantly engaged in activities that are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) or that have been identified for stricter prudential standards under section 1103 of this title; or

(v) any subsidiary of companies described in clauses (i) through (iv) (other than an insured depository institution or any broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) that is a member of the Securities Investor Protection Corporation).

(10) FUND.—The term ''Fund'' means the Systemic Dissolution Fund established in accordance with section 1609(n).

(11) INSURANCE COMPANY.—The term ''insurance company'' includes any person engaged in the business of insurance to the extent of such activities.

(12) SECRETARY.—The term ''Secretary'' shall mean the Secretary of the Treasury.

(13) STATE.—The term ''State'' means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(14) CERTAIN OTHER TERMS.—The terms ''affiliate,'' ''company,'' ''control,'' ''deposit,'' ''depository institution,'' ''foreign bank,'' ''insured depository institution,'' and ''subsidiary'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

SEC. 1603. SYSTEMIC RISK DETERMINATION.

(a) WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE BOARD AND THE APPROPRIATE REGULATORY AGENCY.—

(1) VOTE REQUIRED.—At the request of the Secretary or the Chairman of the Federal Reserve Board or, in cases where an financial company has a broker or dealer as its largest subsidiary as meas-

ured by total assets as of the end of the previous calendar quarter, the Commission, the Federal Reserve Board and the appropriate regulatory agency shall; or on their own initiative, the Federal Reserve Board and the appropriate regulatory agency may; consider whether to make the written recommendation provided for in paragraph (2) with respect to a financial company, which recommendation shall be made upon a vote of not less than two-thirds of the members of the Federal Reserve Board then serving and two-thirds of the members of the board or of the commission then serving of the appropriate regulatory agency, as applicable.

(2) RECOMMENDATION REQUIRED.—Any written recommendations made by the Federal Reserve Board and the appropriate regulatory agency under paragraph (1) shall contain the following:

(A) A description of the effect that the default of the financial company would have on economic conditions or financial stability in the United States.

(B) A description of the effect that the default of the financial company would have on economic conditions or financial stability for

low-income, minority, or underserved communities.

(C) A recommendation regarding the nature and the extent of actions that the Board and the appropriate regulatory agency recommend be taken under section 1604 regarding the financial holding company subject to stricter standards.

(b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal law or the law of any State, if, upon the written recommendation of the Federal Reserve Board and the board of directors or commission of the appropriate regulatory agency as provided for in subsection (a)(1), the Secretary (in consultation with the President) determines that—

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

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

(3) any action under section 1604 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating

1 potential adverse effects on the financial system or
2 economic conditions, the cost to the general fund of
3 the Treasury, and the potential to increase moral
4 hazard on the part of creditors, counterparties, and
5 shareholders in the financial company,
6 then the Secretary must take action under section
7 1604(a), the Corporation must act in accordance with sec-
8 tion 1604(b), and the Corporation may take 1 or more
9 actions specified in section 1604(c) in accordance with the
10 requirements of that subsection, except that, prior to the
11 Secretary or Corporation taking any action under section
12 1604, the Federal Reserve Board or the appropriate Fed-
13 eral regulatory agency shall take action to avoid or miti-
14 gate potential adverse effects on low-income, minority, or
15 underserved communities affected by the failure of such
16 financial company.
17 (c) DOCUMENTATION AND REVIEW.—
18 (1) IN GENERAL.—The Secretary shall—
19 (A) document any determination under
20 subsection (b); and,
21 (B) retain the documentation for review
22 under paragraph (2).
23 (2) GAO REVIEW.—The Comptroller General of
24 the United States shall review and report to the

Congress on any determination under subsection (b), including—

(A) the basis for the determination;

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

(C) the likely effect of the determination and such action on the incentives and conduct of financial holding companies subject to stricter standards and their creditors, counterparties, and shareholders.

(3) REPORT TO CONGRESS.—Within 48 hours after a determination is made under subsection (b), the Secretary shall provide written notice of the determination to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives. The notice shall include a description of the basis for the determination.

(d) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of subsection (b), a financial holding company subject to stricter standards shall be considered to be in default or in danger of default if any of the following conditions exist, as determined in accordance with that subsection:

(1) A case has been, or likely will promptly be, commenced with respect to the financial holding company subject to stricter standards under title 11, United States Code.

(2) The financial holding company subject to stricter standards is critically undercapitalized, as such term has been or may be defined by the Federal Reserve Board.

(3) The financial holding company subject to stricter standards has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion without assistance under section 1604.

(4) The assets of the financial holding company subject to stricter standards are, or are likely to be, less than its obligations to creditors and others.

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

SEC. 1604. RESOLUTION; STABILIZATION.

(a) APPOINTMENT OF RECEIVER.—

(1) IN GENERAL.—Upon the Secretary making a determination in accordance with section 1603(b),

the Secretary shall appoint the Corporation as receiver for the covered financial company.

(2) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—Any appointment of the Corporation as receiver under paragraph (1) shall terminate on the date that is the end of the 1-year period beginning on the date such appointment is made.

(b) RESOLUTION LIMITATIONS.—

(1) IN GENERAL.—An insolvent financial company may be resolved under this subtitle only if the failure and resolution of such company under title 11, United States Code, would be systemically destabilizing, as determined by the appropriate Federal regulatory agencies and the Secretary of the Treasury (in consultation with the President) in accordance with section 1603(b).

(2) LIQUIDATION.—A financial company that comes within coverage of this subtitle for resolution shall be placed in liquidation, and the associated liquidation costs shall be paid from the company's assets and borne by the shareholders and unsecured creditors of such company.

(3) ASSESSMENT FOR EXCESS LIQUIDATION COSTS.—Any liquidation costs that exceed the amount of liquidated assets of the company shall be

paid through assessments on large financial companies.

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

(1) shall consult with the regulators of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly resolution of the covered financial company;

(2) may consult with, or under section 1609(a)(1)(B)(v) or section 1609(a)(1)(K) acquire services of, any outside experts as appropriate to inform and aid the Corporation in the resolution process; and

(3) shall consult with the primary regulators of any subsidiaries of the covered financial company that are not covered subsidiaries as described in section 1602(9)(B)(iv) and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate.

(d) EMERGENCY STABILIZATION AFTER APPOINTMENT OF RECEIVER.—Upon the Secretary appointing the Corporation as receiver under subsection (a), the Corporation may, in its corporate capacity and as an agency of the United States, with the approval of the Secretary and

subject to the conditions in subsections (f) through (g), take the following actions under such terms and conditions that the Corporation and the Secretary jointly deem appropriate:

(1) Making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary.

(2) Purchasing assets of the covered financial company or any covered subsidiary directly or through an entity established by the Corporation for such purpose.

(3) Assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to one or more third parties.

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

(5) Selling or transferring all, or any part thereof, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary.

(e) TREATMENT OF CERTAIN INSURANCE SUBSIDIARIES.—

(1) IN GENERAL.—Notwithstanding subsection (a), if a covered financial company is an insurance company covered by a State law designed specifically to deal with the insolvency of an insurance company, resolution of such company, and any subsidiary of such company, will be conducted as provided under such State law.

(2) EXCEPTION FOR COVERED SUBSIDIARIES.—The requirement of paragraph (1) shall not apply with respect to any covered subsidiary of such an insurance company.

(3) BACKUP AUTHORITY.—Notwithstanding paragraph (1), with respect to a covered financial company described under paragraph (1), if, after the end of the 60-day period beginning on the date a determination is made under section 1603(b) with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into resolution under the State's laws and requirements, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the

appropriate State court to place such company into resolution under the State's laws and requirements.

(f) MANDATORY TERMS AND CONDITIONS FOR ALL STABILIZATION ACTIONS.—The Corporation as receiver is authorized to take the stabilization actions listed in subsection (d) only if—

(1) the Secretary and the Corporation determine that such action is necessary for the purpose of financial stability and not for the purpose of preserving the covered financial company;

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

(3) the Corporation ensures that any funds from taxpayers shall be repaid as part of the resolution process before payments are made to creditors;

(4) the Corporation ensures that unsecured creditors bear losses;

(5) the Corporation ensures that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time the Corporation is appointed as receiver); and

(6) the Corporation ensures that the members of the board of directors (or body performing similar functions) responsible for the failed condition of the covered financial company are removed (if such members have not already been removed at the time the Corporation is appointed as receiver).

(g) RECOUPMENT OF FUNDS EXPENDED FOR SYSTEMIC STABILIZATION PURPOSES.—Amounts expended from the Fund by the Corporation under this section shall be repaid in full to the Fund from the following sources:

(1) RESOLUTION PROCESS.—Amounts attributable to the proceeds of the sale of, or income from, the assets of the covered financial company.

(2) INDUSTRY ASSESSMENTS.—If the sources described in paragraph (1) are insufficient to repay the amount of the stabilization action in full, the difference shall be recouped through assessments on financial companies in accordance with section 1609(o).

SEC. 1605. JUDICIAL REVIEW.

If a receiver is appointed, the covered financial company may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such covered financial company is located, or in the United States District Court

for the District of Columbia, for an order requiring that the receiver be removed, and the court shall, upon the merits, dismiss such action or direct the receiver to be removed. Review of such an action shall be limited to the appointment of a receiver under section 1604.

SEC. 1606. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER.

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the covered financial company's shareholders or creditors for acquiescing in or consenting in good faith to—

(1) the Secretary's appointment of the Corporation as receiver for the covered financial company under section 1604; or

(2) an acquisition, combination, or transfer of assets or liabilities under section 1609.

SEC. 1607. TERMINATION AND EXCLUSION OF OTHER ACTIONS.

The Corporation's acting as receiver for a covered financial company under this title shall immediately, and by operation of law, terminate any case commenced with respect to the covered financial company under title 11, United States Code, or any proceeding under any State insolvency law with respect to the covered financial com-

pany, and no such case or proceeding may be commenced with respect to the covered financial company at any time while the Corporation acts as receiver for the covered financial company.

SEC. 1608. RULEMAKING.

The Corporation may prescribe such regulations as the Corporation considers necessary or appropriate to implement the provisions of this title.

SEC. 1609. POWERS AND DUTIES OF CORPORATION.

(a) POWERS AND AUTHORITIES.—

(1) GENERAL POWERS.—

(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as receiver for a covered financial company under section 1604, and by operation of law, succeed to—

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

(ii) title to the books, records, and assets of any previous receiver or other legal

custodian of such covered financial company.

(B) OPERATE THE COVERED FINANCIAL COMPANY.—The Corporation as receiver for a covered financial company may—

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

(ii) collect all obligations and money due the covered financial company;

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

(iv) preserve and conserve the assets and property of the covered financial company; and

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

(C) FUNCTIONS OF COVERED FINANCIAL COMPANY'S OFFICERS, DIRECTORS, AND SHAREHOLDERS.—

(i) IN GENERAL.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this section.

(ii) PRESUMPTION.—There shall be a strong presumption that the Corporation, as receiver, will remove management responsible for the failed condition of the covered financial company (if such management has not already been removed at the time the Corporation is appointed as receiver).

(D) ADDITIONAL POWERS AS RECEIVER.—The Corporation may, as receiver, and subject to all legally enforceable and perfected security interests, place the covered financial company in liquidation and proceed to realize upon the assets of the covered financial company in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise

of any other rights or privileges granted to the receiver under this section.

(E) ORGANIZATION OF NEW COMPANIES.—The Corporation as receiver may organize a bridge financial company under subsection (h).

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

(i) IN GENERAL.—Subject to clause (ii), the Corporation as receiver may—

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

(II) transfer any asset or liability of the covered financial company (including assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(I) IN GENERAL.—If a transaction described in clause (i) requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the

date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a filing is required under the Hart Scott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice or the Federal Trade Commission, the waiting period shall expire not later than the 30th day following such filing notwithstanding any other provision of Federal law or any attempt by any Federal agency to extend such waiting period, and no further request for information by any Federal agency shall be permitted.

(II) EMERGENCY.—If the Secretary in consultation with the Chair-

man of the Federal Reserve Board has found that the Corporation must act immediately to prevent the probable failure of 1 or more of the covered financial companies involved, the approvals and filings referred to in subclause (I) shall not be required and the transactions may be consummated immediately by the Corporation.

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

(H) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation may, for purposes of carrying out any power, authority, or duty with respect to a covered financial company (including determining any claim against the covered financial company and determining and real-

1 izing upon any asset of any person in the
2 course of collecting money due the covered
3 financial company), exercise any power es-
4 tablished under section 8(n) of the Federal
5 Deposit Insurance Act as if the covered fi-
6 nancial company were an insured deposi-
7 tory institution.
8 (ii) RULE OF CONSTRUCTION.—This
9 section shall 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, may—
16 (i) exercise all powers and authorities
17 specifically granted to receivers under this
18 section and such incidental powers as shall
19 be necessary to carry out such powers; and
20 (ii) take any action authorized by this
21 section, which the Corporation determines
22 is in the best interests of the covered fi-
23 nancial company, its customers, its credi-
24 tors, its counterparties, or the stability of
25 the financial system.

(J) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from a covered financial company, the Corporation, as receiver, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services is practicable, efficient, and cost effective.

(K) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation as receiver for a covered financial company pursuant to this section and its succession, by operation of law, to the rights, titles, powers, and privileges described in subparagraph (A) shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to

payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims provisions in section 1609(b).

(L) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation as receiver for a covered financial company shall coordinate with the appropriate foreign financial authorities regarding the resolution of subsidiaries of the covered financial company that are established in a country other than the United States.

(2) AUTHORITY OF CORPORATION TO DETERMINE CLAIMS.—

(A) IN GENERAL.—The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (3).

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

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

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

(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the covered financial company's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the covered financial company's books, within 30 days after the discovery of such name and address.

(3) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Subject to subsection (b), the Corporation shall prescribe rules and regulations regarding the allowance or disallowance of claims by the Corporation and providing for administrative determination of claims and review of such determination.

(B) EXISTING RULES.—The Corporation may elect to use the regulations adopted pursuant to the provisions of section 11 of the Federal Deposit Insurance Act with respect to the determination of claims for a covered financial company as if the covered financial company were an insured depository institution.

(4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

(A) DETERMINATION PERIOD.—

(i) IN GENERAL.—Before the end of the 180-day period beginning on the date any claim against a covered financial company is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

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

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

(I) on the covered financial company's books;

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

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

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

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

(II) the procedures available for obtaining agency review of the deter-

mination to disallow the claim or judicial determination of the claim.

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

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

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

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

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

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

(D) AUTHORITY TO DISALLOW CLAIMS.—

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

(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a covered financial company which is secured by any property or other asset of such covered financial company, the receiver—

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

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims

of unsecured creditors of the covered financial company.

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

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

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

(iv) PAYMENTS TO FULLY SECURED CREDITORS.—Notwithstanding any other provision of law, in any receivership of a covered financial company in which amounts realized from the resolution are insufficient to satisfy completely any amounts owed to the United States or to the Fund, as determined in the receiver's sole discretion, an allowed claim under a legally enforceable or perfected security interest (that became a legally enforceable or

perfected security interest after the date of the enactment of this clause), other than a legally enforceable or perfected security interest of the Federal Government, in any of the assets of the covered financial company in receivership may be treated as an unsecured claim in the amount of up to 20 percent as necessary to satisfy any amounts owed to the United States or to the Fund. Any balance of such claim that is treated as an unsecured claim under this subparagraph shall be paid as a general liability of the covered financial company.

(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the Corporation determination pursuant to subparagraph (D) to disallow a claim.

(F) LEGAL EFFECT OF FILING.—

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

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the Corporation shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(5) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (4)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (4)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (4)(A)(i),

the claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district

within which the covered financial company's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

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

(6) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (4) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any covered financial com-

pany for which the Corporation has been appointed as receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

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

(i) determine—

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

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (4); and

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

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit,

or to continue such a suit filed before the appointment of the Corporation as receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

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

(ii) the date the Corporation denies the claim.

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

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable

statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company.

(8) PAYMENT OF CLAIMS.—

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

(i) allowed by the receiver;

(ii) approved by the Corporation pursuant to a final determination pursuant to paragraph (6); or

(ii) determined by the final judgment of any court of competent jurisdiction.

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

(C) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for, or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of a covered financial company following satisfaction by the receiver of the principal amount of all creditor claims.

(9) SUSPENSION OF LEGAL ACTIONS.—

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

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A) for a stay of any non-criminal judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(10) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as receiver.

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

(i) have all the rights and remedies available to the covered financial company (before the appointment of the receiver under section 1604) and the Corporation, including but not limited to removal to Federal court and all appellate rights; and

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

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

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

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

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

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

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

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

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

(iv) mitigates the potential for serious adverse effects to the financial system and the U.S. economy;

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

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

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

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

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

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

(II) the period applicable under State law; and

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

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

(II) the period applicable under State law.

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

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

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

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

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as receiver, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

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

(12) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as receiver for any covered financial company, may

avoid a transfer of any interest of an institution affiliated party, or any person who the Corporation determines is a debtor of the covered financial company, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation was appointed receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the covered financial company or the Corporation.

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

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

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

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (B)—

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

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

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

(E) DEFINITION.—For purposes of this subsection, the term ''institution affiliated party'' means—

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

(ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Corporation (by regula-

tion or otherwise) who participates in the conduct of the affairs of a covered financial company; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(I) any violation of any law or regulation;

(II) any breach of fiduciary duty; or

(III) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the covered financial company.

(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the con-

trol of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

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

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the Corporation as receiver for a cov-

ered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B)

shall be made available by the Corporation upon request to any member of the public.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of a covered financial company the Corporation may destroy any records of such covered financial company which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) OLD RECORDS.—Notwithstanding clause (i), the Corporation may destroy records of a covered financial company which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such company in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

1 (b) PRIORITY OF EXPENSES AND UNSECURED
2 CLAIMS.—
3 (1) IN GENERAL.—Unsecured claims against a
4 covered financial company, or the receiver for such
5 covered financial company under this section, that
6 are proven to the satisfaction of the receiver shall
7 have priority in the following order:
8 (A) Administrative expenses of the re-
9 ceiver.
10 (B) Any amounts owed to the United
11 States, unless the United States agrees or con-
12 sents otherwise.
13 (C) Any other general or senior liability of
14 the covered financial company (which is not a
15 liability described under subparagraph (D) or
16 (E)).
17 (D) Any obligation subordinated to general
18 creditors (which is not an obligation described
19 under subparagraph (E)).
20 (E) Any obligation to shareholders, mem-
21 bers, general partners, limited partners or other
22 persons with interests in the equity of the cov-
23 ered financial company arising as a result of
24 their status as shareholders, members, general
25 partners, limited partners or other persons with

interests in the equity of the covered financial company.

(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation as receiver is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) CREDITORS SIMILARLY SITUATED.—Subject to the priorities established under paragraphs (2) and (3), all claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making payments) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary to maximize the value of the assets of the covered financial company, to maximize the present value return from the sale or other disposition of the assets of the covered financial company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company, or to contain or address serious adverse effects on financial stability or the U.S. economy; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (d)(2).

(3) SECURED CLAIMS UNAFFECTED.—This subsection shall not affect secured claims, except to the extent that the security is insufficient to satisfy the claim and then only with regard to the difference between the claim and the amount realized from the security.

(4) DEFINITIONS.—As used in this subsection, the term ''administrative expenses of the receiver'' includes—

(A) the actual, necessary costs and expenses incurred by the receiver in preserving

the assets of a covered financial company or liquidating or otherwise resolving the affairs of a covered financial company for which the Corporation has been appointed as receiver; and

(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the covered financial company.

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

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

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

(B) the performance of which the receiver, in the receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the receiver determines, in the receiver's discretion, will promote the orderly administration of the covered financial company's affairs.

(2) TIMING OF REPUDIATION.—The receiver appointed for any covered financial company under section 1604 shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the

term "actual direct compensatory damages" does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

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

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (d) except as otherwise specifically provided in this subsection.

(4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

(A) IN GENERAL.—If the receiver disaffirms or repudiates a lease under which the covered financial company was the lessee, the

receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

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

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

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

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (d).

(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

(A) IN GENERAL.—If the receiver repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of

the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

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

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(7)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

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

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the receiver shall—

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

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

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

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the appointment of the receiver shall be—

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

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

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the receiver accepts performance by the other person before the receiver makes any determination to exercise the right of repudiation of such contract under this section—

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

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

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this section (other than subsection (a)(7)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the appointment of the Corporation as receiver for such covered financial company at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i).

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(9) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the covered financial company for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such company.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of the Revised Statutes of the United States or any

other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as receiver of a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or any receiver appointed for such company.

(D) CERTAIN CONTACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term ''qualified financial contract'' means any securities contract, commodity contract, forward contract, re-

1 purchase agreement, swap agreement, and
2 any similar agreement that the Corpora-
3 tion determines by regulation, resolution,
4 or order to be a qualified financial contract
5 for purposes of this paragraph.
6 (ii) SECURITIES CONTRACT.—The
7 term ''securities contract''—
8 (I) means a contract for the pur-
9 chase, sale, or loan of a security, a
10 certificate of deposit, a mortgage loan,
11 any interest in a mortgage loan, a
12 group or index of securities, certifi-
13 cates of deposit, or mortgage loans or
14 interests therein (including any inter-
15 est therein or based on the value
16 thereof) or any option on any of the
17 foregoing, including any option to
18 purchase or sell any such security,
19 certificate of deposit, mortgage loan,
20 interest, group or index, or option,
21 and including any repurchase or re-
22 verse repurchase transaction on any
23 such security, certificate of deposit,
24 mortgage loan, interest, group or
25 index, or option (whether or not such

1 repurchase or reverse repurchase
2 transaction is a ''repurchase agree-
3 ment,'' as defined in clause (v));
4 (II) does not include any pur-
5 chase, sale, or repurchase obligation
6 under a participation in a commercial
7 mortgage loan unless the Corporation
8 determines by regulation, resolution,
9 or order to include any such agree-
10 ment within the meaning of such
11 term;
12 (III) means any option entered
13 into on a national securities exchange
14 relating to foreign currencies;
15 (IV) means the guarantee (in-
16 cluding by novation) by or to any se-
17 curities clearing agency of any settle-
18 ment of cash, securities, certificates of
19 deposit, mortgage loans or interests
20 therein, group or index of securities,
21 certificates of deposit or mortgage
22 loans or interests therein (including
23 any interest therein or based on the
24 value thereof) or option on any of the
25 foregoing, including any option to

1 purchase or sell any such security,
2 certificate of deposit, mortgage loan,
3 interest, group or index, or option
4 (whether or not such settlement is in
5 connection with any agreement or
6 transaction referred to in subclauses
7 (I) through (XII) (other than sub-
8 clause (II));
9 (V) means any margin loan;
10 (VI) means any extension of
11 credit for the clearance or settlement
12 of securities transactions;
13 (VII) means any loan transaction
14 coupled with a securities collar trans-
15 action, any prepaid securities forward
16 transaction, or any total return swap
17 transaction coupled with a securities
18 sale transaction;
19 (VIII) means any other agree-
20 ment or transaction that is similar to
21 any agreement or transaction referred
22 to in this clause;
23 (IX) means any combination of
24 the agreements or transactions re-
25 ferred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this

clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term ''commodity contract'' means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option

traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a com-

modity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term ''forward contract'' means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of

1 dealing in the forward contract trade,
2 or product or byproduct thereof, with
3 a maturity date more than 2 days
4 after the date the contract is entered
5 into, including a repurchase or reverse
6 repurchase transaction (whether or
7 not such repurchase or reverse repur-
8 chase transaction is a ''repurchase
9 agreement'', as defined in clause (v)),
10 consignment, lease, swap, hedge
11 transaction, deposit, loan, option, allo-
12 cated transaction, unallocated trans-
13 action, or any other similar agree-
14 ment;
15 (II) any combination of agree-
16 ments or transactions referred to in
17 subclauses (I) and (III);
18 (III) any option to enter into any
19 agreement or transaction referred to
20 in subclause (I) or (II);
21 (IV) a master agreement that
22 provides for an agreement or trans-
23 action referred to in subclauses (I),
24 (II), or (III), together with all supple-
25 ments to any such master agreement,

without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term ''repurchase agreement'' (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for

the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (which for purposes of this clause shall mean a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Co-operation and Development as determined by regulation or order adopted by the Federal Reserve Board) or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to

transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all

supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term ''swap agreement'' means—

(I) any agreement, including the terms and conditions incorporated by

reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement

or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obli-

gation in connection with any agreement or transaction referred to in any such subclause.

(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraph (10)—

(I) The term ''default'' shall mean, with respect to a covered financial company, any adjudication or other official determination by any court of competent jurisdiction, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed; and

(II) The term ''in danger of default'' shall mean a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

(aa) in the opinion of the Corporation or such authority—

(AA) the covered financial company is not likely to be able to pay its obligations

in the normal course of business; and

(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

(CC) in the opinion of the Corporation or such authority—

(bb) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(cc) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement

for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contact. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(ix) TRANSFER.—The term ''transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the covered financial company's equity of redemption.

(x) PERSON.—The term ''person'' includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be sus-

pended from the time the receiver is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term ''walkaway clause'' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by a receiver of such covered financial company, and not as a result of a party's exercise of any right to offset,

setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(G) RECORDKEEPING.—The Corporation, in consultation with the Federal Reserve Board, may prescribe regulations requiring that the covered financial company maintain such records with respect to qualified financial contracts (including market valuations) as the Corporation determines to be necessary or appropriate in order to assist the receiver of the covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default which includes any qualified financial contract, the receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has

been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable

substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term ''financial institution'' means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation by regulation to be a financial institution, and the term ''clearing organization'' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) the receiver for a covered financial company in default or in danger of default transfers any assets and liabilities of the covered financial company; and

(ii) the transfer includes any qualified financial contract,

the receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection solely by reason of or incidental to the appointment under this section of a receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company if the receiver has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term ''business day'' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a receiver with respect to any qualified financial contract to which a covered financial company is a party, the receiver for such covered financial shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this

subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company except where such an interest is taken in contemplation of the company's insolvency or with the intent to hinder, delay, or defraud the company or the creditors of such company; or

(B) legally enforceable interest in customer property.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The receiver may enforce any contract, other than a director's or officer's liability insurance contract or a financial institution bond, entered into by the covered financial company notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a receiver.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the

1 receiver to enforce or recover under a director's
2 or officer's liability insurance contract or finan-
3 cial institution bond under other applicable law.
4 (C) CONSENT REQUIREMENT.—
5 (i) IN GENERAL.—Except as otherwise
6 provided by this section, no person may ex-
7 ercise any right or power to terminate, ac-
8 celerate, or declare a default under any
9 contract to which the covered financial
10 company is a party, or to obtain possession
11 of or exercise control over any property of
12 the covered financial company or affect
13 any contractual rights of the covered finan-
14 cial company, without the consent of the
15 receiver, as appropriate, of the covered fi-
16 nancial company during the 90-day period
17 beginning on the date of the appointment
18 of the receiver, as applicable.
19 (ii) CERTAIN EXCEPTIONS.—No provi-
20 sion of this subparagraph shall apply to a
21 director or officer liability insurance con-
22 tract or a financial institution bond, to the
23 rights of parties to certain qualified finan-
24 cial contracts pursuant to paragraph (8),
25 or to the rights of parties to netting con-

tracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the receiver to fail to comply with otherwise enforceable provisions of such contract.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal Reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including, but not limited, to the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000,

the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Corporation determines to utilize with respect to a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of such covered financial company.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the covered financial company for which such receiver is appointed shall equal the amount such claimant would have received if—

(A) a determination had not been made under section 1603(b) with respect to the covered financial company; and

(B) the covered financial company had been liquidated under title 11, United States Code, or any case related to title 11, United States Code (including a case initiated by the

Securities Investor Protection Corporation with respect to a financial company subject to the Securities Investor Protection Act of 1970), or any State insolvency law.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Corporation may, as receiver and with the approval of the Secretary, make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of a covered financial company if the Corporation determines that such payments or credits are necessary or appropriate to—

(i) minimize losses to the receiver from the resolution of the covered financial company under this section; or

(ii) prevent or mitigate serious adverse effects to financial stability or the United States economy.

(B) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company

established with respect thereto in order to induce such other company to accept liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the receiver appointed for a covered financial company, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver of such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in con-

nection with assistance provided under section 1604.

(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a covered financial company's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any covered financial company's assets shall include principal losses and appropriate interest.

(h) BRIDGE FINANCIAL COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Corporation, as receiver of one or more covered financial compa-

nies may organize one or more bridge financial companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—If the Corporation is appointed as receiver for a covered financial

company, the Corporation may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—

(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities and privileges of a bridge financial company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including, but not limited to, the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law

succeed to and assume such rights, powers, authorities and privileges.

(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures as are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraphs (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which a receiver has been appointed may have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A

bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) TRANSFER OF ASSETS AND LIABILITIES.—The Corporation, as receiver, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies in accordance with and subject to the restrictions of paragraph (1)(B).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1)(B).

(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fidu-

ciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1) in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take actions (including making payments) that do not comply with this subparagraph, if—

(i) the Corporation determines that such actions are necessary to maximize the value of the assets of the covered financial company, to maximize the present value return from the sale or other disposition of the assets of the covered financial company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company, or to contain or address serious adverse effects to financial stability or the U.S. economy; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided in subsection (d)(2).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or

1 purchased by, the bridge financial company
2 from the covered financial company.
3 (6) STAY OF JUDICIAL ACTION.—Any judicial
4 action to which a bridge financial company becomes
5 a party by virtue of its acquisition of any assets or
6 assumption of any liabilities of a covered financial
7 company shall be stayed from further proceedings
8 for a period of up to 45 days (or such longer period
9 as may be agreed to upon the consent of all parties)
10 at the request of the bridge financial company.
11 (7) AGREEMENTS AGAINST INTEREST OF THE
12 BRIDGE FINANCIAL COMPANY.—No agreement that
13 tends to diminish or defeat the interest of the bridge
14 financial company in any asset of a covered financial
15 company acquired by the bridge financial company
16 shall be valid against the bridge financial company
17 unless such agreement is in writing and executed by
18 an authorized officer or representative of the covered
19 financial company.
20 (8) NO FEDERAL STATUS.—
21 (A) AGENCY STATUS.—A bridge financial
22 company is not an agency, establishment, or in-
23 strumentality of the United States.
24 (B) EMPLOYEE STATUS.—Representatives
25 for purposes of paragraph (1)(B), directors, of-

ficers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory,

dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(A) IN GENERAL.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice or the Federal Trade Commission, the waiting period shall expire not later than the 30th day following such filing notwithstanding any other provision of Federal law or any attempt by any Federal agency to extend

such waiting period, and no further request for information by any Federal agency shall be permitted.

(B) EMERGENCY.—If the Secretary, in consultation with the Chairman of the Federal Reserve Board, has found that the Corporation must act immediately to prevent the probable failure of the covered financial company involved, the approvals and filings referred to in subparagraph (A) shall not be required and the transaction may be consummated immediately by the Corporation.

(11) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (12), (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for 3 additional 1-year periods.

(12) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (11), or the earlier dissolution of the bridge financial company as provided in paragraph (14).

(13) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A merger or consolidation as provided in paragraph (12)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company as provided in paragraph (12)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection

1 therewith, the Corporation may take such steps
2 as may be necessary or convenient to reincor-
3 porate the bridge financial company under the
4 laws of a State and, notwithstanding any provi-
5 sions of State or Federal law, such State-char-
6 tered corporation shall be deemed to succeed by
7 operation of law to such rights, titles, powers
8 and interests of the bridge financial company as
9 the Corporation may provide, with the same ef-
10 fect as if the bridge financial company had
11 merged with the State-chartered corporation
12 under provisions of the corporate laws of such
13 State.

14 (C) SALE OF STOCK.—Following the sale
15 of 80 percent or more of the capital stock of a
16 bridge financial company as provided in para-
17 graph (12)(C), the company shall have all of
18 the rights, powers, and privileges under its con-
19 stituent documents and applicable State or Fed-
20 eral law. In connection therewith, the Corpora-
21 tion may take such steps as may be necessary
22 or convenient to reincorporate the bridge finan-
23 cial company under the laws of a State and,
24 notwithstanding any provisions of State or Fed-
25 eral law, the State-chartered corporation shall

be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (12)(D), at the election of the Corporation the bridge financial company may retain its status as such for the period provided in paragraph (11) or may be dissolved at the election of the Corporation.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (12), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(14) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of State or Federal law, if a bridge financial company's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (12)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge financial company was chartered, or any extension thereof, as provided in paragraph (11).

(B) PROCEDURES.—The Corporation shall remain the receiver of a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as such receiver shall wind up the affairs of the bridge financial company in conformity with the provi-

sions of law relating to the liquidation of covered financial companies. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of a covered financial company and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(15) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(D) BURDEN OF PROOF.—In any hearing under this subsection, the Corporation has the burden of proof on the issue of adequate protection.

(16) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) SHARING RECORDS.—Whenever the Corporation has been appointed as receiver for a covered financial company, the Federal Reserve Board and the company's primary appropriate regulatory agency, if any, shall each make all records relating to the company available to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a covered financial company's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—A court of the United States shall expedite the consideration of any case brought by the Corporation against a covered financial company's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would

be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver of any covered financial company and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corpora-

1 tion in its capacity as receiver for a covered financial com-
2 pany.

3 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL
4 COMPANIES OR BRIDGE FINANCIAL COMPANIES.—Not-
5 withstanding any other provision of law (other than a con-
6 flicting provision of this section), the Corporation, in con-
7 nection with the liquidation of any covered financial com-
8 pany or bridge financial company with respect to which
9 the Corporation has been appointed as receiver, shall—

10 (1) in the case of any covered financial com-
11 pany or bridge financial company that is or has a
12 subsidiary that is a stockbroker (as that term is de-
13 fined in section 101 of title 11 of the United States
14 Code) but is not a member of the Securities Investor
15 Protection Corporation, apply the provisions of sub-
16 chapter III of chapter 7 of title 11 of the United
17 States Code in respect of the distribution to any
18 ''customer'' of all ''customer name securities'' and
19 ''customer property'' (as such terms are defined in
20 section 741 of such title 11) as if such covered fi-
21 nancial company or bridge financial company were a
22 debtor for purposes of such subchapter; or

23 (2) in the case of any covered financial com-
24 pany or bridge financial company that is a com-
25 modity broker (as that term is defined in section

101 of title 11 of the United States Code), apply the provisions of subchapter IV of chapter 7 of title 11 of the United States Code in respect of the distribution to any ''customer'' of all ''customer property'' (as such terms are defined in section 761 of such title 11) as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

(n) SYSTEMIC DISSOLUTION FUND.—

(1) ESTABLISHMENT AND PURPOSE.—

(A) IN GENERAL.—There is established in the Treasury a separate fund to be known as the ''Systemic Dissolution Fund''—

(i) to facilitate and provide for the orderly and complete dissolution of any failed financial company or companies that pose a systemic threat to the financial markets or economy, as determined under 1603(b); and

(ii) to ensure that any taxpayer funds utilized to facilitate such liquidations are fully repaid from assessments levied on financial companies that have assets of $50,000,000,000, adjusted for inflation, or more.

(B) ADJUSTMENT OF THRESHOLD.—The threshold referred to in subparagraph (A)(ii) shall be adjusted on an annual basis, based on the growth of assets owned or managed by financial companies (as defined in section 1602(9)).

(2) AUTHORITY.—The Systemic Dissolution Fund shall be administered by the Corporation, which shall have exclusive authority to—

(A) impose assessments on covered financial companies in accordance with paragraphs (6) through (8);

(B) maintain and administer the Fund in a manner so as to make clear to the general public that such Fund is unrelated to any other Fund maintained and administered by the Corporation, including the Deposit Insurance Fund;

(C) utilize the Fund to facilitate the dissolution of a covered financial company (as defined by section 1602(5)) as provided in paragraph (3), or take such other actions as are authorized by this subtitle;

(D) invest the Fund in accordance with section 13(a) of the Federal Deposit Insurance Act; and

(E) exercise borrowing authority as prescribed in subsection (o).

(3) USES.—

(A) The Fund shall be available to the Corporation for use with respect to the dissolution of a covered financial company to—

(i) cover the costs incurred by the Corporation, including as receiver, in exercising its rights, authorities, and powers and fulfilling its obligations and responsibilities under this section;

(ii) repay such funds in accordance with subsection (o)(6); and

(iii) cover the costs of systemic stabilization actions, pursuant to subsections (d) and (f) of section 1604.

(B) The Fund shall not be used in any manner to benefit any officer or director of such company removed pursuant to section 1604(f)(6).

(4) DEPOSITS TO FUND.—All amounts assessed against a financial company under this section shall be deposited into the Fund.

(5) SIZE OF FUND.—The Corporation shall, by rule, establish the minimum size of the Fund consistent with subparagraphs (C) and (D) of paragraph (6).

(6) ASSESSMENTS.—

(A) ASSESSMENTS TO MAINTAIN FUND.—The Corporation shall impose risk-based assessments on financial companies in such amount and manner and subject to such terms and conditions that the Corporation determines, by regulation and in consultation with the Council, are necessary for the amount in the Fund to at least equal the minimum size established pursuant to paragraph (5).

(B) ASSESSMENTS TO REPLENISH THE FUND.—If the Fund falls below the minimum size established pursuant to paragraph (5), the Corporation shall impose assessments on financial companies in such amounts and manner and subject to such terms and conditions as the Corporation determines, by regulation and in consultation with the Council, are necessary to

1 replenish the fund subject to the limitations in
2 subparagraph (D).
3 (C) MINIMUM ASSESSMENT THRESHOLD.—
4 (i) IN GENERAL.—The Corporation
5 shall not assess financial companies with
6 less than $50,000,000,000, adjusted for in-
7 flation, of assets on a consolidated basis,
8 subject to any differentiation as permitted
9 in paragraph (8) and shall assess financial
10 companies with $10,000,000,000, adjusted
11 for inflation or more in assets in accord-
12 ance with paragraphs (7) and (8).
13 (ii) HEDGE FUNDS.—The Corporation
14 shall not assess financial companies that
15 manage hedge funds (as defined by the
16 Corporation for the purpose of this section,
17 in consultation with the Securities and Ex-
18 change Commission) with less than
19 $10,000,000,000, adjusted for inflation, of
20 assets, under management on a consoli-
21 dated basis, subject to any differentiation
22 as permitted in paragraph (8) and shall
23 assess any financial companies that man-
24 age hedge funds with $10,000,000,000 or

more of assets under management in accordance with paragraphs (7) and (8).

(D) MAXIMUM SIZE OF FUND VIA ASSESSMENTS.—

(i) IN GENERAL.—The Corporation shall suspend assessments on financial companies on the day after the date on which the total of the assessments, excluding interest or other earnings from investments made pursuant to paragraph (2)(D), equals $150,000,000,000.

(ii) EXCEPTIONS.—Any suspension of assessments under clause (i)—

(I) may be set aside if the Fund falls below $150,000,000,000; and

(II) shall be set aside if the Fund falls below the minimum level established in subparagraph (C).

(7) FACTORS.—The Corporation, in consultation with the Council shall establish a risk matrix to be used in establishing assessments that takes into account—

(A) the actual or expected risk of losses to the Fund;

(B) economic conditions generally affecting financial companies so as to allow assessments and the Fund to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

(C) any assessments imposed on a financial company or an affiliate of a financial company that—

(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd);

(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1782(c)(1)(A)(i)); or

(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation or

other State insolvency proceeding with respect to 1 or more insurance companies;

(D) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the dissolution of a financial company under this title, including—

(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

(ii) the activities of the financial company and its affiliates;

(iii) the relevant market share of the financial company and its affiliates;

(iv) the extent to which the financial company is leveraged;

(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

(vi) the amount, maturity, volatility, and stability of the company's financial ob-

1 ligations to, and relationship with, other fi-
2 nancial companies;
3 (vii) the amount, maturity, volatility,
4 and stability of the company's liabilities,
5 including the degree of reliance on short-
6 term funding, taking into consideration ex-
7 isting systems for measuring a company's
8 risk-based capital;
9 (viii) the stability and variety of the
10 company's sources of funding;
11 (ix) the company's importance as a
12 source of credit for households, businesses,
13 and State and local governments and as a
14 source of liquidity for the financial system;
15 (x) the extent to which assets are sim-
16 ply managed and not owned by the finan-
17 cial company and the extent to which own-
18 ership of assets under management is dif-
19 fuse; and
20 (xi) the amount, different categories,
21 and concentrations of liabilities, both in-
22 sured and uninsured, contingent and non-
23 contingent, including both on-balance sheet
24 and off-balance sheet liabilities, of the fi-
25 nancial company and its affiliates; and

(E) such other factors as the Corporation, in consultation with the Council, may determine to be appropriate.

(8) REQUIREMENT FOR EQUITABLE TREATMENT IN ASSESSMENTS.—In establishing the assessment system for the Fund, the Corporation, by regulation and in consultation with the Council, shall differentiate among financial companies based on complexity of operations or organization, interconnectedness, size, direct or indirect activities, and any other factors the Corporation or the Council may deem appropriate to ensure that the assessments charged equitably reflect the risk posed to the Fund by particular classes of financial companies.

(9) MINIMUM COMMENT PERIOD.—In order to ensure sufficient opportunity for public and congressional review and evaluation of any assessment system, any proposed regulations regarding the implementation of the assessment system under this subtitle shall provide an opportunity for public comment during a period of not less than 60 days.

(o) BORROWING AUTHORITY.—

(1) BORROWING FROM TREASURY.—

(A) IN GENERAL.—Subject to paragraphs (3), (4), and (5), the Corporation may borrow

from the Treasury, and the Secretary of the Treasury is authorized to lend to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are required, in addition to the funds available in the Systemic Dissolution Fund, to permit the orderly dissolution of 1 or more covered systemically significant financial companies, covered affiliates, or covered subsidiaries under this title.

(B) RATE OF INTEREST.—The rate of interest to be charged in connection with any loan made pursuant to this subsection shall not be less than an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(2) PUBLIC DEBT ISSUANCES.—For the purposes described in subsection (1), the Secretary of the Treasury may use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chap-

ter 31 of title 31 are extended to include such loans. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States.

(3) BORROWING AUTHORITY WHEN FUND ASSETS ARE LESS THAN $150,000,000,000.—

(A) Subject to paragraph (B), the borrowing authority granted in paragraph (1) shall be available to the Corporation where—

(i) the value of the Fund is less than $150,000,000,000;

(ii) the Corporation determines that the immediate dissolution of a financial company or financial companies requires more funds than are available in the Fund; and

(iii) the Corporation has provided a specific plan for repayment under paragraph (7)(A).

(B) The Corporation may borrow, and the Secretary may lend, any amount of funds that, when added to the amount available in the Fund on the date the Corporation makes a request to borrow funds, would not exceed $150,000,000,000.

(C) For purposes of paragraph (1), the Corporation's total debt may not exceed $150,000,000,000 (not including any funds borrowed pursuant to subsection (s)).

(4) ADDITIONAL BORROWING AUTHORITY.—

(A) If at any time the Corporation anticipates that the dissolution of any financial company or financial companies will require funds in excess of $150,000,000,000—

(i) the Corporation shall submit to the Secretary and the President a written request for additional borrowing authority subject to the limitation in subparagraph (5), which shall be accompanied by a certification indicating the anticipated amount needed, the basis on which such amount was determined, and any such information as the Secretary may deem necessary; and

(ii) the President shall transmit a request to the House of Representatives and the Senate requesting the additional borrowing authority, which shall include the certification referred to in clause (i) and which includes a repayment schedule as outlined in paragraph (7).

(B) Any request for borrowing authority under paragraph (A) shall be effective only if approved by affirmative vote of the House of Representatives and the Senate in accordance with subsection (s).

(5) LIMITATIONS ON ADDITIONAL BORROWING AUTHORITY.—

(A) No request for borrowing authority is permitted under paragraph (4) unless the President, in consultation with the Council, certifies to the House of Representatives and the Senate that the borrowing authority is necessary to avoid or mitigate an imminent financial emergency.

(B) The amount of borrowing authority requested under subparagraph (A)(i) may not exceed $50,000,000,000.

(6) PROCEEDS FROM LIQUIDATION, REPAYMENT OF FUNDS.—

(A) IN GENERAL.—The Corporation shall take such measures as may be appropriate to maximize the amount of funds from any dissolution that may be available for repayment under subparagraph (B) consistent with systemic concerns.

(B) REPAYMENT PRIORITY.—Amounts realized from the dissolution of any financial company under this subtitle that are not otherwise utilized by the Corporation to dissolve a financial company under subsection (n)(3)(A) shall be paid—

(i) first, to repay any costs incurred in exercising the borrowing authority granted in paragraph (1); and

(ii) second, to recapitalize the Fund to such level as the Corporation deems necessary, but not to exceed $150,000,000,000.

(7) REPAYMENT PLAN AND SCHEDULES REQUIRED FOR ANY BORROWING.—

(A) IN GENERAL.—No amount may be provided by the Secretary of the Treasury to the Corporation under paragraph (1) unless an agreement is in effect between the Secretary and the Corporation which—

(i) provides a specific plan and schedule for assessments under (n)(6) to achieve the repayment of the outstanding amount of any borrowing under such subsection; and

(ii) demonstrates that income to the Corporation from assessments under this section will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance.

(B) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary of the Treasury and the Corporation shall—

(i) consult with the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement; and

(ii) submit a copy of each repayment schedule agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under paragraph (1).

1 (p) INFORMATION GATHERING AND VERIFICATION;
2 PAYMENTS .—
3 (1) IN GENERAL.—The Corporation may re-
4 quire each financial company to make available such
5 information as the Corporation may require—
6 (A) for purposes of—
7 (i) determining the financial com-
8 pany's assessment under this section;
9 (ii) verifying the accuracy of informa-
10 tion; and
11 (iii) preparing for resolution, includ-
12 ing a resolution plan as required by this
13 section; and
14 (B) for such other purposes as may be ap-
15 propriate and necessary to promote the orderly
16 dissolution of the financial company.
17 (2) USE OF EXISTING REPORTS.—The Corpora-
18 tion shall, to the fullest extent possible, accept—
19 (A) reports that a financial company has
20 provided or been required to provide to other
21 Federal or State supervisors or to appropriate
22 self-regulatory organizations;
23 (B) information that is otherwise required
24 to be reported publicly; and
25 (C) externally audited financial statements.

(3) AUTHORITY FOR ON-SITE INSPECTION.—The Corporation may make on-site inspections of a financial company's books and records as necessary to carry out the purposes of this subsection.

(4) RULEMAKING.—The Corporation may promulgate such rules or regulations as are necessary or appropriate to implement this subsection.

(5) PAYMENTS OF ASSESSMENTS REQUIRED .—

(A) IN GENERAL.—Any financial company subject to an assessment under this section shall pay to the Corporation such assessment.

(B) FORM OF PAYMENT.—The payments required under this section shall be made in such manner and at such time or times as the Corporation, in consultation with the Council, shall prescribe by regulation.

(6) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—Any financial company that fails or refuses to pay any assessment under this section shall be subject to a penalty under section 18(h) of the Federal Deposit Insurance Act, as if that financial company were an insured depository institution.

(q) ASSESSMENT ACTIONS.—

(1) IN GENERAL.—The Corporation, in any court of competent jurisdiction, shall be entitled to

recover from any financial company the amount of any unpaid assessment lawfully payable by such company.

(2) STATUTE OF LIMITATIONS.—Notwithstanding any other provision in Federal law, or the law of any State—

(A) any action by a financial company to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to subparagraph (C);

(B) any action by the Corporation to recover from a financial company the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to subparagraph (C); and

(C) if a financial company has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(r) REQUIREMENT TO MAINTAIN SYSTEMIC DISSOLUTION FUND AS SEPARATE FUND.—The Systemic Dissolution Fund shall at all times be administered in a manner that is separate and distinct from the Deposit Insurance Fund, and the Corporation shall take such actions as may be necessary to ensure that such distinction is made with respect to internal processes and procedures as well as with regard to any public information, discussion or other communications involving either Fund.

(s) CONGRESSIONAL APPROVAL OF ADDITIONAL BORROWING AUTHORITY.—

(1) INTRODUCTION.—On the day on which the request of the President is received by the House of Representatives and the Senate under subsection (o)(4)(A)(ii), a joint resolution specified in paragraph (5) shall be introduced in the House by the majority leader and minority leader of the House and in the Senate by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a request is received, the joint resolution with respect to such request shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(2) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(A) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution introduced under paragraph (1) is referred shall report such joint resolution to the House not later than 5 calendar days after the applicable date of introduction of the joint resolution. If a committee fails to report such joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

(B) PROCEEDING TO CONSIDERATION.—After all committees authorized to consider a joint resolution have reported such joint resolution to the House or have been discharged from its consideration, it shall be in order, not later than the sixth day after the applicable date of introduction of the joint resolution, to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution and shall not be

in order if the House has received a message from the Senate under paragraph (4)(C). The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(C) CONSIDERATION.—The joint resolution shall be considered in the House and shall be considered as read. All points of order against a joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of a joint resolution shall not be in order.

(3) CONSIDERATION IN THE SENATE.—

(A) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(B) FLOOR CONSIDERATION.—

(i) IN GENERAL.—Notwithstanding rule XXII of the Standing Rules of the

Senate, it is in order at any time during the period beginning on the 4th day after the applicable date of introduction in the Senate and ending on the 6th day after the applicable date of introduction in the Senate (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(ii) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the

majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(iii) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(4) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

(A) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint

resolution, then the following procedures shall apply:

(i) The joint resolution of the other House shall not be referred to a committee.

(ii) With respect to the joint resolution of the House receiving the resolution, the procedure in that House shall be the same as if no such joint resolution had been received from the other House; but the vote on passage shall be on the joint resolution of the other House.

(B) TREATMENT OF COMPANION MEASURES.—If, following passage of a joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(C) FAILURE OF JOINT RESOLUTION IN THE SENATE.—

(i) If, in the Senate, the motion to proceed to the consideration of the joint resolution fails on adoption, the Secretary of the Senate shall transmit a message to

that effect to the House of Representatives.

(ii) If, in the Senate, the joint resolution fails on passage, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

(D) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This paragraph and the preceding paragraphs are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the

same manner, and to the same extent as in the case of any other rule of that House.

(5) DEFINITION.—In this section, the term ''joint resolution'' means only a joint resolution—

(A) which does not have a preamble;

(B) the title of which is as follows: ''Joint resolution relating to the approval of request for borrowing authority under the Financial Stability Improvement Act of 2009.''; and

(C) the sole matter after the resolving clause of which is as follows: ''That the Congress approves the request for additional borrowing authority transmitted to the Congress on _____ by the President under section 1609(o)(4)(A)(ii) of the Financial Stability Improvement Act of 2009.'', the blank space being filled with the appropriate date.

(t) NO FEDERAL STATUS.—

(1) AGENCY STATUS.—A covered financial company (or any covered subsidiary thereof) that is placed into receivership is not a department, agency, or instrumentality of the United States for purposes of statutes that confer powers on or impose obligations on government entities.

(2) EMPLOYEE STATUS.—Interim directors, directors, officers, employees, or agents of a covered financial company that is placed into receivership are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation, acting as receiver or of any Federal agency who serves at the request of the receiver as an interim director, director, officer, employee, or agent of a covered financial company that is placed into receivership shall not—

(A) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or;

(B) receive any salary or benefits for service in any such capacity with respect to a covered financial company that is placed into receivership in addition to such salary or benefits as are obtained through employment with the Corporation or other Federal agency.

SEC. 1610. CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING AGENT.

(a) IN GENERAL.—Section 1032 of title 18, United States Code, is amended in paragraph (1) by deleting ''or'' before ''the National Credit Union Administration Board,'' and by inserting immediately thereafter ''or the Corporation, as defined in section 1602 of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009,''.

(b) CONFORMING CHANGE.—The heading of section 1032 of title 18, United States Code, is amended by striking ''**of financial institution**''.

SEC. 1611. OFFICE OF RESOLUTION.

(a) TRIGGER OF AND PLAN FOR ESTABLISHMENT.—

(1) TRIGGER.—If the Secretary appoints the Corporation as receiver for a financial company under section 1604, the Inspector General of the Corporation shall, as soon as possible after such appointment, establish in accordance with this section the Office of Resolution as an office within the Office of the Inspector General of the Corporation.

(2) PLAN.—The Inspector General of the Corporation shall, in consultation with the Council of Inspectors General on Financial Oversight established under section 1702, formulate and maintain a

plan to allow for the timely establishment of an Office of Resolution in accordance with paragraph (1). The Inspector General of the Corporation shall make such plan available to the Financial Services Oversight Council established under section 1001.

(b) SPECIAL DEPUTY INSPECTOR GENERAL.—The head of the Office of Resolution is the Special Deputy Inspector General for Resolution (in this section referred to as the ''Special Deputy Inspector General''), who shall be appointed by and report to the Inspector General of the Corporation.

(c) DUTIES.—

(1) AUDITS AND INVESTIGATIONS.—It shall be the duty of the Special Deputy Inspector General, in consultation with and subject to the approval of the Inspector General of the Corporation, to conduct, supervise, and coordinate audits and investigations of the activities of the Corporation in its capacity as receiver for a financial company under section 1604, including by collecting the following information:

(A) A description of each financial company for which the Corporation has been appointed as receiver under section 1604.

(B) A description of the activities and future plans of the Corporation with respect to

each financial company for which it has been appointed as receiver, and an analysis of whether such activities and plans conform to the requirements of this subtitle and other applicable law and are in the best interest of the overall stability of the financial system.

(C) Such other information as the Special Deputy Inspector General considers appropriate, in consultation with and subject to the approval of the Inspector General of the Corporation.

(2) ADDITIONAL DUTIES.—

(A) SYSTEMS, PROCEDURES, AND CONTROLS.—The Special Deputy Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Deputy Inspector General considers appropriate, in consultation with and subject to the approval of the Inspector General of the Corporation, to discharge the duties under paragraph (1).

(B) REPORTING OF CRIMINAL VIOLATIONS TO ATTORNEY GENERAL.—If the Special Deputy Inspector General, in carrying out this section, discovers facts that give the Special Dep-

uty Inspector General reasonable grounds to believe there has been a violation of Federal criminal law, the Special Deputy Inspector General shall expeditiously report such facts to the Attorney General.

(C) MINIMIZING DUPLICATION OF EFFORT.—The Inspector General of the Corporation and the Special Deputy Inspector General shall coordinate to minimize duplication of effort in the oversight of the Corporation's activities as receiver for financial companies under section 1604.

(3) DUTIES UNDER THE INSPECTOR GENERAL ACT OF 1978.—In addition to the duties specified in paragraphs (1) and (2), the Special Deputy Inspector General shall assist the Inspector General of the Corporation in carrying out such duties and responsibilities of inspectors general under the Inspector General Act of 1978 as the Inspector General of the Corporation considers appropriate.

(d) AUTHORITIES UNDER THE INSPECTOR GENERAL ACT OF 1978.—The Inspector General of the Corporation may confer on the Special Deputy Inspector General such authorities provided to the Inspector General of the Corporation in section 6 of the Inspector General Act of 1978

as the Inspector General of the Corporation considers necessary to enable the Special Deputy Inspector General to carry out the duties specified in subsection (c).

(e) PERSONNEL, FACILITIES, AND OTHER RESOURCES.—

(1) IN GENERAL.—The Special Deputy Inspector General may, in consultation with and subject to the approval of the Inspector General of the Corporation, expend such amounts from the fund established under section 1609(n) as are necessary to carry out the duties described in subsection (c) and to submit the reports required by subsection (h).

(2) ADDITIONAL FUNDS.—If the fund established under section 1609(n) is insufficient to enable the Special Deputy Inspector General to begin carrying out the duties of the Special Deputy Inspector General in a timely fashion or later becomes insufficient to enable the Special Deputy Inspector General to carry out such duties, the Inspector General of the Corporation shall detail the necessary personnel, facilities, or other resources to the Special Deputy Inspector General.

(f) CORRECTIVE RESPONSES TO AUDIT PROBLEMS.—The Chairman of the Corporation shall—

(1) take action to address deficiencies identified by a report or investigation of the Special Deputy Inspector General; or

(2) certify to the appropriate committees of Congress that no action is necessary or appropriate.

(g) COOPERATION AND COORDINATION WITH OTHER ENTITIES.—In carrying out the duties, responsibilities, and authorities of the Special Deputy Inspector General under this section, the Special Deputy Inspector General shall work with each of the inspectors general who is a member of the Council of Inspectors General on Financial Oversight established under section 1703(a)(1), in order to avoid duplication of effort and ensure comprehensive oversight of the Corporation's activities as a receiver appointed under section 1604.

(h) REPORTS.—

(1) IN GENERAL.—In lieu of the semiannual reports required by section 5(a) of the Inspector General Act of 1978, the Special Deputy Inspector General shall submit to the appropriate committees of Congress at the following times a report prepared in consultation with and approved by the Inspector General of the Corporation:

(A) Not later than 30 days after the appointment of the Special Deputy Inspector General.

(B) During the first 3 years after such appointment, not later than 30 days after the end of each fiscal quarter during which the Corporation acts as receiver for a financial company under section 1604.

(C) During the 4th year after such appointment and each year thereafter, not later than 30 days after the end of the 2nd and the 4th fiscal quarters, if the Corporation acts as receiver for a financial company under section 1604 during such semiannual period.

(2) CONTENT OF REPORTS.—Each report required by paragraph (1) shall include a summary, for the period since the last required report (or, in the case of the first report, for the period since the Corporation was first appointed as a receiver under section 1604) of—

(A) the activities of the Special Deputy Inspector General; and

(B) the activities and future plans of the Corporation with respect to each financial company for which it served as receiver.

(i) TERMINATION.—The Office of Resolution shall terminate 6 months after the Corporation ceases to serve as a receiver for any financial company under section 1604, subject to reestablishment pursuant to subsection (a)(1).

SEC. 1612. MISCELLANEOUS PROVISIONS.

(a) BANKRUPTCY CODE AMENDMENTS.—Section 109(b)(2) of title 11 of the United States Code is amended by inserting ''covered financial company (as that term is defined in section 1602(5) of the Dissolution Authority for Large, Interconnected Financial Companies Act of 2009),'' after ''a domestic insurance company,''.

(b) FEDERAL DEPOSIT INSURANCE ACT AND FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—

(1) Section 18(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) is amended by inserting at the end the following new sentence: ''The determination with regard to the Corporation's exercise of authority under this subparagraph shall apply to only an insured depository institution except when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions.''.

(2) Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting ''section 1609(c) of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)),'' after ''section 11(e) of the Federal Deposit Insurance Act,''.

SEC. 1613. AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 11A the following new section:

''SEC. 11B. SYSTEMIC DISSOLUTION AUTHORITY AND FUND.

''(a) SYSTEMIC DISSOLUTION AUTHORITY.—The Corporation shall establish a Systemic Dissolution Authority, which shall function as a subsidiary of the Corporation.

''(b) SYSTEMIC DISSOLUTION FUND.—Any fund established for the purpose of facilitating the dissolution of a financial company under subtitle G of the Financial Stability Improvement Act shall be called the Systemic Dissolution Fund, which shall be managed by the Corporation, through the Systemic Dissolution Authority.

1 "(c) MANAGEMENT OF FUND.—

2 "(1) SEPARATE MAINTENANCE.—The Systemic
3 Dissolution Fund shall be separately maintained and
4 not commingled with any other fund of the Corpora-
5 tion.

6 "(2) TREATMENT OF AND ACCOUNTING FOR AS-
7 SETS.—The assets and liabilities of the Systemic
8 Dissolution Fund—

9 "(A) shall be the assets and liabilities of
10 the Fund and not of the Corporation; and

11 "(B) shall not be consolidated with the as-
12 sets and liabilities of the Deposit Insurance
13 Fund or the Corporation for accounting, report-
14 ing, or any other purpose.

15 "(d) RIGHTS, POWERS, AND DUTIES.—

16 "(1) IN GENERAL.—The Corporation, in addi-
17 tion to any rights, powers, and duties under this Act
18 or any other law, shall, through the Systemic Dis-
19 solution Authority, have all rights, powers, and du-
20 ties necessary to implement and maintain the Sys-
21 temic Dissolution Fund in accordance with subtitle
22 G of the Financial Stability Improvement Act of
23 2009.

24 "(2) POWERS AS RECEIVER FOR COVERED FI-
25 NANCIAL COMPANY.—When acting as receiver with

respect to any covered financial company, as defined in subtitle G of the Financial Stability Improvement Act of 2009, the Corporation, through the Systemic Dissolution Authority, shall have all rights, powers, and duties that the Corporation has as receiver under such subtitle.

"(3) SPECIFIC AND INCIDENTAL POWERS.—The Corporation, through the Systemic Dissolution Authority, or any duly authorized officer or agent of the Authority, may exercise all powers specifically granted by the provisions of this Act and subtitle G of the Financial Stability Improvement Act and such incidental powers as shall be necessary to carry out the powers so granted and accomplish the purposes of subtitle G of the Financial Stability Improvement Act.

"(e) STAFF AND RESOURCES.—

"(1) IN GENERAL.—The Corporation shall assign such staff, and provide such administrative and other support services to the Systemic Dissolution Authority as is necessary to fulfill the statutory responsibilities of the Authority.

"(2) ADMINISTRATIVE EXPENSES.— The cost of all personnel, services, and resources provided on

behalf of the Systemic Dissolution Authority shall be paid from the Systemic Dissolution Fund.''.

SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION LIMITATIONS.

The provisions of section 111 of the Emergency Economic Stabilization Act of 2008 shall apply to a covered financial institution for which a receiver has been appointed pursuant to section 1604. Such covered financial institution shall be considered a TARP recipient for purposes of such section 111 for so long as such institution is in receivership.

Subtitle H—Additional Improvements for Financial Crisis Management

SEC. 1701. ADDITIONAL IMPROVEMENTS FOR FINANCIAL CRISIS MANAGEMENT.

Section 13 of the Federal Reserve Act (12 U.S.C. 343) is amended by striking the 3rd undesignated paragraph and inserting the following new subsection:

''(c) FINANCIAL CRISIS MANAGEMENT.—

''(1) IN GENERAL.—In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, upon the written determination, pursuant to section 1109 of the Financial Stability Improvement Act of 2009, of the Financial Stability

Oversight Council, that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of such Council then serving), and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), may authorize any Federal reserve bank, during such periods as the Board may determine and at rates established in accordance with the provision designated as (d) of section 14, to discount for an individual, partnership, or corporation, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal reserve bank and in conformance with regulations or guidelines issued by the Board of Governors regarding the quality of notes, drafts, and bills of exchange available for discount and of the security for those notes, drafts and bills of exchange, unless a joint resolution (as defined in paragraph (5)) is adopted. Upon making any determination under this paragraph, with the consent of the Secretary of the Treasury, the Financial Stability Oversight Council shall promptly submit a notice of such determination to the Congress. The amounts made

available under this subsection shall not exceed $4,000,000,000,000.

"(2) CLARIFICATION OF 'SECURED TO THE SATISFACTION OF THE FEDERAL RESERVE BANK'.—No member of the Board of Governors of the Federal Reserve System shall vote to authorize any action permitted under paragraph (1) and the Secretary of the Treasury shall not provide the written consent required by paragraph (1) unless that member believes and the Secretary of the Treasury believes:

"(A) that there is at least a 99 percent likelihood that all funds disbursed or put at risk by such action will be repaid to the Federal Reserve System; and

"(B) that there is at least a 99 percent likelihood that all interest due on any funds disbursed will also be paid to the Federal Reserve System.

"(3) LOW QUALITY ASSETS EXCLUDED.—The notes, drafts, and bills of exchange available for discount for purposes of paragraph (1), and the security for those notes, drafts and bills of exchange may only include any of the following assets if such asset is used to further enhance the security for those notes, drafts and bills of exchange which shall be

fully secured with assets that are not any of the following assets:

"(A) An asset (including a security) that would be classified as "substandard," "doubtful," or "loss," or treated as "special mention" or "other transfer risk problems," in a report of examination or inspection of bank or an affiliate of a bank prepared by either a Federal or State supervisory agency or in any internal classification system used by such individual, partnership or corporation.

"(B) An asset in a nonaccrual status.

"(C) An asset on which principal or interest payments are more than 30 days past due.

"(D) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor unless such asset has been performing for at least 6 months since the renegotiation.

"(4) NO SINGLE OR SPECIFIC BENEFICIARIES.—The Board of Governors of the Federal Reserve System may authorize a Federal reserve bank to discount notes, drafts, or bills of exchange under this section only as part of a broadly available credit or other facility and may not authorize a Fed-

eral Reserve bank to discount notes, drafts, or bills of exchange for only a single and specific individual, partnership, or corporation.

"(5) EVIDENCE OF UNAVAILABILITY OF CREDIT.—Before discounting any note, draft, or bill of exchange under this subsection for an individual, a partnership or corporation as part of a broadly available credit or other facility the Federal reserve bank shall obtain evidence that such individual, partnership, or corporation is unable to secure adequate credit accommodations from other banking institutions. All discounts under this subsection for individuals, partnerships, or corporations shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.

"(6) CONGRESSIONAL DISAPPROVAL OF ADDITIONAL BORROWING AUTHORITY.—

"(A) INTRODUCTION.—Within 90 days of the day on which notice from the Financial Stability Oversight Council is received by the House of Representatives and the Senate under paragraph (1), a joint resolution specified in subparagraph (E) may be introduced in the House by the majority leader and minority

leader of the House and in the Senate by the majority leader and minority leader of the Senate.

"(B) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

"(i) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution introduced under subparagraph (A) is referred shall report such joint resolution to the House not later than 5 calendar days after the applicable date of introduction of the joint resolution. If a committee fails to report such joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

"(ii) PROCEEDING TO CONSIDERATION.—After each committee authorized to consider a joint resolution reports such joint resolution to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after the applicable date of introduction of

the joint resolution, to move to proceed to consider the joint resolution in the House. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution and shall not be in order if the House has received a message from the Senate under subparagraph (D)(iii)(I). The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

''(iii) CONSIDERATION.—The joint resolution shall be considered in the House and shall be considered as read. All points of order against a joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of a joint resolution shall not be in order.

"(C) CONSIDERATION IN THE SENATE.—

"(i) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

"(ii) FLOOR CONSIDERATION.—

"(I) IN GENERAL.—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the applicable date of introduction of the joint resolution and ending on the 6th day after the applicable date of introduction (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or dis-

agreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

"(II) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(III) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of

the debate if requested in accordance with the rules of the Senate.

"(IV) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

"(D) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

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

"(I) The joint resolution of the other House shall not be referred to a committee.

"(II) With respect to the joint resolution of the House receiving the resolution, the procedure in that House shall be the same as if no such joint resolution had been received

from the other House; but the vote on passage shall be on the joint resolution of the other House.

"(ii) TREATMENT OF COMPANION MEASURES.—If, following passage of a joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

"(iii) FAILURE OF JOINT RESOLUTION IN THE SENATE.—

"(I) If, in the Senate, the motion to proceed to the consideration of the joint resolution fails, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

"(II) If, in the Senate, the joint resolution fails on passage, the Secretary of the Senate shall transmit a message to that effect to the House of Representatives.

"(iv) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This para-

graph and the preceding paragraphs are enacted by Congress—

"(I) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(II) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

"(E) DEFINITION.—In this paragraph, the term 'joint resolution' means only a joint resolution—

"(i) which does not have a preamble;

"(ii) the title of which is as follows: 'Joint resolution relating to the use of authority relevant to section 13(c) of the Federal Reserve Act under the Financial Stability Improvement Act of 2009.'; and

"(iii) the sole matter after the resolving clause of which is as follows: 'That the Congress disapproves the use of authority pursuant to use of authority relevant to section 13(c) of the Federal Reserve Act transmitted to the Congress on _____ by the Board of Governors of the Federal Reserve System', the blank space being filled with the appropriate date.

"(F) NONSCORING OF JOINT RESOLUTIONS OF DISAPPROVAL.—A joint resolution of disapproval shall be treated as having no budgetary effect by the Congressional Budget Office and the Office of Management and Budget for any purpose under the Rules of the House of Representatives, the Standing Rules of the Senate, the Congressional Budget Act of 1974, or any statutory pay-as-you-go requirement.".

SEC. 1702. CERTAIN RESTRICTIONS RELATED TO FOREIGN CURRENCY SWAP AUTHORITY.

Section 14 of the Federal Reserve Act is amended by adding at the end the following new subsection:

''(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN CURRENCY SWAP AUTHORITY.—A Federal reserve bank may not take any action pursuant to the authority provided under this section with respect to foreign currency swaps unless—

''(1) such action is approved in advance by the affirmative vote of not less than five members of the Board of Governors of the Federal Reserve System; and

''(2) such action is taken with the written concurrence of the Secretary of the Treasury.''.

SEC. 1703. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(h) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(h))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of

information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—The Council of Inspectors General shall, each year within a timeframe that permits consideration by the Financial Services Oversight Council (in this section referred to as the ''Oversight Council'') prior to the submission of its report for such year under section 1006, submit to the Oversight Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General

1 based on the views expressed by each in-
2 spector general as required by clause (i),
3 with a focus on measures that should be
4 taken to improve financial oversight.
5 (3) COUNCIL OF INSPECTORS GENERAL WORK-
6 ING GROUPS.—
7 (A) WORKING GROUPS TO EVALUATE
8 OVERSIGHT COUNCIL.—
9 (i) CONVENING A WORKING GROUP.—
10 The Council of Inspectors General may, by
11 majority vote, convene a Council of Inspec-
12 tors General Working Group to evaluate
13 the effectiveness and internal operations of
14 the Oversight Council.
15 (ii) PERSONNEL AND RESOURCES.—
16 The inspectors general who are members
17 of the Council of Inspectors General may
18 detail staff and resources to a Council of
19 Inspectors General Working Group estab-
20 lished under this subparagraph to enable it
21 to carry out its duties.
22 (iii) REPORTS.—A Council of Inspec-
23 tors General Working Group established
24 under this subparagraph shall submit reg-
25 ular reports to the Oversight Council and

to Congress on its evaluations pursuant to this subparagraph.

(B) WORKING GROUPS FOR FINANCIAL COMPANIES UNDERGOING RESOLUTION.—

(i) CONVENING A WORKING GROUP.—The Council of Inspectors General shall convene a Council of Inspectors General Working Group for each financial company for which the Secretary of the Treasury appoints the Federal Deposit Insurance Corporation as receiver under section 1604.

(ii) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this subparagraph to enable it to carry out its duties.

(iii) REPORTS.—Not later than 270 days after the appointment of the Federal Deposit Insurance Corporation as receiver for the financial company for which a Council of Inspectors General Working Group is convened under clause (i), such

Working Group shall submit to the primary financial regulatory agency and to Congress a report that includes—

(I) the reasons for such financial company's failure;

(II) the reasons for the Secretary of the Treasury's appointment of the Federal Deposit Insurance Corporation as receiver for such financial company; and

(III) recommendations for preventing future failures of financial companies.

(b) RESPONSE TO REPORT BY OVERSIGHT COUNCIL.—The Oversight Council shall include in its annual report under section 1006 responses to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

Subtitle I—Miscellaneous

SEC. 1801. INCLUSION OF MINORITIES AND WOMEN; DIVERSITY IN AGENCY WORKFORCE.

(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—

(1) ESTABLISHMENT.—Not later than 180 days following the enactment of this title, each agency

shall establish an Office of Minority and Women Inclusion (hereinafter in this section referred to as the ''Office'') that shall advise the agency administrator of the impact of policies and regulations of the agency on minority-owned and women-owned businesses, and shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities, including the coordination of technical assistance, in accordance with such standards and requirements as the Director of the Office shall establish.

(2) CONSOLIDATION.—Each agency that has assigned these or comparable responsibilities to existing offices shall ensure that such responsibilities are consolidated within the Office.

(b) DIRECTOR.—

(1) IN GENERAL.—For each Office, the President shall appoint, by and with the advice and consent of the Senate, a Director of Minority and Women Inclusion (hereinafter in this section referred to as the ''Director''), who shall also hold a title within such agency comparable to that of other senior level staff who are, as applicable, either appointed by the President, by and with the advice and consent of the Senate, or act in a managerial capac-

ity that requires reporting directly to the agency administrator.

(2) DUTIES.—Each Director shall—

(A) ensure equal employment opportunity and the racial, ethnic and gender diversity of the agency's workforce and senior management;

(B) increase the participation of minority-owned and women-owned businesses in the programs and contracts of the agency;

(C) provide guidance to the agency administrator to ensure that the policies and regulations of the agency strengthen minority-owned and women-owned businesses; and

(D) conduct an assessment, as part of the examination process for the entities regulated or monitored by the agency of the diversity and inclusion efforts by such entities.

(c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.—

(1) IN GENERAL.—Each Director shall develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12

U.S.C. 1811 note)), women, and minority-owned and women-owned businesses (as such terms are defined in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts (including, as applicable, contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of its assets, the making of its equity investments, and the implementation of programs to address economic recovery).

(2) CONTRACTS.—The processes established by each agency for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

(3) WRITTEN ASSURANCE.—All such contract proposals, provided such proposals are of an amount greater than $50,000 and the contractor employs more than 50 employees, shall include a written as-

1 surance, in a form and substance that the Director
2 shall prescribe, that the contractor shall ensure, to
3 the maximum extent possible, the inclusion of mi-
4 norities and women in its workforce and, as applica-
5 ble, by its subcontractors.

6 (4) TERMINATION.—A Director may terminate
7 any contract upon a finding that the contractor has
8 failed to make a good faith effort to comply with
9 paragraph (3), except that a contractor may appeal
10 such finding and termination to the agency adminis-
11 trator within a reasonable amount of time as deter-
12 mined by the Director.

13 (d) APPLICABILITY.—This section shall apply to all
14 contracts of an agency for services of any kind, including
15 services that require the services of investment banking,
16 asset management entities, broker-dealers, financial serv-
17 ices entities, underwriters, accountants, investment con-
18 sultants, and providers of legal services.

19 (e) REPORTS.—Not later than 90 days before the end
20 of each Federal fiscal year, each Director shall report to
21 the Congress detailed information describing the actions
22 taken by the agency and the Director pursuant to this sec-
23 tion, which shall—

24 (1) to the extent contracts exceed the contract
25 amount and employment levels established in sub-

section (c)(3), include a statement of the total amounts paid by the agency to third party contractors since the last such report;

(2) the percentage of such amounts paid to businesses described in subsection (c)(1);

(3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs;

(4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and

(5) such other information, findings, conclusions, and recommendations for legislative or agency action, as the Director may determine to be appropriate to include in such report.

(f) DIVERSITY IN AGENCY WORKFORCE.—Each agency shall take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States and the Federal government, which shall include—

(1) heavily recruiting at historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

(3) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;

(4) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and

(5) such other mass media communications that the Director determines are necessary.

(g) DEFINITIONS.—For purposes of this section:

(1) AGENCY.—The term ''agency'' means—

(A) the Department of the Treasury,

(B) the Federal Deposit Insurance Corporation,

(C) the Federal Housing Finance Agency,

(D) each of the Federal reserve banks,

(E) the Board,

(F) the National Credit Union Administration,

(G) the Office of the Comptroller of the Currency,

(H) the Office of Thrift Supervision,

(I) the Securities and Exchange Commission,

(J) the Federal department or agency that the President has identified as the main department or agency responsible for consumer financial protection,

(K) the Federal department or agency that the President has identified as the main department or agency responsible for insurance information,

and any successors to such entities.

(2) AGENCY ADMINISTRATOR.—The term ''agency administrator'' means the head of an agency.

Subtitle J—International Policy Coordination

SEC. 1901. INTERNATIONAL POLICY COORDINATION.

The President of the United States, or a designee of the President, shall coordinate through all available international policy channels similar policies as found in United

States law related to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies in order to protect financial stability and the global economy.

Subtitle K—International Financial Provisions

SEC. 1951. ACCESS TO UNITED STATES FINANCIAL MARKET BY FOREIGN INSTITUTIONS.

(a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Subsection 7(d)(3) of the International Banking Act of 1978 (U.S.C. 3105(d)(3)) is amended—

(1) by striking ''and'' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(E) for a foreign bank that presents a systemic risk to the United States (as determined in accordance with section 1603 of the Financial Stability Improvement Act of 2009), whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate sys-

tem of financial regulation for the financial system of such home country to mitigate such systemic risk.''.

(b) TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Subsection 7(e)(1) of the International Banking Act of 1978 (U.S.C. 3105(e)(1)) is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(3) by inserting after subparagraph (B), the following new subparagraph:

''(C) for a foreign bank that presents a systemic risk to the United States (as determined in accordance with section 1603 of the Financial Stability Improvement Act of 2009), the home country of the foreign bank has not adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such systemic risk.''.

(c) REGISTRATION OR SUCCESSION TO UNITED STATES BROKERAGE OR DEALER AND TERMINATION OF SUCH REGISTRATION.—Section 15 of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78o) is amended by adding
2 at the end the following new subsections:

3 "(k) REGISTRATION OR SUCCESSION TO A UNITED
4 STATES BROKER OR DEALER.—In determining whether
5 to permit a foreign person or an affiliate of a foreign per-
6 son to register as a United States broker or dealer, or
7 succeed to the registration of a United States broker or
8 dealer, the Securities and Exchange Commission may con-
9 sider whether, for a foreign person, or an affiliate of a
10 foreign person that presents a systemic risk to the United
11 States (as determined in accordance with section 1603 of
12 the Financial Stability Improvement Act of 2009), the
13 home country of the foreign person has adopted or made
14 demonstrable progress toward adopting an appropriate
15 system of financial regulation to mitigate such systemic
16 risk.

17 "(l) TERMINATION OF A UNITED STATES BROKER
18 OR DEALER.—For a foreign person or an affiliate of a
19 foreign person that presents such a systemic risk to the
20 United States, the Securities and Exchange Commission
21 may determine to terminate the registration of such for-
22 eign person or an affiliate of such foreign person as a
23 broker or dealer in the United States if the Commission
24 determines that the home country of the foreign person
25 has not adopted, or made demonstrable progress toward

adopting, an appropriate system of financial regulation to mitigate such systemic risk.''.

TITLE II—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS ACT

SEC. 2001. SHORT TITLE.

This title may be cited as the ''Corporate and Financial Institution Compensation Fairness Act of 2009''.

SEC. 2002. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

''(i) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

''(1) ANNUAL VOTE.—Any proxy or consent or authorization (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) where proxies are solicited in respect of any security registered under section 12 occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder vote to ap-

prove the compensation of executives as disclosed pursuant to the Commission's compensation disclosure rules for named executive officers (which disclosure shall include the compensation committee report, the compensation discussion and analysis, the compensation tables, and any related materials, to the extent required by such rules). The shareholder vote shall not be binding on the issuer or the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

"(2) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

"(A) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), at which shareholders are asked to approve an acquisition,

merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

"(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or under-

standings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under paragraph (1). A vote by the shareholders shall not be binding on the issuer or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by any such person or issuer, nor to create or imply any additional fiduciary duty by any such person or issuer.

"(3) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to paragraphs (1) or (2) of this section, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

"(4) RULEMAKING.—Not later than 6 months after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue final rules to implement this subsection.

"(5) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of this subsection, where appro-

priate in view of the purpose of this subsection. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.''.

SEC. 2003. COMPENSATION COMMITTEE INDEPENDENCE.

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10A the following new section:

''SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

''(a) COMMISSION RULES.—

''(1) IN GENERAL.—Effective not later than 9 months after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

''(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to

have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

"(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

"(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

"(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be independent.

"(2) CRITERIA.—In order to be considered to be independent for purposes of this subsection, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee accept any consulting, advisory, or other compensatory fee from the issuer.

"(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

"(4) DEFINITION.—As used in this section, the term 'compensation committee' means—

"(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

"(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

"(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—Any compensation consultant or other similar adviser to the compensation committee of any issuer shall meet standards for independence established by the Commission by regulation.

"(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

"(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee

of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

"(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant

meeting the standards for independence promulgated pursuant to subsection (c).

"(3) REGULATIONS.—In promulgating regulations under this subsection or any other provision of law with respect to compensation consultants, the Commission shall ensure that such regulations are competitively neutral among categories of consultants and preserve the ability of compensation committees to retain the services of members of any such category.

"(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the com-

1 pensation committee's ability or obligation to exercise its
2 own judgment in fulfillment of its duties.

3 "(f) FUNDING.—Each issuer shall provide for appro-
4 priate funding, as determined by the compensation com-
5 mittee, in its capacity as a committee of the board of direc-
6 tors, for payment of compensation—

7 "(1) to any compensation consultant to the
8 compensation committee that meets the standards
9 for independence promulgated pursuant to sub-
10 section (c), and

11 "(2) to any independent counsel or other ad-
12 viser to the compensation committee.".

13 (b) STUDY AND REVIEW REQUIRED.—

14 (1) IN GENERAL.—The Securities and Ex-
15 change Commission shall conduct a study and review
16 of the use of compensation consultants meeting the
17 standards for independence promulgated pursuant to
18 section 10B(c) of the Securities Exchange Act of
19 1934 (as added by subsection (a)), and the effects
20 of such use.

21 (2) REPORT TO CONGRESS.—Not later than 2
22 years after the rules required by the amendment
23 made by this section take effect, the Commission
24 shall submit a report to the Congress on the results
25 of the study and review required by this paragraph.

SEC. 2004. ENHANCED COMPENSATION STRUCTURE REPORTING TO REDUCE PERVERSE INCENTIVES.

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) is aligned with sound risk management;

(B) is structured to account for the time horizon of risks; and

(C) meets such other criteria as the appropriate Federal regulators jointly may determine to be appropriate to reduce unreasonable incentives offered by such institutions for employees to take undue risks that—

(i) could threaten the safety and soundness of covered financial institutions; or

(ii) could have serious adverse effects on economic conditions or financial stability.

(2) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this subsection shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, and taking into account the factors described in subparagraphs (A), (B), and (C) of subsection (a)(1), the appropriate Federal regulators shall jointly prescribe regulations that prohibit any incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions that—

(1) could threaten the safety and soundness of covered financial institutions; or

(2) could have serious adverse effects on economic conditions or financial stability.

(c) ENFORCEMENT.—The provisions of this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section shall be treated as a violation of subtitle A of title V of such Act.

(d) DEFINITIONS.—As used in this section—

(1) the term ''appropriate Federal regulator'' means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board;

(F) the Securities and Exchange Commission; and

(G) the Federal Housing Finance Agency; and

(2) the term ''covered financial institution'' means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(e) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

(f) LIMITATION.—No regulation promulgated pursuant to this section shall be allowed to require the recovery of incentive-based compensation under compensation arrangements in effect on the date of enactment of this title, provided such compensation agreements are for a period of no more than 24 months. Nothing in this title shall prevent or limit the recovery of incentive-based compensation under any other applicable law.

(g) GAO STUDY.—

(1) STUDY REQUIRED.—

(A) IN GENERAL.—The Comptroller General of the United States shall carry out a study to determine whether there is a correlation between compensation structures and excessive risk taking.

(B) FACTORS TO CONSIDER.—In carrying out the study required under subparagraph (A), the Comptroller General shall—

(i) consider compensation structures used by companies from 2000 to 2008; and

(ii) compare companies that failed, or nearly failed but for government assistance, to companies that remained viable throughout the housing and credit market crisis of 2007 and 2008, including the

1 compensation practices of all such compa-
2 nies.
3 (C) DETERMINING COMPANIES THAT
4 FAILED OR NEARLY FAILED.—In determining
5 whether a company failed, or nearly failed but
6 for government assistance, for purposes of sub-
7 paragraph (B)(ii), the Comptroller General
8 shall focus on—
9 (i) companies that received excep-
10 tional assistance under the Troubled Asset
11 Relief Program under title I of the Emer-
12 gency Economic Stabilization Act of 2009
13 (12 U.S.C. 5211 et seq.) or other forms of
14 significant government assistance, includ-
15 ing under the Automotive Industry Financ-
16 ing Program, the Targeted Investment
17 Program, the Asset Guarantee Program,
18 and the Systemically Significant Failing
19 Institutions Program;
20 (ii) the Federal National Mortgage
21 Association;
22 (iii) the Federal Home Loan Mort-
23 gage Corporation; and
24 (iv) companies that participated in the
25 Security and Exchange Commission's Con-

solidated Supervised Entities Program as of January 2008.

(2) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this title, the Comptroller General shall issue a report to the Congress containing the results of the study required under paragraph (1).

TITLE III—OVER-THE-COUNTER DERIVATIVES MARKETS ACT

SEC. 3001. SHORT TITLE.

This title may be cited as the ''Over-the-Counter Derivatives Markets Act of 2009''.

Subtitle A—Regulation of Swap Markets

SEC. 3101. DEFINITIONS.

(a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (9) through (34) as paragraphs (10) through (35), respectively;

(2) by adding after paragraph (8) the following:

''(9) DERIVATIVE.—The term 'derivative' means—

''(A) a contract of sale of a commodity for future delivery; or

"(B) a swap.";

(3) by redesignating paragraph (35) (as redesignated by paragraph (1)) as paragraph (36);

(4) by adding after paragraph (34) (as redesignated by paragraph (1)) the following:

"(35) SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction that—

"(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

"(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

1 "(iii) provides on an executory basis
2 for the exchange, on a fixed or contingent
3 basis, of one or more payments based on
4 the value or level of one or more interest
5 or other rates, currencies, commodities, se-
6 curities, instruments of indebtedness, indi-
7 ces, quantitative measures, or other finan-
8 cial or economic interests or property of
9 any kind, or any interest therein or based
10 on the value thereof, and that transfers, as
11 between the parties to the transaction, in
12 whole or in part, the financial risk associ-
13 ated with a future change in any such
14 value or level without also conveying a cur-
15 rent or future direct or indirect ownership
16 interest in an asset (including any enter-
17 prise or investment pool) or liability that
18 incorporates the financial risk so trans-
19 ferred, including any agreement, contract,
20 or transaction commonly known as an in-
21 terest rate swap, a rate floor, rate cap,
22 rate collar, cross-currency rate swap, basis
23 swap, currency swap, total return swap,
24 equity index swap, equity swap, debt index
25 swap, debt swap, credit spread, credit de-

fault swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

"(iv) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

"(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv).

"(B) EXCLUSIONS.—The term 'swap' does not include:

"(i) any contract of sale of a commodity for future delivery or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

"(ii) any sale of a nonfinancial commodity for deferred shipment or delivery, so long as such transaction is physically settled;

"(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, in-

cluding any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

''(v) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(vi) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless such agree-

ment, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

''(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(viii) any agreement, contract, or transaction that is—

''(I) based on a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

''(ix) any foreign exchange swap;

''(x) any foreign exchange forward;

"(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank or the United States Government, or an agency of the United States Government that is expressly backed by the full faith and credit of the United States; and

"(xii) any security-based swap, other than a security-based swap as described in paragraph (38)(C).

"(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).";

(5) in paragraph (13) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) in clause (vii), by striking ''$25,000,000'' and inserting ''$50,000,000''; and

(ii) in clause (xi), by striking ''total assets in an amount'' and inserting ''amounts invested on a discretionary basis''; and

(B) in subparagraph (C), by striking ''determines'' and inserting ''and the Securities and Exchange Commission may jointly determine'';

(6) in paragraph (30) (as redesignated by paragraph (1)), by—

(A) redesignating subparagraph (E) as subparagraph (G);

(B) in subparagraph (D), by striking ''and''; and

(C) inserting after subparagraph (D) the following:

''(E) a swap execution facility registered under section 5h;

''(F) a swap repository; and'';

(7) by adding after paragraph (36) (as redesignated by paragraph (3)) the following:

"(37) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.";

(8) by adding after paragraph (37) the following:

"(38) SECURITY-BASED SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'security-based swap' means any agreement, contract, or transaction that would be a swap under paragraph (35) (without regard to paragraph (35)(B)(xii)), and that—

"(i) is based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

"(ii) is based on a single security or loan, including any interest therein or based on the value thereof; or

"(iii) is based on the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a nar-

row-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

"(B) EXCLUSION.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of security-based swap only because it references or is based upon a government security.

"(C) MIXED SWAP.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of one or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

"(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).";

(9) by adding after paragraph (38) the following:

"(39) SWAP DEALER.—

"(A) IN GENERAL.—The term 'swap dealer' means any person engaged in the business of buying and selling swaps for such person's own account, through a broker or otherwise.

"(B) EXCEPTION.—The term 'swap dealer' does not include a person that buys or sells

swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.";

(10) by adding after paragraph (39) the following:

"(40) MAJOR SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer and—

"(i) who maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing, or otherwise mitigating commercial risk; or

"(ii) whose outstanding swaps create substantial net counterparty exposure (current and potential future) that would expose counterparties to significant credit losses that could have a material adverse effect on capital of the counterparties.

"(B) DEFINITIONS.—The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term 'substantial net position' and 'substantial net counterparty exposure' at a threshold that the

1 Commissions determine prudent for the effec-
2 tive monitoring of, management and oversight
3 of the financial system. In the event the Com-
4 missions are unable to agree upon a level within
5 60 days of the commencement of such consulta-
6 tions, the Secretary of the Treasury shall make
7 such determination, which shall be binding on
8 and adopted by such Commissions.

9 ''(41) MAJOR SECURITY-BASED SWAP PARTICI-
10 PANT.—

11 ''(A) IN GENERAL.—The term 'major secu-
12 rity-based swap participant' means any person
13 who is not a swap dealer and—

14 ''(i) who maintains a substantial net
15 position in outstanding security-based
16 swaps, excluding positions held primarily
17 for hedging, reducing, or otherwise miti-
18 gating commercial risk; or

19 ''(ii) whose outstanding security-based
20 swaps create substantial net counterparty
21 exposure (current and potential future)
22 that would expose counterparties to signifi-
23 cant credit losses that could have a mate-
24 rial adverse effect on capital of the
25 counterparties.

"(B) DEFINITIONS.—The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term 'substantial net position' and 'substantial net counterparty exposure' at a threshold that the Commissions determine prudent for the effective monitoring of, management and oversight of the financial system. In the event the Commissions are unable to agree upon a level within 60 days of the commencement of such consultations, the Secretary of the Treasury shall make such determination, which shall be binding on and adopted by such Commissions.";

(11) by adding after paragraph (41) the following:

"(42) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).";

(12) by adding after paragraph (42) the following:

"(43) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' means—

"(A) the Board in the case of a swap dealer, major swap participant, security-based swap

dealer or major security-based swap participant that is—

"(i) a State-chartered bank that is a member of the Federal Reserve System; or

"(ii) a State-chartered branch or agency of a foreign bank;

"(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

"(i) a national bank; or

"(ii) a federally chartered branch or agency of a foreign bank; and

"(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System.";

(13) by adding after paragraph (43) the following:

"(44) SECURITY-BASED SWAP DEALER.—

"(A) IN GENERAL.—The term 'security-based swap dealer' means any person engaged in the business of buying and selling security-

based swaps for such person's own account, through a broker or otherwise.

"(B) EXCEPTION.—The term 'security-based swap dealer' does not include a person that buys or sells security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.";

(14) by adding after paragraph (44) the following:

"(45) GOVERNMENT SECURITY.—The term 'government security' has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).";

(15) by adding after paragraph (45) the following:

"(46) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.";

(16) by adding after paragraph (46) the following:

"(47) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that

solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.";

(17) by adding after paragraph (47) the following:

"(48) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' means any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-

based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10).";

(18) by adding after paragraph (48) the following:

"(49) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term 'person associated with a swap dealer or major swap participant' or 'associated person of a swap dealer or major swap participant' means any partner, officer, director, or branch manager of such swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such swap dealer or major swap participant, or any employee of such swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 4s(b)(6)."; and

(19) by adding after paragraph (49) the following:

''(50) SWAP REPOSITORY.—The term 'swap repository' means an entity that collects and maintains the records of the terms and conditions of swaps or security-based swaps entered into by third parties.

''(51) RESTRICTED OWNER.—The term 'restricted owner' means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, person associated with a swap dealer or major swap participant, or person associated with a security-based swap dealer or major security-based swap participant.''.

(b) JOINT RULEMAKING ON FURTHER DEFINITION OF TERMS.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly adopt a rule further defining the terms ''swap'', ''security-based swap'', ''swap dealer'', ''security-based swap dealer'', ''major swap participant'',''major security-based swap participant'', and ''eligible contract participant'' no later than 180 days after the effective date of this title.

(2) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission may prescribe rules defining the term ''swap'' or ''security-based swap'' to include transactions that have been structured to evade this title.

(c) JOINT RULEMAKING UNDER THIS TITLE.—

(1) UNIFORM RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be uniform.

(2) TREASURY DEPARTMENT.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe uniform rules and regulations under any provision of this title in a timely manner, the Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, shall prescribe rules and regulations under such provision. A rule prescribed by the Secretary of the Treasury shall be enforced as if prescribed jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission and shall remain in effect until the Secretary rescinds the rule or until the ef-

fective date of a corresponding rule prescribed jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission in accordance with this section, whichever is later.

(3) DEADLINE.—The Secretary of the Treasury shall adopt rules and regulations under paragraph (2) within 180 days of the time that the Commodity Futures Trading Commission and the Securities and Exchange Commission failed to adopt uniform rules and regulations.

(4) TREATMENT OF SIMILAR PRODUCTS.—In adopting joint rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall prescribe requirements to treat functionally or economically similar products similarly.

(5) TREATMENT OF DISSIMILAR PRODUCTS.—Nothing in this title shall be construed to require the Commodity Futures Trading Commission and the Securities and Exchange Commission to adopt joint rules that treat functionally or economically different products identically.

(6) JOINT INTERPRETATION.—Any interpretation of, or guidance regarding, a provision of this title, shall be effective only if issued jointly by the

Commodity Futures Trading Commission and the Securities and Exchange Commission if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

SEC. 3102. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—The first sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended—

(1) by striking ''(C) and (D)'' and inserting ''(C), (D), and (G)'';

(2) by striking ''subsections (c) through (i)'' and inserting ''subsections (c) and (f)''; and

(3) by striking ''involving contracts of sale'' and inserting ''involving swaps or contracts of sale''.

(b) NO LIMITATION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by inserting after subparagraph (F) the following:

''(G) Nothing contained in this paragraph shall supersede or limit the jurisdiction conferred on the Securities and Exchange Commission or other regulatory authority by, or otherwise restrict the authority of the Securities and Exchange Commission or other regulatory authority under, the Over-the-Counter Derivatives

Markets Act of 2009, including with respect to a security-based swap as described in section 1a(38)(C) of this Act.''.

(c) ADDITIONS.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

''(ii) a swap; or''.

SEC. 3103. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) Sections 2(d), 2(e), 2(g), and 2(h) of the Commodity Exchange Act (7 U.S.C. 2(d), 2(e), 2(g), and 2(h)) are repealed.

(2) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

''(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (f), and (j), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 4u, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms to registered entities and Commission registrants) governs or applies to a swap.

1 "(e) LIMITATION ON PARTICIPATION.—It shall be
2 unlawful for any person, other than an eligible contract
3 participant, to enter into a swap unless the swap is en-
4 tered into on or subject to the rules of a board of trade
5 designated as a contract market under section 5.".

6 (3) Section 2 of the Commodity Exchange Act
7 (7 U.S.C. 2) is further amended by inserting after
8 subsection (i) the following:

9 "(j) CLEARING OF SWAPS.—

10 "(1) IN GENERAL.—

11 "(A) PRESUMPTION OF CLEARING.—A
12 swap shall be submitted for clearing if a deriva-
13 tives clearing organization that is registered
14 under this Act will accept the swap for clearing.

15 "(B) OPEN ACCESS.—The rules of a de-
16 rivatives clearing organization described in sub-
17 paragraph (A) shall—

18 "(i) prescribe that all swaps submitted
19 to the derivatives clearing organization
20 with the same terms and conditions are
21 economically equivalent and may be offset
22 with each other within the derivatives
23 clearing organization; and

24 "(ii) provide for non-discriminatory
25 clearing of a swap executed on or through

the rules of an unaffiliated designated contract market or swap execution facility.

"(2) COMMISSION APPROVAL.—

"(A) IN GENERAL.—A derivatives clearing organization shall submit to the Commission for prior approval each swap, or any group, category, type, or class of swaps, that it seeks to accept for clearing, which submission the Commission shall make available to the public.

"(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the derivatives clearing organization submitting the request agrees to an extension of the time limitation established under this subparagraph. A request on which the Commission fails to take final action within the time limitation established under this subparagraph is deemed approved.

"(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commis-

1 sion finds that the request is consistent with
2 section 5b(c)(2).
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 a derivatives
7 clearing organization's submission for approval,
8 pursuant to this paragraph, of a swap, or a
9 group, category, type or class of swaps, that it
10 seeks to accept for clearing.
11 "(3) STAY OF CLEARING REQUIREMENT.—At
12 any time after issuance of an approval pursuant to
13 paragraph (2):
14 "(A) REVIEW PROCESS.—The Commission,
15 on application of a counterparty to a swap or
16 on its own initiative, may stay the clearing re-
17 quirement of paragraph (1) until the Commis-
18 sion completes a review of the terms of the
19 swap (or the group, category, type, or class of
20 swaps) and the clearing arrangement.
21 "(B) DEADLINE.—The Commission shall
22 complete a review undertaken pursuant to sub-
23 paragraph (A) not later than 90 days after
24 issuance of the stay, unless the derivatives
25 clearing organization that clears the swap, or

group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

"(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

"(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with section 5b(c)(2); or

"(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

"(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a

group, category, type, or class of swaps, that it has accepted for clearing.

"(4) PREVENTION OF EVASION.—The Commission and the Securities and Exchange Commission shall have authority to prescribe rules under this subsection, or issue interpretations of such rules, as necessary to prevent evasions of this Act provided that any such rules or interpretations must be issued jointly to be effective.

"(5) REQUIRED REPORTING.—

"(A) IN GENERAL.—All swap transactions that are not accepted for clearing by any derivatives clearing organization shall be reported to either a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

"(B) AUTHORITY OF SWAP DEALER TO REPORT.—Counterparties may agree which counterparty will report the swap transaction. In transactions where only 1 counterparty is a swap dealer, the swap dealer will report the transaction.

"(6) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(A) Swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

"(B) Swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than the later of—

"(i) 90 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(7) TRADE EXECUTION.—

"(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1) and where both

counterparties are either swap dealers or major swap participants, such counterparties shall—

"(i) execute the transaction on a board of trade designated as a contract market under section 5; or

"(ii) execute the transaction on a swap execution facility registered with the Commission.

"(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade.

"(C) REQUIRED REPORTING.—If the exception of subparagraph (B) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to swaps subject to the requirements of paragraph (1).

"(8) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on boards of trade designated as contract markets under section 5 of contracts, agreements or trans-

actions that would be security-based swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.

"(9) EXCEPTIONS.—The requirements of paragraph (1) shall not apply to a swap if—

"(A) no derivatives clearing organization registered under this Act will accept the swap for clearing; or

"(B) one of the counterparties to the swap is not a swap dealer or major swap participant.

"(10) EXCLUSION.—Paragraph (1) shall not apply to a swap 1 party to which is not a swap dealer or major swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this paragraph.".

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) are amended to read as follows:

"(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives

clearing organization described in section 1a(10) of this Act with respect to—

"(1) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is—

"(A) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or

"(B) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

"(2) a swap.

"(b) VOLUNTARY REGISTRATION.—

"(1) DERIVATIVES CLEARING ORGANIZATIONS.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.

"(2) CLEARING AGENCIES.—A derivatives clearing organization may clear security-based swaps that are required to be cleared by a person who is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).".

(2) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by adding at the end the following:

"(g) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is required to be registered as a derivatives clearing organization under this section shall register with the Commission regardless of whether the person is also a bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(h) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered as derivatives clearing organizations for swaps under this subsection and persons that are registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(i) CONSULTATION.—The Commission and the Securities and Exchange Commission shall consult with the appropriate Federal banking agencies prior to adopting rules under this section with respect to swaps.

1 "(j) EXEMPTIONS.—The Commission may exempt,
2 conditionally or unconditionally, a derivatives clearing or-
3 ganization from registration under this section for the
4 clearing of swaps if the Commission finds that such de-
5 rivatives clearing organization is subject to comparable,
6 comprehensive supervision and regulation on a consoli-
7 dated basis by the Securities and Exchange Commission,
8 a Prudential Regulator or the appropriate governmental
9 authorities in the organization's home country.

10 "(k) DESIGNATION OF COMPLIANCE OFFICER.—

11 "(1) IN GENERAL.—Each derivatives clearing
12 organization shall designate an individual to serve as
13 a compliance officer.

14 "(2) DUTIES.—The compliance officer—

15 "(A) shall report directly to the board or
16 to the senior officer of the derivatives clearing
17 organization;

18 "(B) shall—

19 "(i) review compliance with the core
20 principles in section 5b(c)(2);

21 "(ii) in consultation with the board of
22 the derivatives clearing organization, a
23 body performing a function similar to that
24 of a board, or the senior officer of the de-

rivatives clearing organization, resolve any conflicts of interest that may arise;

"(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and

"(iv) ensure compliance with commodity laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

"(C) shall establish procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, retesting, and closing of noncompliant issues.

"(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with the commodity laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report

shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.''.

(3) Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)) is amended to read as follows:

''(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles specified in subparagraphs (B) through (N) this paragraph. The Commission may conform the core principles to reflect evolving United States and international standards.''.

(4) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is further amended by adding after subsection (k), as added by paragraph (2), the following:

''(l) REPORTING.—

''(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall provide to the Commission and any designated swap repository all in-

formation determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for swaps accepted by swap repositories and swaps traded on swap execution facilities. A derivatives clearing organization that clears security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act of 1934) shall, upon request, make available to the Securities and Exchange Commission all information (including information on a real-time basis) relating to such security-based swap agreements. Subject to section 8, the Commission shall share such information, upon request, with the Board, the Securities and Exchange Commission (with respect to swaps other than security-based swap agreements), the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j).".

(5) Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence by adding "central bank and ministries" after "department" each place it appears.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

"SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

"(a) EXCLUSION.—Except as provided in subsection (b) or (c), no provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall apply to, and the Commodity Futures Trading Commission and the Securities and Ex-

1 change Commission shall not exercise regulatory authority
2 under the Commodity Exchange Act with respect to, an
3 identified banking product.

4 "(b) EXCEPTION.—An appropriate Federal banking
5 agency may except an identified banking product or a
6 bank under its regulatory jurisdiction from the exclusion
7 in subsection (a) if the agency determines, in consultation
8 with the Commodity Futures Trading Commission and the
9 Securities and Exchange Commission, that the product—

10 "(1) would meet the definition of swap in sec-
11 tion 1a(35) of the Commodity Exchange Act (7
12 U.S.C. 1a(35)) or security-based swap in section
13 1a(38) of the Commodity Exchange Act (7 U.S.C.
14 1a(38)); and

15 "(2) has become known to the trade as a swap
16 or security-based swap, or otherwise has been struc-
17 tured as an identified banking product for the pur-
18 pose of evading the provisions of the Commodity Ex-
19 change Act (7 U.S.C. 1 et seq.), the Securities Act
20 of 1933 (15 U.S.C. 77a et seq.), or the Securities
21 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

22 "(c) ADDITIONAL EXCEPTION.—The exclusion in
23 subsection (a) shall not apply to an identified banking
24 product that—

"(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

"(2) meets the definition of swap in section 1a(35) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

"(3) has become known to the trade as a swap or security-based swap, or has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).".

SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding after subsection (i) the following:

"(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

"(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business trans-

actions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

"(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

"(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

"(A) derivatives clearing organizations pursuant to section 5b(k)(2);

"(B) swap repositories pursuant to section 21(c)(3); and

"(C) reports received by the Commission pursuant to section 4r.".

SEC. 3105. SWAP REPOSITORIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

"SEC. 21. SWAP REPOSITORIES.

"(a) REGISTRATION REQUIREMENT.—

"(1) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any

means or instrumentality of interstate commerce to perform the functions of a swap repository.

"(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

"(b) STANDARD SETTING.—

"(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

"(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

"(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

"(c) DUTIES.—A swap repository shall—

"(1) accept data prescribed by the Commission for each swap under subsection (b);

"(2) maintain such data in such form and manner and for such period as may be required by the Commission;

"(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

"(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(d) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a swap repository under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as a security-based swap repository.

"(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter

Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as security-based swap repositories under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

''(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that such swap repository is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.''.

SEC. 3106. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

''SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.

''(a) IN GENERAL.—Any person who enters into a swap and—

''(1) did not clear the swap in accordance with section 2(j)(1); and

"(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including time frames) adopted by the Commission under section 21,

shall meet the requirements in subsection (b).

"(b) REPORTS.—Any person described in subsection (a) shall—

"(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

"(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

"(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.".

SEC. 3107. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 3106) the following:

"SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

"(a) REGISTRATION.—

"(1) It shall be unlawful for any person to act as a swap dealer unless such person is registered as a swap dealer with the Commission.

"(2) It shall be unlawful for any person to act as a major swap participant unless such person shall have registered as a major swap participant with the Commission.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

"(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a swap dealer or major swap participant, shall continue to report and

1 furnish to the Commission such information per-
2 taining to such person's business as the Commission
3 may require.

4 "(3) EXPIRATION.—Each registration shall ex-
5 pire at such time as the Commission may by rule or
6 regulation prescribe.

7 "(4) RULES.—Except as provided in sub-
8 sections (c), (d) and (e), the Commission may pre-
9 scribe rules applicable to swap dealers and major
10 swap participants, including rules that limit the ac-
11 tivities of swap dealers and major swap participants.

12 "(5) TRANSITION.—Rules adopted under this
13 section shall provide for the registration of swap
14 dealers and major swap participants no later than
15 one year after the effective date of the Over-the-
16 Counter Derivatives Markets Act of 2009.

17 "(6) STATUTORY DISQUALIFICATION.—Except
18 to the extent otherwise specifically provided by rule,
19 regulation, or order, it shall be unlawful for a swap
20 dealer or a major swap participant to permit any
21 person associated with a swap dealer or a major
22 swap participant who is subject to a statutory dis-
23 qualification to effect or be involved in effecting
24 swaps on behalf of such swap dealer or major swap
25 participant, if such swap dealer or major swap par-

1 ticipant knew, or in the exercise of reasonable care
2 should have known, of such statutory disqualifica-
3 tion.
4 ''(c) DUAL REGISTRATION.—
5 ''(1) SWAP DEALER.—Any person that is re-
6 quired to be registered as a swap dealer under this
7 section shall register with the Commission regardless
8 of whether that person also is a bank or is registered
9 with the Securities and Exchange Commission as a
10 security-based swap dealer.
11 ''(2) MAJOR SWAP PARTICIPANT.—Any person
12 that is required to be registered as a major swap
13 participant under this section shall register with the
14 Commission regardless of whether that person also
15 is a bank or is registered with the Securities and
16 Exchange Commission as a major security-based
17 swap participant.
18 ''(d) JOINT RULES.—
19 ''(1) IN GENERAL.—Not later than 180 days
20 after the effective date of the Over-the-Counter De-
21 rivatives Markets Act of 2009, the Commission and
22 the Securities and Exchange Commission shall joint-
23 ly adopt uniform rules for persons that are reg-
24 istered as swap dealers or major swap participants
25 under this section and persons that are registered as

1 security-based swap dealers or major security-based
2 swap participants under the Securities Exchange Act
3 of 1934 (15 U.S.C. 78a et seq.).

4 ''(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
5 MENTS.—The Commission and the Securities and
6 Exchange Commission shall not prescribe rules im-
7 posing prudential requirements (including activity
8 restrictions) on swap dealers, major swap partici-
9 pants, security-based swap dealers, or major secu-
10 rity-based swap participants for which there is a
11 Prudential Regulator. This provision shall not be
12 construed as limiting the authority of the Commis-
13 sion and the Securities and Exchange Commission to
14 prescribe appropriate business conduct, reporting,
15 and recordkeeping requirements to protect investors.

16 ''(e) CAPITAL AND MARGIN REQUIREMENTS.—

17 ''(1) IN GENERAL.—

18 ''(A) BANK SWAP DEALERS AND MAJOR
19 SWAP PARTICIPANTS.—Each registered swap
20 dealer and major swap participant for which
21 there is a Prudential Regulator shall meet such
22 minimum capital requirements and minimum
23 margin requirements as the Prudential Regu-
24 lators shall by rule or regulation jointly pre-

scribe to help ensure the safety and soundness of the swap dealer or major swap participant.

"(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Commission and the Securities and Exchange Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

"(2) JOINT RULES.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants.

"(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter De-

1 rivatives Markets Act of 2009, the Commission
2 and the Securities and Exchange Commission,
3 in consultation with the Prudential Regulators,
4 shall jointly adopt rules imposing capital and
5 margin requirements under this subsection for
6 swap dealers and major swap participants for
7 which there is no Prudential Regulator.
8 ''(3) CAPITAL.—
9 ''(A) BANK SWAP DEALERS AND MAJOR
10 SWAP PARTICIPANTS.—In setting capital re-
11 quirements under this subsection, the Pruden-
12 tial Regulators shall impose:
13 ''(i) a capital requirement that is
14 greater than zero for swaps that are
15 cleared by a derivatives clearing organiza-
16 tion; and
17 ''(ii) to offset the greater risk to the
18 swap dealer or major swap participant and
19 to the financial system arising from the
20 use of swaps that are not centrally cleared,
21 higher capital requirements for swaps that
22 are not cleared by a registered derivatives
23 clearing organization than for swaps that
24 are centrally cleared.

"(B) EXCLUSION.—Subparagraph (A) shall not apply to a swap 1 party to which is not a swap dealer or major swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

"(C) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Securities and Exchange Commission under this subsection shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

"(D) BANK HOLDING COMPANIES.—Capital requirements set by the Board for swaps of bank holding companies on a consolidated basis shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

"(E) A futures commission merchant, introducing broker, broker or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which it is subject.

"(4) MARGIN.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—The Prudential Regulators shall impose margin requirements under this subsection on all swaps that are not cleared by a registered derivatives clearing organization.

"(B) NON-SWAP DEALERS OR MAJOR SWAP PARTICIPANTS.—The Prudential Regulators may, but are not required to, impose margin requirements with respect to swaps in which one of the counterparties is neither a swap dealer, major swap participant, security-based swap dealer nor a major security-based swap participant. Any such margin requirements for swaps shall provide for the use of non-cash collateral.

"(C) EXCLUSION.—Subparagraph (B) shall not apply to a swap 1 party to which is not a swap dealer or major swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

"(D) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Margin requirements for swaps set by the Commission and the Securities and Exchange Commission under this

subsection shall be as strict as or stricter than margin requirements for swaps set by the Prudential Regulators.

"(f) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant—

"(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

"(B) for which—

"(i) there is a Prudential Regulator shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

"(ii) there is no Prudential Regulator shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

"(C) shall keep such books and records open to inspection and examination by any representative of the Commission; and

"(D) shall keep any such books and records relating to transactions in swaps based on one or more securities open to inspection and examination by the Securities and Exchange Commission.

"(2) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(g) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of its swaps and all related records (including related cash or forward transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings

of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

"(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

"(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each swap transaction.

"(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(5) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(h) BUSINESS CONDUCT STANDARDS.—

1 "(1) IN GENERAL.—Each registered swap deal-
2 er and major swap participant shall conform with
3 business conduct standards as may be prescribed by
4 the Commission by rule or regulation addressing—
5 "(A) fraud, manipulation, and other abu-
6 sive practices involving swaps (including swaps
7 that are offered but not entered into);
8 "(B) diligent supervision of its business as
9 a swap dealer;
10 "(C) adherence to all applicable position
11 limits;
12 "(D) the prevention of self-dealing, by lim-
13 iting the extent to which such a swap dealer or
14 major swap participant may conduct business
15 with a derivatives clearing organization, a board
16 of trade, or an alternative swap execution facil-
17 ity that clears or trades swaps and in which
18 such a swap dealer or major swap participant
19 has a material debt or equity investment; and
20 "(D) such other matters as the Commis-
21 sion shall determine to be necessary or appro-
22 priate.
23 "(2) BUSINESS CONDUCT REQUIREMENTS.—
24 Business conduct requirements adopted by the Com-
25 mission shall—

"(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

"(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant) of—

"(i) information about the material risks and characteristics of the swap;

"(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate clearinghouse and for non-cleared swaps, upon the request of the counterparty, the daily mark of the swap dealer or major swap participant; and

"(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

"(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public inter-

1 est, for the protection of investors, or otherwise
2 in furtherance of the purposes of this Act.
3 ''(3) RULES.—The Commission and the Securi-
4 ties and Exchange Commission, in consultation with
5 the appropriate Federal banking agencies, shall
6 jointly prescribe rules under this subsection gov-
7 erning business conduct standards for swap dealers,
8 major swap participants, security-based swap deal-
9 ers, and major security-based swap participants
10 within 365 days of the enactment of the Over-the-
11 Counter Derivatives Markets Act of 2009.
12 ''(i) DOCUMENTATION AND BACK OFFICE STAND-
13 ARDS.—
14 ''(1) IN GENERAL.—Each registered swap deal-
15 er and major swap participant shall conform with
16 standards, as may be prescribed by the Commission
17 by rule or regulation, addressing timely and accurate
18 confirmation, processing, netting, documentation,
19 and valuation of all swaps.
20 ''(2) RULES.—Within 365 days of the enact-
21 ment of the Over-the-Counter Derivatives Markets
22 Act of 2009, the Commission and the Securities and
23 Exchange Commission, in consultation with the ap-
24 propriate Federal banking agencies, shall adopt rules
25 governing documentation and back office standards

for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(j) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

"(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

"(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission and to the Prudential Regulator for such swap dealer or major swap participant, as applicable, information concerning—

"(A) terms and conditions of its swaps;

"(B) swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to swaps; and

"(D) other information relevant to its trading in swaps.

"(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission and to the Prudential Regulator for such swap dealer or major swap participant, as applicable, upon request.

"(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

"(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(B) address such other issues as the Commission determines appropriate.

"(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of

this Act, the swap dealer or major swap participant shall avoid—

"(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading.

"(k) RULES.—The Commission, the Securities and Exchange Commission, and the Prudential Regulators shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2009.

"(l) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap dealer or major swap participant from the prudential requirements of the Over-the-Counter Derivatives Markets Act of 2009 if the Commission finds that such swap dealer or major swap participant is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

"(m) EXEMPTIVE AUTHORITY.—

"(1) IN GENERAL.—The Commission, by rule or regulation, may conditionally or unconditionally

exempt any person, derivative, or transaction, or any class or classes of persons, derivatives, or transactions, from any provision of this Act that was added by an amendment in the Over-the-Counter Derivatives Markets Act of 2009, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the purposes of such Act.

"(2) PROCEDURES.—The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this subsection shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.".

SEC. 3108. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is further amended by inserting after section 4s the following:

"SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.

"(a) SEGREGATION.—At the request of a swap counterparty who provides funds or other property to a swap dealer as variation or initial margin or collateral to

1 secure the obligations of the counterparty under a swap
2 between the counterparty and the swap dealer that is not
3 submitted for clearing to a derivatives clearing organiza-
4 tion, the swap dealer shall segregate the funds or other
5 property for the benefit of the counterparty, and maintain
6 the variation or initial margin or collateral in an account
7 which is carried by an independent third-party custodian
8 and designated as a segregated account for the
9 counterparty, in accordance with such rules and regula-
10 tions as the Commission or Prudential Regulator may pre-
11 scribe. If a swap counterparty is a swap dealer or major
12 swap participant who owns more than 20 percent of, or
13 has more than 50 percent representation on the board of
14 directors of, a custodian, the custodian shall not be consid-
15 ered independent from the swap counterparties for pur-
16 poses of the preceding sentence. This subsection shall not
17 be interpreted to preclude commercial arrangements re-
18 garding the investment of the segregated funds or other
19 property and the related allocation of gains and losses re-
20 sulting from any such investment.

21 "(b) BACK OFFICE AUDIT REPORTING.—If a swap
22 dealer does not segregate funds at the request of a swap
23 counterparty in accordance with subsection (a), the swap
24 dealer shall report to its counterparty on a quarterly basis
25 that its back office procedures relating to margin and col-

lateral requirements are in compliance with the agreement of the counterparties.''.

SEC. 3109. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

''(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

''(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

''(2) address such other issues as the Commission determines appropriate.''.

SEC. 3110. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:

"SEC. 5h. SWAP EXECUTION FACILITIES.

"(a) REGISTRATION.—

"(1) IN GENERAL.—

"(A) No person may operate a swap execution facility unless the facility is registered under this section.

"(B) The term 'swap execution facility' means an entity that facilitates the execution of swaps between two persons through any means of interstate commerce but which is not a designated contract market.

"(2) DUAL REGISTRATION.—Any person that is required to be registered as a swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as a swap execution facility.

"(b) REQUIREMENTS FOR TRADING.—A swap execution facility that is registered under subsection (a) may trade any swap.

"(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution fa-

1 cility and uses the same electronic trade execution system
2 for trading on the contract market and the swap execution
3 facility, identify whether the electronic trading is taking
4 place on the contract market or the swap execution facil-
5 ity.

6 "(d) CRITERIA FOR REGISTRATION.—

7 "(1) IN GENERAL.—To be registered as a swap
8 execution facility, the facility shall be required to
9 demonstrate to the Commission that it meets the
10 criteria specified herein.

11 "(2) DETERRENCE OF ABUSES.—The swap exe-
12 cution facility shall establish and enforce trading
13 and participation rules that will deter abuses and
14 have the capacity to detect, investigate, and enforce
15 those rules, including means to—

16 "(A) obtain information necessary to per-
17 form the functions required under this section;
18 or

19 "(B) use means to—

20 "(i) provide market participants with
21 impartial access to the market; and

22 "(ii) capture information that may be
23 used in establishing whether rule violations
24 have occurred.

1 "(3) TRADING PROCEDURES.—The swap execu-
2 tion facility shall establish and enforce rules or
3 terms and conditions defining, or specifications de-
4 tailing, trading procedures to be used in entering
5 and executing orders traded on or through its facili-
6 ties.
7 "(4) FINANCIAL INTEGRITY OF TRANS-
8 ACTIONS.—The swap execution facility shall estab-
9 lish and enforce rules and procedures for ensuring
10 the financial integrity of swaps entered on or
11 through its facilities, including the clearance and
12 settlement of the swaps pursuant to section 2(j)(1).
13 "(e) CORE PRINCIPLES FOR SWAP EXECUTION FA-
14 CILITIES.—
15 "(1) IN GENERAL.—To maintain its registra-
16 tion as a swap execution facility, the facility shall
17 comply with the core principles specified in this sub-
18 section and any requirement that the Commission
19 may impose by rule or regulation pursuant to section
20 8a(5). Except where the Commission determines
21 otherwise by rule or regulation, the facility shall
22 have reasonable discretion in establishing the man-
23 ner in which it complies with these core principles.
24 "(2) COMPLIANCE WITH RULES.—The swap
25 execution facility shall monitor and enforce compli-

ance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility.

"(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING.—The swap execution facility shall monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

"(B) provide the information to the Commission upon request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

"(7) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

"(8) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The swap execution

1 facility shall, upon request, make available to the Se-
2 curities and Exchange Commission all information
3 (including information on a real-time basis) relating
4 to transactions in security-based swap agreements
5 (as defined in section 3(a)(76) of the Securities Ex-
6 change Act of 1934). The Commission shall adopt
7 data collection and reporting requirements for swap
8 execution facilities that are comparable to cor-
9 responding requirements for derivatives clearing or-
10 ganizations and swap repositories.

11 ''(9) ANTITRUST CONSIDERATIONS.—Unless
12 necessary or appropriate to achieve the purposes of
13 this Act, the swap execution facility shall avoid—

14 ''(A) adopting any rules or taking any ac-
15 tions that result in any unreasonable restraints
16 of trade; or

17 ''(B) imposing any material anticompeti-
18 tive burden on trading on the swap execution
19 facility.

20 ''(10) CONFLICTS OF INTEREST.—

21 ''(A) The swap execution facility shall es-
22 tablish and enforce rules to minimize conflicts
23 of interest in its decision-making process, and
24 establish a process for resolving any such con-
25 flicts of interest.

"(B) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.

"(C) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.

"(11) DESIGNATION OF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

"(B) DUTIES.—The compliance officer shall—

"(i) report directly to the board or to the senior officer of the facility;

"(ii) shall—

1 "(I) review compliance with the
2 core principles in this subsection;
3 "(II) in consultation with the
4 board of the facility, a body per-
5 forming a function similar to that of
6 a board, or the senior officer of the
7 facility, resolve any conflicts of inter-
8 est that may arise;
9 "(III) be responsible for admin-
10 istering the policies and procedures
11 required to be established pursuant to
12 this section; and
13 "(IV) ensure compliance with
14 commodity laws and the rules and
15 regulations issued thereunder, includ-
16 ing rules prescribed by the Commis-
17 sion pursuant to this section; and
18 "(iii) establish procedures for remedi-
19 ation of non-compliance issues found dur-
20 ing compliance office reviews, lookbacks,
21 internal or external audit findings, self-re-
22 ported errors, or through validated com-
23 plaints. Procedures will establish the han-
24 dling, management response, remediation,

1 re-testing, and closing of non-compliant
2 issues.
3 "(C) ANNUAL REPORTS REQUIRED.—The
4 compliance officer shall annually prepare and
5 sign a report on the compliance of the facility
6 with the commodity laws and its policies and
7 procedures, including its code of ethics and con-
8 flict of interest policies, in accordance with
9 rules prescribed by the Commission. Such com-
10 pliance report shall accompany the financial re-
11 ports of the facility that are required to be fur-
12 nished to the Commission pursuant to this sec-
13 tion and shall include a certification that, under
14 penalty of law, the report is accurate and com-
15 plete.
16 "(f) EXEMPTIONS.—The Commission may exempt,
17 conditionally or unconditionally, a swap execution facility
18 from registration under this section if the Commission
19 finds that such facility is subject to comparable, com-
20 prehensive supervision and regulation on a consolidated
21 basis by the Securities and Exchange Commission, a Pru-
22 dential Regulator or the appropriate governmental au-
23 thorities in the organization's home country.
24 "(g) HARMONIZATION OF RULES.—Within 180 days
25 of the enactment of the Over-the-Counter Derivatives

Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly prescribe rules governing the regulation of swap execution facilities under this section and section 3B of the Securities Exchange Act of 1934 (15 U.S.C. 78c–2).''.

SEC. 3111. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7 and 7a-3) are repealed.

SEC. 3112. DESIGNATED CONTRACT MARKETS.

(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraph (9) and inserting the following:

''(9) EXECUTION OF TRANSACTIONS.—

''(A) The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the board of trade's centralized market.

''(B) The rules may authorize, for bona fide business purposes—

''(i) transfer trades or office trades;

''(ii) an exchange of—

''(I) futures in connection with a cash commodity transaction;

"(II) futures for cash commodities; or

"(III) futures for swaps; or

"(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.".

(b) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraph (15) and inserting the following:

"(15) CONFLICTS OF INTEREST.—

"(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.

"(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a

controlling interest in the board of trade, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.

"(C) The rules of a board of trade that trades swaps shall provide that a majority of the directors of the board of trade shall not be associated with a restricted owner.".

(c) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by adding after paragraph (18) the following:

"(19) FINANCIAL RESOURCES.—The board of trade shall demonstrate that it has adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the board of trade's financial resources to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of one year, calculated on a rolling basis.

"(20) SYSTEM SAFEGUARDS.—The board of trade shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and mini-

mize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade's responsibilities and obligations; and

"(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.".

SEC. 3113. POSITION LIMITS.

(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

(1) inserting "(1)" after "(a)";

(2) striking "on electronic trading facilities with respect to a significant price discovery contract" in the first sentence and inserting "swaps that perform

or affect a significant price discovery function with respect to regulated markets''; (3) inserting '', including any group or class of traders,'' in the second sentence after ''held by any person''; (4) striking ''on an electronic trading facility with respect to a significant price discovery contract,'' in the second sentence and inserting ''swaps that perform or affect a significant price discovery function with respect to regulated markets,''; and (5) inserting at the end the following:

''(2) AGGREGATE POSITION LIMITS.—The Commission may, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

''(A) contracts listed by designated contract markets;

''(B) contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct

access to its electronic trading and order matching system; and

"(C) swap contracts that perform or affect a significant price discovery function with respect to regulated markets.

"(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

"(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

"(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or exe-

1 cuting trades in the swaps on a frequent and
2 recurring basis.
3 "(C) MATERIAL PRICE REFERENCE.—The
4 extent to which, on a frequent and recurring
5 basis, bids, offers, or transactions in a contract
6 traded on a regulated market are directly based
7 on, or are determined by referencing, the price
8 generated by the swap.
9 "(D) MATERIAL LIQUIDITY.—The extent
10 to which the volume of swaps being traded in
11 the commodity is sufficient to have a material
12 effect on another contract traded on a regulated
13 market.
14 "(E) OTHER MATERIAL FACTORS.—Such
15 other material factors as the Commission speci-
16 fies by rule or regulation as relevant to deter-
17 mine whether a swap serves a significant price
18 discovery function with respect to a regulated
19 market.
20 "(4) EXEMPTIONS.—The Commission, by rule,
21 regulation, or order, may exempt, conditionally or
22 unconditionally, any person or class of persons, any
23 swap or class of swaps, or any transaction or class
24 of transactions from any requirement it may estab-

lish under this section with respect to position limits.''.

(b) Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking ''or derivatives transaction execution facility or facilities or electronic trading facility'' and inserting ''or swap execution facility or facilities''; and

(2) in paragraph (2), by striking ''or derivatives transaction execution facility or electronic trading facility'' and inserting ''or swap execution facility''.

SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5(d)(1) of the Commodity Exchange Act (7 U.S.C. 7(d)(1)) is amended by striking ''The board of trade shall have'' and inserting ''Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the board of trade shall have''.

(b) Section 5c(c) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)) is amended to read as follows:

''(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—

''(1) IN GENERAL.—Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instru-

ment, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

"(2) PRIOR APPROVAL.—

"(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

"(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval under subparagraph (A) each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity (or any option thereon) traded through its facilities if

the rule amendment applies to contracts and delivery months which have already been listed for trading and for which there is open interest.

"(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

"(3) APPROVAL.—The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.".

SEC. 3115. FOREIGN BOARDS OF TRADE.

(a) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended by striking "No rule or regulation" and inserting "Except as provided in paragraphs (1) and (2), no rule or regulation".

(b) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is further amended by inserting before "The Commission" the following: "(1) The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the

members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, 'direct access' refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

''(2) It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

''(A) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the

agreement, contract, or transaction traded on the foreign board of trade settles; and

"(B) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

"(i) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

"(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

"(iii) agrees to promptly notify the Commission, with regard to the agreement, contract,

or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

"(I) the information that the foreign board of trade will make publicly available;

"(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

"(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

"(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

"(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

"(3) Paragraphs (1) and (2) shall not be effective with respect to any foreign board of trade to which the Commission has granted direct access permission before the date of the enactment of this subsection until the date that is 180 days after such date of enactment.

"(4)".

(c) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

(1) Section 4(a) of the Commodity Exchange Act (7. U.S.C. 6(a)) is amended by inserting "or by subsection (f)" after "Unless exempted by the Commission pursuant to subsection (c)"; and

(2) Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is further amended by adding at the end the following:

"(f) A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with subsections (b)(1) and (b)(2).".

(d) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

"(5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.".

SEC. 3116. LEGAL CERTAINTY FOR SWAPS.

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:

"(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

"(A) No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to such hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.

"(B) No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party thereto shall be entitled to rescind, or recover any payment made with respect to, such agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the definition of a swap set forth

in section 1a or to be cleared pursuant to section 2(j)(1).''.

SEC. 3117. MULTILATERAL CLEARING ORGANIZATIONS.

(a) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended by striking ''section 2(c), 2(d), 2(f), or 2(g) of such Act, or exempted under section 2(h) or 4(c) of such Act'' and inserting ''section 2(c) or 2(f) of such Act''.

(b) Section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421) is further amended by inserting at the end the following:

''(4) The term 'over-the-counter derivative instrument' does not include a swap or a security-based swap as defined in sections 1a(35) and 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(35) and 1a(38)).''.

SEC. 3118. PRIMARY ENFORCEMENT AUTHORITY.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding the following new section after section 4b:

''SEC. 4b–1. PRIMARY ENFORCEMENT AUTHORITY.

''(a) CFTC.—Except as provided in subsections (b), (c), and (d), the Commission shall have primary authority to enforce the provisions of Subtitle A of the Over-the-

1 Counter Derivatives Markets Act of 2009 with respect to
2 any person.

3 "(b) PRUDENTIAL REGULATORS.—The Prudential
4 Regulators shall have exclusive authority to enforce the
5 provisions of section 4s(e) and other prudential require-
6 ments of this Act with respect to banks, and branches or
7 agencies of foreign banks that are swap dealers or major
8 swap participants.

9 "(c) REFERRAL.—If the Prudential Regulator for a
10 swap dealer or major swap participant has cause to believe
11 that such swap dealer or major swap participant may have
12 engaged in conduct that constitutes a violation of the non-
13 prudential requirements of section 4s or rules adopted by
14 the Commission thereunder, that Prudential Regulator
15 may recommend in writing to the Commission that the
16 Commission initiate an enforcement proceeding as author-
17 ized under this Act. The recommendation shall be accom-
18 panied by a written explanation of the concerns giving rise
19 to the recommendation.

20 "(d) BACKSTOP ENFORCEMENT AUTHORITY.—If the
21 Commission does not initiate an enforcement proceeding
22 before the end of the 90-day period beginning on the date
23 on which the Commission receives a recommendation
24 under subsection (c), the Prudential Regulator may ini-

tiate an enforcement proceeding as permitted under Federal law.''.

SEC. 3119. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking ''or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(b) Section 4b(b) of the Commodity Exchange Act (7 U.S.C. 6b(b)) is amended by striking ''or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(c) Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by inserting ''or swap'' before ''if the transaction is used or may be used''.

(d) Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by inserting ''or of any swap,'' before ''or to corner''.

(e) Section 9(a)(4) of the Commodity Exchange Act (7 U.S.C. 13(a)(4)) is amended by inserting ''swap repository,'' before ''or futures association''.

(f) Section 9(e)(1) of the Commodity Exchange Act (7 U.S.C. 13(e)(1)) is amended by inserting ''swap repository,'' before ''or registered futures association'' and by inserting '', or swaps,'' before ''on the basis''.

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and by inserting after paragraph (5) the following:

"(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository or swap execution facility, whether or not it is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or Prudential Regulator for purposes of the Over-the-Counter Derivatives Markets Act of 2009.".

SEC. 3120. RETAIL COMMODITY TRANSACTIONS.

Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking "(to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))" and inserting ", 5b, or 12(e)(2)(B))";

(2) in paragraph (2), by inserting after subparagraph (C) the following:

"(D) RETAIL COMMODITY TRANSACTIONS.—

"(i) This subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

"(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

"(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

"(ii) Clause (i) shall not apply to—

"(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

"(II) any security;

"(III) a contract of sale that—

"(aa) results in actual delivery within 28 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

"(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business;

"(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

"(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

"(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

"(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

"(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products.

"(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligi-

ble commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.''.

SEC. 3121. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4t (as added by section 3108) the following:

''SEC. 4u. LARGE SWAP TRADER REPORTING.

''(a) It shall be unlawful for any person to enter into any swap that performs or affects a significant price discovery function with respect to regulated markets if—

''(1) such person shall directly or indirectly enter into such swaps during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

''(2) such person shall directly or indirectly have or obtain a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, in accordance with the rules

and regulations of the Commission, such person shall keep books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

''(b) Such books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

''(c) Such books and records shall be open at all times to inspection and examination by any representative of the Commission.

''(d) Any such books and records relating to transactions in security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act of 1934) shall be open at all times to inspection and examination by the Securities and Exchange Commission.

''(e) For the purpose of this section, the swaps, futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

''(f) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).''.

SEC. 3122. AUTHORITY TO BAN ABUSIVE SWAPS.

The Commodity Futures Trading Commission and the Securities and Exchange Commission may, by rule or order, jointly collect information as may be necessary concerning the markets for any types of swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of the such Act) and jointly issue a report with respect to any types of swaps or security-based swaps which the Commodity Futures Trading Commission and the Securities and Exchange Commission find are detrimental to the stability of a financial market or of participants in a financial market.

SEC. 3123. INTERNATIONAL HARMONIZATION.

In order to promote effective and consistent global regulation of swaps, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Prudential Regulators (as defined in section 1a(43) of the Commodity Exchange Act), and the financial stability regulator, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of swaps, and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors and swap counterparties.

SEC. 3124. AUTHORITY TO BAN ACCESS TO THE UNITED STATES FINANCIAL SYSTEM.

If the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the U.S. financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in that country from participating in the United States in any swap or security-based swap activities.

SEC. 3125. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3126. ANTITRUST.

Nothing in the amendments made by this title shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term ''antitrust laws'' has the same meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

SEC. 3127. EFFECTIVE DATE.

This subtitle is effective 270 days after the date of enactment.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 3201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (5)(A) and (B), by inserting ''(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)'' after ''securities'' in each place it appears;

(2) in paragraph (10) by inserting ''security-based swaps'' after ''security future,''

(3) in paragraph (13), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(4) in paragraph (14), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its sched-

uled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(5) in paragraph (39)—

(A) by striking ''or government securities dealer'' and inserting ''government securities dealer, security-based swap dealer or major security-based swap participant'' in subparagraph (B)(i)(I);

(B) by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,'' in subparagraph (B)(i)(II);

(C) by striking ''or government securities dealer'' and inserting ''government securities dealer, security-based swap dealer or major security-based swap participant'' in subparagraph (C); and

(D) by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,'' in subparagraph (D); and

(6) by adding at the end the following:

"(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).

"(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

"(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'major security-based swap participant' has the same meaning as in section 1a(41) of the Commodity Exchange Act (7 U.S.C. 1a(41)).

"(68) SECURITY-BASED SWAP.—The term 'security-based swap' has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

"(69) SWAP.—The term 'swap' has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

"(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based

swap participant' has the same meaning as in section 1a(48) of the Commodity Exchange Act (7 U.S.C. 1a(48)).

"(71) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C. 1a(44)).

"(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(73) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

"(74) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' has the same meaning as in section 1a(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

"(75) SWAP DEALER.—The term 'swap dealer' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

"(76) SECURITY-BASED SWAP AGREEMENT.—

"(A) IN GENERAL.—For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term 'security-based swap

agreement' means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

"(B) EXCLUSIONS.—The term 'security-based swap agreement' does not include any security-based swap.

"(77) RESTRICTED OWNER.—The term 'restricted owner' has the same meaning as in section 1a(51) of the Commodity Exchange Act.".

SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.

(a) REPEAL OF LAW.—Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b–1) is amended by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that such term appears.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting ''(including security-based swaps)'' after ''securities''; and

(ii) by striking ''206B of the Gramm-Leach-Bliley Act'' and inserting ''3(a)(76) of the Securities Exchange Act of 1934''; and

(B) in subsection (d), by striking ''206B of the Gramm-Leach-Bliley Act'' and inserting ''3(a)(76) of the Securities Exchange Act of 1934''.

(c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

(1) Section 3A (15 U.S.C. 78c–1) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that the term appears.

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

''(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent

1 active trading in such security, or raising or depressing
2 the price of such security, for the purpose of inducing the
3 purchase or sale of such security by others.

4 "(3) If a dealer, broker, security-based swap dealer,
5 major security-based swap participant or other person sell-
6 ing or offering for sale or purchasing or offering to pur-
7 chase the security, or a security-based swap or security-
8 based swap agreement with respect to such security, to
9 induce the purchase or sale of any security registered on
10 a national securities exchange or any security-based swap
11 or security-based swap agreement with respect to such se-
12 curity by the circulation or dissemination in the ordinary
13 course of business of information to the effect that the
14 price of any such security will or is likely to rise or fall
15 because of market operations of any one or more persons
16 conducted for the purpose of raising or depressing the
17 price of such security.

18 "(4) If a dealer, broker, security-based swap dealer,
19 major security-based swap participant or other person sell-
20 ing or offering for sale or purchasing or offering to pur-
21 chase the security, or a security-based swap or security-
22 based swap agreement with respect to such security, to
23 make, regarding any security registered on a national se-
24 curities exchange or any security-based swap or security-
25 based swap agreement with respect to such security, for

the purpose of inducing the purchase or sale of such security or such security-based swap or security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

''(5) For a consideration, received directly or indirectly from a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.''.

(3) Section 9(i) (15 U.S.C. 78i(i)) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(4) Section 10 (15 U.S.C. 78j) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that the term appears.

(5) Section 15(c)(1) is amended—

(A) in subparagraph (A), by striking '', or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),''; and

(B) in subparagraphs (B) and (C), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' in each place that the term appears.

(6) Section 15(i) (15 U.S.C. 78o(i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455) is amended by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''.

(7) Section 16 (15 U.S.C. 78p) is amended—

(A) in subsection (a)(2)(C), by striking ''(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))'';

(B) in subsection (b), by striking ''(as defined in section 206B of the Gramm-Leach-Bli-

ley Act)'' in each place that the term appears; and

(C) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(8) Section 20 (15 U.S.C. 78t) is amended—

(A) in subsection (d), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (f), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(9) Section 21A (15 U.S.C. 78u–1) is amended—

(A) in subsection (a)(1), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''.

SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)

is amended by adding the following section after section 3A:

"SEC. 3B. CLEARING OF SECURITY-BASED SWAPS.

"(a) CLEARING REQUIREMENT.—

"(1) IN GENERAL.—

"(A) PRESUMPTION OF CLEARING.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing;

"(B) OPEN ACCESS.—The rules of a clearing agency described in subparagraph (A) shall—

"(i) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are fungible and may be offset with each other; and

"(ii) provide for non-discriminatory clearing of a security-based swap executed on or through the rules of an unaffiliated exchange or alternative swap execution facility.

"(2) COMMISSION APPROVAL.—

"(A) IN GENERAL.—A clearing agency shall submit to the Commission for prior approval each security-based swap, or any group, category, type or class of security-based swaps, that it seeks to accept for clearing, which submission the Commission shall make available to the public.

"(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the clearing agency submitting the request agrees to an extension of the time limitation established under this subparagraph. A request on which the Commission fails to take final action within the time limitation established under this subparagraph shall be deemed approved.

"(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if it finds that the request is consistent with the core principles specified under subsection (l).

1 "(D) RULES.—Not later than 180 days
2 after the date of enactment of the Over-the-
3 Counter Derivatives Markets Act of 2009, the
4 Commission shall adopt rules for a clearing
5 agency's submission for approval, pursuant to
6 this paragraph, of a security-based swap, or a
7 group, category, type or class of security-based
8 swaps, that it seeks to accept for clearing.
9 "(3) STAY OF CLEARING REQUIREMENT.—At
10 any time after issuance of an approval pursuant to
11 paragraph (2)—
12 "(A) REVIEW PROCESS.—The Commission,
13 on application of a counterparty to a security-
14 based swap or on its own initiative, may stay
15 the clearing requirement of paragraph (1) until
16 the Commission completes a review of the terms
17 of the security-based swap (or the group, cat-
18 egory, type or class of security-based swaps)
19 and the clearing arrangement.
20 "(B) DEADLINE.—The Commission shall
21 complete a review undertaken pursuant to sub-
22 paragraph (A) not later than 90 days after
23 issuance of the stay, unless the clearing agency
24 that clears the security-based swap, or group,
25 category, type or class of security-based swaps,

agrees to an extension of the time limitation established under this subparagraph.

"(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

"(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with the securities laws; or

"(ii) determine that the clearing requirement of paragraph (1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

"(D) RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a clearing agency's clearing of a security-based swap, or a group,

1 category, type or class of security-based swaps,
2 that it has accepted for clearing.
3 "(4) PREVENTION OF EVASION.—The Commis-
4 sion and the Commodities Futures Trading Commis-
5 sion shall have authority to prescribe rules under
6 this section, or issue interpretations of such rules, as
7 necessary to prevent evasions of this Act. Any such
8 rules or interpretations of rules shall be prescribed
9 and issued jointly by both Commissions.
10 "(5) REQUIRED REPORTING.—
11 "(A) IN GENERAL.—Any security-based
12 swap that is not accepted for clearing by any
13 clearing agency shall be reported to either a se-
14 curity-based swap repository described in sec-
15 tion 13(n) or, if there is no repository that
16 would accept the security-based swap, to the
17 Commission pursuant to section 13A within
18 such time period as the Commission may by
19 rule prescribe.
20 "(B) REPORTING BY SECURITY-BASED
21 SWAP DEALERS AND MAJOR SECURITY-BASED
22 SWAP PARTICIPANTS.—In transactions where
23 only 1 counterparty is a security-based swap
24 dealer or major security-based swap participant,
25 the security-based swap dealer or major secu-

rity-based swap participant shall report the transaction. In transactions where neither counterparty is a security-based swap dealer or major security-based swap participant, only 1 counterparty shall be required to report the transaction and the counterparties shall determine the reporting party by contract or otherwise.

"(6) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(A) Security-based swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of such Act.

"(B) Security-based swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than the later of—

"(i) 90 days after the effective date of such Act; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(7) EXCEPTION.—The requirements of paragraph (1) shall not apply to a security-based swap if—

"(A) no clearing agency registered under this Act will accept the security-based swap for clearing; or

"(B) one of the counterparties to the security-based swap is not a security-based swap dealer or major security-based swap participant.

"(8) EXCLUSION.—Paragraph (1) shall not apply to a security-based swap one party to which is not a security-based swap dealer or major security-based swap participant, and which is entered into before the end of the 180-day period that begins with the effective date of this paragraph.

"(b) CONSULTATION.—The Commission and the Commodity Futures Trading Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section.".

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsections:

''(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a swap.

''(h) VOLUNTARY REGISTRATION.—

''(1) CLEARING AGENCIES.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a clearing agency.

''(2) DERIVATIVES CLEARING ORGANIZATIONS.—A clearing agency may clear swaps that are required to be cleared by a person who is registered as a derivatives clearing organization under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

''(i) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is required to be registered as a clearing agency under this section shall register with the Commission regardless of whether the person is also a bank or a derivatives clearing organization

1 registered with the Commodity Futures Trading Commis-
2 sion under the Commodity Exchange Act (7 U.S.C. 1, et
3 seq.).

4 "(j) REPORTING.—

5 "(1) IN GENERAL.—A clearing agency that
6 clears security-based swaps shall provide to the
7 Commission and any designated swap repository all
8 information determined by the Commission to be
9 necessary to perform its responsibilities under this
10 Act. The Commission shall adopt data collection and
11 maintenance requirements for security-based swaps
12 cleared by clearing agencies that are comparable to
13 the corresponding requirements for security-based
14 swaps accepted by security-based swap repositories
15 and security-based swaps traded on swap execution
16 facilities. The Commission shall share such informa-
17 tion, upon request, with the Board, the Commodity
18 Futures Trading Commission, the appropriate Fed-
19 eral banking agencies, the Financial Services Over-
20 sight Council, and the Department of Justice or to
21 other persons the Commission deems appropriate,
22 including foreign financial supervisors (including for-
23 eign futures authorities), foreign central banks, and
24 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 "(k) 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 "(A) report directly to the board or to the
14 senior officer of the clearing agency;
15 "(B) in consultation with the board of the
16 clearing agency, a body performing a function
17 similar to that of a board, or the senior officer
18 of the clearing agency, resolve any conflicts of
19 interest that may arise;
20 "(C) be responsible for administering the
21 policies and procedures required to be estab-
22 lished pursuant to this section;
23 "(D) ensure compliance with securities
24 laws and the rules and regulations issued there-

1 under, including rules prescribed by the Com-
2 mission pursuant to this section; and
3 "(E) establish procedures for remediation
4 of noncompliance issues found during compli-
5 ance office reviews, lookbacks, internal or exter-
6 nal audit findings, self-reported errors, or
7 through validated complaints which will estab-
8 lish the handling, management response, reme-
9 diation, retesting, and closing of noncompliance
10 issues.
11 "(3) ANNUAL REPORTS REQUIRED.—The com-
12 pliance officer shall annually prepare and sign a re-
13 port on the compliance of the clearing agency with
14 the securities laws and its policies and procedures,
15 including its code of ethics and conflict of interest
16 policies, in accordance with rules prescribed by the
17 Commission. Such compliance report shall accom-
18 pany the financial reports of the clearing agency
19 that are required to be furnished to the Commission
20 pursuant to this section and shall include a certifi-
21 cation that, under penalty of law, the report is accu-
22 rate and complete.
23 "(l) STANDARDS FOR CLEARING AGENCIES CLEAR-
24 ING SWAP TRANSACTIONS.—To be registered and to main-
25 tain registration as a clearing agency that clears swap

1 transactions, a clearing agency shall comply with such
2 standards as the Commission may establish by rule. In
3 establishing any such standards, and in the exercise of its
4 oversight of such a clearing agency pursuant to this title,
5 the Commission may conform such standards or oversight
6 to reflect evolving United States and international stand-
7 ards. Except where the Commission determines otherwise
8 by rule or regulation, a clearing agency shall have reason-
9 able discretion in establishing the manner in which it com-
10 plies with any such standards.

11 ''(m) CONSULTATION.—The Commission and the
12 Commodity Futures Trading Commission shall consult
13 with the appropriate Federal banking agencies and each
14 other prior to adopting rules under this section.

15 ''(n) HARMONIZATION OF RULES.—Not later than
16 180 days after the effective date of the Over-the-Counter
17 Derivatives Markets Act of 2009, the Commission and the
18 Commodity Futures Trading Commission shall jointly
19 adopt uniform rules governing persons that are registered
20 as derivatives clearing organizations for swaps under the
21 Commodity Exchange Act (7 U.S.C. 1, et seq.) and per-
22 sons that are registered as clearing agencies for security-
23 based swaps under the Securities Exchange Act of 1934
24 (15 U.S.C. 78a, et seq.).''.

(c) EXECUTION OF SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 5 the following:

"SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.

"(a) TRADE EXECUTION.—

"(1) IN GENERAL.—With respect to transactions involving security-based swaps subject to the clearing requirement of section 3B and where both counterparties are either security-based swap dealers or major security-based swap participants, such counterparties shall—

"(A) execute the transaction on a national securities exchange registered pursuant to section 6(a) (in which event such transaction shall be subject to regulation under this title as a transaction in a security); or

"(B) execute the transaction on a swap execution facility registered with the Commission.

"(2) EXCEPTION.—The requirements of subparagraphs (A) or (B) of paragraph (1) shall not apply if no board of trade or swap execution facility makes the swap available to trade.

"(3) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no facility that

makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to security-based swaps subject to the requirements of section 3B and where both counterparties are either security-based swap dealers or major security-based swap participants.

''(b) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on national securities exchanges or swap execution facilities, agreements or transactions that would be commodity swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.''.

(d) SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3B (as added by subsection (a)) the following:

''SEC. 3C. SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—

''(1) IN GENERAL.—

''(A) No person may operate a swap execution facility unless such facility is registered under this section.

1 "(B) For purposes of this section, the term
2 'swap execution facility' means an entity that
3 facilitates the execution of swaps between 2
4 persons through any means of interstate com-
5 merce but which is not a designated contract
6 market.
7 "(2) DUAL REGISTRATION.—Any person that is
8 required to be registered as a swap execution facility
9 under this section shall register with the Commis-
10 sion regardless of whether that person also is reg-
11 istered with the Commodity Futures Trading Com-
12 mission as a swap execution facility.
13 "(b) REQUIREMENTS FOR TRADING.—A swap execu-
14 tion facility that is registered under subsection (a) may
15 trade any security-based swap.
16 "(c) TRADING BY EXCHANGES.—An exchange shall,
17 to the extent that the exchange also operates a swap exe-
18 cution facility and uses the same electronic trade execution
19 system for trading on the exchange and the swap execu-
20 tion facility, identify whether the electronic trading is tak-
21 ing place on the exchange or the swap execution facility.
22 "(d) CRITERIA FOR REGISTRATION.—
23 "(1) IN GENERAL.—To be registered as a swap
24 execution facility, the facility shall be required to

1 demonstrate to the Commission that it meets the
2 criteria specified herein.
3 ''(2) DETERRENCE OF ABUSES.—The swap exe-
4 cution facility shall establish and enforce trading
5 and participation rules that will deter abuses and
6 have the capacity to detect, investigate, and enforce
7 those rules, including means to—
8 ''(A) obtain information necessary to per-
9 form the functions required under this section;
10 or
11 ''(B) use 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 rule violations
16 have occurred.
17 ''(3) TRADING PROCEDURES.—The swap execu-
18 tion facility shall establish and enforce rules or
19 terms and conditions defining, or specifications de-
20 tailing, trading procedures to be used in entering
21 and executing orders traded on or through its facili-
22 ties.
23 ''(4) FINANCIAL INTEGRITY OF TRANS-
24 ACTIONS.—The swap execution facility shall estab-
25 lish and enforce rules and procedures for ensuring

the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps.

"(e) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

"(1) IN GENERAL.—To maintain its registration as a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation. Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

"(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the security-based swaps traded on or through the facility and any limitations on access to the facility.

"(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING.—The swap execution facility shall monitor trading in security-based swaps to prevent manipulation and price distortion through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

"(B) provide the information to the Commission upon request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

"(7) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission.

"(8) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

"(9) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall avoid—

"(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading on the swap execution facility.

"(10) CONFLICTS OF INTEREST.—

"(A) IN GENERAL.—The swap execution facility shall establish and enforce rules to minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

"(B) BENEFICIAL OWNERSHIP BY A RESTRICTED OWNER.—The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.

"(C) ASSOCIATION WITH A RESTRICTED OWNER.—The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.

1 "(11) DESIGNATION OF COMPLIANCE OFFI-
2 CER.—
3 "(A) IN GENERAL.—Each swap execution
4 facility shall designate an individual to serve as
5 a compliance officer.
6 "(B) DUTIES.—The compliance officer—
7 "(i) shall report directly to the board
8 or to the senior officer of the facility;
9 "(ii) shall—
10 "(I) review compliance with the
11 core principles in section 3B(e);
12 "(II) in consultation with the
13 board of the facility, a body per-
14 forming a function similar to that of
15 a board, or the senior officer of the
16 facility, resolve any conflicts of inter-
17 est that may arise;
18 "(III) be responsible for admin-
19 istering the policies and procedures
20 required to be established pursuant to
21 this section; and
22 "(IV) ensure compliance with se-
23 curities laws and the rules and regula-
24 tions issued thereunder, including

rules prescribed by the Commission pursuant to this section; and

"(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, retesting, and closing of non-compliant issues.

"(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

"(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility

from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

"(g) HARMONIZATION OF RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly prescribe rules governing the regulation of swap execution facilities under this section and section 5h of the Commodity Exchange Act (7 U.S.C. 7b–3).".

(e) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by subsection (b)) the following:

"SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.

"(a) SEGREGATION.—At the request of a counterparty to a security-based swap who provides funds or other property to a swap dealer as variation or initial margin or collateral to secure the obligations of the

1 counterparty under a security-based swap between the
2 counterparty and the swap dealer that is not submitted
3 for clearing to a derivatives clearing agency, the swap
4 dealer shall segregate the variation or initial margin or
5 collateral for the benefit of the counterparty, and maintain
6 the variation or initial margin or collateral in an account
7 which is carried by an independent third-party custodian
8 and designated as a segregated account for the
9 counterparty, in accordance with such rules and regula-
10 tions as the Commission or Prudential Regulator may pre-
11 scribe. If a securities-based swap counterparty is a swap
12 dealer or major securities-based swap participant who
13 owns more than 20 percent of, or has more than 50 per-
14 cent representation on the board of directors of, a custo-
15 dian, the custodian shall not be considered independent
16 from the securities-based swap counterparties for purposes
17 of the preceding sentence. This subsection shall not be in-
18 terpreted to preclude commercial arrangements regarding
19 the investment of the segregated funds or other property
20 and the related allocation of gains and losses resulting
21 from any such investment.

22 "(b) BACK OFFICE AUDIT REPORTING.—If a secu-
23 rity-based swap dealer does not segregate funds at the re-
24 quest of a security-based swap counterparty in accordance
25 with subsection (a), the security-based swap dealer shall

report to its counterparty on a quarterly basis that its back office procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.''.

(f) TRADING IN SECURITY-BASED SWAP AGREEMENTS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(l) It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).''.

(g) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read as follows:

''(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; (B) any security futures product on the security; or

(C) any security-based swap involving the security or the issuer of the security;

''(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product; or (C) such security-based swap; or

''(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in (A) any such put, call, straddle, option, or privilege; (B) such security futures product with relation to such security; or (C) any security-based swap involving such security or the issuer of such security.''.

(h) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS AND SECURITY-BASED SWAP AGREEMENTS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

''(j) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction

in, or to induce or attempt to induce the purchase or sale of, any security-based swap or any security-based swap agreement, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.''.

(i) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is further amended by inserting after section 10B (15 U.S.C. 78j–1) (as added by section 2003(a)) the following new section:

''SEC. 10C. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

''(a) POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provi-

sions) on the size of positions in any security-based swap or security-based swap agreement that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

"(1) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any security-based swap agreement and any other instrument relating to such security or loan or group or index of securities or loans; or

"(2) any security-based swap and (A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in section 3(a)(76) and (B) any security-based swap and any other instrument relating to the same security or group or index of securities.

"(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction

1 or class of transactions from any requirement it may es-
2 tablish under this section with respect to position limits.
3 "(c) SRO RULES.—
4 "(1) IN GENERAL.—As a means reasonably de-
5 signed to prevent fraud or manipulation, the Com-
6 mission, by rule, regulation, or order, as necessary
7 or appropriate in the public interest, for the protec-
8 tion of investors, or otherwise in furtherance of the
9 purposes of this title, may direct a self-regulatory
10 organization—
11 "(A) to adopt rules regarding the size of
12 positions in any security-based swap that may
13 be held by—
14 "(i) any member of such self-regu-
15 latory organization; or
16 "(ii) any person for whom a member
17 of such self-regulatory organization effects
18 transactions in such security-based swap or
19 other security-based swap agreement; and
20 "(B) to adopt rules reasonably designed to
21 ensure compliance with requirements prescribed
22 by the Commission under subparagraph (A).
23 "(2) REQUIREMENT TO AGGREGATE POSI-
24 TIONS.—In establishing such limits, the self-regu-

latory organization may require such member or person to aggregate positions in—

"(A) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any security-based swap agreement and any other instrument relating to such security or loan or group or index of securities or loans; or

"(B)(i) any security-based swap;

"(ii) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in section 3(a)(76); and

"(iii) any security-based swap and any other instrument relating to the same security or group or index of securities.

"(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or security-based swap agreement and any security or loan or group

or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or security-based swap agreement and any security or loan or group or index of securities or loans and any other instrument relating to such security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a).''.

(j) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

''(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

''(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a

1 security-based swap repository to carry out the pub-
2 lic reporting described in paragraph (1).
3 "(3) SOURCES OF INFORMATION.—The sources
4 of the information to be publicly reported as de-
5 scribed in paragraph (1) are—
6 "(A) clearing agencies pursuant to section
7 3A;
8 "(B) security-based swap repositories pur-
9 suant to subsection (n); and
10 "(C) reports received by the Commission
11 pursuant to section 13A.
12 "(n) SECURITY-BASED SWAP REPOSITORIES.—
13 "(1) REGISTRATION REQUIREMENT.—
14 "(A) IN GENERAL.—It shall be unlawful
15 for a security-based swap repository, unless reg-
16 istered with the Commission, directly or indi-
17 rectly to make use of the mails or any means
18 or instrumentality of interstate commerce to
19 perform the functions of a security-based swap
20 repository.
21 "(B) INSPECTION AND EXAMINATION.—
22 Registered security-based swap repositories
23 shall be subject to inspection and examination
24 by any representatives of the Commission.
25 "(2) STANDARD SETTING.—

"(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

"(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

"(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

"(3) DUTIES.—A security-based swap repository shall—

"(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

"(B) maintain such data in such form and manner and for such period as may be required by the Commission;

"(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined

by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

"(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a securities-based swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap repository.

"(5) HARMONIZATION OF RULES.—Not later than 180 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009,

the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as swap repositories under the Commodity Exchange Act (7 U.S.C. 1, et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

"(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.".

SEC. 3204. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 15E (15 U.S.C. 78o-7) the following:

"SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

"(a) REGISTRATION.—

"(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

"(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

"(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the

1 Commission such information pertaining to such
2 person's business as the 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 no 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 as security-based swap dealers or major secu-
22 rity-based swap participants under this Act and per-
23 sons that are registered as swap dealers or major
24 swap participants under the Commodity Exchange
25 Act (7 U.S.C. 1, et seq.).

"(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the Commodity Futures Trading Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on security-based swap dealers or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission and the Commodity Futures Trading Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

"(e) CAPITAL AND MARGIN REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

1 "(B) NONBANK SECURITY-BASED SWAP
2 DEALERS AND MAJOR SECURITY-BASED SWAP
3 PARTICIPANTS.—Each registered security-based
4 swap dealer and major security-based swap par-
5 ticipant for which there is not a Prudential
6 Regulator shall meet such minimum capital re-
7 quirements and minimum margin requirements
8 as the Commission and the Commodity Futures
9 Trading Commission shall by rule or regulation
10 jointly prescribe to help ensure the safety and
11 soundness of the security-based swap dealer or
12 major security-based swap participant.
13 "(2) JOINT RULES.—
14 "(A) BANK SECURITY-BASED SWAP DEAL-
15 ERS AND MAJOR SECURITY-BASED SWAP PAR-
16 TICIPANTS.—Within 180 days of the enactment
17 of the Over-the-Counter Derivatives Markets
18 Act of 2009, the Prudential Regulators, in con-
19 sultation with the Commission and the Com-
20 modity Futures Trading Commission, shall
21 jointly adopt rules imposing capital and margin
22 requirements under this subsection for security-
23 based swap dealers and major security-based
24 swap participants.

"(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the Prudential Regulators, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is no Prudential Regulator.

"(3) CAPITAL.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—In setting capital requirements under this subsection, the Prudential Regulators shall impose—

"(i) a capital requirement that is greater than zero for security-based swaps that are cleared by a clearing agency; and

"(ii) to offset the greater risk to the security-based swap dealer or major security-based swap participant and to the financial system arising from the use of se-

curity-based swaps that are not centrally cleared, higher capital requirements for security-based swaps that are not cleared by a clearing agency than for security-based swaps that are centrally cleared.

"(B) EXCLUSION.—Subparagraph (A) shall not apply to a security-based swap one party to which is not a security-based swap dealer or major security-based swap participant, and which is entered into before the end of the 90-day period that begins with the effective date of this subparagraph.

"(C) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

"(D) BANK HOLDING COMPANIES.—Capital requirements set by the Board for security-based swaps of bank holding companies on a consolidated basis shall be as strict as or strict-

1 er than the capital requirements set by the Pru-
2 dential Regulators under this subsection.
3 "(4) MARGIN.—
4 "(A) BANK SECURITY-BASED SWAP DEAL-
5 ERS AND MAJOR SECURITY-BASED SWAP PAR-
6 TICIPANTS.—The Prudential Regulators shall
7 impose margin requirements under this sub-
8 section on all security-based swaps that are not
9 cleared by a registered clearing agency.
10 "(B) NON-SWAP DEALERS AND MAJOR
11 MARKET PARTICIPANTS.—The Prudential Regu-
12 lators may, but are not required to, impose
13 margin requirements with respect to security-
14 based swaps in which one of the counterparties
15 is not a swap dealer, major swap participant,
16 security-based swap dealer or major security-
17 based swap participant. Margin requirements
18 for swaps set by the Commission and the Com-
19 modity Futures Trading Commission shall pro-
20 vide for the use of non-cash assets as collateral.
21 "(C) EXCLUSION.—Subparagraph (B)
22 shall not apply to a security-based swap one
23 party to which is not a security-based swap
24 dealer or major security-based swap participant,
25 and which is entered into before the end of the

90-day period that begins with the effective date of this subparagraph.

"(D) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Margin requirements for security-based swaps set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than margin requirements for security-based swaps set by the Prudential Regulators.

"(f) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

"(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

"(B) for which—

"(i) there is a Prudential Regulator, shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed

by the Commission by rule or regulation; or

"(ii) there is no Prudential Regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

"(C) shall keep such books and records open to inspection and examination by any representative of the Commission; and

"(D) shall keep any such books and records relating to transactions in swaps based on 1 or more securities open to inspection and examination by the Commission.

"(2) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers and major security-based swap participants.

"(g) DAILY TRADING RECORDS.—

1 "(1) IN GENERAL.—Each registered security-
2 based swap dealer and major security-based swap
3 participant shall maintain daily trading records of
4 its security-based swaps and all related records (in-
5 cluding related transactions) and recorded commu-
6 nications including but not limited to electronic mail,
7 instant messages, and recordings of telephone calls,
8 for such period as may be prescribed by the Com-
9 mission by rule or regulation.

10 "(2) INFORMATION REQUIREMENTS.—The daily
11 trading records shall include such information as the
12 Commission shall prescribe by rule or regulation.

13 "(3) CUSTOMER RECORDS.—Each registered se-
14 curity-based swap dealer or major security-based
15 swap participant shall maintain daily trading records
16 for each customer or counterparty in such manner
17 and form as to be identifiable with each security-
18 based swap transaction.

19 "(4) AUDIT TRAIL.—Each registered security-
20 based swap dealer or major security-based swap par-
21 ticipant shall maintain a complete audit trail for
22 conducting comprehensive and accurate trade recon-
23 structions.

24 "(5) RULES.—Not later than 1 year after the
25 date of enactment of the Over-the-Counter Deriva-

1 tives Markets Act of 2009, the Commission and the
2 Commodity Futures Trading Commission, in con-
3 sultation with the appropriate Federal banking agen-
4 cies, shall jointly adopt rules governing daily trading
5 records for swap dealers, major swap participants,
6 security-based swap dealers, and major security-
7 based swap participants.
8 ''(h) BUSINESS CONDUCT STANDARDS.—
9 ''(1) IN GENERAL.—Each registered security-
10 based swap dealer and major security-based swap
11 participant shall conform with business conduct
12 standards as may be prescribed by the Commission
13 by rule or regulation addressing—
14 ''(A) fraud, manipulation, and other abu-
15 sive practices involving security-based swaps
16 (including security-based swaps that are offered
17 but not entered into);
18 ''(B) diligent supervision of its business as
19 a security-based swap dealer;
20 ''(C) adherence to all applicable position
21 limits;
22 ''(D) the prevention of self-dealing by lim-
23 iting the extent to which a security-based swap
24 dealer or major security-based swap participant
25 may conduct business with a clearing agency,

1 an exchange, or an alternative swap execution
2 facility that clears or trades security-based
3 swaps and in which such a dealer or participant
4 has a material debt or equity investment; and
5 ''(E) such other matters as the Commis-
6 sion shall determine to be necessary or appro-
7 priate.
8 ''(2) BUSINESS CONDUCT REQUIREMENTS.—
9 Business conduct requirements adopted by the Com-
10 mission shall—
11 ''(A) establish the standard of care for a
12 security-based swap dealer or major security-
13 based swap participant to verify that any secu-
14 rity-based swap counterparty meets the eligi-
15 bility standards for an eligible contract partici-
16 pant;
17 ''(B) require disclosure by the security-
18 based swap dealer or major security-based swap
19 participant to any counterparty to the security-
20 based swap (other than a swap dealer, major
21 swap participant, security-based swap dealer or
22 major security-based swap participant) of—
23 ''(i) information about the material
24 risks and characteristics of the security-
25 based swap;

1 "(ii) for cleared swaps, upon the re-
2 quest of the counterparty, the daily mark
3 from the appropriate clearinghouse and for
4 non-cleared swaps, upon the request of the
5 counterparty, the daily mark of the secu-
6 rity-based swap dealer or major security-
7 based swap participant; and
8 "(iii) any other material incentives or
9 conflicts of interest that the security-based
10 swap dealer or major security-based swap
11 participant may have in connection with
12 the security-based swap; and
13 "(C) establish such other standards and
14 requirements as the Commission may determine
15 are necessary or appropriate in the public inter-
16 est, for the protection of investors, or otherwise
17 in furtherance of the purposes of this title.
18 "(3) RULES.—Not later than 1 year after the
19 date of enactment of the Over-the-Counter Deriva-
20 tives Markets Act of 2009, the Commission and the
21 Commodity Futures Trading Commission, in con-
22 sultation with the appropriate Federal banking agen-
23 cies, shall jointly prescribe rules under this sub-
24 section governing business conduct standards for
25 swap dealers, major swap participants, security-

1 based swap dealers, and major security-based swap
2 participants.
3 "(i) DOCUMENTATION AND BACK OFFICE STAND-
4 ARDS.—
5 "(1) IN GENERAL.—Each registered security-
6 based swap dealer and major security-based swap
7 participant shall conform with standards, as may be
8 prescribed by the Commission by rule or regulation,
9 addressing timely and accurate confirmation, proc-
10 essing, netting, documentation, and valuation of all
11 security-based swaps.
12 "(2) RULES.—Not later than 1 year after the
13 date of enactment of the Over-the-Counter Deriva-
14 tives Markets Act of 2009, the Commission and the
15 Commodity Futures Trading Commission, in con-
16 sultation with the appropriate Federal banking agen-
17 cies, shall jointly adopt rules governing documenta-
18 tion and back office standards for swap dealers,
19 major swap participants, security-based swap deal-
20 ers, and major security-based swap participants.
21 "(j) DEALER RESPONSIBILITIES.—Each registered
22 security-based swap dealer and major security-based swap
23 participant at all times shall comply with the following re-
24 quirements:

"(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

"(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, information concerning—

"(A) terms and conditions of its security-based swaps;

"(B) security-based swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to security-based swaps; and

"(D) other information relevant to its trading in security-based swaps.

"(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary infor-

mation to perform any of the functions described in this section; and

"(B) provide the information to the Commission and to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.

"(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

"(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(B) address such other issues as the Commission determines appropriate.

"(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of

this Act, the security-based swap dealer or major security-based swap participant shall avoid—

"(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading.

"(k) RULES.—The Commission, the Commodity Futures Trading Commission, and the Prudential Regulators shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2009.

"(l) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

1 "(m) ENFORCEMENT AND ADMINISTRATIVE PRO-
2 CEEDING AUTHORITY.—
3 "(1) PRIMARY ENFORCEMENT AUTHORITY.—
4 "(A) SEC.—Except as provided in sub-
5 section (b), the Commission shall have primary
6 authority to enforce the provisions of the
7 amendments made by subtitle B of the Over-
8 the-Counter Derivatives Markets Act of 2009
9 with respect to any person.
10 "(B) PRUDENTIAL REGULATORS.—The
11 Prudential Regulators shall have exclusive au-
12 thority to enforce the provisions of subsection
13 (e) and other prudential requirements of this
14 Act with respect to banks, and branches or
15 agencies of foreign banks that are security-
16 based swap dealers or major security-based
17 swap participants.
18 "(C) REFERRAL.—If the Prudential Regu-
19 lator for a security-based swap dealer or major
20 security-based swap participant has cause to be-
21 lieve that such security-based swap dealer or
22 major security-based swap participant may have
23 engaged in conduct that constitutes a violation
24 of the nonprudential requirements of section
25 15F or rules adopted by the Commission there-

under, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(D) BACKSTOP ENFORCEMENT AUTHORITY.—If the Commission does not initiate an enforcement proceeding before the end of the 90 day period beginning on the date on which the Commission receives a recommendation under subparagraph (C), the Prudential Regulator may initiate an enforcement proceeding as permitted under Federal law.

"(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based

swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

"(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

"(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or

1 regulation, enumerated in subparagraph (G) of
2 such paragraph (4).
3 "(3) With respect to any person who is associ-
4 ated, who is seeking to become associated, or, at the
5 time of the alleged misconduct, who was associated
6 or was seeking to become associated with a security-
7 based swap dealer or major security-based swap par-
8 ticipant for the purpose of effecting or being in-
9 volved in effecting security-based swaps on behalf of
10 such security-based swap dealer or major security-
11 based swap participant, the Commission, by order,
12 shall censure, place limitations on the activities or
13 functions of such person, or suspend for a period not
14 exceeding 12 months, or bar such person from being
15 associated with a security-based swap dealer or
16 major security-based swap participant, if the Com-
17 mission finds, on the record after notice and oppor-
18 tunity for a hearing, that such censure, placing of
19 limitations, suspension, or bar is in the public inter-
20 est and that such person—
21 "(A) has committed or omitted any act, or
22 is subject to an order or finding, enumerated in
23 subparagraph (A), (D), or (E) of paragraph (4)
24 of section 15(b);

"(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

"(4) It shall be unlawful—

"(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

"(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Com-

1 mission, to become or remain a person associ-
2 ated with the security-based swap dealer or
3 major security-based swap participant in con-
4 travention of such order, if such security-based
5 swap dealer or major security-based swap par-
6 ticipant knew, or in the exercise of reasonable
7 care should have known, of such order.

8 ''(5) EXEMPTIONS.—The Commission may ex-
9 empt, conditionally or unconditionally, a security-
10 based swap dealer or major security-based swap par-
11 ticipant from the prudential requirements of the
12 Over-the-Counter Derivatives Markets Act of 2009 if
13 the Commission finds that such security-based swap
14 dealer or major security-based swap participant is
15 subject to comparable, comprehensive supervision
16 and regulation on a consolidated basis by the Com-
17 modity Futures Trading Commission, a Prudential
18 Regulator or the appropriate governmental authori-
19 ties in the organization's home country.

20 ''(n) EXEMPTIVE AUTHORITY.—

21 ''(1) IN GENERAL.—The Commission, by rule
22 or regulation, may conditionally or unconditionally
23 exempt any person, derivative, or transaction, or any
24 class or classes of persons, derivatives, or trans-
25 actions, from any provision of this Act that was

added by an amendment in the Over-the-Counter Derivatives Markets Act of 2009, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the purposes of such Act.

"(2) PROCEDURES.—The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this subsection shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.".

SEC. 3205. NATIONAL SECURITY EXCHANGE REGISTRATION REQUIREMENTS.

Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new paragraphs:

"(10) The rules of the exchange minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

"(11) The rules of an exchange that trades security-based swaps provide that a majority of the directors of the exchange shall not be associated with a restricted owner.

"(12) The rules of an exchange that trades security-based swaps provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the exchange or in persons with a controlling interest in the exchange, to the extent that such an acquisition would result in restricted owners controlling more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests.".

SEC. 3206. REPORTING AND RECORDKEEPING.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

"SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

"(a) IN GENERAL.—Any person who enters into a security-based swap and—

"(1) did not clear the security-based swap in accordance with section 3A; and

"(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n),

shall meet the requirements in subsection (b).

1 "(b) REPORTS.—Any person described in subsection
2 (a) shall—
3 "(1) make such reports in such form and man-
4 ner and for such period as the Commission shall pre-
5 scribe by rule or regulation regarding the security-
6 based swaps held by the person; and
7 "(2) keep books and records pertaining to the
8 security-based swaps held by the person in such
9 form and manner and for such period as may be re-
10 quired by the Commission, which books and records
11 shall be open to inspection by any representative of
12 the Commission, an appropriate Federal banking
13 agency, the Commodity Futures Trading Commis-
14 sion, the Financial Services Oversight Council, and
15 the Department of Justice.
16 "(c) IDENTICAL DATA.—In adopting rules under this
17 section, the Commission shall require persons described in
18 subsection (a) to report the same or more comprehensive
19 data than the Commission requires security-based swap
20 repositories to collect under subsection (n).".
21 (b) BENEFICIAL OWNERSHIP REPORTING.—
22 (1) Section 13(d)(1) of the Securities Exchange
23 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
24 inserting "or otherwise becomes or is deemed to be-
25 come a beneficial owner of any of the foregoing upon

the purchase or sale of a security-based swap or other derivative instrument as the Commission may define by rule, and'' after ''Alaska Native Claims Settlement Act,''.

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting ''or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument, as the Commission may define by rule'' after ''subsection (d)(1) of this section''.

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by striking ''section 13(d)(1) of this title'' and inserting ''subsection (d)(1), or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument, as the Commission may define by rule,''.

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,''; and

(2) in subparagraph (F), by inserting '', or security-based swap dealer, or a major security-based swap participant'' after ''or dealer''.

(e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(o) BENEFICIAL OWNERSHIP.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap or other derivative instrument only to the extent that the Commission, by rule, determines after consultation with the Prudential Regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap or other derivative instrument, or class of security-based swaps or other derivative instruments, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps or instrument, or class of security-based swap or instruments, be deemed the acquisition of beneficial ownership of the equity security.''.

SEC. 3207. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

''(a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of 'bucket shops' or other similar or related activities, shall invalidate (1) any put, call, straddle, option, privilege, or other security subject to this title (except a security-based swap agreement and any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer,

purchase, sale, exercise, settlement, or closeout of any such security, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.''.

SEC. 3208. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting ''security-based swap,'' after ''security future,'';

(2) in paragraph (3) by adding at the end the following: ''Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.''; and

(3) by adding at the end the following:

"(17) The terms 'swap' and 'security-based swap' have the same meanings as provided in sections 1a(35) and (38) of the Commodity Exchange Act (7 U.S.C. 1a(35) and (38)).

"(18) The terms 'purchase' or 'sale' of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.".

(b) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 is amended by adding at the end the following:

"(15) Any security-based swap, as defined in section 2(a)(17) that is not otherwise a security as defined in section 2(a)(1) and that satisfies such conditions as established by rule or regulation by the Commission consistent with the provisions of the Over-the-Counter Derivatives Markets Act of 2009. The Commission shall promulgate rules implementing this exemption.".

(c) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

"(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).".

SEC. 3209. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3210. JURISDICTION.

Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:

"(c) EXEMPTIVE AUTHORITY.—The Commission may use its authority under subsection (a) to exempt any person, security, or transaction, or any class of persons, securities, or transactions from any provision or provisions

of this title or of any rule or regulation thereunder that applies to such person, security, or transaction solely because a security-based swap is a security, as such term is defined in section 3(a) of this title.''.

SEC. 3211. EFFECTIVE DATE.

This subtitle is effective 270 days after the date of enactment.

Subtitle C—Miscellaneous

SEC. 3301. STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.

(a) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(b) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

(1) commercial users and traders of derivatives;

(2) derivative clearing houses, exchanges and electronic trading platforms;

(3) trade repositories and regulator investigations of market activities; and

(4) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(c) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(d) REPORT.—Within 8 months after the date of the enactment of this title, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry

and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by subsections (a) through (c).

SEC. 3302. STUDY OF DESIRABILITY AND FEASIBILITY OF ESTABLISHING SINGLE REGULATOR FOR ALL TRANSACTIONS INVOLVING FINANCIAL DERIVATIVES.

(a) IN GENERAL.—The Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a joint study of the desirability and feasibility of establishing, by January 1, 2012, a single regulator for all transactions involving financial derivatives.

(b) REPORT TO THE CONGRESS.—Not later than December 1, 2010, Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report that contains the results of the study required by subsection (a).

SEC. 3303. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of enactment of this title, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Prudential Regulators (as defined in section 1a of the Commodity Exchange Act, as amended by section 3101 of this title) shall transmit to Congress recommendations for legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing non-proprietary swap positions with a swap clearinghouse, including—

(A) customer rights to recover margin deposits or custodial property held at or through an insolvent swap clearinghouse, or clearing participant; and

(B) the enforceability of clearing rules relating to the portability of customer swap positions (and associated margin) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or

dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and

(3) to facilitate the portfolio margining of securities and commodity futures and options positions held through entities that are both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

SEC. 3304. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.

(a) IN GENERAL.—No provision of this title shall be construed to authorize Federal assistance to support the clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act, except where explicitly authorized by an Act of Congress.

(b) DEFINITION.—For the purposes of this section, the term ''Federal assistance'' shall be defined as the use of public funds for the purposes of—

(1) making loans to, or purchasing any debt obligation of, a derivatives clearing organization or a subsidiary;

(2) purchasing assets of a derivatives clearing organization or a subsidiary;

(3) assuming or guaranteeing the obligations of a derivatives clearing organization or a subsidiary; or

(4) acquiring any type of equity interest or security of a derivatives clearing organization or a subsidiary.

TITLE IV—CONSUMER FINANCIAL PROTECTION AGENCY ACT

SEC. 4001. SHORT TITLE.

This title may be cited as the ''Consumer Financial Protection Agency Act of 2009''.

SEC. 4002. DEFINITIONS.

For the purposes of subtitles A through F of this title, the following definitions shall apply:

(1) AFFILIATE.—The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) AGENCY.—The term ''Agency'' means the Consumer Financial Protection Agency.

(3) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2(a) of the Bank Holding Company Act of 1956.

(4) BOARD.—Except when used in connection with the term ''Board of Governors'', the term ''Board'' means the Consumer Financial Protection Oversight Board.

(5) BOARD OF GOVERNORS.—The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

(6) BUSINESS OF INSURANCE.—The term ''business of insurance'' means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(7) CONSUMER.—The term ''consumer'' means an individual or an agent, trustee, or representative acting on behalf of an individual.

(8) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term ''consumer financial product or service'' means any financial product, other than a Federal tax return, or service to be used by a consumer primarily for personal, family, or household purposes.

(9) COVERED PERSON.—

(A) IN GENERAL.—The term ''covered person'' means any person who engages directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service.

(B) EXCLUSION.—The term ''covered person'' shall not include the Secretary, the Department of the Treasury, any agency or bureau under the jurisdiction of the Secretary, or any person collecting Federal taxes for the United States to the extent such person is acting in such capacity.

(10) CREDIT.—The term ''credit'' means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(11) CREDIT UNION.—The term ''credit union'' means a Federal credit union or a State credit union as defined in section 101 of the Federal Credit Union Act.

(12) DEPOSIT.—The term ''deposit''—

(A) has the same meaning as in section 3(l) of the Federal Deposit Insurance Act; and

(B) includes a share in a member account (as defined in section 101(5) of the Federal Credit Union Act) at a credit union.

(13) DEPOSIT-TAKING ACTIVITY.—The term ''deposit-taking activity'' means—

(A) the acceptance of deposits, the maintenance of deposit accounts, or the provision of services related to the acceptance of deposits;

(B) the acceptance of money, the provision of other services related to the acceptance of money, or the maintenance of members' share accounts by a credit union; or

(C) the receipt of money or its equivalent, as the Director may determine by regulation or order, received or held by the covered person (or an agent for the person) for the purpose of facilitating a payment or transferring funds or value of funds by a consumer to a third party.

(14) DESIGNATED TRANSFER DATE.—The term ''designated transfer date'' has the meaning provided in section 4602.

(15) DIRECTOR.—The term ''Director'' means the Director of the Agency.

(16) ENUMERATED CONSUMER LAWS.—The term ''enumerated consumer laws'' means each of the following:

(A) The Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et seq.).

(B) The Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.)

(C) The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of such Act.

(E) The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(F) Subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).

(G) Sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802 et seq.).

(H) The Homeowners Protection Act of 1998.

(I) The Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

(J) The Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(K) The Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.).

(L) The Truth in Lending Act (15 U.S.C. 1601 et seq.).

(M) The Truth in Savings Act (12 U.S.C. 4301 et seq.).

(17) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' means the Board of Governors, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration and the term ''Federal banking agencies'' means all of such agencies.

(18) FAIR LENDING.—The term ''fair lending'' means fair, equitable, and nondiscriminatory access to credit for both individuals and communities.

(19) FINANCIAL ACTIVITY.—

(A) IN GENERAL.—The term ''financial activity'' means any of the following activities:

(i) Deposit-taking activities.

(ii) Extending credit and servicing loans, including—

(I) acquiring, purchasing, selling, brokering, or servicing loans or other extensions of credit;

(II) engaging in any other activity usual in connection with extensions of credit or servicing loans, including performing appraisals of real estate and personal property.

(iii) Check cashing and check-guaranty services, including—

(I) authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services; and

(II) purchasing from a subscribing merchant validly authorized checks that are subsequently dishonored.

(iv) Collecting, analyzing, maintaining, and providing consumer report information or other account information by covered persons, including information relating to the credit history of consumers and providing the information to a credit

grantor who is considering a consumer application for credit or who has extended credit to the borrower.

(v) Collection of debt related to any consumer financial product or service.

(vi) Providing real estate settlement services.

(vii) Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of leases involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Director.

(viii) Acting as an investment adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission,

the Securities and Exchange Commission, or any securities commission (or any agency or office performing like functions) of any State).

(ix) Acting as financial adviser to any person (excluding an investment adviser that is a person regulated by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or any securities commission (or any agency or office performing like functions) of any State), including—

(I) providing financial and other related advisory services;

(II) providing educational courses, and instructional materials to consumers on individual financial management matters;

(III) providing credit counseling or tax planning services to any person (excluding the preparation of returns, or claims for refund, of tax imposed by the Internal Revenue Code or advice with respect to positions taken therein, or services regulated by the

Secretary of the Treasury under section 330 of title 31, United States Code); or

(IV) providing services to assist a consumer with debt management or debt settlement, with modifying the terms of any extension of credit, or with avoiding foreclosure.

(x) For purposes of this title, the following shall not be considered acting as financial adviser:

(I) Publishing any bona fide newspaper, news magazine or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer.

(II) Providing advice, analyses, or reports that do not relate to any securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest

by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act.

(xi) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a ''financial activity'' if with respect to financial data processing the person—

(I) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(II) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(III) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

(xii) Money transmitting.

(xiii) Sale, provision or issuance of stored value, except that, in the case of a sale, only if the seller influences the terms or conditions of the stored value provided to the consumer.

(xiv) Acting as a money services business.

(xv) Acting as a custodian of money or any financial instrument.

(xvi)(I) Any other activity that the Director defines, by regulation, as a financial activity after finding that—

(aa) the activity has, or there is a substantial likelihood that the activity will have, a ma-

terial adverse impact on the creditworthiness or financial well being of consumers;

(bb) the activity is incidental or complementary to any other financial activity regulated by the Agency; or

(cc) the activity is entered into or conducted as a subterfuge or with a purpose to evade any requirement under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

(II) For purposes of subclause (I)(bb), the following activities provided to a covered person shall not be ''incidental or complementary'':

(aa) Providing information products or services to a covered person for identity authentication.

(bb) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(cc) Providing document retrieval or delivery services.

(dd) Providing public records information retrieval.

(ee) Providing information products or services for anti-money laundering activities.

(B) BUSINESS OF INSURANCE EXCEPTION.—The term ''financial activity'' shall not include the business of insurance.

(20) FINANCIAL PRODUCT OR SERVICE.—The term ''financial product or service'' means any product or service that, directly or indirectly, results from or is related to engaging in 1 or more financial activities.

(21) FOREIGN EXCHANGE.—The term ''foreign exchange'' means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(22) INSURED CREDIT UNION.—The term ''insured credit union'' has the same meaning as in section 101 of the National Credit Union Act.

(23) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the same

meaning as in section 3 of the Federal Deposit Insurance Act.

(24) MONEY SERVICES BUSINESS.—The term ''money services business'' means a person that—

(A) receives currency, monetary value, or payment instruments for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services, or other businesses that facilitate third-party transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(25) MONEY TRANSMITTING.—The term ''money transmitting'' means the receipt by a covered person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

(26) PAYMENT INSTRUMENT.—The term ''payment instrument'' means a check, draft, warrant,

money order, traveler's check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(27) PERSON.—The term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(28) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term ''person regulated by a State insurance regulator'' means any person who is—

(A) engaged in the business of insurance, and

(B) subject to regulation by any State insurance regulator,

but only to the extent that such person acts in such capacity.

(29) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term ''person regulated by the Commodity Futures Trading Commission'' means any futures commission merchant, commodity trading adviser, commodity pool operator, introducing broker, boards of trade, derivatives clearing organizations, or multilateral clearing organizations to the extent that such person's actions are

subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act and any agent, employee, or contractor acting on behalf of, registered with, or providing services to such person but only to the extent the person, or the employee, agent, or contractor of such person, acts in a registered capacity.

(30) PERSON REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—The term ''person regulated by the Securities and Exchange Commission'' means—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any municipal securities dealer that is registered with the Securities and Exchange Commission;

(H) any self-regulatory organization that is registered with the Securities and Exchange Commission;

(I) any national securities exchange or other entity that is required to be registered under the Securities Exchange Act of 1934; and

(J) the Municipal Securities Rulemaking Board,

and any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any such person, but only to the extent that the person, or the employee agent, or contractor of such person, acts in a registered capacity.

(31) PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.—The terms ''provision of a

consumer financial product or service'' and ''providing a consumer financial product or service'' mean the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.

(32) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term ''person that performs income tax preparation activities for consumers'' means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary of the Treasury under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(33) RELATED PERSON.—

(A) IN GENERAL.—The term ''related person'', when used in connection with a covered

1 person that is not a bank holding company,
2 credit union, depository institution, means—
3 (i) any director, officer, employee
4 charged with managerial responsibility, or
5 controlling stockholder of, or agent for,
6 such covered person;
7 (ii) any shareholder, consultant, joint
8 venture partner, and any other person as
9 determined by the Director (by regulation
10 or on a case-by-case basis) who materially
11 participates in the conduct of the affairs of
12 such covered person; and
13 (iii) any independent contractor (in-
14 cluding any attorney, appraiser, or ac-
15 countant), with respect to such covered
16 person, who knowingly or recklessly par-
17 ticipates in any—
18 (I) violation of any law or regula-
19 tion; or
20 (II) breach of fiduciary duty.
21 (B) TREATMENT OF A RELATED PERSON
22 AS A COVERED PERSON.—Any person who is a
23 related person under subparagraph (A) shall be
24 deemed to be a covered person for all purposes
25 of this title, any enumerated consumer law, and

any law for which authorities were transferred by subtitles F and H.

(34) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(35) SERVICE PROVIDER.—

(A) IN GENERAL.—The term ''service provider'' means any person who provides a material service to a covered person in the provision of a consumer financial product or service, including a person who—

(i) facilitates the design of, or operations relating to the provision of, the consumer financial product or service;

(ii) has direct interaction with a consumer (whether in person or via telecommunication device or other similar technology) regarding the consumer financial product or service; or

(iii) processes transactions relating to the consumer financial product or service.

(B) EXCEPTIONS.—The term ''service provider'' shall not apply to a person solely by virtue of such person providing or selling to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service;

(ii) a service that does not materially affect the terms or conditions of the consumer financial product or service, its performance or operation, or the propensity of a consumer to obtain or use such product or service; or

(iii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(36) STATE.—The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands.

(37) STORED VALUE.—The term ''stored value''—

(A) means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as

to be retrievable and transferred electronically; and

(B) includes a prepaid debit card or product (other than a card or product used solely for telephone services) or any other similar product,

regardless of whether the amount of the funds or monetary value may be increased or reloaded.

Subtitle A—Establishment of the Agency

SEC. 4101. ESTABLISHMENT OF THE CONSUMER FINANCIAL PROTECTION AGENCY.

(a) AGENCY ESTABLISHED.—There is established the Consumer Financial Protection Agency as an independent agency to regulate the provision of consumer financial products or services under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

(b) PRINCIPAL OFFICE.—The principal office of the Agency shall be located in the city of Washington, District of Columbia, at 1 or more sites.

SEC. 4102. DIRECTOR.

(a) ESTABLISHMENT OF POSITION.—

(1) IN GENERAL.—There is hereby established the position of the Director of the Agency who shall be the head of the Agency.

(2) AUTHORITY TO PRESCRIBE REGULATIONS.—The Director may prescribe such regulations and issue such orders in accordance with this title as the Director may determine to be necessary for carrying out this title and all other laws within the Director's jurisdiction.

(b) APPOINTMENT; TERM.—

(1) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(2) TERM.—The Director shall be appointed for a term of 5 years.

(3) REMOVAL.—The Director may be removed before the end of a term only for cause.

(4) VACANCY.—

(A) IN GENERAL.—A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (1) and the Director appointed to

fill such vacancy shall be appointed only for the remainder of such term.

(B) ACTING DIRECTOR.—

(i) IN GENERAL.—In the event of a vacancy in the position of Director or during the absence or disability of the Director, an Acting Director shall be appointed in the manner provided in section 3345, of title 5, United States Code.

(ii) AUTHORITY OF ACTING DIRECTOR.—Any individual serving as Acting Director under this subparagraph shall be vested with all authority, duties, and privileges of the Director.

(5) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed and qualified.

(c) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any covered person.

(d) COMPENSATION.—The Director shall receive compensation at the rate prescribed for Level I of the Executive Schedule under section 5313 of title 5, United States Code.

SEC. 4103. CONSUMER FINANCIAL PROTECTION OVERSIGHT BOARD.

(a) ESTABLISHED.—There is hereby established the Consumer Financial Protection Oversight Board as an instrumentality of the United States.

(b) DUTIES AND POWERS.—

(1) DUTY TO ADVISE DIRECTOR.—The Board shall advise the Director on—

(A) the consistency of a proposed regulation of the Director with prudential, market, or systemic objectives administered by the agencies that comprise the Board;

(B) the overall strategies and policies in carrying out the duties of the Director under this title; and

(C) actions the Director can take to enhance and ensure that all consumers are subject to robust financial protection.

(2) LIMITATION ON POWERS.—The Board may not exercise any executive authority, and the Director may not delegate to the Board any of the functions, powers, or duties of the Director.

(c) COMPOSITION.—The Board shall be comprised of 7 members as follows:

(1) The Chairman of the Board of Governors.

(2) The head of the agency responsible for chartering and regulating national banks.

(3) The Chairperson of the Federal Deposit Insurance Corporation.

(4) The Chairman of the National Credit Union Administration.

(5) The Chairman of the Federal Trade Commission.

(6) The Secretary of Housing and Urban Development.

(7) The Chairman of the liaison committee of representatives of State agencies to the Financial Institutions Examination Council.

(d) REPRESENTATIVE OF ADDITIONAL INTERESTS.—

(1) COMPOSITION.—Notwithstanding subsection (c), the President, by and with the advice and consent of the Senate, shall appoint 5 additional members of the Board from among experts in the fields of consumer protection, fair lending and civil rights, representatives of depository institutions that primarily serve underserved communities, or representatives of communities that have been significantly impacted by higher-priced mortgage loans, as such communities are identified by the Director through an analysis of data received by reason of the provi-

sions of the Home Mortgage Disclosure Act of 1975 or other data on lending patterns.

(2) AFFILIATION.—With respect to members appointed pursuant to paragraph (1), not more than 3 shall be members of any one political party.

(e) MEETINGS.—

(1) IN GENERAL.—The Board shall meet upon notice by the Director, but in no event shall the Board meet less frequently than once every 3 months.

(2) SPECIAL MEETINGS.—Any member of the Board may, upon giving written notice to the Director, require a special meeting of the Board.

(f) PROHIBITION ON ADDITIONAL COMPENSATION.—Members of the Board may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(g) COMPLAINTS RELATED TO REQUIRED OFFERING OF SPECIFIC FINANCIAL PRODUCTS OR SERVICES.—The Board shall establish procedures to receive and analyze complaints from any person claiming that the Director is not in compliance with the requirements under section 4311.

SEC. 4104. EXECUTIVE AND ADMINISTRATIVE POWERS.

The Director may exercise all executive and administrative functions of the Agency, including to—

(1) establish regulations for conducting the Agency's general business in a manner not inconsistent with this title;

(2) bind the Agency and enter into contracts;

(3) direct the establishment of and maintain divisions or other offices within the Agency in order to fulfill the responsibilities of this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H, and to satisfy the requirements of other applicable law;

(4) coordinate and oversee the operation of all administrative, enforcement, and research activities of the Agency;

(5) adopt and use a seal;

(6) determine the character of and the necessity for the Agency's obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid;

(7) delegate authority, at the Director's discretion, to any officer or employee of the Agency to take action under any provision of this title or under other applicable law;

(8) to implement this title and the Agency's authorities under the enumerated consumer laws and under subtitles F and H through regulations, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(9) perform such other functions as may be authorized or required by law.

SEC. 4105. ADMINISTRATION.

(a) OFFICERS.—The Director shall appoint the following officials:

(1) A secretary, who shall be charged with maintaining the records of the Agency and performing such other activities as the Director directs.

(2) A general counsel, who shall be charged with overseeing the legal affairs of the Agency and performing such other activities as the Director directs.

(3) An inspector general, who shall have the authority and functions of an inspector general of a designated Federal entity under the Inspector General Act of 1978 (5 U.S.C. App. 3).

(4) An Ombudsperson, who shall—

(A) develop and maintain expertise in and understanding of the law relating to consumer financial products;

(B) at the request of a Federal agency or a State agency, and with the prior approval of the Director, advise such agency with respect to actions that may affect consumers;

(C) advise consumers who may have a legitimate potential or actual claim against a Federal agency involving the provision of consumer financial products regarding their rights under this title;

(D) identify Federal agency actions that have potential implications for consumers and, if appropriate, and with the prior approval of the Director, advise the relevant Federal agencies with respect to those implications;

(E) provide information to private citizens, civic groups, Federal agencies, State agencies, and other interested parties regarding the rights of those parties under this title;

(F) develop, maintain, and provide expertise designed to assist covered persons, especially smaller depository institutions and other smaller entities to comply with regulations and other requirements issued to implement the provisions of this title, and where such assistance for smaller depository institutions shall be pro-

vided jointly by the Agency and the appropriate Federal banking agency;

(G) develop procedures to assist covered persons, especially smaller depository institutions and other smaller entities, in responding to or challenging actions taken by the Director or the Agency to implement the provisions of this title and to ensure that safeguards exist to preserve the confidentiality of covered persons using those procedures; and

(H) perform such other duties as the Director may delegate to the Ombudsperson.

(b) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Agency.

(B) EXPEDITED HIRING.—The Director may appoint, without regard to the provisions of sections 3309 through 3318, of title 5, United States Code, candidates directly to positions for which public notice has been given.

(C) HIRING VETERANS.—In hiring employees of the Agency, the Director shall establish appropriate targets, including timetables, to

hire veterans (as defined in paragraphs (1) and (2) of section 2108 of title 5, United States Code) as employees of the Agency. In establishing appropriate targets under this paragraph, the Director may consider, among other relevant factors, the proportion of veterans hired by Federal agencies with comparable functions or types of occupations and their experiences in hiring veterans.

(2) COMPENSATION.—

(A) PAY.—The Director shall fix, adjust, and administer the pay for all employees of the Agency without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(B) BENEFITS.—The Director may provide additional benefits to Agency employees if the same type of benefits are then being provided by the Board of Governors or, if not then being provided, could be provided by the Board of Governors under applicable provisions of law or regulations.

(C) MINIMUM STANDARD.—The Director shall at all times provide compensation and benefits to classes of employees that, at a min-

imum, are equivalent to the compensation and benefits provided by the Board of Governors for the corresponding class of employees in any fiscal year.

(c) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Agency shall establish a unit whose functions shall include—

(A) conducting research on consumer financial counseling and education, including—

(i) on the topics of debt, credit, savings, financial product usage, and financial planning;

(ii) exploring effective methods, tools, and approaches; and

(iii) identifying ways to incorporate new technology for the delivery and evaluation of financial counseling and education efforts;

(B) researching, analyzing, and reporting on—

(i) current and prospective developments in markets for consumer financial products or services, including market areas of alternative consumer financial

products or services with high growth rates;

(ii) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(iii) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(iv) consumer behavior with respect to consumer financial products or services, including performance on mortgage loan; and

(v) experiences of traditionally underserved consumers, including un-banked and under-banked consumers, regarding consumer financial products or services;

(C) identifying priorities for consumer financial education efforts, based on consumer complaints, research or analysis conducted pursuant to subparagraph (A), or other information; and

(D) testing and identifying methods of educating consumers to determine which methods are most effective.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) CONSUMER COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a central database, or utilizing an existing database, for collecting and tracking information on consumer complaints about consumer financial products or services and resolution of complaints.

(B) COORDINATION.—In performing the functions described in subparagraph (A), the Director shall coordinate with the Federal banking agencies, other Federal agencies, and other regulatory agencies or enforcement authorities.

(C) DATA SHARING REQUIRED.—To the extent permitted by law and the regulations prescribed by the Director regarding the confidential treatment of information, the Director shall share data relating to consumer com-

1 plaints with Federal banking agencies, other
2 Federal agencies, and State regulators. To the
3 extent permitted by law and the regulations
4 prescribed by the Federal banking agencies and
5 other Federal agencies regarding the confiden-
6 tial treatment of information, the Federal bank-
7 ing agencies and other Federal agencies, respec-
8 tively, shall share data relating to consumer
9 complaints with the Director and the Agency.
10 (4) CONSUMER FINANCIAL EDUCATION.—
11 (A) IN GENERAL.—The Agency shall es-
12 tablish a unit to be named the Office of Finan-
13 cial Literacy, whose functions shall include ac-
14 tivities designed to facilitate the education of
15 consumers on consumer financial products and
16 services, including through the dissemination of
17 materials to consumers on such topics.
18 (B) DIRECTOR.—The Office of Financial
19 Literacy shall be headed by a director.
20 (C) DUTIES.—Such unit shall—
21 (i) develop goals for programs to be
22 provided by persons that provide consumer
23 financial education and counseling, includ-
24 ing programs through which such per-
25 sons—

(I) provide one-on-one financial counseling;

(II) help individuals understand basic banking and savings tools;

(III) help individuals understand their credit history and credit score;

(IV) assist individuals in efforts to plan for major purchases, reduce their debt, and improve their financial stability; and

(V) work with individuals to design plans for long-term savings;

(ii) develop recommendations regarding effective certification of persons providing programs, or performing the activities, described in clause (i), including recommendations regarding—

(I) certification processes and standards for certification;

(II) appropriate certifying bodies; and

(III) mechanisms for funding the certification processes;

(iii) develop a technology tool to collect data on financial education and counseling outcomes; and

(iv) conduct research to identify effective methods, tools, technoloy, and strategies to educate and counsel consumers about personal finance management, including on the topics of debt, credit, savings, financial product usage, and financial planning.

(D) COORDINATION.—Such unit shall coordinate with other units within the Agency in carrying out its functions, including—

(i) working with the unit established under paragraph (2) to—

(I) provide information and resources to community organizations, nonprofit organizations, and other entities to assist in helping educate consumers about consumer financial products and services; and

(II) develop a marketing strategy to promote financial education and one-on-one counseling; and

(ii) working with the unit established under paragraph (1) to conduct research related to consumer financial education and counseling.

(d) SINGLE TOLL-FREE TELEPHONE NUMBER FOR CONSUMER COMPLAINTS AND INQUIRIES.—

(1) CALL INTAKE SYSTEM.—The Consumer Financial Protection Agency shall establish a single, toll-free telephone number for consumer complaints and inquiries concerning institutions regulated by such agencies and a system for collecting and monitoring complaints and, as soon as practicable, a system for routing such calls to the Federal financial institution regulatory agency that primarily supervises the financial institution, or that is otherwise the appropriate Federal agency to address the subject of the complaint or inquiry.

(2) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate call transfers from the system established under paragraph (1) if—

(A) the State agency's system has the functional capacity to receive calls routed by the system; and

(B) the State agency has satisfied any conditions of participation in the system that the Council, coordinating with State agencies through the chairperson of the State Liaison Committee, may establish.

(e) REPORT TO THE CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this title, the Federal financial institution regulatory agencies shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the agencies' efforts to establish—

(1) a public interagency Web site for directing and referring Internet consumer complaints and inquiries concerning any financial institution to the Consumer Financial Protection Agency for purposes of collecting, monitoring, and responding to such complaints and, where appropriate, a system for referring complaints to the Federal financial institution regulatory agency, other Federal agency, or State agency that is otherwise the appropriate agency to address the subject of the complaint or inquiry; and

(2) a system to expedite the prompt and effective rerouting of any misdirected consumer complaint or inquiry documents between or among the agencies, with prompt referral of any complaint or inquiry to the appropriate Federal financial institution regulatory agency, and to participating State agencies.

(f) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—Before the end of the 180-day period beginning on the date of the enactment of this title, the Director shall establish within the Agency the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate the Office which shall include the following functions:

(A) Providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Agency, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.

(B) Coordinating fair lending enforcement efforts of the Agency with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient and effective enforcement of Federal fair lending laws.

(C) Working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education.

(D) Providing annual reports to the Congress on the Agency's efforts to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—There is hereby established the position of Assistant Director of the Agency for Fair Lending and Equal Opportunity who—

(A) shall be appointed by the Director;

(B) shall carry out such duties as the Director may delegate to such Assistant Director; and

(C) shall serve as the Director of the Office of Fair Lending and Equal Opportunity.

(4) PROHIBITIONS ON PARTICIPATION IN PROGRAMS WITH RESPECT TO CERTAIN INDICTED ORGANIZATIONS.—

(A) PROHIBITION.—The Director of the Office of Fair Lending and Equal Opportunity may not allow a covered organization to participate in any program established by such Director.

(B) COVERED ORGANIZATION.—In this paragraph, the term ''covered organization'' means any of the following:

(i) Any organization that has been indicted for a violation under any Federal or State law governing the financing of a campaign for election for public office or any law governing the administration of an election for public office, including a law relating to voter registration.

(ii) Any organization that had its State corporate charter terminated due to its failure to comply with Federal or State lobbying disclosure requirements.

(iii) Any organization that has filed a fraudulent form with any Federal or State regulatory agency.

(iv) Any organization that—

(I) employs any applicable individual, in a permanent or temporary capacity;

(II) has under contract or retains any applicable individual; or

(III) has any applicable individual acting on the organization's behalf or with the express or apparent authority of the organization.

(C) ADDITIONAL DEFINITIONS.—In this paragraph:

(i) The term ''organization'' includes the Association of Community Organizations for Reform Now (in this paragraph referred to as ''ACORN'') and any ACORN-related affiliate.

(ii) The term ''ACORN-related affiliate'' means any of the following:

(I) Any State chapter of ACORN registered with the Secretary of State's office in that State.

(II) Any organization that shares directors, employees, or independent contractors with ACORN.

(III) Any organization that has a financial stake in ACORN.

(IV) Any organization whose finances, whether federally funded, donor-funded, or raised through organizational goods and services, are shared or controlled by ACORN.

(iii) The term ''applicable individual'' means an individual who has been indicted for a violation under Federal or State law relating to an election for Federal or State office.

(D) REVISION OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall be revised to carry out the provisions of this paragraph relating to contracts.

(E) SEVERABILITY.—If any provision of this section or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provision to any other person or circumstance shall not be affected.

SEC. 4106. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and con-

1 sult with the Director in the exercise of the functions of
2 the Director and the Agency under this title, the enumer-
3 ated consumer laws, and to provide information on emerg-
4 ing practices in the consumer financial products or serv-
5 ices industry.

6 (b) MEMBERSHIP.—

7 (1) IN GENERAL.—In appointing the members
8 of the Consumer Advisory Board, the Director shall
9 seek—

10 (A) to assemble experts in financial serv-
11 ices, community development, fair lending and
12 civil rights, consumer protection, and consumer
13 financial products or services; and

14 (B) to represent the interests of covered
15 persons and consumers.

16 (2) PROHIBITION ON MEMBERSHIP WITH RE-
17 SPECT TO CERTAIN INDICTED ORGANIZATIONS.—The
18 director may not appoint an employee of a covered
19 organization (as defined in section 4105(f)(4)(B)) to
20 the Consumer Advisory Board.

21 (c) POLITICAL AFFILIATION.—Not more than 1 more
22 than half of the members of the Consumer Advisory Board
23 may be members of the same political party.

(d) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(e) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 4107. COORDINATION.

(a) COORDINATION WITH OTHER FEDERAL AGENCIES AND STATE REGULATORS.—The Director shall coordinate with the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Secretary of the Treasury, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of, and enforcement related to, consumer and investment products, services, and laws.

(b) COORDINATION OF CONSUMER EDUCATION INITIATIVES.—

(1) IN GENERAL.—The Director shall coordinate with each agency that is a member of the Financial Literacy and Education Commission established by the Financial Literacy and Education Improvement Act (20 U.S.C. 9701 et seq.) to assist each agency in enhancing its existing financial literacy and education initiatives to better achieve the goals in paragraph (2) and to ensure the consistency of such initiatives across Federal agencies.

(2) GOALS OF COORDINATION.—In coordinating with the agencies described in paragraph (1), the Director shall seek to improve efforts to educate consumers about financial matters generally, the management of their own financial affairs, and their judgments about the appropriateness of certain financial products.

(c) COORDINATION.—The Agency may coordinate investigations, compliance examinations, information sharing, and related activities in support of activities undertaken pursuant to the Fair Housing Act by other Federal agencies.

SEC. 4108. REPORTS TO THE CONGRESS.

(a) REPORTS REQUIRED.—The Director shall prepare and submit to the President and the appropriate committees of the Congress a report at the beginning of

each regular session of the Congress, beginning with the session following the designated transfer date.

(b) CONTENTS.—The reports required by subsection (a) shall include—

(1) a list of the significant regulations and orders adopted by the Director, as well as other significant initiatives conducted by the Director, during the preceding year and the Director's plan for regulations, orders, or other initiatives to be undertaken during the upcoming period;

(2) an analysis of complaints about consumer financial products or services that the Agency has received and collected in its central database on complaints during the preceding year;

(3) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Agency is a party (including adjudication proceedings conducted under subtitle E) during the preceding year;

(4) the actions taken regarding regulations, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions, including descriptions of the types of such covered persons, financial activities, and consumer

financial products or services affected by such regulations, orders, and supervisory actions;

(5) an appraisal of significant actions, including actions under Federal or State law, by State attorneys general or State regulators relating to this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws;

(6) an analysis of the Agency's efforts to fulfill the fair lending mission of the Agency; and

(7) an appraisal of the regulatory and legal difficulties encountered by the Agency in carrying out the mission and duties of the Agency with respect to consumer protection, including a description of—

(A) the difficulties and hardships encountered with respect to coordinating with other Federal and State government entities;

(B) the regulatory and enforcement limitations placed on the Agency by this title;

(C) the practices of persons, covered and uncovered under this title, that allow such persons to harm consumers and escape regulation or enforcement, including any trends identified; and

(D) legislative and administrative recommendations with respect to solving or alleviating identified difficulties.

(c) ANNUAL APPEARANCE BEFORE THE CONGRESS.—The Director shall appear before the House Committee on Financial Services at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives and plans of the Agency; and

(2) discuss and answer questions concerning such report.

SEC. 4109. FUNDING; FEES AND ASSESSMENTS; PENALTIES AND FINES.

(a) TRANSFER OF FUNDS FROM THE BOARD OF GOVERNORS.—

(1) TRANSFER REQUIRED.—Each year, beginning on the designated transfer date, the Board of Governors shall transfer funds in an amount equaling 10 percent of the Federal Reserve System's total system expenses (as reported in the Budget Review of the Board of Governors most recent Annual Report to Congress) to the Director for the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and transferred under subtitles F and H.

(2) PROCEDURES.—The Board of Governors, in consultation with the Agency, shall make appropriate arrangements to transfer funds to the Director in accordance with this subsection.

(b) FEES AND ASSESSMENTS.—

(1) ASSESSMENT REQUIRED.—

(A) IN GENERAL.—Taking into account such other sums available to the Agency and subject to the provisions of this subsection and subsection (d), the Director shall assess fees on covered persons to meet the Agency's expenses for carrying out the duties and responsibilities of the Agency, including supervising such covered persons.

(B) BASIS FOR ASSESSMENT.—The Agency shall assess fees on covered persons pursuant to this subsection based on the size and complexity of the covered person, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(2) REGULATIONS.—

(A) IN GENERAL.—The Director shall prescribe regulations to govern the imposition and collection of fees and assessments.

(B) FACTORS REQUIRED TO BE ADDRESSED.—Regulations prescribed by the Director under this subsection shall specify and define—

(i) the basis of fees or assessments (such as the outstanding number of consumer credit accounts, off-balance sheet receivables attributable to the covered person, total consolidated assets, total assets under management, or volume of consumer financial transactions or use of service providers);

(ii) the amount and frequency of fees or assessments; and

(iii) such other factors that the Director determines are appropriate, which shall include a covered person's compliance record under the enumerated consumer laws, the authorities transferred under subtitles F and H, and this title.

(3) ASSESSMENTS ON DEPOSITORY INSTITUTION COVERED PERSONS.—

(A) DEPOSITORY INSTITUTION COVERED PERSON DEFINED.—For purposes of this section, the term ''depository institution covered person'' means a covered person that is an insured depository institution or credit union.

(B) ASSESSMENTS.—

(i) FEES REQUIRED.—The Director shall assess fees for supervision as are appropriate on depository institution covered persons, taking into account the size and complexity of the covered person, and the compliance record of the covered person under the enumerated consumer laws, the laws and authorities transferred under subtitles F and H, and this title.

(ii) LIMITATION ON CERTAIN FEES.—The Agency shall not assess examination fees on an institution referred to in section 4203(a), or an institution whose examination responsibilities have been delegated to an appropriate agency, pursuant to section 4202(c)(11).

(iii) BASIS FOR FEE AMOUNTS.—Fees assessed by the Director under this subparagraph may be established at levels nec-

essary to meet the Agency's expenses for carrying out the duties and responsibilities of the Director and the Agency under this title with regard to depository institution covered persons.

(C) COORDINATION DURING IMPLEMENTATION PERIOD.—The Director and the agencies responsible for chartering and or supervising depository institution covered persons shall coordinate on the levels of fees assessed on depository institution covered persons under this paragraph, so that levels of assessments under this subparagraph combined with levels of assessments by agencies responsible for chartering and or supervising depository institution covered persons shall be no more than the assessments such depository institution covered person was required to pay for the 12-month period ending on December 31, 2009.

(D) MARGINAL ASSESSMENT RATE.—

(i) IN GENERAL.—In setting assessment rates for depository institution covered persons, the Director shall not impose assessments that result in higher marginal assessment rates for depository institution

1 covered persons with assets of less than
2 $25,000,000,000 than the marginal rates
3 for depository institutions covered persons
4 with assets that exceed that amount.
5 (ii) RULE OF CONSTRUCTION.—
6 Clause (i) shall not be construed as lim-
7 iting or impairing the authority of the Di-
8 rector to set assessments that would result
9 in higher marginal assessment rates on the
10 larger depository institution covered per-
11 sons.
12 (E) LIMITATIONS ON ASSESSMENTS.—
13 (i) ASSESSMENTS FOR ADMINISTRA-
14 TIVE COSTS.—Notwithstanding any provi-
15 sion in this title, no depository institution
16 covered person shall be charged an assess-
17 ment to be used for the supervision, exam-
18 ination, enforcement or regulation by the
19 Agency of nondepository covered persons.
20 (ii) AMOUNTS PAID FOR CONSUMER
21 COMPLIANCE SUPERVISION.—Notwith-
22 standing any provision in this title, no de-
23 pository institution covered person shall
24 pay more for consumer compliance super-

vision than it paid before the date of enactment of this title.

(4) ASSESSMENTS ON NONDEPOSITORY COVERED PERSONS.—

(A) NONDEPOSITORY COVERED PERSON DEFINED.—For purposes of this section, the term ''nondepository covered person''—

(i) means a covered person that is not a credit union or insured depository institution; and

(ii) includes any bank holding company.

(B) ASSESSMENTS.—

(i) FEES REQUIRED.—The Director shall assess fees for registration, examination, and supervision of nondepository covered persons.

(ii) BASIS FOR FEE AMOUNTS.—Fees assessed by the Director under this subparagraph may be established at levels necessary to meet the Agency's expenses for carrying out the duties and responsibilities of the Director and the Agency, including supervising such covered persons, taking

into account such other sums available to the Agency.

(iii) REGISTRATION FEE MINIMUMS.—Registration fees imposed on a nondepository covered person under this paragraph shall, at a minimum, be imposed on such covered person at the time the person registers (or periodically renews any such registration) with the Agency, in accordance with regulations prescribed by the Director.

(C) NONDEPOSITORY COVERED PERSON ASSESSMENT NOT LESS THAN FOR DEPOSITORY COVERED PERSONS.—Assessment rates levied by the Director under this section on a nondepository institution covered persons shall be no less than assessments levied by the Agency under this section on a depository institution covered person with similar characteristics.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For the purposes of carrying out the authorities granted in this title, under the enumerated consumer laws, and the laws and authorities transferred under subtitles F and H, there

are authorized to be appropriated to the Director such sums as may be necessary for any fiscal year.

(2) APPORTIONMENT.—Notwithstanding any other provision of law, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

(3) OTHER AVAILABLE FUNDS TAKEN INTO ACCOUNT.—Sums appropriated under this subsection shall take into account such other sums available to the Agency under this section.

(d) CONSUMER FINANCIAL PROTECTION AGENCY DEPOSITORY INSTITUTION FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Treasury a separate fund to be known as the ''Consumer Financial Protection Agency Depository Institution Fund'' (hereafter in this section referred to as the ''CFPA Depository Fund'').

(B) AMOUNTS IN FUND NOT AVAILABLE FOR CERTAIN PURPOSES.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Depository Fund shall not be used in the

supervision and examination of nondepository institution covered persons.

(2) ALL TRANSFERRED FUNDS DEPOSITED.—All amounts transferred to the Agency under subsection (a) shall be deposited into the CFPA Depository Fund.

(3) ALL APPLICABLE SUPERVISORY FEES AND ASSESSMENTS DEPOSITED.—The Director shall deposit all amounts received from assessments under subsection (b)(3) in the CFPA Depository Fund.

(e) CONSUMER FINANCIAL PROTECTION AGENCY NONDEPOSITORY INSTITUTION FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Treasury a separate fund called the Consumer Financial Protection Agency Nondepository Institution Fund (hereafter in this section referred to as the ''CFPA Nondepository Fund'').

(B) AMOUNTS IN FUND NOT AVAILABLE FOR CERTAIN PURPOSES.—Other than pursuant to subsection (f), amounts on deposit in the CFPA Nondepository Fund shall not be used for the supervision and examination of depository institution covered persons.

1 (2) ALL APPLICABLE SUPERVISORY FEES AND
2 ASSESSMENTS DEPOSITED.—The Director shall de-
3 posit all amounts received from assessments under
4 subsection (b)(4) in the CFPA Nondepository Fund.
5 (f) GENERAL PROVISIONS RELATING TO FUNDS.—
6 (1) MAINTENANCE OF FUNDS.—
7 (A) AGENCY FUNDS MAINTAINED BY
8 TREASURY.—The Consumer Financial Protec-
9 tion Agency Depository Institution Fund estab-
10 lished under subsection (d) and the Consumer
11 Financial Protection Agency Nondepository In-
12 stitution Fund established under subsection (e)
13 shall each be—
14 (i) maintained and administered by
15 the Secretary; and
16 (ii) maintained separately and not
17 commingled.
18 (B) AGENCY'S AUTHORITY.—Any provision
19 of this title forbidding the commingling or use
20 of the CFPA Depository Fund and the CFPA
21 Nondepository Fund shall not be construed as
22 limiting or impairing the authority of the Agen-
23 cy to use the same facilities and resources in
24 the course of conducting supervisory and regu-
25 latory functions with respect to depository insti-

tutions and nondepository institutions, or to integrate such functions.

(C) ACCOUNTING REQUIREMENTS.—

(i) ACCOUNTING FOR USE OF FACILITIES AND RESOURCES.—The Agency shall keep a full and complete accounting of all costs and expenses associated with the use of any facility or resource used in the course of any function specified in subparagraph (B) and shall allocate, in the manner provided in subparagraph (D), any such costs and expenses incurred by the Agency—

(I) with respect to depository institution covered persons, to the CFPA Depository Fund; and

(II) with respect to nondepository covered persons, to the CFPA Nondepository fund.

(D) ALLOCATION OF ADMINISTRATIVE EXPENSES.—Any personnel, administrative, or other overhead expense of the Agency shall be allocated—

(i) fully to the CFPA Depository Fund if the expense was incurred directly

as a result of the Agency's responsibilities solely with respect to depository institution covered persons;

(ii) fully to the CFPA Nondepository Fund, if the expense was incurred directly as a result of the Agency's responsibilities solely with respect to nondepository covered persons;

(iii) between the CFPA Depository Fund and the CFPA Nondepository Fund, in amounts reflecting the relative degree to which the expense was incurred as a result of the activities of depository institution covered persons, and nondepository covered persons; and

(iv) if the Director is unable to make a complete allocation under clause (i), (ii), or (iii), between the CFPA Depository Fund and the CFPA Nondepository Fund, in amounts reflecting the relative proportion that, as of the end of the preceding year—

(I) the aggregate assets of all depository institution covered persons

bears to the aggregate assets of all covered persons; and

(II) the aggregate assets of all nondepository covered persons bears to the aggregate assets of all covered persons.

(E) AGENCY FUND.—The ''Agency fund'' means the Consumer Financial Protection Agency Depository Institution Fund established under subsection (d), and, the Consumer Financial Protection Agency Nondepository Institution Fund established under subsection (e), and the Consumer Financial Protection Agency Civil Penalty Fund established under subsection (g).

(2) INVESTMENT.—

(A) AMOUNTS IN FUNDS MAY BE INVESTED.—The Director may request the Secretary to invest the portion of any Agency fund that, in the Director's judgment, is not required to meet the current needs of such fund.

(B) ELIGIBLE INVESTMENTS.—Investments pursuant to subparagraph (A) shall be made by the Secretary in obligations of the United States or obligations that are guaran-

teed as to principal and interest by the United States, with maturities suitable to the needs of the Agency fund involved, as determined by the Director.

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

(3) USE OF FUNDS.—Funds obtained by, transferred to, or credited to any Agency fund shall be immediately available to the Agency, and remain available until expended, to pay the expenses of the Agency in carrying out the duties and responsibilities of the Director and the Agency, including the payment of compensation of the Director and officers and employees of the Agency.

(2) FEES, ASSESSMENTS AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to any Agency fund shall not be construed to be Government funds or appropriated monies.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law,

amounts in any Agency fund shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.

(g) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Treasury of the United States a fund to be known as the ''Consumer Financial Protection Agency Civil Penalty Fund'' (hereafter in this section referred to as the ''Civil Penalty Fund'').

(2) DEPOSITS.—If the Agency obtains a civil penalty against any person in any judicial or administrative action under this title, any law or authority transferred under subtitles F and H, or any enumerated consumer law, the Agency shall deposit into the Civil Penalty Fund the amount of the penalty collected.

(3) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Director, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under this title, the law and authorities transferred under subtitles F and H, or any enumerated consumer law.

SEC. 4110. AMENDMENTS RELATING TO OTHER ADMINISTRATIVE PROVISIONS.

(a) ACT OF OCTOBER 28, 1974.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting ''the Consumer Financial Protection Agency,'' after ''Federal Deposit Insurance Corporation,''.

(b) PAPERWORK REDUCTION ACT.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) by inserting ''the Consumer Financial Protection Agency,'' after ''the Securities and Exchange Commission,''.

SEC. 4111. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this title.

Subtitle B—General Powers of the Director and Agency

SEC. 4201. MANDATE AND OBJECTIVES.

(a) MANDATE.—The Director shall seek to promote transparency, simplicity, fairness, accountability, and equal access in the market for consumer financial products or services.

(b) OBJECTIVES.—The Director may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H for the purposes of ensuring that, with respect to consumer financial products or services—

(1) consumers have and can use the information they need to make responsible decisions about consumer financial products or services;

(2) consumers are protected from abuse, unfairness, deception, and discrimination;

(3) markets for consumer financial products or services operate fairly and efficiently with ample room for sustainable growth and innovation; and

(4) traditionally underserved consumers and communities have equal access to responsible financial services.

SEC. 4202. AUTHORITIES.

(a) IN GENERAL.—The Director may exercise the authorities granted in this title, in the enumerated consumer laws, and transferred under subtitles F and H, to administer, enforce, and otherwise implement the provisions of this title, the authorities transferred in subtitles F and H, and the enumerated consumer laws.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) IN GENERAL.—The Director may prescribe regulations and issue orders and guidance as may be necessary or appropriate to enable it to administer and carry out the purposes and objectives of this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws, and to

1 prevent evasions of this title, any such authority,
2 and any such law.
3 (2) STANDARDS FOR RULEMAKING.—In pre-
4 scribing a regulation under this title or pursuant to
5 the authorities transferred under subtitles F and H
6 or the enumerated consumer laws, the Director
7 shall—
8 (A) consider the potential benefits and
9 costs to consumers and covered persons, includ-
10 ing the potential reduction of consumers' access
11 to consumer financial products or services, re-
12 sulting from such regulation; and
13 (B) consult with the Federal banking agen-
14 cies, State bank supervisors, the Federal Trade
15 Commission, or other Federal agencies, as ap-
16 propriate, regarding the consistency of a pro-
17 posed regulation with prudential, consumer pro-
18 tection, civil rights, market, or systemic objec-
19 tives administered by such agencies or super-
20 visors.
21 (3) EXEMPTIONS.—
22 (A) IN GENERAL.—The Director, by regu-
23 lation or order, may conditionally or uncondi-
24 tionally exempt any covered person, service pro-
25 vider, or any consumer financial product or

service or any class of covered persons, class of service providers, or consumer financial products or services, from any provision of this title, any enumerated consumer law, or from any regulation under any such provision or law, as the Director deems necessary or appropriate to carry out the purposes and objectives of this title taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption by regulation or order as permitted in subparagraph (A), the Director shall as appropriate take into consideration the following:

(i) The total assets of the covered person.

(ii) The volume of transactions involving consumer financial products or services in which the covered person engages.

(iii) The extent to which the covered person engages in 1 or more financial activities.

(iv) Existing laws or regulations which are applicable to the consumer financial product or service and the extent to which

such laws or regulations provide consumers with adequate protections.

(C) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, amending, or affecting any authority under sections 304(a), 304(i), 305(a), and 306(b) of the Home Mortgage Disclosure Act of 1975 and sections 703(a)(1), 703(a)(2), 703(a)(3), 705(f), and 705(g) of the Equal Credit Opportunity Act for determining whether a covered person should be provided an exemption.

(c) EXAMINATIONS AND REPORTS.—

(1) IN GENERAL.—Except as provided under section 4203, the Director may on a periodic basis examine a covered person or service provider, with respect to any consumer financial product or service, for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any regulations prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) EXAMINATION PROGRAM.—The Director shall exercise any authority of the Director under paragraph (1) in a manner designed to ensure that

such authorities are exercised with respect to covered persons or service providers, without regard to charter or corporate form, based on the Director's assessment of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable, the following factors:

(A) The asset size of the covered persons.

(B) The volume of transactions involving consumer financial products or services in which the covered persons engage.

(C) The risks to consumers created by the provision of such consumer financial products or services.

(D) In the case of State-chartered institutions, the extent to which such institutions are subject to oversight by State authorities for consumer protection.

(3) COORDINATION.—The Director shall coordinate the Agency's supervisory activities with the supervisory activities conducted by the Federal banking agencies and the State bank supervisors, including establishing their respective schedules for examining covered persons and requirements regarding reports to be submitted by covered persons.

(4) REPORTS.—The Director may require reports from a covered person for purposes of ensuring compliance with the requirements of this title, the enumerated consumers laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(5) CONTENT OF REPORTS.—The reports authorized in paragraph (4) may include such information as necessary to keep the Agency informed as to—

(A) the compliance systems or procedures of the covered person or any affiliate thereof, with applicable provisions of this title or any other law that the Agency has jurisdiction to enforce; and

(B) matters related to the provision of consumer financial products or services including the servicing or maintenance of accounts or extensions of credit.

(6) USE OF EXISTING REPORTS.—In general, the Agency shall, to the fullest extent possible, use—

(A) reports that a covered person, or any affiliate thereof, or any service provider to such

1 covered person or affiliate, has provided or been
2 required to provide to a Federal or State agen-
3 cy; and
4 (B) information that has been reported
5 publicly.
6 (7) ACCESS BY THE AGENCY TO REPORTS OF
7 OTHER REGULATORS.—
8 (A) EXAMINATION AND FINANCIAL CONDI-
9 TION REPORTS.—Upon providing reasonable as-
10 surances of confidentiality, the Agency shall
11 have access to any report of examination or fi-
12 nancial condition, including a report containing
13 data regarding consumer complaints, made by a
14 Federal banking agency or other Federal agen-
15 cy having supervision of a covered person, or a
16 service provider, (other than returns and return
17 information described in section 6103 of the In-
18 ternal Revenue Code of 1986) and to all revi-
19 sions made to any such report.
20 (B) PROVISION OF OTHER REPORTS TO
21 AGENCY.—In addition to the reports described
22 in subparagraph (A), a Federal banking agency
23 may, in its discretion, furnish to the Agency
24 any other report or other confidential super-
25 visory information concerning any insured de-

1 pository institution, any credit union, or other
2 entity examined by such agency under authority
3 of any Federal law.
4 (8) ACCESS BY OTHER REGULATORS TO RE-
5 PORTS OF THE AGENCY.—
6 (A) EXAMINATION REPORTS.—Upon pro-
7 viding reasonable assurances of confidentiality,
8 a Federal banking agency, a State regulator, or
9 any other Federal agency having supervision of
10 a covered person shall have access to any report
11 of examination made by the Agency with re-
12 spect to the covered person or service provider,
13 and to all revisions made to any such report.
14 (B) PROVISION OF OTHER REPORTS TO
15 OTHER REGULATORS.—In addition to the re-
16 ports described in paragraph (A), the Agency
17 may, in the discretion of the Agency, furnish to
18 a Federal banking agency any other report or
19 other confidential supervisory information con-
20 cerning any insured depository institution, any
21 credit union, or other entity examined by the
22 Agency under authority of any Federal law.
23 (9) PRESERVATION OF AUTHORITY.—No provi-
24 sion in paragraph (3) shall be construed as pre-
25 venting the Agency from conducting an examination

authorized by this title or under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law. No provision of this title shall be construed as limiting the authority of the Director to require reports from a covered person, as permitted under paragraph (4), regarding information owned or under the control of the covered person, regardless of whether such information is maintained, stored, or processed by another person.

(10) REPORTS OF TAX LAW NONCOMPLIANCE.—The Director shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(11) DELEGATION.—

(A) IN GENERAL.—The Director may delegate the examination authorities of the Agency under this title to any appropriate agency, as defined in section 4203, for any insured depository institution or insured credit union that is not subject to section 4203 upon a petition by an appropriate agency.

(B) STANDARD FOR DELEGATION.—The Director shall provide such delegation if, in the

Director's sole discretion, the Director determines that—

(i) the delegation is consistent with the public interest;

(ii) the appropriate agency is capable of enforcing compliance with this title, and with any regulation prescribed under this title; and

(iii) such capability is comparable to or superior to the capability of the Agency, in terms of expertise, demonstrated commitment, and overall effectiveness, in enforcing such compliance.

(C) EFFECT OF DELEGATION.—The insured depository institution or insured credit union shall be subject to the examination process described in section 4203(b).

(D) NO EFFECT ON ENFORCEMENT.—The Director's delegation authority under this paragraph shall not apply to the Director's enforcement responsibilities under subsection (e).

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law other than section 4203 and subsections (f) and (h) of this section, to the extent that a Federal law

authorizes the Director and another Federal agency to prescribe regulations, issue guidance, conduct examinations, or require reports under that law for purposes of assuring compliance with this title, any enumerated consumer law, the laws for which authorities were transferred under subtitles F and H, and any regulations prescribed under this title or pursuant to any such authority, the Director shall have the exclusive authority to prescribe regulations, issue guidance, conduct examinations, require reports, or issue exemptions with regard to any person subject to that law and with respect to any activity regulated under any enumerated consumer law.

(e) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE AGENCY TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that a Federal law authorizes the Agency and another Federal agency to enforce that law, the Agency shall have primary authority to enforce that Federal law with respect to any person in accordance with this subsection.

(2) COORDINATION WITH FEDERAL TRADE COMMISSION.—

(A) NOTICE.—If the Commission is authorized to enforce any Federal law described in paragraph (1), or a regulation prescribed under

any such Federal law, the Commission shall serve written notice to the Director of any enforcement action at least 30 days prior to initiating such an enforcement action, except that if exigent circumstances are present, the Commission may provide notice immediately upon initiating such enforcement action.

(B) INTERVENTION BY THE DIRECTOR.—Upon receiving any notice under subparagraph (A) with respect to an enforcement action, the Director may intervene in such enforcement action and upon intervening—

(i) be heard on all matters arising in such enforcement action; and

(ii) file petitions for appeal in such enforcement action.

(C) PENDENCY OF AGENCY ACTION.—Whenever a civil action has been instituted by or on behalf of the Agency for any violation of any Federal law described in paragraph (1), or a regulation prescribed under any such Federal law, the Commission may not, during the pendency of that action instituted by or on behalf of the Agency, institute a civil action under such law or regulation against any defendant named

in the Agency complaint in such action for any violation alleged in the Agency complaint.

(D) AGREEMENTS BETWEEN AGENCIES.—

(i) NEGOTIATIONS AUTHORIZED.—The Director may negotiate an agreement with the Commission to establish procedures to ensure that the enforcement actions of the 2 agencies are appropriately coordinated.

(ii) SCOPE OF NEGOTIATED AGREEMENT.—The terms of any agreement negotiated pursuant to clause (i) may modify or supersede the provisions of subparagraphs (A), (B), and (C).

(3) COORDINATION WITH OTHER FEDERAL AGENCY.—

(A) REFERRAL.—Any Federal agency (other than the Federal Trade Commission) that is authorized to enforce a Federal law described in paragraph (1) may recommend in writing to the Director that the Agency initiate an enforcement proceeding to the extent the Agency is authorized by that Federal law or by this title. The recommendation shall be accom-

panied by a written explanation of the concerns giving rise to the recommendation.

(B) BACKSTOP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Agency does not, before the end of the 120-day period beginning on the date on which the Director receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the other agency referred to in subparagraph (A) may initiate an enforcement proceeding as permitted by that Federal law.

(4) INSTITUTIONS SUBJECT TO SPECIAL EXAMINATION AND ENFORCEMENT PROCEDURES.—This subsection shall not apply to institutions subject to section 4203.

(f) PRESERVATION OF OTHER AUTHORITY.—

(1) ATTORNEY GENERAL.—No provision of this title shall be construed as affecting any authority of the Attorney General.

(2) SECRETARY OF THE TREASURY.—No provision of this title shall be construed as affecting any authority of the Secretary of the Treasury, including with respect to prescribing regulations, initiating enforcement proceedings, or taking other actions with

respect to a person providing tax planning or tax preparation services.

(3) FAIR HOUSING ACT.—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.

(g) EFFECT ON OTHER AUTHORITY.—No provision of this section or section 4203 shall be construed as modifying or limiting the authority of any appropriate Federal banking agency or the Director or Agency to interpret, or take enforcement action under, any law or regulation the interpretation or enforcement of which is committed to the banking agency or the Director or Agency, which shall include, in the case of the Director and the Agency, this title, the enumerated consumer laws, and the regulations prescribed under this title or such laws.

(h) PRESERVATION OF FEDERAL TRADE COMMISSION AUTHORITY.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the Federal Trade Commission Act or other laws other than the enumerated consumer laws.

SEC. 4203. EXAMINATION AND ENFORCEMENT FOR SMALL BANKS, THRIFTS, AND CREDIT UNIONS.

(a) SCOPE OF INSTITUTIONS SUBJECT TO THIS SECTION.—

(1) INSTITUTIONS COVERED.—This section shall apply to—

(A) any insured depository institution with total assets of $10,000,000,000 or less; or

(B) any insured credit union with total assets of $1,500,000,000 or less.

(2) APPROPRIATE AGENCY.—For purposes of this title, the term ''appropriate agency'' means—

(A) in the case of an insured depository institution, the appropriate Federal banking agency as such term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(b) EXAMINATIONS.—

(1) IN GENERAL.—The appropriate agency shall on a periodic basis examine, or require reports from, an institution referred to in subsection (a) for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) AGENCY ROLE IN EXAMINATIONS.—

(A) The appropriate agency shall provide all reports, records, and documentation related to the examination process to the Agency on a timely and ongoing basis.

(B) The Director and Agency may, at its discretion, include an examiner on any examination conducted under paragraph (1). The appropriate agency shall involve such Agency examiner in the entire examination process, including setting the scope of an examination, participating in the examination, and providing input on the examination report, matters requiring attention and examination ratings.

(c) ENFORCEMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of this title other than this subsection, the appropriate agency shall have primary authority to enforce violations identified at institutions referred to in subsection (a) of any of the requirements of this title, the enumerated consumers laws, and any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H.

(2) COORDINATION WITH APPROPRIATE AGENCY.—

(A) REFERRAL.—

(i) IN GENERAL.—The Agency may recommend in writing to the appropriate agency that the appropriate agency initiate an enforcement proceeding to the extent the appropriate agency is authorized by that Federal law or by this title.

(ii) EXPLANATION.—Any recommendation under clause (i) shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(B) BACKSTOP ENFORCEMENT AUTHORITY OF AGENCY.—If the appropriate agency does not, before the end of the 120-day period beginning on the date on which the appropriate agency receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the Agency may initiate an enforcement proceeding as permitted by Federal law.

(d) ACTIONS ARISING OUT OF CONSUMER COMPLAINT SYSTEM.—Notwithstanding any provision of this section, if through the consumer complaint system administered by the Agency under section 4105(c)(3), the Director has reasonable cause to believe that an institution re-

ferred to in subsection (a) demonstrates noncompliance with any provision of this title, the enumerated consumer laws, or any regulation prescribed by the Director under this title or pursuant to the authorities transferred under subtitles F and H, the Director may directly investigate such institution for such noncompliance and take any action permitted under subtitle E that the Director deems appropriate.

(e) REMOVAL OF APPROPRIATE AGENCY FOR PARTICULAR INSTITUTION.—

(1) HEIGHTENED SUPERVISION.—The Director—

(A) may provide notice to an appropriate agency that the Director is considering issuing a removal order under paragraph (2); and

(B) shall have an Agency examiner participate in the examination process under subsection (b) for at least 1 examination cycle.

(2) REMOVAL BY ORDER.—If, after the completion of at least 1 examination cycle following the provision of notice to an appropriate agency under paragraph (1), the Director determines in writing that the appropriate agency has failed to adequately conduct consumer compliance examinations or bring appropriate enforcement actions against an institu-

tion referred to in subsection (a), the Director may order the removal of the appropriate agency from its responsibilities under this section for such institution.

(3) AGENCY AUTHORITY UPON REMOVAL.—Upon removal pursuant to paragraph (2), the Agency shall examine and enforce against such institution as if the institution were subject to section 4202.

(4) EFFECTIVE DATE.—An order under paragraph (2) shall take effect 30 days after a determination by the Secretary of the Treasury pursuant to paragraphs (5) and (6).

(5) AUTOMATIC APPEAL.—An order issued by the Director pursuant to paragraph (2) shall be automatically appealed to the Secretary.

(6) DECISION BY THE SECRETARY OF THE TREASURY.—

(A) DETERMINATION.—The order issued pursuant to paragraph (2) shall be deemed affirmed unless the Secretary of the Treasury denies the determination of the Director within 120 days of the issuance of the order pursuant to paragraph (2).

(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed as prohib-

iting the Secretary of the Treasury from making a determination to either affirm or deny an order issued pursuant to paragraph (2) prior to the passage of the time period in subparagraph (A).

(7) REGULATIONS.—By the transfer date, the Secretary shall issue regulations that establish the standards the Director shall apply in making a determination to remove an appropriate agency and the process, procedures, and standards for an appeal. Such standards shall require the Director to consider at least the following in issuing an order removing an appropriate agency for an institution referred to in subsection (a)(1):

(A) Reports of examination of such institution.

(B) Any enforcement actions taken by an appropriate agency against such institution and the results of those actions.

(C) Consumer complaints issued against such institution.

(D) Actions taken by State attorneys general and private rights of action against such institution.

(f) POLICIES AND PROCEDURES.—Within 180 days after the designated transfer date, the Agency and the appropriate agency shall develop policies and procedures for implementing this section.

(g) ASSESSMENTS.—

(1) LIMITATION ON CERTAIN FEES.—The Agency shall not assess examination fees on an institution referred to in subsection (a).

(2) RULE OF CONSTRUCTION.—No provision of this section shall be construed as preventing the appropriate agency from assessing fees on an institution referred to in paragraph (1) to meet the appropriate agency's expenses for carrying out such examination and supervision responsibilities pursuant to this section.

SEC. 4204. SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.

(a) EXAMINATIONS.—A Federal banking agency and the Agency shall, with respect to each insured depository institution, credit union, or other covered person supervised by the Federal banking agency and the Agency, respectively—

(1) coordinate the scheduling of examinations of the insured depository institution, and credit union, or other covered person;

(2) conduct simultaneous examinations of each insured depository institution, credit union or other covered person, unless such institution requests examinations to be conducted separately;

(3) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(4) prior to issuing a final report of examination or taking supervisory action, an agency shall take into consideration concerns, if any, raised in the comments made by the other agency.

(b) COORDINATION WITH STATE BANK SUPERVISORS.—The Agency shall pursue arrangements and agreements with State bank supervisors to coordinate examinations consistent with subsection (a).

(c) RESOLUTION OF CONFLICT IN SUPERVISION.—

(1) REQUEST OF DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—If the proposed material supervisory determinations of the Agency and a Federal banking agency are conflicting, an insured depository institution, credit union, or other covered person may request the agen-

cies to coordinate and present a joint statement of coordinated supervisory action.

(B) LIMITATION.—A request of an insured depository institution, credit union, or other covered person shall not be used to appeal a supervisory rating or determination by the Agency or a Federal banking agency.

(2) JOINT STATEMENT.—The agencies receiving a request from an insured depository institution, credit union, or covered person under paragraph (1) shall provide a joint statement resolving the conflict under such subparagraph before the end of the 30-day period beginning on the date the agencies receive such request.

(d) APPEALS TO GOVERNING PANEL.—

(1) IN GENERAL.—If the agencies receiving a request from an insured depository institution, credit union, or covered person under subsection (c)(1) do not issue a joint statement under subsection (c)(2), or if either agency takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, the insured depository institution, credit union, or other covered person may institute an appeal to a governing panel under this subsection.

(2) TIMETABLE.—Any appeal under paragraph (1) with regard to a failure of agencies to issue a joint statement shall be filed before the end of the 30-day period beginning at the end of the 30-day period during which such joint statement was due under subsection (c)(2).

(e) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this section shall be composed of—

(1) 2 individuals—

(A) 1 of whom is a representative from the Agency;

(B) 1 of whom is a representative of the Federal banking agency which received the request to which the appeal relates; and

(C) neither of whom—

(i) have participated in the material supervisory determinations under appeal; and

(ii) report directly or indirectly to the individual who made the supervisory determinations under appeal; and

(2) 1 individual who is a representative from—

(A) the Federal banking agency that heads the Financial Institution Examination Council; or

(B) if the Financial Institutions Examination Council is headed by a Federal banking agency that is a party to the appeal, the Federal banking agency that is next scheduled to head the Financial Institutions Examination Council.

(f) CONDUCT OF APPEAL.—

(1) CONTENT OF FILING APPEAL.—The insured depository institution, credit union, or other covered person which institutes an appeal under subsection (d)(1) shall include in the filing of such appeal all the facts and legal arguments pertaining to the matter appealed.

(2) APPEARANCE.—The insured depository institution, credit union, or other covered person which institutes an appeal under this section may appear before the governing panel in person or by telephone, through counsel, employees, or representatives of, or for, such institution, credit union, or other covered person.

(3) REQUESTS FOR ADDITIONAL INFORMATION.—Any governing panel convened under this

section may request the insured depository institution, credit union, or other covered person, the Agency, or the Federal banking agency to produce additional information relevant to the appeal.

(4) FINAL WRITTEN DETERMINATIONS .—Any governing panel convened under this section, by a majority vote of the members of the panel, shall provide a final determination, in writing, within 30 days of the filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, credit union, or other covered person may jointly agree.

(5) PUBLIC INFORMATION.—A redacted copy of any determination by a governing panel convened under this section shall be made public upon the issuance of such determination.

(g) PROHIBITION AGAINST RETALIATION.—The Director and the Federal banking agencies shall prescribe regulations to provide safeguards from retaliation against any insured depository institution, credit union, or other covered person which institutes an appeal under this section, as well as against any officer or and employee of any such institution, credit union, or other person.

(h) MATERIAL SUPERVISORY DETERMINATION DEFINED.—For purposes of this section, the term ''material supervisory determination''—

(1) includes any action relating to any supervision or examinations; and

(2) does not include—

(A) a determination by any Federal banking agency to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act or section 212 of the Federal Credit Union Act, as the case may be; or

(B) any regulation or guidance, or order of general applicability.

SEC. 4205. LIMITATIONS ON AUTHORITY OF AGENCY AND DIRECTOR.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, en-

1 forcement or other authority, including authority to
2 order assessments, under this title with respect to—
3 (A) credit extended directly by a merchant,
4 retailer, or seller of nonfinancial services to a
5 consumer, in a case in which the good or service
6 being provided is not itself a consumer financial
7 product or service, exclusively for the purpose
8 of enabling that consumer to purchase goods or
9 services directly from the merchant, retailer, or
10 seller of nonfinancial services; or
11 (B) collection of debt, directly by the mer-
12 chant, retailer, or seller of nonfinancial services,
13 arising from such credit extended.
14 (2) EXCEPTION FOR EXISTING AUTHORITY.—
15 The Director may exercise any rulemaking authority
16 regarding an extension of credit described in para-
17 graph (1)(A) or the collection of debt arising from
18 such extension, as may be authorized by the enumer-
19 ated consumer laws or any law or authority trans-
20 ferred under subtitle F or H.
21 (3) RULE OF CONSTRUCTION.—No provision of
22 this title shall be construed as modifying, limiting,
23 or superseding the authority of the Federal Trade
24 Commission or any other agency with respect to
25 credit extended, or the collection of debt arising

from such extension, directly by a merchant, retailer, or seller of nonfinancial services to a consumer exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant, retailer, or seller of nonfinancial services.

(4) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided significantly exceeds the market value of the product or service provided, and

(ii) with respect to which the Director finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

(b) EXCLUSION FOR PERSONS REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State. The Director and Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Securities and Exchange Commission or any securities commission (or any agency or office performing like functions) of any State.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Securities and Exchange Commission shall consult and coordinate with the Director with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is

subject to the jurisdiction of the Agency under this title or under any other law.

(c) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Director and the Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Director with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Agency under this title or under any other law.

(d) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any State insurance regulator. Except as provided in paragraphs (2) and (3), the Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by any State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) PRESERVATION OF CERTAIN AUTHORITIES.—Nothing in this title shall be construed as limiting the authority of the Director and the Agency from exercising powers under this title with respect to the provision by a covered person of a product or service, not otherwise subject to this title, for

or on behalf of a person regulated by a State insurance regulator, in connection with a financial activity.

(e) EXCLUSION FOR PERSONS REGULATED BY THE FEDERAL HOUSING FINANCE AGENCY.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Federal Housing Finance Agency to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Federal Housing Finance Agency. The Director and Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Federal Housing Agency. For purposes of this subsection, the term ''person regulated by the Federal Housing Finance Agency'' means any Federal home loan bank, and any joint office of 1 or more Federal home loan banks.

(f) EXCLUSION FOR QUALIFIED RETIREMENT OR ELIGIBLE DEFERRED COMPENSATION PLANS AND ARRANGEMENTS.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforce-

ment proceedings, or take any actions with respect to—

(A) any retirement or eligible deferred compensation plan or arrangement qualified under or meeting the requirements of section 401(a), 403(a), 403(b), 457(b), 408 or 408A of the Internal Revenue Code; or

(B) any educational savings arrangement under section 529 of such Code.

(2) LIMITATION ON AGENCY AUTHORITY.—

(A) IN GENERAL.—The Director and the Agency may not exercise any power to enforce this title with respect to services provided directly (or indirectly if the services relate to the operation of such plan or arrangement) to—

(i) any retirement or eligible deferred compensation plan or arrangement qualified under or meeting the requirements of section 401(a), 403(a), 403(b), 457(b), 408, or 408A of the Internal Revenue Code; or

(ii) any educational savings arrangement under section 529 of such Code.

(B) SERVICES DEFINED.—For purposes subparagraph (A), the term ''services'' shall in-

clude, for example, services for custody and investment of assets, administration, compliance, and participant assistance.

(g) EXCLUSION FOR ACCOUNTANTS, TAX PREPARERS, AND ATTORNEYS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph when such person is performing or offering to perform customary and usual accounting activities, including the provision of accounting, tax, advisory, other services that are subject to the regulatory authority of a state board of accountancy or a federal authority, or other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not

offered or provided by the person separate and apart from such customary and usual accounting activities and are not offered or provided to consumers who are not receiving such customary and usual accounting activities;

(B) any person other than a person described in subparagraph (A) that performs income tax preparation activities for consumers; or

(C) any individual who is providing legal advice or services for which a license to practice law is required under the law of the State in which the advice or services are provided and which are performed within the scope of an attorney-client relationship established by an agreement, but only to the extent of such legal advice or services.

(2) NO EXCLUSION WITH RESPECT TO REGISTRATION OF MOST ATTORNEYS.—Notwithstanding paragraph (1), this subsection shall not apply to any authority granted to the Director or the Agency under section 4209 with respect to a licensed attorney, except to the extent a licensed attorney is solely providing legal services in connection with—

(A) the preparation and filing of a bankruptcy petition; or

(B) court proceedings to avoid a foreclosure.

(3) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to—

(A) any person described in paragraph (1)(A) to the extent such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is a financial activity described in any subparagraph of section 4002(19);

(B) any person described in paragraph (1)(B) or (1)(C) to the extent such person is engaged in any activity which is a financial activity described in any subparagraph of section 4002(19); or

(C) any person described in paragraph (1)(A), (1)(B) or (1)(C) that is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(h) EXCLUSION FOR REAL ESTATE LICENSEES.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person that is licensed or registered as a real estate broker, real estate agent, in accordance with State law, but only to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(D) engages in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; or

(E) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), (C), or (D).

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(i) EXCLUSION FOR AUTO DEALERS.—

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement or any other authority, including authority to order assessments, over—

(A) a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both; or

(B) a person that—

(i) is controlled by, or is under common control with, one or more motor vehicle dealers; and

(ii) primarily engages in the extension of, or arranging for the extension of, retail

1 credit or retail leases involving motor vehi-
2 cles, where 90 percent of such extension,
3 or arranging for such extension, is made
4 with respect to customers of one or more
5 motor vehicle dealers that control such per-
6 son or with which such person is under
7 common control.

8 (2) CERTAIN FUNCTIONS EXCEPTED.—The pro-
9 visions of paragraph (1) shall not apply to any per-
10 son to the extent that person—

11 (A) provides consumers with any services
12 related to residential mortgages; or

13 (B) operates a line of business that in-
14 volves the extension of retail credit or retail
15 leases involving motor vehicles, and in which—

16 (i) the extension of retail credit or re-
17 tail leases is routinely provided directly to
18 consumers; and

19 (ii) the contract governing such exten-
20 sion of retail credit or retail leases is not
21 routinely assigned to a third party finance
22 or leasing source.

23 (3) NO IMPACT ON PRIOR AUTHORITY.—Noth-
24 ing in this subsection shall be construed to modify,
25 limit, or supersede the rulemaking or enforcement

authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day prior to the enactment of this title.

(4) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding subtitle F or any other provision of law under this title, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Agency to the extent such functions are with respect to a person described under paragraph (1).

(5) DEFINITIONS.—For purposes of this subsection:

(A) MOTOR VEHICLE.—The term ''motor vehicle'' means any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road.

(B) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person resident in the United States or any territory of the United States, and licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.

(j) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Director or the Agency to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(k) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person to the extent such person—

(A) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(B) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(C) offers to engage in any activity described in subparagraphs (A) or (B).

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such

paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) DEFINITIONS.—For purposes of this subsection:

(A) MANUFACTURED HOME.—The term ''manufactured home'' has the meaning given such term in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term ''modular home'' means a house built in a factory in two or more modules that meet the State or local building codes where the house will be located and where such modules are transported to the building site, installed on foundations, and completed.

SEC. 4206. COLLECTION OF INFORMATION; CONFIDENTIALITY REGULATIONS.

(a) COLLECTION OF INFORMATION.—

(1) IN GENERAL.—In conducting research on the provision of consumer financial products or services, the Director shall have the power to gather in-

formation from time to time regarding the organization, business conduct, and practices of covered persons or service providers.

(2) SPECIFIC AUTHORITY.—In order to gather such information, the Director shall have the power—

(A) to gather and compile information;

(B) to require persons to file with the Agency, in such form and within such reasonable period of time as the Director may prescribe, by regulation or order, annual or special reports, or answers in writing to specific questions, furnishing information the Director may require; and

(C) to make public such information obtained by it under this section as is in the public interest in reports or otherwise in the manner best suited for public information and use.

(b) CONFIDENTIALITY REGULATIONS.—The Director shall prescribe regulations regarding the confidential treatment of information obtained from persons in connection with the exercise of any authority of the Agency or Director under this title and the enumerated consumer laws and the authorities transferred under subtitles F and H.

(c) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Agency, or requiring covered persons to publicly report information, the Director and the Agency shall take steps to ensure that proprietary, personal or confidential consumer information that are protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law are not made public under this title.

SEC. 4207. MONITORING; ASSESSMENTS OF SIGNIFICANT REGULATIONS; REPORTS.

(a) MONITORING.—

(1) IN GENERAL.—The Agency shall monitor for risks to consumers in the provision of consumer financial products or services, including developments in markets for such products or services.

(2) MEANS OF MONITORING.—Such monitoring may be conducted by examinations of covered persons or service providers, analysis of reports obtained from covered persons or service providers, assessment of consumer complaints, surveys and interviews of covered persons, service providers, and consumers, and review of available databases.

(3) CONSIDERATIONS.—In allocating the resources of the Agency to perform the monitoring re-

quired by this section, the Director may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) consumers' understanding of the risks of a type of consumer financial product or service;

(C) the state of the law that applies to the provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the provision of a consumer financial product or service;

(E) extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers, if any; or

(F) types, number, and other pertinent characteristics of covered persons that provide the product or service.

(4) REPORTS.—The Agency shall publish at least 1 report of significant findings of the monitoring required by paragraph (1) in each calendar

year, beginning in the calendar year that is 1 year after the designated transfer date.

(b) ASSESSMENT OF SIGNIFICANT REGULATIONS.—

(1) IN GENERAL.—The Agency shall conduct an assessment of each significant regulation prescribed or order issued by the Director under this title, under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law that addresses, among other relevant factors, the effectiveness of the regulation in meeting the purposes and objectives of this title and the specific goals stated by the Director.

(2) BASIS FOR ASSESSMENT.—The assessment shall reflect available evidence and any data that the Agency reasonably may collect.

(3) REPORTS.—The Agency shall publish a report of an assessment under this subsection not later than 3 years after the effective date of the regulation or order, unless the Director determines that 3 years is not sufficient time to study or review the impact of the regulation, but in no event shall the Agency publish a report of such assessment more than 5 years after the effective date of the regulation or order.

(4) PUBLIC COMMENTED REQUIRED.—Before publishing a report of its assessment, the Agency shall invite, with sufficient time allotted, public comment on, and may hold public hearings on, recommendations for modifying, expanding, or eliminating the newly adopted significant regulation or order.

(c) INFORMATION GATHERING.—In conducting any monitoring or assessment required by this section, the Agency may gather information through a variety of methods, including by conducting surveys or interviews of consumers.

SEC. 4208. AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.

(a) IN GENERAL.—The Director, by regulation, may prohibit or impose conditions or limitations on the use of any agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties if the Director finds that such a prohibition or imposition of conditions or limitations are in the public interest and for the protection of consumers.

(b) EFFECTIVE DATE.—Notwithstanding any other provision of law, any regulation prescribed by the Director under subsection (a) shall apply, consistent with the terms

of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Director.

SEC. 4209. REGISTRATION AND SUPERVISION OF NON-DEPOSITORY COVERED PERSONS.

(a) RISK-BASED PROGRAMS.—

(1) IN GENERAL.—The Agency shall develop risk-based programs to supervise covered persons that are not credit unions, depository institutions, or persons excluded under section 4205 by prescribing registration requirements, reporting requirements, and examination standards and procedures.

(2) BASIS FOR PROGRAMS.—The risk-based supervisory programs established pursuant to paragraph (1) shall be based on—

(A) relevant registration and reporting information about such covered persons, as determined by the Agency; and

(B) the Agency's assessment of risks posed to consumers in the relevant geographic markets and markets for consumer financial products and services.

(b) REGISTRATION.—

(1) IN GENERAL.—The Director shall prescribe regulations regarding registration requirements for covered persons that are not credit unions or depository institutions.

(2) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this subsection, the Agency shall consult with State agencies regarding requirements or systems for registration (including coordinated or combined systems), where appropriate.

(3) EXCEPTION FOR RELATED PERSONS.—The Agency shall not impose requirements regarding the registration of a related person.

(4) REGISTRATION INFORMATION.—Subject to regulations prescribed by the Director, the Agency shall publicly disclose the registration information about a covered person which is not a bank holding company, credit union, or depository institution for the purposes of facilitating the ability of consumers to identify the covered person as registered with the Agency.

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The Agency may require reports from covered persons that are not credit unions or depository institutions, or service providers

thereto, for the purposes of facilitating supervision of such covered persons or service providers.

(2) CONSISTENCY OF REPORTING REQUIREMENTS AND RISK-BASED STANDARDS.—The Agency shall impose reporting requirements under this subsection that are consistent with the risk-based standards developed and implemented under this section and the registration information pertaining to the relevant types or classes of covered persons.

(3) CONTENTS OF REPORTS.—Reporting requirements imposed under this paragraph may include information regarding—

(A) the nature of the covered person's business;

(B) the covered person's name, legal form, ownership and management structure, and related persons;

(C) the covered person's locations of operation;

(D) the covered person's types and number of consumer financial products and services provided by the covered person;

(E) compliance with any requirement imposed or enforced by the Agency, including any

requirement relating to registration, licensing, fees, or assessments; and

(F) the financial condition of such covered person, including a related person, for the purpose of assessing the ability of such person to perform its obligation to consumers.

(4) EXCEPTION FOR RELATED PERSONS.—Other than reports permitted under paragraph (3)(F) or in connection with a supervisory action or examination or pursuant to the powers granted in subtitle E, the Agency shall not impose requirements regarding reports of any related person.

(d) EXAMINATIONS.—

(1) EXAMINATIONS REQUIRED.—The Agency shall conduct examinations of covered persons that are not credit unions or depository institutions as part of the programs implemented under paragraphs (2) and (3) of section 4202(c).

(2) EXAMINATION STANDARDS AND PROCEDURES.—The Director shall establish risk-based standards and procedures for conducting examinations of covered persons required to be examined under paragraph (1), including the frequency and scope of such examinations, except that the Agency shall conduct examinations of such covered persons

that are determined to pose the highest risk to consumers based on factors determined by the Director, such as the operations, sales practices, or consumer financial products or services provided by such covered persons.

(e) AUTHORITY TO COLLECT INFORMATION REGARDING FEES OR ASSESSMENTS.—To the extent permitted by Federal law, the Agency may obtain from the Secretary of the Treasury information relating to a covered person which is not a bank holding company, credit union, or depository institution, including information regarding compliance with a reporting or registration requirement under the subchapter II of chapter 53 of title 31, United States Code, for the purposes of, and only to the extent necessary in, investigating, determining, or enforcing compliance with a requirement relating to any fee or assessment imposed by the Agency under this title.

SEC. 4210. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle C—Specific Authorities

SEC. 4301. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The Agency may take any action authorized under subtitle E to prevent a person from com-

1 mitting or engaging in an unfair, deceptive, or abusive act
2 or practice under Federal law in connection with any
3 transaction with a consumer for a consumer financial
4 product or service, or the offering of a consumer financial
5 product or service.

6 (b) REGULATIONS.—

7 (1) IN GENERAL.—The Director may prescribe
8 regulations identifying as unlawful unfair, deceptive,
9 or abusive acts or practices in connection with any
10 transaction with a consumer for a consumer finan-
11 cial product or service or the offering of a consumer
12 financial product or service.

13 (2) INCLUDES PREVENTION MEASURES.—Regu-
14 lations prescribed under this section may include re-
15 quirements for the purpose of preventing such acts
16 or practices.

17 (c) UNFAIRNESS.—

18 (1) IN GENERAL.—The Director and the Agen-
19 cy shall have no authority under this section to de-
20 clare an act or practice in connection with a trans-
21 action with a consumer for a consumer financial
22 product or service, or the offering of a consumer fi-
23 nancial product or service, to be unlawful on the
24 grounds that such act or practice is unfair unless
25 the Agency has a reasonable basis to conclude that

the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) ESTABLISHED PUBLIC POLICY AS FACTOR.—In determining whether an act or practice is unfair, the Agency may consider established public policies as evidence to be considered with all other evidence.

(d) CONSULTATION.—In prescribing any regulation under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regulation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

SEC. 4302. DISCLOSURES.

(a) IN GENERAL.—The Director may prescribe regulations to ensure the timely, appropriate and effective disclosure to consumers of the costs, benefits, and risks associated with any consumer financial product or service.

(b) COORDINATION WITH OTHER LAWS.—In prescribing regulations under subsection (a), the Director

shall take into account disclosure requirements under other laws in order to enhance consumer compliance and reduce regulatory burden.

(c) COMPLIANCE.—

(1) MODEL DISCLOSURES.—The Agency may provide model disclosures to facilitate compliance with the requirements of regulations prescribed under this section.

(2) PER SE COMPLIANCE.—Compliance by a covered person with the model disclosures issued by the Agency under this subsection shall per se constitute compliance with the disclosure requirements of this section.

(3) ADDITIONAL GUIDANCE.—The Agency may issue exemptions, no action letters, and other guidance to promote compliance with disclosures requirements of regulations prescribed under this section.

(d) COMBINED MORTGAGE LOAN DISCLOSURE.—Within 1 year after the designated transfer date, the Director shall propose for public comment regulations and model disclosures that combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Director determines that any proposal issued by

the Board of Governors and the Department of Housing and Urban Development carries out the same purpose.

SEC. 4303. SALES PRACTICES.

The Director may prescribe regulations and issue orders and guidance regarding the manner, settings, and circumstances for the provision of any consumer financial products or services to ensure that the risks, costs, and benefits of the products or services, both initially and over the term of the products or services, are fully and accurately represented to consumers.

SEC. 4304. PILOT DISCLOSURES.

(a) PILOT DISCLOSURES.—The Agency shall establish standards and procedures for approval of pilot disclosures to be provided or made available by a covered person to consumers in connection with the provision of a consumer financial product or service, or the offering of a consumer financial product or service.

(b) STANDARDS.—The procedures shall provide that a pilot disclosure must be limited in time and scope and reasonably designed to contribute materially to the understanding of consumer awareness and understanding of, and responses to, disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(c) TRANSPARENCY.—The procedures shall provide for public disclosure of pilots, but the Agency may limit disclosure to the extent necessary to encourage covered persons to conduct effective pilots.

SEC. 4305. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR, DECEPTIVE, OR ABUSIVE PRACTICES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The States are encouraged to prescribe standards applicable to covered persons who are not insured depository institutions or credit unions, or service providers, to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services, including standards for—

(1) background checks for principals, officers, directors, or key personnel;

(2) registration, licensing, or certification;

(3) bond or other appropriate financial requirements to provide reasonable assurance of ability to perform its obligations to consumers;

(4) creating and maintaining records of transactions or accounts; or

(5) procedures and operations relating to the provision of, or maintenance of accounts for, consumer financial products or services.

(b) AGENCY AUTHORITY TO PRESCRIBE STANDARDS.—

(1) IN GENERAL.—The Director may prescribe regulations establishing minimum standards under this section for any class of covered persons other than covered persons which are subject to the jurisdiction of a Federal banking agency or a State bank supervisor , or for any service provider.

(2) REGISTRATION AND LICENSING STANDARDS.—In addition to prescribing standards for the purposes described in subsection (a), the Director may prescribe registration or licensing standards applicable to covered persons for the purposes of imposing fees or assessments in accordance with this title.

(3) ENFORCEMENT OF STANDARDS.—The Director may enforce under subtitle E compliance with standards adopted by the Director or a State pursuant to this section for covered persons or service providers operating in that State.

(c) CONSULTATION.—In prescribing minimum standards under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, or other Federal agencies, as appropriate, regarding the consistency of a proposed regu-

lation with prudential, consumer protection, civil rights, market, or systemic objectives administered by such agencies or supervisors.

SEC. 4306. DUTIES.

(a) IN GENERAL.—

(1) REGULATIONS ENSURING FAIR DEALING WITH CONSUMERS.—The Director shall prescribe regulations imposing duties on a covered person, or an employee of a covered person, or an agent or independent contractor for a covered person, who deals or communicates directly with consumers in the provision of a consumer financial product or service, as the Director deems appropriate or necessary to ensure fair dealing with consumers.

(2) CONSIDERATIONS FOR DUTIES.—In prescribing such regulations, the Director shall consider whether—

(A) the covered person, employee, agent, or independent contractor represents implicitly or explicitly that the person, employee, agent, or contractor is acting in the interest of the consumer with respect to any aspect of the transaction;

(B) the covered person, employee, agent, or independent contractor provides the con-

sumer with advice with respect to any aspect of the transaction;

(C) the consumer's reliance on or use of any advice from the covered person, employee, agent, or independent contractor would be reasonable and justifiable under the circumstances;

(D) the benefits to consumers of imposing a particular duty would outweigh the costs; and

(E) any other factors as the Director considers appropriate.

(3) DUTIES RELATING TO COMPENSATION PRACTICES.—

(A) IN GENERAL.—The Director may prescribe regulations establishing duties regarding compensation practices applicable to a covered person, employee, agent, or independent contractor who deals or communicates directly with a consumer in the provision of a consumer financial product or service for the purpose of promoting fair dealing with consumers.

(B) NO COMPENSATION CAPS.—The Director may not prescribe a limit on the total dollar amount of compensation paid to any person.

(C) DISPARITY TREATMENT PROHIBITED.—The Director may not prescribe regula-

tions that directly or indirectly disparately treat, or are interpreted to disparately treat, or disparately impact any entity that employs covered persons.

(4) REQUIREMENT TO INCLUDE DISCLAIMER ON PUBLIC STATEMENTS.—The Director shall ensure that the Agency's website, and any statement made by the Director or the Agency to the public, includes a disclaimer stating that the Agency does not endorse any particular financial product or service and consumers are expected to exercise due diligence in deciding what financial products and services are appropriate for them.

(b) ADMINISTRATIVE PROCEEDINGS.—

(1) IN GENERAL.—Any regulation prescribed by the Director under this section shall be enforceable only by the Agency through an adjudication proceeding under subtitle E or by a State regulator through an appropriate administrative proceeding as permitted under State law.

(2) EXCLUSIVITY OF REMEDY.—No action may be commenced in any court to enforce any requirement of a regulation prescribed under this section, and no court may exercise supplemental jurisdiction over a claim asserted under a regulation prescribed

under this section based on allegations or evidence of conduct that otherwise may be subject to such regulation.

(3) RULE OF CONSTRUCTION.—The Agency, the Attorney General, and any State attorney general or State regulator shall not be precluded from enforcing any other Federal or State law against a person with respect to conduct that may be subject to a regulation prescribed by the Director under this section.

(c) EXCLUSIONS.—This section shall not be construed as authorizing the Director to prescribe regulations applicable to—

(1) an attorney licensed to practice law and in compliance with the applicable rules and standards of professional conduct, but only to the extent that the consumer financial product or service provided is within the attorney-client relationship with the consumer; or

(2) any trustee, custodian, or other person that holds a fiduciary duty in connection with a trust, including a fiduciary duty to a grantor or beneficiary of a trust, that is subject to and in compliance with the applicable law relating to such trust.

SEC. 4307. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) IN GENERAL.—Subject to regulations prescribed by the Director, a covered person shall make available to a consumer, in an electronic form usable by the consumer, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data.

(b) EXCEPTIONS.—A covered person shall not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other law (including section 6103 of the Internal Revenue Code of 1986); or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) NO DUTY TO MAINTAIN RECORDS.—No provision of this section shall be construed as imposing any duty on a covered person to maintain or keep any information about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The Director, by regulation, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

(e) CONSULTATION.—The Director shall, when prescribing any regulation under this section, consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Commissioner of Internal Revenue to ensure that the regulations—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

SEC. 4308. PROHIBITED ACTS.

It shall be unlawful for any person—

(1) to advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee, or charge in connection with a consumer financial product or service that is not in conformity with this title or applicable regulation prescribed or order issued by the Director or to engage in any unfair, deceptive, or abusive act or practice, except that no person shall be held to have violated this subsection solely by virtue of providing or selling time or space to a person placing an advertisement;

(2) to fail or refuse to pay any fee or assessment imposed by the Agency under this title, to fail or refuse to permit access to or copying of records, to fail or refuse to establish or maintain records, or to fail or refuse to make reports or provide information to the Agency, as required by this title, an enumerated consumer law, or pursuant to the authorities transferred by subtitles F and H, or any regulation prescribed or order issued by the Director this title or pursuant to any such authority; or

(3) to knowingly or recklessly provide substantial assistance to another person in violation of the provisions of section 4301, or any regulation prescribed or order issued under such section, and any such person shall be deemed to be in violation of

that section to the same extent as the person to whom such assistance is provided.

SEC. 4309. TREATMENT OF REMITTANCE TRANSFERS.

(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

(1) IN GENERAL.—Each remittance transfer provider shall make disclosures to consumers, as specified by this section and by regulation prescribed by the Director.

(2) SPECIFIC DISCLOSURES.—In addition to any other disclosures applicable under this title, a remittance transfer provider shall—

(A) disclose clearly and conspicuously, in writing and in a form that the consumer may keep, to each consumer who requests information regarding the fees or exchange rate for a remittance transfer, prior to the consumer making any payment in connection with the transfer—

(i) the total amount in United States dollars that will be required to be paid by the consumer in connection with the remittance transfer;

(ii) the amount of currency that the designated recipient of the remittance

transfer will receive, using the values of the currency into which the funds will be exchanged;

(iii) the fee charged by the remittance transfer provider for the remittance transfer;

(iv) any exchange rate to be used by the remittance transfer provider for the remittance transfer, unless the exchange rate is not fixed on send;

(v) the amount of time for which the information specified in this subparagraph (A) will be in effect;

(vi) the expected time interval within which the funds being transferred will be made available to the recipient; and

(vii) the location where the funds being transferred will be made available to the recipient if the funds are to be made available only at one location, or if the remittance transfer provider permits the recipient to choose from multiple locations where the funds being transferred will be made available to the recipient, the remittance transfer provider shall make avail-

able to the consumer or the recipient a resource that lists such locations;

(B) at the time at which the consumer makes payment in connection with the remittance transfer, a receipt in writing disclosing clearly and conspicuously—

(i) the information described in subparagraph (A);

(ii) the expected time interval within which the funds being transferred will be made available to the recipient, which shall be not more than ten days after the date the consumer makes payment in connection with the remittance transfer unless otherwise prohibited by applicable State or Federal law or the law of another country, or as may be specified by the consumer so long as the consumer has the choice to order that the funds be made available to the recipient not more than ten days after the consumer makes payment in connection with the remittance transfer;

(iii) the location where the funds being transferred will be made available to the recipient if the funds are to be made

available only at one location, or if the remittance transfer provider permits the recipient to choose from multiple locations where the funds being transferred will be made available to the recipient, the remittance transfer provider shall make available to the consumer or the recipient a resource that lists such locations;

(iv) the name and telephone number or address of the designated recipient, if provided to the remittance transfer provider by the consumer;

(v) information about the rights of the consumer under this section to cancel the remittance transfer, to resolve errors and to receive refunds;

(vi) appropriate contact information for the remittance transfer provider;

(vii) a transaction reference number unique to that remittance transfer; and

(viii) information as to when the exchange rate will be calculated (for example, when the funds are received by the recipient), if the customer has been notified that the exchange rate is not fixed on send;

(C) at the time at which the consumer initiates the remittance transfer, offer to provide in writing, prior to making any payment in connection with the transfer, the information listed in subparagraph (A); and

(D) in the case of an exchange rate not fixed on send, the remittance provider shall also disclose, at the time at which the consumer initiates the remittance transfer, the range, using the high and low rates, for the prior 30 day period, that the consumer would have received if a representative amount had been exchanged by the remittance transfer provider, as well as a clear and conspicuous notice that the actual exchange rate may vary.

If the actual rate used for the transfer is known to the remittance provider, either because such rate was set by the remittance provider itself or because the remittance provider receives confirmation of the actual exchange rate used, the remittance provider shall make available to consumers written or electronic confirmation of the actual exchange rate used and the amount of currency that the recipient or the remittance transfer received, using the values of the currency into which the funds were exchanged. The

1 Director shall within 2 years after the date of the
2 enactment of the Consumer Financial Protection
3 Agency Act of 2009 prescribe consumer disclosures
4 for transfers with rates not fixed on send that are
5 functionally equivalent to those applicable to remit-
6 tances where the exchange rate is specified by the
7 remittance transfer provider at the time the con-
8 sumer initiates the remittance transfer. To the
9 greatest extent possible, the Director shall ensure
10 that functional equivalence will enable remittance
11 transfer providers to comply with all requirements in
12 this title and provide consumers with information
13 sufficient to compare services providers, to time
14 their use of the product, to discover errors in trans-
15 mission and to seek remedies.

16 (3) EXEMPTION.—Notwithstanding require-
17 ments under paragraph (2)(A)(ii), (2)(A)(iv), or
18 (2)(B)(i), no such disclosure is required—

19 (A) because of the requirements of another
20 law, including the law of another country;

21 (B) because the transfer is being routed
22 through the Directo a México offered by the
23 Federal reserve banks; or

24 (C) because of any other circumstance
25 deemed permissible by regulation of the Direc-

tor; If the actual rate used for the transfer is known to the remittance provider, the remittance provider shall make available to consumers written or electronic confirmation of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged.

(4) PROVISION OF TOLL-FREE NUMBER AND WEB ACCESS.—

(A) In addition to providing the disclosures required by this section to a consumer at a remittance transfer provider location, a remittance transfer provider shall provide a toll-free telephone number or local number, and an Internet website that a consumer can access for which access no remittance transfer provider may assess a charge, to obtain the information required by paragraph (2)(A) for remittance transfers offered by that remittance transfer provider or information about the status of a remittance transfer for which a consumer has made payment.

(B) A remittance transfer provider that on an aggregate basis originates 30,000 or fewer

transfers on a calendar year basis (or such other amount as may be prescribed by the Director) is not required to offer the web access prescribed in subparagraph (A), but is required to provide a toll-free telephone number or local number as prescribed in subparagraph (A).

(5) ALTERNATIVE METHODS OF DISCLOSURE.—Subject to subsection (e)(2), a remittance transfer provider may—

(A) if the transaction is conducted entirely by telephone (which shall include, but not be limited to, a mobile telephone) satisfy the requirements of paragraph (2)(A) orally or, at the option of the consumer, electronically through a message sent to the consumer through any electronic means (including, but not limited to, an electronic mail address or a mobile telephone) as designated by the consumer;

(B) satisfy the requirements of paragraph (2)(A) electronically if the transfer is initiated by the consumer electronically through the remittance transfer provider's website or through any other electronic means; and

(C) satisfy the requirements of paragraph (2)(B) by mailing (or transmitting electronically

if the transfer is initiated electronically by the consumer through the remittance transfer provider's website or the consumer otherwise consents in accordance with the provisions of section 101 of the Electronic Signatures in Global and National Commerce Act) the information required under such paragraph to the consumer not later than one business day after the date on which the transaction is conducted, if the transaction is conducted entirely by telephone (or electronically) and the consumer requests a written receipt.

(b) WRITTEN FOREIGN LANGUAGE DISCLOSURES.—

(1) IN GENERAL.—The disclosures required under subsections (a)(2)(A) and (a)(2)(B)(i) shall be made in English and—

(A) at each remittance transfer provider location, shall be made in the same languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market its remittance transfers business, either orally or in writing, at that location, if other than English, provided that such languages are those for which the Director has

issued model disclosures as provided in subsection (g); or

(B) on a remittance transfer provider's website, shall at a minimum be made in any other language for which the Director has issued model disclosures as provided in subsection (g) if the remittance transfer provider, or any of its agents, advertises, solicits, or markets its remittance transfers business in such language.

(2) DISPUTES CONCERNING TERMS.—If a disclosure is required by this section to be in English and another language, the English version of the disclosure shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the remittance transfer provider or its agent and the remittance transfer provider or its agent shall be liable for any damages caused by these discrepancies.

(c) REMITTANCE TRANSFER CANCELLATIONS, REFUNDS, AND ERRORS.—

(1) CANCELLATIONS.—

(A) After receiving the receipt required under subsection (a)(2)(B), a consumer may cancel the currency transaction—

(i) before leaving the premises of the remittance transfer provider where the consumer received the receipt, and

(ii) not later than 30 minutes after the time the consumer initiated the remittance transfer with the remittance transfer provider.

(B) If a consumer cancels the transaction, the remittance transfer provider shall immediately refund to the consumer the fees paid and the currency to be transferred, and issue a receipt indicating that the transaction has been cancelled.

(C) A consumer may not cancel a remittance transfer after the remittance transfer provider has sent the funds to the recipient.

(D) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

(2) REFUNDS.—

(A) If a remittance transfer provider receives written notice from the consumer within

ten days of the promised date of delivery of a remittance transfer that no amount of the funds to be remitted was made available to the designated recipient in the foreign country, the remittance transfer provider shall—

(i) refund to the consumer the total amount in U.S. dollars that was paid by the consumer in connection with such remittance transfer;

(ii) promptly transmit the remittance transfer in accordance with the terms in the written receipt provided to the consumer pursuant to subsection (a)(2)(B);

(iii) provide such other remedy, as determined appropriate by rule of the Director for the protection of consumers; or

(iv) demonstrate to the consumer that the proceeds of the remittance transfer were made available to the recipient of the remittance provider.

(B) A remittance transfer provider shall not be required to provide a refund if providing a refund would violate State or Federal law.

(3) ERROR RESOLUTION.—

(A) IN GENERAL.—If a remittance transfer provider receives written notice from the consumer within 60 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including that the full amount of the funds to be remitted was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this paragraph.

(B) REMEDIES.—Not later than 120 days after the date of receipt of a notice from the consumer pursuant to subparagraph (A), the remittance transfer provider shall—

(i) as applicable to the error and as designated by the consumer—

(I) refund to the consumer the total amount in U.S. dollars that was paid by the consumer in connection with the remittance transfer that was not properly transmitted;

(II) make available to the designated recipient, without additional cost to the designated recipient or to

the consumer, the amount appropriate to resolve the error;

(III) provide such other remedy, as determined appropriate by regulation of the Director for the protection of consumers; or

(ii) demonstrate to the consumer that there was no error.

(4) REGULATIONS.—The Director, in order to protect consumers, shall establish, by regulation, clear and appropriate standards for remittance transfer providers with respect to error resolution, cancellation and refunds.

(d) ENFORCEMENT AUTHORITY.—The Director shall have the sole authority to enforce the provisions of this section, and any regulations established pursuant to this section.

(e) APPLICABILITY OF OTHER PROVISIONS OF LAW.—

(1) APPLICABILITY OF TITLE 18 AND TITLE 31 PROVISIONS.—A remittance transfer provider that is a money transmitting business as defined in section 5330 of title 31, United States Code, may provide remittance transfers only if such provider is in compliance with the requirements of section 5330 of title

31, United States Code, and section 1960 of title 18, United States Code, as applicable.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act, or chapter 2 of title I of Public Law 91–508, or any regulations promulgated thereunder; or

(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (2) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulation prescribed under such subparagraph.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) DEPOSITORY INSTITUTION.—the term ''depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes a credit union.

(2) NOT FIXED ON SEND.—The term ''not fixed on send'' when referring to an exchange rate used in a remittance transfer means an exchange rate that is not set by the remittance transfer provider at the time the consumer initiates the remittance transfer.

(3) REMITTANCE TRANSFER.—The term ''remittance transfer'' means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act) transfer of funds at the request of a consumer located in any State to a person in another country that is initiated by a remittance transfer provider, whether or not the consumer is an account holder of the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903 of the Electronic Fund Transfer Act.

(4) REMITTANCE TRANSFER PROVIDER.—The term ''remittance transfer provider'' means any person or depository institution, or agent thereof, that originates remittance transfers on behalf of consumers in the normal course of its business, whether or not the consumer is an account holder of that person or depository institution.

(g) MODEL DISCLOSURES.—

(1) PUBLICATION.—Notwithstanding any provisions of this title, the Director shall establish and publish model disclosure forms to facilitate compliance with the disclosure requirements of this section and to aid the consumer in understanding the transaction to which the subject disclosure form relates.

(2) LANGUAGES TO BE USED IN MODEL DISCLOSURES.—The Director shall make these disclosures available within 1 year of the effective date of this title—

(A) in English, and

(B) the ten most frequently spoken languages in the United States, other than English, used by consumers initiating remittance transfers, as may be determined by the Director.

(3) USE OF AUTOMATED EQUIPMENT.—In establishing model forms under this subsection, the Director shall consider the use by lessors of data processing or similar automated equipment.

(4) USE OPTIONAL.—A remittance transfer provider may utilize a model disclosure form established by the Director under this subsection for purposes

of compliance with this section, at the discretion of the remittance transfer provider.

(5) EFFECT OF USE.—Any remittance transfer provider that properly uses the material aspects of any model disclosure form established by the Director under this subsection shall be deemed to be in compliance with the disclosure requirements to which the form relates.

(h) REGULATION AND EXEMPTION AUTHORITY.—Notwithstanding any other provisions of this title, the Director, in the sole discretion of the Director, in consultation with relevant Federal and State government agencies may by regulation exempt from one or more requirements of this section, any category of remittance transfer provider if the Director determines that under applicable Federal or State law that such category of remittance transfer provider is subject to requirements substantially similar to those imposed under this section or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

(i) APPLICABILITY OF STATE LAW.—

(1) This section does not annul, alter, affect, or exempt any person subject to the provisions of this section from complying with other applicable Federal law and the laws of any State relating to remittance

transfers and remittance transfer providers, except to the extent that those laws are inconsistent with the provisions of this section, and then only to the extent of the inconsistency.

(2) Notwithstanding any other provisions of this title, the Director may determine whether such inconsistencies exist. A State law is not inconsistent with this section if the protection such law affords any consumer is greater than the protection afforded by this section. If the Director determines that a State requirement is inconsistent, remittance transfer providers shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This section does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

(3) This section does not annul, alter, or affect the laws of any State relating to the licensing or registration, supervision or examination of remittance transfer providers.

(4) Nothing in this section shall be construed as limiting the authority of a State attorney general or

State regulator to bring an action or other regulatory proceeding arising solely under the law of that State.

(j) FEDERAL CREDIT UNION ACT AMENDMENT.—Paragraph (12)(A) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757(12)(A)) is amended by inserting ''and remittance transfers, as defined in section 4309 of the Consumer Financial Protection Agency Act of 2009'' after ''and domestic electronic fund transfers''.

(k) AUTOMATED CLEARINGHOUSE SYSTEM.—

(1) EXPANSION OF SYSTEM.—The Board of Governors of the Federal Reserve System shall work with the Federal reserve banks to expand the use of the automated clearinghouse system for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(A) the volume and dollar amount of remittance transfers to those countries;

(B) the significance of the volume of such transfers, relative to the external financial flows of the receiving country; and

(C) the feasibility of such an expansion.

(2) REPORT TO THE CONGRESS.—Before the end of the 180-day period beginning on the date of

the enactment of this title, and on April 30 biennially thereafter, the Board of Governors of the Federal Reserve System shall submit a report to the Director, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this section.

(l) REGULATORY GUIDANCE ON REMITTANCE TRANSFERS.—

(1) PROVISION OF GUIDELINES TO INSTITUTIONS.—The Director shall provide guidelines to all remittance transfer providers regarding—

(A) the offering of low-cost remittance transfers;

(B) the availability of agency services to remittance transfer providers;

(C) compliance with the provisions of this title; and

(D) specific options that allow remittance transfer providers to take advantage of automated clearing systems, including the FedACH International Services offered by the Board of Governors of the Federal Reserve System and

the Federal reserve banks, to transmit remittances at low cost.

(2) CONTENT OF GUIDELINES.—Guidelines provided to remittance transfer providers under this section shall include—

(A) information as to the methods of providing remittance transfer services;

(B) the potential economic opportunities in providing low-cost remittance transfers; and

(C) the potential value to depository institutions of broadening their financial bases to include persons that use remittance transfers.

(3) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—The Secretary of the Treasury and each agency referred to in subsection (a) shall, as part of their duties as members of the Financial Literacy and Education Commission, assist that Commission in improving the financial literacy and education of consumers who send remittances.

(m) REPORT ON FEASIBILITY OF AND IMPEDIMENTS TO USE OF REMITTANCE HISTORY IN CALCULATION OF CREDIT SCORE.—Before the end of the 365-day period beginning on the date of the enactment of this title, the Director shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the

Senate, and the Committee on Financial Services of the House of Representatives regarding—

(1) the manner in which a consumer's remittance history could be used to enhance a consumer's credit score;

(2) the current legal and business model barriers and impediments that impede the use of a consumer's remittance history to enhance the consumer's credit score; and

(3) recommendations on the manner in which maximum transparency and disclosure to consumers of exchange rates for remittance transfers subject to this title may be accomplished, whether or not such exchange rates are known at the time of origination or payment by the consumer for the remittance transfer, including disclosure to the sender of the actual exchange rate used and the amount of currency that the recipient of the remittance transfer received, using the values of the currency into which the funds were exchanged, as contained in section s 919(a)(2)(D) and 919(a)(3) of the Electronic Fund Transfer Act (as amended by subsection (a)).

(n) EFFECTIVE DATE.—This section shall apply with respect to remittance transfers made after the end of the

180-day period beginning on the date of the enactment of this title.

SEC. 4310. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

SEC. 4311. NO AUTHORITY TO REQUIRE THE OFFERING OF FINANCIAL PRODUCTS OR SERVICES.

The Director may not prescribe any regulation, issue any order or guidance, or take any other action, including any enforcement action, the effect of which would be to require a covered person to offer to any consumer a specific financial product or service.

SEC. 4312. APPRAISAL INDEPENDENCE REQUIREMENTS.

(a) PROMULGATION OF NEW REQUIREMENTS.—The Director shall lead a Negotiated Rulemaking Committee under the Federal Advisory Committee Act and the Negotiated Rulemaking Act to promulgate appraisal independence requirements for residential loan purposes, and such Committee shall promulgate such requirements not later than the end of the 60-day period beginning on the date of the enactment of this title.

(b) CERTAIN REGULATION REQUIREMENTS.—Regulations promulgated by the Negotiated Rulemaking Committee under this section—

(1) shall not prohibit lenders, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation from accepting any appraisal report completed by an appraiser selected, retained, or compensated in any manner by a mortgage loan originator—

(A) licensed or registered in accordance with section 1501 et seq. of the SAFE Mortgage Licensing Act of 2008; and

(B) subject to State or Federal laws that make it unlawful for a mortgage loan originator to make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property, except that nothing in this section shall prohibit a person with an interest in a real estate transaction from asking an appraiser to—

(i) consider additional, appropriate property information;

(ii) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(iii) correct errors in the appraisal report; and

(2) shall include a requirement that lenders and their agents compensate appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised.

(c) SUNSET.—Effective on the date the appraisal independence requirements are promulgated pursuant to subsection (a), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

Subtitle D—Preservation of State Law

SEC. 4401. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title shall not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the laws, regulations, orders, or interpretations, in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this title and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For the purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Agency on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 4803, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

SEC. 4402. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Any State attorney general may bring a civil action in the name of such

State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States or State court having jurisdiction of the defendant, to secure monetary or equitable relief for violation of any provisions of this title or regulations issued thereunder.

(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person to enforce any provision of this title, including any regulation prescribed by the Director under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Agency, or the Agency's designee.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Agency immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this section shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Director or Agency or another Federal agency.

(2) AGENCY RESPONSE.—In any action described in paragraph (1), the Agency may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the

action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Director shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as limiting the authority of a State attorney general or State regulator to bring an action or other regulatory proceeding arising solely under the law of that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action

with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

SEC. 4403. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, and established by the Agency, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of the enactment of this title, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 4404. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et 1 seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

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

"(1) NATIONAL BANK.—The term 'national bank' includes—

"(A) any bank organized under the laws of the United States; and

"(B) any Federal branch established in accordance with the International Banking Act of 1978.

"(2) STATE CONSUMER FINANCIAL LAWS.—The term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against national banks and that regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national

banks to engage in), or any account related thereto, with respect to a consumer.

"(3) OTHER DEFINITIONS.—The terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(b) PREEMPTION STANDARD.—

"(1) IN GENERAL.—National banks shall generally comply with State laws. State laws are preempted only if—

"(A) application of a state law would have a discriminatory effect on national banks in comparison with the effect of the law on a bank chartered by that State;

"(B) the Comptroller of the Currency determines by regulation or order on a case-by-case basis that a State law prevents or significantly interferes with the ability of an insured depository institution chartered as national bank to engage in the business of banking; or

"(C) the State law is preempted by Federal law other than this Act.

"(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any national bank subsidiary, affiliate, or other enti-

ty that is not an insured depository institution chartered as a national bank.

"(3) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law and a court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act.

"(4) REVIEW OF PREEMPTION DECISIONS.—A court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a state law is preempted under this Act. Nothing in this subsection shall affect the deference that a court affords to the Comptroller of the Currency regarding the meaning or interpretation of the National Bank Act or other Federal laws.

"(c) SUBSTANTIAL EVIDENCE.—No regulation of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law unless substantial evidence, made on the record of the proceeding, supports the specific finding that the provision prevents or significantly interferes with the national

1 bank's exercise of a power explicitly granted by the Con-
2 gress.

3 "(d) OTHER FEDERAL LAWS.—Notwithstanding any
4 other provision of law, the Comptroller of the Currency
5 may not prescribe regulation pursuant to subsection
6 (b)(1)(B) until the Comptroller of the Currency, after con-
7 sultation with the Consumer Financial Protection Agency,
8 makes a finding, in writing, that a Federal law provides
9 a substantive standard, applicable to a national bank,
10 which regulates the particular conduct, activity, or author-
11 ity that is subject to such provision of the State consumer
12 financial law.

13 "(e) PERIODIC REVIEW OF PREEMPTION DETER-
14 MINATIONS.—The Comptroller of the Currency shall peri-
15 odically conduct a review, through notice and public com-
16 ment, of each determination that a provision of Federal
17 law preempts a State consumer financial law. The agency
18 shall conduct such review within the 5-year period after
19 prescribing or otherwise issuing such determination, and
20 at least once during each 5-year period thereafter. After
21 conducting the review of, and inspecting the comments
22 made on, the determination, the agency shall timely pro-
23 pose to continue, amend or rescind it, as may be appro-
24 priate, in accordance with the procedures set forth in sub-

sections (a) and (b) of section 5244 (12 U.S.C. 43(a)–(b)).

"(f) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

"5136C. State law preemption standards for national banks and subsidiaries clarified.".

SEC. 4405. VISITORIAL STANDARDS.

Section 5136C of the Revised Statutes of the United States (as added by section 4404) is amended by adding at the end the following new subsections:

"(g) VISITORIAL POWERS.—

"(1) RULE OF CONSTRUCTION.—No provision of this title which relates to visitorial powers or otherwise limits or restricts the supervisory, examination, or regulatory authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or

other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

"(A) to require a national bank to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

"(B) to enforce any applicable Federal or State law, as authorized by such law; or

"(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a national bank, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any national bank.

"(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the head of the agency responsible for chartering and regulating national banks before acting under paragraph (1).

"(h) ENFORCEMENT ACTIONS.—The ability of the head of the agency responsible for chartering and regulating national banks to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act shall not be construed as precluding private par-

ties from enforcing rights granted under Federal or State law in the courts.''.

SEC. 4406. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States is amended by inserting after subsection (h) (as added by section 4405) the following new subsection:

''(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

''(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(B) NONDEPOSITORY INSTITUTION.—The term 'nondepository institution' means any entity that is not a depository institution.

''(2) IN GENERAL.—No provision of this title shall be construed as annulling, altering, or affecting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a national bank.''.

SEC. 4407. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

"SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

"(a) STATE CONSUMER FINANCIAL LAW DEFINED.—For purposes of this section, the term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against Federal savings associations and that regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for Federal savings associations to engage in), or any account related thereto, with respect to a consumer.

"(b) PREEMPTION STANDARD.—

"(1) IN GENERAL.—Federal savings associations shall generally comply with State laws. State laws are preempted only if—

"(A) application of a state law would have a discriminatory effect on Federal savings associations in comparison with the effect of the law on a bank chartered by that State;

"(B) the Director of the Office of Thrift Supervision determines by regulation or order on a case-by-case basis that a State law prevents or significantly interferes with the ability of an insured depository institution chartered as a Federal savings associations to engage in the business of banking; or

"(C) the State law is preempted by Federal law other than this Act.

"(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any Federal savings associations subsidiary, affiliate, or other entity that is not an insured depository institution chartered as a national bank.

"(3) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law and a court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a State law is preempted under this Act.

"(4) REVIEW OF PREEMPTION DECISIONS.—A court shall review any claim that a State law is preempted by this Act as a matter of law and without deference to any agency claim that a state law is preempted under this Act. Nothing in this sub-

1 section shall affect the deference that a court affords
2 to the Director of the Office of Thrift Supervision
3 regarding the meaning or interpretation of the Na-
4 tional Bank Act or other Federal laws.

5 ''(c) OTHER FEDERAL LAW.—Notwithstanding any
6 other provision of law, the Director of the Office of Thrift
7 Supervision may not prescribe any regulation pursuant to
8 subsection (b)(1)(B) until such Director, after consulta-
9 tion with the Consumer Financial Protection Agency,
10 makes a finding, in writing, that a Federal law provides
11 a substantive standard, applicable to a Federal savings as-
12 sociation, which regulates the particular conduct, activity,
13 or authority that is subject to such provision of the State
14 consumer financial law.

15 ''(d) SUBSTANTIAL EVIDENCE.—No regulation pre-
16 scribed by the Director of the Office of Thrift Supervision
17 issued under subsection (b)(1)(B) shall be interpreted or
18 applied so as to invalidate, or otherwise declare inappli-
19 cable to a Federal savings association, the provision of the
20 State consumer financial law unless substantial evidence,
21 made on the record of the proceeding, supports the specific
22 finding that the provision prevents or significantly inter-
23 feres with the Federal savings association's exercise of a
24 power explicitly granted by the Congress.

1 "(e) PERIODIC REVIEW OF PREEMPTION DETER-
2 MINATIONS.—The Director of the Office of Thrift Super-
3 vision shall periodically conduct a review, through notice
4 and public comment, of each determination that a provi-
5 sion of Federal law preempts a State consumer financial
6 law. The agency shall conduct such review within the 5-
7 year period after prescribing or otherwise issuing such de-
8 termination, and at least once during each 5-year period
9 thereafter. After conducting the review of, and inspecting
10 the comments made on, the determination, the agency
11 shall timely propose to continue, amend or rescind it, as
12 may be appropriate, in accordance with the procedures set
13 forth in subsections (a) and (b) of section 5244 of the
14 Revised Statutes of the United States (12 U.S.C. 43(a)-
15 (b)).

16 "(f) APPLICATION OF STATE CONSUMER FINANCIAL
17 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
18 standing any provision of this Act, a State consumer fi-
19 nancial law shall apply to a subsidiary or affiliate of a
20 Federal savings association to the same extent that the
21 State consumer financial law applies to any person, cor-
22 poration, or other entity subject to such State law and
23 consistent with Federal law.".

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.)

is amended by striking the item relating to section 6 and inserting the following new item:

"Sec. 6. State law preemption standards for Federal savings associations clarified.".

SEC. 4408. VISITORIAL STANDARDS.

Section 6 of the Home Owners' Loan Act (as added by section 4407 of this title) is amended by adding at the end the following new subsections:

"(g) VISITORIAL POWERS.—

"(1) IN GENERAL.—No provision of this Act shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

"(A) to require a Federal savings association to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

"(B) to enforce any applicable Federal or State law, as authorized by such law; or

"(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a Federal savings association, as authorized by such law, or to seek relief and recover damages for such residents

from any violation of any such law by any Federal savings association.

"(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Director or any successor agency before acting under paragraph (1).

"(h) ENFORCEMENT ACTIONS.—The ability of the Director or any successor officer or agency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.".

SEC. 4409. CLARIFICATION OF LAW APPLICABLE TO NON-DEPOSITORY INSTITUTION SUBSIDIARIES.

Section 6 of the Home Owners' Loan Act is amended by adding after subsection (h) (as added by section 4408) the following new subsection:

"(i) CLARIFICATION OF LAW APPLICABLE TO NON-DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF FEDERAL SAVINGS ASSOCIATIONS.—

"(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms 'depository institution', 'subsidiary', and 'affiliate' have the

same meanings as in section 3 of the Federal Deposit Insurance Act.

"(B) NONDEPOSITORY INSTITUTION.—The term 'nondepository institution' means any entity that is not a depository institution.

"(2) IN GENERAL.—No provision of this title shall be construed as preempting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a Federal savings association.".

SEC. 4410. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 4501. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms "civil investigative demand" and "demand" mean any demand issued by the Agency.

(2) AGENCY INVESTIGATION.—The term "Agency investigation" means any inquiry conducted by an Agency investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any

enumerated consumer law, or any regulation prescribed or order issued by the Director under this title or under the authorities transferred under subtitles F and H.

(3) AGENCY INVESTIGATOR.—The term ''Agency investigator'' means any attorney or investigator employed by the Agency who is charged with the duty of enforcing or carrying into effect any provisions of this title, any enumerated consumer law, the authorities transferred under subtitles F and H, or any regulation prescribed or order issued under this title or pursuant to any such authority by the Director.

(4) CUSTODIAN.—The term ''custodian'' means the custodian or any deputy custodian designated by the Agency.

(5) DOCUMENTARY MATERIAL.—The term ''documentary material'' includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, log, electronic file, or other data or data compilations stored in any medium.

(6) VIOLATION.—The term ''violation'' means any act or omission that, if proved, would constitute a violation of any provision of this title, any enumer-

ated consumer law, any law for which authorities were transferred under subtitles F and H, or of any regulation prescribed or order issued by the Director under this title or pursuant to any such authority.

SEC. 4502. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Agency or, where appropriate, an Agency representative may engage in joint investigations and requests for information.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations and requests for information with the Secretary of Housing and Urban Development, the Attorney General, or both.''

(b) SUBPOENAS.—

(1) IN GENERAL.—The Agency or an Agency investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the dis-

trict court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Agency or an Agency investigator and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents or other material, or both.

(3) CONTEMPT.—Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(c) DEMANDS.—

(1) IN GENERAL.—Whenever the Agency has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Agency may, before the institution of any proceedings under this title or under any enumerated consumer law or pursuant to the authorities transferred under subtitles F and H, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Agency;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assem-

bled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Agency investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—

(A) Any civil investigative demand may be served by any Agency investigator at any place within the territorial jurisdiction of any court of the United States.

(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(C) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at its principal office or place of business.

(9) PROOF OF SERVICE.—

(A) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession,

custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each report-

ing requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) TESTIMONY.—

(A) PROCEDURE.—

(i) OATH AND RECORDATION.—Any Agency investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the investigator, record the testimony of the witness.

(ii) TRANSCRIPTIONS.—The testimony shall be taken stenographically and transcribed.

(iii) COPY TO CUSTODIAN.—After the testimony is fully transcribed, the Agency investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Agency investigator before whom oral testimony is to be

taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, the attorney for such person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Agency is engaged in a joint investigation, and any stenographer taking such testimony.

(C) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Agency investigator before whom the oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) CONFIDENTIAL ADVICE.—The attorney may advise the person summoned, in confidence, either upon the request of

such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—The person summoned or the attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection.

(iv) REFUSAL TO ANSWER.—An objection may properly be made, received, and entered upon the record when it is claimed that the person summoned is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and shall not otherwise interrupt the oral examination, directly or through such person's attorney.

(v) PETITION FOR ORDER.—If such person refuses to answer any question, the Agency may petition the district court of the United States pursuant to this section

for an order compelling such person to answer such question.

(vi) BASIS FOR COMPELLING TESTIMONY.—If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—

(i) RIGHT TO EXAMINE.—After the testimony of any witness is fully transcribed, the Agency investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript.

(ii) READING THE TRANSCRIPT.—The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness.

(iii) REQUEST FOR CHANGES.—Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Agency investigator with a statement of

the reasons given by the witness for making such changes.

(iv) SIGNATURE.—The transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(v) AGENCY ACTION IN LIEU OF SIGNATURE.—If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Agency investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) CERTIFICATION BY INVESTIGATOR.—The Agency investigator shall certify on the transcript that the witness was duly sworn by the investigator and that the transcript is a true record of the testimony given by the witness, and the Agency investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The Agency investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Agency may for good cause limit such witness to inspection of the official transcript of the testimony of such witness.

(H) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Materials received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with regulations established by the Director.

(2) DISCLOSURE TO CONGRESS.—No regulation established by the Director regarding the confidentiality of materials submitted to, or otherwise obtained by, the Agency shall be intended to prevent disclosure to either House of the Congress or to an

appropriate committee of the Congress, except that the Director may prescribe regulations allowing prior notice to any party that owns or otherwise provided the material to the Agency and has designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon such person under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Agency, through such officers or attorneys as the Director may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(2) SERVICE OF PROCESS.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

(1) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Agency investigator named in the demand, such person may file with the Agency a petition for an order by the Agency modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Agency, shall not run during the pendency of such petition at the Agency, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon such custodian by this section or regulation prescribed by the Director.

(h) JURISDICTION OF COURT.—

(1) IN GENERAL.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(2) APPEAL.—Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

SEC. 4503. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Agency may conduct hearings and adjudication proceedings with respect to any per-

son in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any regulations prescribed by the Director under this title; and

(2) any other Federal law that the Agency is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Agency from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ISSUANCE.—

(A) NOTICE OF CHARGES.—If, in the opinion of the Agency, any covered person or service provider is engaging or has engaged in an activity that violates a law, regulation, or any condition imposed in writing on the person by the Agency, the Agency may issue and serve upon the person a notice of charges with respect to such violation.

(B) CONTENTS OF NOTICE.—The notice shall contain a statement of the facts constituting any alleged violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease-and-desist there from should issue against the person.

(C) TIME OF HEARING.—A hearing under this subsection shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Agency at the request of any party so served.

(D) NONAPPEARANCE DEEMED TO BE CONSENT TO ORDER.—Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order.

(E) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any such hearing, the Agency shall find that any violation specified in the notice of charges has been established, the Agency may issue and serve upon the person an order to cease-and-desist from any such violation or practice.

(F) INCLUDES REQUIREMENT FOR CORRECTIVE ACTION.—Such order may, by provisions which may be mandatory or otherwise, require the person to cease-and-desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall take effect at the end of the 30-day period beginning on the date of the service of such order upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall take effect at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Agency or a reviewing court.

(3) DECISION AND APPEAL.—

(A) PLACE OF AND PROCEDURES FOR HEARING.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or home office of the person is located unless the person consents to another place,

and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(B) TIME LIMIT FOR DECISION.—After such hearing, and within 90 days after the Agency has notified the parties that the case has been submitted to it for final decision, the Agency shall—

(i) render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue; and

(ii) serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection.

(C) MODIFICATION OF ORDER GENERALLY.—Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (4), and thereafter until the record in the proceeding has been filed as so provided, the Agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order.

(D) MODIFICATION OF ORDER AFTER FILING RECORD ON APPEAL.—Upon such filing of the record, the Agency may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—

(A) IN GENERAL.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Agency be modified, terminated, or set aside.

(B) TRANSMITTAL OF COPY TO THE AGENCY.—A copy of such petition shall be forthwith transmitted by the clerk of the court to the Agency, and thereupon the Agency shall file in the court the record in the proceeding, as pro-

vided in section 2112 of title 28 of the United States Code.

(C) JURISDICTION OF COURT.—Upon the filing of a petition under subparagraph (A), such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Agency.

(D) SCOPE OF REVIEW.—Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code.

(E) FINALITY.—The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Agency.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) ISSUANCE.—

(A) IN GENERAL.—Whenever the Agency determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation of such violation, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Agency may issue a temporary order requiring the person to cease-and-desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings.

(B) OTHER REQUIREMENTS.—Any temporary order issued under this paragraph may include any requirement authorized under this subtitle.

(C) EFFECT DATE OF ORDER.—Any temporary order issued under this paragraph shall take effect upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the ad-

ministrative proceedings pursuant to such notice and until such time as the Agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Within 10 days after the person concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the home office of the person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that a person's books and records are so incomplete or inaccurate that the Agency is unable to determine the financial condition of

that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall take effect upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Agency determines, by examination or otherwise, that the person's books and records are accurate and reflect the financial condition of the person.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Agency may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) REGULATIONS.—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

SEC. 4504. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a provision of this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority, the Agency may commence a civil action against such person to impose a civil penalty and to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Agency may act in its own name and through its own attorneys in enforcing any provision of this title, regulations under this title, or any other law or regulation, or in any action, suit, or proceeding to which the Agency is a party.

(c) COMPROMISE OF ACTIONS.—The Agency may compromise or settle any action if such compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation thereunder, the Agency shall notify the Attorney General.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Agency may represent itself in its own name before the Supreme Court of the United States, if—

(1) the Agency makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari; and

(2) the Attorney General concurs with such request or fails to take action within 60 days of the Agency's request.

(f) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of the discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) For purposes of this section, an action arising under this title shall not include claims arising solely under enumerated consumer laws.

(B) In any action arising solely under an enumerated consumer law, the Agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

(C) In any action arising solely under the laws for which authorities were transferred by subtitles F and H, the Agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

SEC. 4505. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or Agency, as the case may be) in an action or adjudication proceeding brought under this title, any enumerated consumer law, or any law for which authorities were transferred by subtitles F and H, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title, any enumer-

ated consumer law, and any law for which authorities were transferred by subtitles F and H, including a violation of a regulation prescribed or order issued under this title, any enumerated consumer law and any law for which authorities were transferred by subtitles F and H.

(2) RELIEF.—Such relief may include—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties under subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Agency, a State attorney general, or a State bank supervisor to enforce any provision of this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or any regulation prescribed or order issued by the Director under this title or pursuant to any such authority, the Agency, State attorney general, or State bank supervisor may recover the costs incurred by such Agency, attorney general, or supervisor in connection with prosecuting such action if the Agency, State attorney general, or State bank supervisors (as the case may be) is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) Any person that violates, through any act or omission, any provision of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title shall forfeit and pay a civil penalty pursuant to this subsection determined as follows:

(A) FIRST TIER.—For any violation of any law, regulation, final order or condition imposed in writing by the Agency, or for any failure to pay any fee or assessment imposed by the Agency (including any fee or assessment for

which a related person may be liable), a civil penalty shall not exceed $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any violation of a regulation prescribed under section 4306 or for any person that recklessly engages in a violation of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title, relating to the provision of an alternative consumer financial product or service, a civil penalty shall not exceed $25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director under this title, a civil penalty shall not exceed $1,000,000 for each day during which such violation continues.

(2) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (1), the Agency or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(3) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Agency may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (1). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(4) NOTICE AND HEARING.—No civil penalty may be assessed with respect to a violation of this title, any enumerated consumer law, or any regulation prescribed or order issued by the Director, unless—

(A) the Agency gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Agency.

SEC. 4506. REFERRALS FOR CRIMINAL PROCEEDINGS.

Whenever the Agency obtains evidence that any person, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Agency may transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate law. No provision of this section shall be construed as affecting any other authority of the Agency to disclose information.

SEC. 4507. EMPLOYEE PROTECTION.

(a) IN GENERAL.—No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

(1) has provided information to the Agency or to any other State, local, or Federal Government authority or law enforcement official information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this title or any other law that is subject to the jurisdiction of the Agency, or any regulation, order, standard, or prohibition prescribed by the Director;

(2) has testified or is about to testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other law that is subject to the jurisdiction of the Agency, or any regulation, order, standard, or prohibition prescribed by the Director;

(3) has filed or instituted, or has caused to be filed or instituted, any proceeding under any enumerated consumer law or any law for which authorities were transferred by subtitles F and H; or

(4) has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, regulation, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Agency.

(b) COVERED EMPLOYEE DEFINED.—For the purposes of this section, the term ''covered employee'' means any individual performing tasks related to the provision of a financial product or service to a consumer.

(c) TIMETABLES.—

(1) FILING COMPLAINT.—Any individual who believes that such individual has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, before the end of the 180-day period beginning on the date on which such violation occurs, file (or have any person file on behalf of such individual) a complaint with the Secretary of Labor (hereafter in this subsection referred to as the ''Secretary'', notwithstanding section 4002(34)) alleging such discharge or discrimination and identifying the person responsible for such act.

(2) SECRETARY'S ACTION ON RECEIPT OF COMPLAINT.—Upon receipt of a complaint by any individual under paragraph (1), the Secretary shall notify, in writing, the person named in the complaint who is alleged to have committed the violation of—

(A) the filing of the complaint;

(B) the allegations contained in the complaint;

(C) the substance of the evidence supporting the complaint; and

(D) the opportunities that will be afforded to such person under paragraph (3).

(3) INVESTIGATION, HEARING, AND ORDERS.—

(A) FINDINGS.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the individual filing the complaint and the person named in the complaint who is alleged to have committed the violation an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings.

(B) PRELIMINARY ORDER.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the

Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B).

(C) OBJECTIONS TO FINDINGS OR PRELIMINARY ORDER.—Not later than 30 days after the date of notification of findings under subparagraph (A), the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record.

(D) OBJECTIONS DO NOT CONSTITUTE A STAY.—The filing of objections under subparagraph (C) shall not operate to stay any reinstatement remedy contained in the preliminary order.

(E) EXPEDITIOUS HEARING.—Any hearing requested under subparagraph (C) shall be conducted expeditiously.

(F) FINALITY OF ORDER.—If a hearing is not requested under subparagraph (C) with respect to any findings of the Secretary under subparagraph (A) within the 30-day period described in subparagraph (C), the preliminary

order shall be deemed a final order that is not subject to judicial review.

(4) STANDARDS FOR DETERMINATION.—

(A) PRIMA FACIE EVIDENCE OF CONTRIBUTION.—The Secretary shall dismiss a complaint filed under paragraph (1) and shall not conduct an investigation otherwise required under paragraph (3)(A) unless the individual filing the complaint makes a prima facie showing that any behavior described in paragraph (1), (2), (3), or (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) PROHIBITION ON INVESTIGATION IN CASE OF CLEAR AND CONVINCING EVIDENCE OF INDEPENDENT BASIS.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (3) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) CONTRIBUTING FACTOR REQUIREMENT.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraph (1), (2), (3), or (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) PROHIBITION ON FINAL ORDER IN CASE OF CLEAR AND CONVINCING EVIDENCE OF INDEPENDENT BASIS.—Relief may not be ordered under paragraph (3) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(5) FINAL ORDER.—

(A) IN GENERAL.—Not later than 120 days after the date of conclusion of any hearing under paragraph (3), the Secretary shall issue a final order providing the relief prescribed by this subsection or denying the complaint.

(B) SETTLEMENT AGREEMENT.—At any time before issuance of a final order, a proceeding under this subsection may be termi-

nated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(C) CONTENTS OF ORDER.—If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to such individual's former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with such individual's employment; and

(iii) to provide compensatory damages to the complainant.

(D) COSTS AND ATTORNEYS FEES.—If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate

amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(E) FRIVOLOUS OR BAD FAITH COMPLAINTS.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $1,000, to be paid by the complainant.

(6) DE NOVO ACTION ON CLAIM.—

(A) ACTION AT LAW OR EQUITY.—If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant who filed such complaint may bring an action at law or equity for de novo review in the appropriate district court of the United States.

(B) JURY TRIAL.—At the request of either party to an action brought under subparagraph

(A), such action shall be tried by the court with a jury.

(C) STANDARDS FOR DETERMINATION.—The standards for determination established under paragraph (4) shall apply in any action under this paragraph.

(D) RELIEF.—The court shall have jurisdiction to grant all relief, including injunctive relief and compensatory damages , that necessary to make the complainant who sought de novo review whole, including—

(i) reinstatement with the same seniority status that the complainant would have had, but for the discharge or discrimination;

(ii) the amount of back pay, with interest; and

(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(E) NOT REVIEWABLE.—The decision of the court shall be final without further review.

(7) JUDICIAL REVIEW OF FINAL ORDER.—

(A) IN GENERAL.—Unless a complainant brings a de novo action under paragraph (6), any person adversely affected or aggrieved by a final order issued under paragraph (5) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation.

(B) STATUTE OF LIMITATION .—Any petition for review of a final order under subsection shall be filed not later than 60 days after the date of the issuance of the final order by the Secretary.

(C) STANDARDS FOR REVIEW.—The standards for review established under chapter 7 of title 5, United States Code, shall apply in any review of a final order under this paragraph.

(D) EFFECT OF PROCEEDINGS AS STAY.—The commencement of proceedings under this paragraph shall not operate as a stay of the final order of the Secretary under review, unless so ordered by the court.

(E) LIMITATION ON EFFECT OF OTHER PROCEEDINGS.—Except as provided in paragraph (6) and this paragraph, an order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(8) ENFORCEMENT OF ORDERS BY SECRETARY.—

(A) IN GENERAL.—Whenever any person has failed to comply with an order issued under paragraph (5), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order.

(B) RELIEF.—In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(9) ENFORCEMENT OF ORDER BY AGGRIEVED PARTY .—

(A) IN GENERAL.—A person on whose behalf an order was issued under paragraph (5) may commence a civil action against the person

to whom such order was issued to require compliance with such order.

(B) RELIEF.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(d) ACTION IN NATURE OF MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(e) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) NO WAIVER OF RIGHTS AND REMEDIES.—Notwithstanding any law and except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) PREDISPUTE ARBITRATION AGREEMENTS.—Notwithstanding any law and except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable and to the

extent the agreement requires arbitration of a dispute arising under this section.

(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(2) unless the Director determines by regulation that such provision is inconsistent with the purposes of this title.

SEC. 4508. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 4601. TRANSFER OF CERTAIN FUNCTIONS.

(a) IN GENERAL.—Except as provided in subsection (b), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Director.

(B) BOARD OF GOVERNORS' AUTHORITY.—The Director shall have all powers and duties

that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Director.

(B) COMPTROLLER'S AUTHORITY.—The Director shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Director.

(B) DIRECTOR'S AUTHORITY.—The Director shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial pro-

tection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Director.

(B) CORPORATION'S AUTHORITY.—The Director shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—Except as provided in subparagraph (C), the consumer financial protection functions of the Federal Trade Commission that are contained within the enumerated consumer laws are transferred to the Agency, except as provided in section 4202(e).

(B) COMMISSION'S AUTHORITY.—Except as provided in subparagraph (C), the Director shall have all powers and duties that were vest-

ed in the Federal Trade Commission, relating to consumer financial protection functions, on the day before the designated transfer date.

(C) CONTINUATION OF CERTAIN COMMISSION AUTHORITIES.—Notwithstanding subparagraphs (A) and (B), the Federal Trade Commission shall continue to enforce the following provisions of law and prescribe regulations under such provisions:

(i) The Credit Repair Organizations Act.

(ii) Section 5 of the Federal Trade Commission Act.

(iii) The Telemarketing and Consumer Fraud and Abuse Prevention Act.

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Director.

(B) NATIONAL CREDIT UNION ADMINISTRATION'S AUTHORITY.—The Director shall have all powers and duties that were vested in the National Credit Union Administration, re-

lating to consumer financial protection functions, on the day before the designated transfer date.

(7) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 are transferred to the Director.

(B) SECRETARY OF HUD'S AUTHORITY.—The Director shall have all powers and duties that were vested in the Secretary of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, on the day before the designated transfer date

(b) TRANSFERS OF FUNCTIONS SUBJECT TO BACKSTOP ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (a) shall not affect the authority of the agencies identified in subsection (a) from initiating enforcement

proceedings under the circumstances described in section 4202(e)(3).

(c) TERMINATION OF AUTHORITY OF TRANSFEROR AGENCIES TO COLLECT FEES FOR CONSUMER FINANCIAL PROTECTION PURPOSES.—Authorities of the agencies identified in subsection (a) to assess and collect fees to cover the cost of conducting consumer financial protection functions shall terminate on the day before the designated transfer date.

(d) CONSUMER FINANCIAL PROTECTION FUNCTIONS DEFINED.—For purposes of this subtitle, the term ''consumer financial protection functions'' means research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the provision of consumer financial products or services, including the authority to assess and collect fees for those purposes, except that such term shall not include any such function relating to an agency's responsibilities under the Community Reinvestment Act of 1977.

(e) EFFECTIVE DATE.—Subsections (a) and (b) shall take effect on the designated transfer date.

SEC. 4602. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of the enactment of this title, the Secretary—

(1) shall, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Director under section 4601; and

(2) shall publish notice of that designation in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designation in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days nor later than 18 months after the date of the enactment of this title.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18 months after the date of the enactment of this title if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible on the date that is 18 months after the date of the enactment of this title;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case shall any date designated under this section be later than 24 months after the date of the enactment of this title.

SEC. 4603. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(1) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Director by this title, except that the Director shall be substituted for the

1 Board of Governors (or Federal reserve bank) as a
2 party to any such proceeding as of the designated
3 transfer date.
4 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—
5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
6 TIONS NOT AFFECTED.—Section 4601(a)(4) shall
7 not affect the validity of any right, duty, or obliga-
8 tion of the United States, the Federal Deposit In-
9 surance Corporation, the Board of Directors of that
10 Corporation, or any other person, that—
11 (A) arises under any provision of law relat-
12 ing to any consumer financial protection func-
13 tion of the Federal Deposit Insurance Corpora-
14 tion transferred to the Director by this title;
15 and
16 (B) existed on the day before the des-
17 ignated transfer date.
18 (2) CONTINUATION OF SUITS.—this title shall
19 not abate any proceeding commenced by or against
20 the Federal Deposit Insurance Corporation (or the
21 Board of Directors of that Corporation) before the
22 designated transfer date with respect to any con-
23 sumer financial protection function of the Federal
24 Deposit Insurance Corporation transferred to the
25 Director by this title, except that the Director shall

be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(5) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Federal Trade Commission before the designated transfer date with respect to any consumer financial protection function of the Federal Trade Commission transferred to the Director by this title, except that the Director shall be substituted for the Federal Trade Commission as a party to any such proceeding as of the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(6) shall not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Director by this title, except that the Director shall be substituted for the National Credit Union Administration (or National Credit Union Administration

Board) as a party to any such proceeding as of the designated transfer date.

(e) COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(2) shall not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Director by this title before the designated transfer date, except that the Director shall be substituted for the Comptroller of the Currency (or the Office of the

1 Comptroller of the Currency) as a party to any such
2 proceeding as of the designated transfer date.
3 (f) DIRECTOR OF THE OFFICE OF THRIFT SUPER-
4 VISION.—
5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
6 TIONS NOT AFFECTED.—Section 4601(a)(3) shall
7 not affect the validity of any right, duty, or obliga-
8 tion of the United States, the Director of the Office
9 of Thrift Supervision, the Office of Thrift Super-
10 vision, 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 Director of the Office of Thrift Su-
14 pervision transferred to the Director by this
15 title; and
16 (B) that existed on the day before the des-
17 ignated transfer date.
18 (2) CONTINUATION OF SUITS.—this title shall
19 not abate any proceeding commenced by or against
20 the Director of the Office of Thrift Supervision (or
21 the Office of Thrift Supervision) with respect to any
22 consumer financial protection function of the Direc-
23 tor of the Office of Thrift Supervision transferred to
24 the Director by this title before the designated
25 transfer date, except that the Director shall be sub-

stituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of Housing and Urban Development, the Department of Housing and Urban Development, or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of Housing and Urban Development under the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 transferred to the Director by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the Secretary of Housing and Urban Development (or the Department of Housing and Urban Develop-

ment) with respect to any consumer financial protection function of the Secretary of Housing and Urban Development transferred to the Director by this title before the designated transfer date, except that the Director shall be substituted for the Secretary of Housing and Urban Development (or such Department) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, REGULATIONS, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and regulations that have been issued, made, prescribed, or allowed to become effective by the Board of Governors (or any Federal reserve bank), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of Housing and Urban Development, or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, and shall be enforceable by or against the Director

until modified, terminated, set aside, or superseded in accordance with applicable law by the Director, by any court of competent jurisdiction, or by operation of law.

(i) IDENTIFICATION OF REGULATIONS CONTINUED.—Not later than the designated transfer date, the Director—

(1) shall, after consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Secretary of Housing and Urban Development identify the regulations continued under subsection (g) that will be enforced by the Director; and

(2) shall publish a list of such regulations in the Federal Register.

(j) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director

of the Office of Thrift Supervision, or the Secretary of Housing and Urban Development which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Director.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the Secretary of Housing and Urban Development which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date but which has not become effective before that date, shall take effect as a regulation of the Director according to its terms.

SEC. 4604. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the Board of Governors shall—

(i) jointly determine the number of employees of the Board necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Agency in a manner that the Director and the Board of Governors, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Gov-

ernors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Agency in a manner that the Director and the Board of Directors of the Corporation, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Agency in a manner that the Director and the National Credit Union Administration Board, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(4) CERTAIN HUD EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Director and the Secretary of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer financial protection functions of the Secretary of Housing and Urban Development that are transferred to the Director by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Agency in a manner that the Director and the Secretary of Housing and Urban Development, in their discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified

under subparagraph (A)(ii) shall be transferred to the Agency for employment.

(5) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Director of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant to such subparagraph) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of such employee's position assignment not later than 120 days after the effective date of the employee's transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM FDIC, FTC, HUD, NCUA, OCC, AND OTS.—Each employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of

the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Agency with the same status and tenure as he or she held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—

(A) COMPARABILITY.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of employees transferring to the Agency from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Agency shall not be subject to any additional certification requirements before being placed in a comparable examiner's position at the Agency examining the same types of institutions as

the transferred examiners examined before such examiners were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 5-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date shall not, during the 5-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside such transferred employee's local locality pay area as defined by the Director of the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) shall not be construed as limiting the right of the Director to—

(A) separate an employee for cause or for unacceptable performance;

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) reassign a supervisory employee outside such employee's locality pay area as defined by the Director of the Office of Personnel Management when the Director determines that

the reassignment is necessary for the efficient operation of the Agency.

(g) PAY.—

(1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 1-year period beginning on the designated transfer date, receive pay at a rate not less than the basic rate of pay (including any geographic differential) that the employee received during the 1-year period immediately before the transfer.

(2) EXCEPTIONS.—Paragraph (1) shall not be construed as limiting the right of the Agency to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the employee's consent.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Agency.

(4) PAY INCREASES PERMITTED.—Paragraph (1) shall not be construed as limiting the authority of the Agency to increase a transferred employee's pay.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Agency determines, during the period beginning 1 year after the designated transfer date and ending 3 years after the designated transfer date, that a reorganization of the staff of the Agency is required—

(i) that reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Director of the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Agency shall—

(I) establish competitive areas (as that term is defined in regulations

issued by the Director of the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Director of the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Agency as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, peri-

ods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Agency determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Agency is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Agency shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve

bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in such employee's existing retirement plan as long as the employee remains employed by the Agency.

(ii) EMPLOYER'S CONTRIBUTION.—The Director shall pay any employer contributions to the existing retirement plan of each transferred employee as required under that plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before the date of the employee's transfer to the Agency may, during the period beginning 6 months after the designated transfer date and ending 1 year after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) AGENCY PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—A separate account in the Federal Reserve System retirement plan shall be established for Agency employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Director shall deposit into the account established under clause (i) the employer contributions that the Agency makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Director shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) EXISTING RETIREMENT PLAN.—The term ''existing retirement plan'' means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, which the employee was enrolled in on the day before the designated transfer date.

(ii) FEDERAL EMPLOYEE RETIREMENT PLAN.—The term ''Federal employee retirement program'' means the retirement program for Federal employees established by chapters 83 and 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which

the employee transferred, including a dental, vision, long-term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Director shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Director decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which employees transferred, a transferred employee who is a member of such a program may, before the Director's decision takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; and

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG-TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Director decides not to continue participation in any long-term care insurance program of an agency or bank from which employees transferred, a transferred employee who is a member of such a program may, before the Director's decision takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce

1 member (as defined in Part 875, title 5, Code
2 of Federal Regulations).
3 (D) EMPLOYEE'S CONTRIBUTION.—An in-
4 dividual enrolled in the Federal Employees
5 Health Benefits program shall pay any em-
6 ployee contribution required by the plan.
7 (E) ADDITIONAL FUNDING.—The Director
8 shall transfer to the Federal Employees Health
9 Benefits Fund established under section 8909
10 of title 5, United States Code, an amount deter-
11 mined by the Director of the Office of Per-
12 sonnel Management, after consultation with the
13 Director and the Director of the Office of Man-
14 agement and Budget, to be necessary to reim-
15 burse the Fund for the cost to the Fund of pro-
16 viding benefits under this subparagraph.
17 (F) CREDIT FOR TIME ENROLLED IN
18 OTHER PLANS.—For employees transferred
19 under this section, enrollment in a health bene-
20 fits plan administered by the Comptroller of the
21 Currency, the Director of the Office of Thrift
22 Supervision, the Federal Deposit Insurance
23 Corporation, the National Credit Union Admin-
24 istration, the Board of Governors, the Secretary
25 of Housing and Urban Development, or a Fed-

eral reserve bank, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, or the Director of the Office of Thrift Supervision on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the

Agency, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE'S CONTRIBUTION.—An individual enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Director shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Director and the Director of the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this section, enrollment in a life insurance plan administered by the Board of Governors, the Federal Deposit Insurance

Corporation, the Federal Trade Commission, the Secretary of Housing and Urban Development, the National Credit Union Administration, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or a Federal reserve bank immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Director shall implement a uniform pay and classification system for all transferred employees.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Director—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Sec-

retary of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to those employees' status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time, for prior periods of service with any Federal agency, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Director shall work with the Director of the Office of Personnel Management and other

entities with expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 4605. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director may determine necessary to accomplish the purposes of this title.

(b) SUNSET.—The authority provided in this section shall terminate 5 years after the date of the enactment of this title.

SEC. 4606. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Director under this subtitle until the appointment of the Director is confirmed by the Senate in accordance with section 4102.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Secretary of the Treasury may provide administrative services necessary to support the Agency before the designated transfer date.

(c) INTERIM FUNDING FOR THE DEPARTMENT OF THE TREASURY.—For the purposes of carrying out the authorities granted in this section, there are appropriated to the Secretary of the Treasury such sums as are necessary. Notwithstanding any other provision of law, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

Subtitle G—Regulatory Improvements

SEC. 4701. COLLECTION OF DEPOSIT ACCOUNT DATA.

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain records of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—The customers' addresses maintained pursuant to paragraph (1) shall be geo-coded so that data shall be collected regarding the census tracts of the residence or business location of the customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall also record whether the deposit account is for a residential or commercial customer.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—The following information shall be publicly available on an annual basis—

(i) the address and census tracts of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution;

(ii) the type of deposit account including whether the account was a checking or savings account; and

(iii) data on the number and dollar amounts of the accounts, presented by cen-

sus tract location of the residential and commercial customers.

(iv) any other data deemed appropriate by the Director.

(B) PROTECTION OF IDENTITY.—In the publicly available data, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency, or to a Federal banking agency, in accordance with regulations prescribed by the Director.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Director.

(d) AGENCY USE.—The Director—

(1) shall assess the distribution of residential and commercial accounts at such financial institu-

tion across income and minority level of census tracts; and

(2) may use the data for any other purpose as permitted by law.

(e) REGULATIONS AND GUIDANCE.—

(1) IN GENERAL.—The Director shall prescribe such regulations and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

(2) DATA COMPILATION REGULATIONS.—The Director shall prescribe regulations regarding the provision of data compiled under this section to the Federal banking agencies to carry out the purposes of this section and shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of regulations prescribed under this section.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) AGENCY.—The term ''Agency'' means the Consumer Financial Protection Agency.

(2) CREDIT UNION.—The term ''credit union'' means a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act).

(3) DEPOSIT ACCOUNT.—The term ''deposit account'' includes any checking account, savings account, credit union share account, and other type of account as defined by the Director.

(4) DIRECTOR.—The term ''Director'' means the Director of the Agency.

(5) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' means the Board of Governors of the Federal Reserve System, the head of the agency responsible for chartering and regulating national banks, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and the term ''Federal banking agencies'' means all of those agencies.

(6) FINANCIAL INSTITUTION.—The term ''financial institution''—

(A) has the meaning given to the term ''insured depository institution'' in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

(g) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

SEC. 4702. SMALL BUSINESS DATA COLLECTION.

(a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following new section:

"§ 704B. Small business loan data collection

''(a) PURPOSE.—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women- and minority-owned small businesses.

''(b) IN GENERAL.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for a small business, the financial institution shall—

''(1) inquire whether the business is a women- or minority-owned business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means and whether or not such application is in response to a solicitation by the financial institution; and

''(2) maintain a record of the responses to such inquiry separate from the application and accompanying information.

''(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant

1 to subsection (b) in connection with any application for
2 credit.

3 "(d) NO ACCESS BY UNDERWRITERS.—

4 "(1) IN GENERAL.—Where feasible, no loan un-
5 derwriter or other officer or employee of a financial
6 institution, or any affiliate of a financial institution,
7 involved in making any determination concerning an
8 application for credit shall have access to any infor-
9 mation provided by the applicant pursuant to a re-
10 quest under subsection (b) in connection with such
11 application.

12 "(2) EXCEPTION.—If a financial institution de-
13 termines that loan underwriter or other officer or
14 employee of a financial institution, or any affiliate of
15 a financial institution, involved in making any deter-
16 mination concerning an application for credit should
17 have access to any information provided by the ap-
18 plicant pursuant to a request under subsection (b),
19 the financial institution will provide notice to the ap-
20 plicant of the access of the underwriter to this infor-
21 mation, along with notice that the financial institu-
22 tion may not discriminate on this basis of this infor-
23 mation.

24 "(e) FORM AND MANNER OF INFORMATION.—

1 "(1) IN GENERAL.—Each financial institution
2 shall compile and maintain, in accordance with regu-
3 lations of the Agency, a record of the information
4 provided by any loan applicant pursuant to a request
5 under subsection (b).

6 "(2) ITEMIZATION.—Information compiled and
7 maintained under paragraph (1) shall also be
8 itemized in order to clearly and conspicuously dis-
9 close the following:

10 "(A) The number of the application and
11 the date the application was received.

12 "(B) The type and purpose of the loan or
13 other credit being applied for.

14 "(C) The amount of the credit or credit
15 limit applied for and the amount of the credit
16 transaction or the credit limit approved for such
17 applicant.

18 "(D) The type of action taken with respect
19 to such application and the date of such action.

20 "(E) The census tract in which is located
21 the principal place of business of the small busi-
22 ness loan applicant.

23 "(F) The gross annual revenue of the busi-
24 ness in the last fiscal year of the small business

loan applicant preceding the date of the application.

"(G) The race, sex, and ethnicity of the principal owners of the business.

"(H) Any additional data the Agency determines would aid in fulfilling the purposes of this section.

"(3) INCLUSION OF PERSONALLY IDENTIFIABLE INFORMATION PROHIBITED.—In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, and any other personally identifiable information concerning any individual who is, or is connected with, the small business loan applicant.

"(4) DISCRETION TO DELETE OR MODIFY PUBLICLY AVAILABLE DATA.—The Agency may, in the discretion of the Agency, delete or modify data collected under this section which is or will be available to the public if the Agency determines that the deletion or modification of the data would advance a compelling privacy interest.

"(f) AVAILABILITY OF INFORMATION.—

"(1) SUBMISSION TO AGENCY.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the Agency.

"(2) AVAILABILITY OF INFORMATION.—

"(A) IN GENERAL.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under regulations prescribed by the Agency.

"(B) ANNUAL DISCLOSURE TO THE PUBLIC.—In addition to the availability by request under subparagraph (A) of data compiled and maintained under this section, the Agency shall annually provide such data to the public.

"(C) PROCEDURES.—The procedures for disclosing data compiled and maintained under this section to the public shall be determined by the Agency by regulation.

"(3) COMPILATION OF AGGREGATE DATA.—

"(A) IN GENERAL.—The Agency may, in the discretion of the Agency, compile for the Agency's own use compilations of aggregate data.

1 "(B) PUBLIC AVAILABILITY OF AGGRE-
2 GATE DATA.—The Agency may, in the discre-
3 tion of the Agency, make public compilations of
4 aggregate data in such manner as the Agency
5 may determine to be appropriate.
6 "(g) DEFINITIONS.—For purposes of this section, the
7 following definitions shall apply:
8 "(1) FINANCIAL INSTITUTION.—The term 'fi-
9 nancial institution' means any partnership, com-
10 pany, corporation, association (incorporated or unin-
11 corporated), trust, estate, cooperative organization,
12 or other entity that engages in any financial activity.
13 "(2) MINORITY-OWNED BUSINESS.—The term
14 'minority-owned business' means a 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 BUSINESS.—The term
22 'women-owned business' means a business—
23 "(A) more than 50 percent of the owner-
24 ship or control of which is held by 1 or more
25 women; and

1 "(B) more than 50 percent of the net prof-
2 it or loss of which accrues to 1 or more women.
3 "(4) MINORITY.—The term 'minority' has the
4 meaning given to such term by section 1204(c)(3) of
5 the Financial Institutions Reform, Recovery, and
6 Enforcement Act of 1989.
7 "(5) SMALL BUSINESS LOAN.—The term 'small
8 business loan' shall be defined by the Agency, which
9 may take into account—
10 "(A) the gross revenues of the borrower;
11 "(B) the total number of employees of the
12 borrower;
13 "(C) the industry in which the borrower
14 has its primary operations; and
15 "(D) the size of the loan.
16 "(h) AGENCY ACTION.—
17 "(1) IN GENERAL.—The Agency shall prescribe
18 such regulations and issue such guidance as may be
19 necessary to carry out, enforce, and compile data
20 pursuant to this section.
21 "(2) EXCEPTIONS.—The Agency, by regulation
22 or order, may adopt exceptions to any requirement
23 of this section and may, conditionally or uncondi-
24 tionally, exempt any financial institution or class of
25 institutions from the requirements of this section as

the Agency determines to be necessary or appropriate to carry out the purposes and objectives of this section.

"(3) GUIDANCE.—The Agency shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women- or minority-owned for the purposes of this section.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) by striking "or" after the semicolon at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; or"; and

(3) by inserting after paragraph (4), the following new paragraph:

"(5) to make an inquiry under section 704B in accordance with the requirements of such section.".

(c) CLERICAL AMENDMENT.—The table of sections for the Equal Credit Opportunity Act is amended by inserting after the item relating to section 704A the following new item:

"704B. Small business loan data collection.".

(d) EFFECTIVE DATE.—This section shall take effect on the designated transfer date.

SEC. 4703. ANNUAL FINANCIAL AUTOPSY.

(a) STUDY REQUIRED.—Not later than March 31 of each calendar year, the Director shall—

(1) conduct a scientific sampling of foreclosures and bankruptcies during the previous calendar year in each State or territory of the United States; and

(2) identify any underlying causes of such bankruptcies or foreclosures, including any specific financial products or services that have been the cause of substantial numbers of such bankruptcies or foreclosures.

(b) REPORT.—After the completion of each study required under subsection (a), the Director shall submit a report to the Congress containing—

(1) any conclusions made by the Director in carrying out such study;

(2) any specific financial products or services that the Director has identified to have caused a substantial number of bankruptcies or foreclosures, as well as which companies or individuals provided such financial products or services; and

(3) any recommendations the Director has for legislation that would reduce the underlying causes

of bankruptcies and foreclosures identified in such study.

Subtitle H—Conforming Amendments

SEC. 4801. AMENDMENTS TO THE INSPECTOR GENERAL ACT OF 1978.

(a) ESTABLISHMENT.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting ''the Consumer Financial Protection Agency,'' before ''the Consumer Product Safety Commission,''.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this title.

SEC. 4802. AMENDMENTS TO THE PRIVACY ACT OF 1974.

(a) APPLICABILITY.—Section 552a of title 5, United States Code, is amended by adding at the end the following new subsection:

''(w) APPLICABILITY TO CONSUMER FINANCIAL PROTECTION AGENCY.—Except as provided in the Consumer Financial Protection Agency Act of 2009, this section shall apply with respect to the Consumer Financial Protection Agency.''.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this title.

SEC. 4803. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) SECTION 803(1).—Section 803(1) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3802(1)) is amended by striking paragraphs (B) and (C).

(b) SECTION 804(a).—Section 804(a) of the Alternative Mortgage Transaction Parity Act of l982 (12 U.S.C. 3803(a)) is amended—

(1) in paragraphs (1), (2), and (3), by inserting ''on or before the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009'' after ''transactions made'' each place such term appears;

(2) in paragraph (2), by striking ''and'' at the end;

(3) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following new paragraph:

''(4) with respect to transactions made after the designated transfer date, as determined in section 4602 of the Consumer Financial Protection Agency Act of 2009, only in accordance with regulations governing alternative mortgage transactions as issued by the Consumer Financial Protection Agency

for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Consumer Financial Protection Agency with regard to federally chartered housing creditors under laws other than this section.''.

(c) SECTION 804.—Section 804 of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3803) is amended—

(1) by striking subsection (c) and inserting the following new subsection:

''(c) EFFECT OF STATE LAW.—

''(1) IN GENERAL.—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State Constitution, law, or regulation that prohibits an alternative mortgage transaction.

''(2) RULE OF CONSTRUCTION.—For purposes of this subsection, a State Constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State Constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.''; and

(2) by adding at the end the following new subsection:

1 "(d) DUTIES OF CONSUMER FINANCIAL PROTECTION
2 AGENCY.—The Consumer Financial Protection Agency
3 shall—
4 "(1) review the regulations identified by the
5 Comptroller of the Currency, the National Credit
6 Union Administration, and the Director of the Office
7 of Thrift Supervision (as those regulations exist on
8 the designated transfer date, as determined in sec-
9 tion 4602 of the Consumer Financial Protection
10 Agency Act of 2009) as applicable under paragraphs
11 (1), (2), and (3) of subsection (a);
12 "(2) determine whether such regulations are
13 fair and not deceptive and otherwise meet the objec-
14 tives of section 4201 of the Consumer Financial
15 Protection Agency Act of 2009; and
16 "(3) prescribe regulations under subsection
17 (a)(4) after the designated transfer date, as deter-
18 mined under such Act.".
19 (d) EFFECTIVE DATE AND SCOPE OF APPLICA-
20 TION.—
21 (1) EFFECTIVE DATE.—This section shall take
22 effect on the designated transfer date.
23 (2) SCOPE OF APPLICATION.—The amendments
24 made by subsection (a) shall not affect any trans-
25 action covered by the Alternative Mortgage Trans-

action Parity Act of l982 which is entered into on or before the designated transfer date.

SEC. 4804. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

(a) TRUTH IN LENDING ACT.—

(1) SECTION 103.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by striking subsection (b) and inserting the following new subsection:

''(b) AGENCY DEFINITIONS.—

''(1) BOARD.—The term 'Board' means the 'Board of Governors of the Federal Reserve System'.

''(2) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''.

(2) UNIVERSAL AMENDMENT RELATING TO BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking ''Board'' each place such term appears, including in chapters 4 and 5 relating to credit billing and consumer leases, and inserting ''Agency''.

(B) EXCEPTIONS.—The amendment described in subparagraph (A) shall not apply to

sections 108(a) (as amended by paragraph (4)) and 140(d).

(3) SECTION 105.—Section 105(b) of the Truth in Lending Act (15 U.S.C. 1604(b)) is amended by striking the first sentence and inserting the following: ''The Agency shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.''.

(4) SECTION 108.—Section 108 of the Truth in Lending Act (15 U.S.C. 1607) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

''(a) ENFORCING AGENCIES.—Subject to section 4202 of the Consumer Financial Protection Agency Act

of 2009, compliance with the requirements imposed under this title shall be enforced as follows:

"(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board;

"(C) depository institution insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

"(D) Federal savings associations and savings and loan holding companies, by the Director of the Office of Thrift Supervision.

"(2) Under subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.

"(3) Under the Federal Credit Union Act, by the head of the agency responsible for chartering and regulating Federal credit unions.

"(4) Under the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

"(5) Under the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

"(6) Under the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association."; and

(B) by striking subsection (c) and inserting the following new subsection:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent

that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.''.

(5) UNIVERSAL AMENDMENT RELATING TO THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by striking ''Federal Trade Commission'' each place such term appears and inserting ''Agency''.

(B) EXCEPTIONS.—The amendment described in subparagraph (A) shall not apply to

sections 108(c) (as amended by paragraph (4)) and 129(m) (as amended by paragraph (7)).

(6) SECTION 127.—Subparagraph (C) of section 127(b)(11) of the Truth in Lending Act (15 U.S.C. 1637(b)(11)) is amended to read as follows:

"(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Agency, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5 percent minimum monthly payment on a balance of $300 at an interest rate of 17 percent would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Consumer Financial Protection Agency at this toll-free number: _____ [the blank space to be filled in by the creditor].' A creditor who is

subject to this subparagraph shall not be subject to subparagraph (A) or (B).''.

(7) SECTION 129.—Section 129(m) of the Truth in Lending Act (15 U.S.C. 1639(m)) is amended to read as follows:

''(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Agency pursuant to subsection (l)(2) of this section shall be treated as a violation of a regulation promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.''.

(b) FAIR CREDIT REPORTING ACT.—

(1) SECTION 603.—Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following new subsection:

''(w) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''.

(2) UNIVERSAL AMENDMENTS RELATING TO THE FEDERAL TRADE COMMISSION.—Other than in

connection with the amendment made by paragraph (7)(A), the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—

(A) by striking ''Federal Trade Commission'' each place such term appears and inserting ''Agency'';

(B) by striking ''Commission'' each place such term appears (other than in connection with the term amended in subparagraph (A)) and inserting ''Agency''; and

(C) by striking ''Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly'' each place such term appears in sections 605(h)(2) and 623(a)(8)(A) and inserting ''Agency shall''.

(3) SECTION 603.—Section 603(k)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681a(k)(2)) is amended by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Agency''.

(4) SECTION 604.—Subsection 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended—

(A) by striking subparagraph (C) of paragraph (3) and inserting the following new subparagraph:

"(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Agency (with respect to any covered person subject to the jurisdiction of such agency under paragraph (2) of section 621(b)), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities)."; and

(B) by striking paragraph (5) and inserting the following new paragraph:

"(5) REGULATIONS REQUIRED.—The Agency may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.".

(5) SECTION 611.—Section 611(e)(2) of the Fair Credit Reporting Act (15 U.S.C.1681i(e)(2)) is amended to read as follows:

"(2) EXCLUSION.—Complaints received or obtained by the Agency pursuant to its investigative authority under the Consumer Financial Protection Agency Act of 2009 shall not be subject to paragraph (1).".

(6) SECTION 615.—Section 615(h)(6)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681m(h)(6)(A)) is amended to read as follows:

"(A) RULES REQUIRED.—The Agency shall prescribe rules.".

(7) SECTION 621.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

"(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

"(1) IN GENERAL.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed

under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of such Act with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers (subject to section 4202 of the Consumer Financial Protection Agency Act of 2009), including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the

Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

"(2) CIVIL MONEY PENALTIES.—

"(A) IN GENERAL.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

"(B) FACTORS IN DETERMINING AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, ef-

fect on ability to continue to do business, and such other matters as justice may require.

"(3) EXCEPTION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1) unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission or the Agency, as the case may be, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.";

(B) by striking subsection (b) and inserting the following new subsection:

"(b) ENFORCEMENT BY OTHER AGENCIES.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to subsection (d) of section 615 shall be enforced as follows:

"(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System;

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

"(D) Federal savings associations and savings and loan holding companies, by the Director of the Office of Thrift Supervision.

"(2) Under subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency in the case of a covered person under that Act.

"(3) Under the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union.

"(4) Under subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board.

"(5) Under the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

"(6) Under the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

"(7) Under the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission.

"(8) Under the Federal securities law and any other laws subject to the jurisdiction of the Securities and Exchange Commission, with respect to a

1 person subject to the jurisdiction of the Securities
2 and Exchange Commission.
3 Any term used in paragraph (1) that is not defined in
4 this title or otherwise defined in section 3(s) of the Federal
5 Deposit Insurance Act shall have the meaning given to
6 such term in section 1(b) of the International Banking Act
7 of 1978.";
8 (C) by striking subsection (e) and inserting
9 the following new subsection:
10 "(e) REGULATORY AUTHORITY.—The Agency shall
11 prescribe such regulations as necessary to carry out the
12 purposes of this Act with respect to a covered person de-
13 scribed in subsection (b)."; and
14 (D) in the heading of subsection (g) by
15 striking "FTC".
16 (8) SECTION 623.—Section 623 of the Fair
17 Credit Reporting Act (15 U.S.C. 1681s–2) is
18 amended—
19 (A) by amending subparagraph (a)(7)(D)
20 to read as follows:
21 "(D) MODEL DISCLOSURE.—
22 "(i) DUTY OF AGENCY TO PRE-
23 PARE.—The Agency shall prescribe a brief
24 model disclosure a financial institution

may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph shall be construed as requiring a financial institution to use any such model form prescribed by the Agency.

"(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any such model form prescribed by the Agency, or the financial institution uses any such model form and rearranges its format.".

(B) by amending subsection (e) to read as follows:

"(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The Agency shall, with respect to the entities that are subject to its enforcement authority under section 621—

"(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relat-

ing to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

"(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures or implementing the guidelines established pursuant to subparagraph (A).

"(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Agency shall—

"(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

"(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

"(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

"(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies."

(c) EQUAL CREDIT OPPORTUNITY ACT.—

(1) SECTION 701.—Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by striking "Board" each place such term appears and inserting "Agency".

(2) SECTION 702.—Section 702(c) of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended to read as follows:

"(c) The term 'Agency' means the Consumer Financial Protection Agency.".

(3) SECTION 703.—Section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b) is amended—

(A) by striking subsection (b);

(B) in subsection (a)—

(i) by striking "(1)"; and

(ii) by redesignating paragraphs (2), (3), (4), and (5) as subsections (b), (c), (d), and (e), respectively;

(C) in subsection (c) (as so redesignated)—

(i) by striking ''paragraph (2)'' and inserting ''subsection (b)''; and

(ii) by striking ''such paragraph'' and inserting ''such subsection'';

(D) in subsection (d) (as so redesignated)—

(i) by striking ''subsection'' and inserting ''section' ''

(ii) by striking ''Act'' and inserting ''title''; and

(iii) by striking ''this paragraph'' and inserting ''this subsection''; and

(E) by striking ''Board'' each place such term appears in such section and inserting ''Agency''.

(4) SECTION 704.—Section 704 of the Equal Credit Opportunity Act (15 U.S.C. 1691c) is amended—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1), by striking ''Compliance'' and inserting ''Subject to section 4202 of the Con-

sumer Financial Protection Agency Act of 2009, compliance'';

(ii) in paragraph (1)(A), by striking ''Office of the Comptroller of the Currency'' and inserting ''head of the agency responsible for chartering and regulating national banks'';

(iii) in paragraph (1)(B), by striking ''and'' after the semicolon;

(iv) in paragraph (1)(C), by inserting ''and'' after the semicolon;

(v) by inserting after subparagraph (C) of paragraph (1) the following new subparagraph:

''(D) savings associations and savings and loan holding companies by the Director of the Office of Thrift Supervision;''; and

(vi) by amending paragraph (2) to read as follows:

''(2) Subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.'';

(B) by striking subsection (c) and inserting the following new subsection:

''(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that en-

1 forcement of the requirements imposed under this title is
2 specifically committed to some other Government agency
3 under subsection (a) and subject to section 4202 of the
4 Consumer Financial Protection Agency Act of 2009, the
5 Federal Trade Commission shall enforce such require-
6 ments. For the purpose of the exercise by the Federal
7 Trade Commission of its functions and powers under the
8 Federal Trade Commission Act, a violation of any require-
9 ment imposed under this title shall be deemed a violation
10 of a requirement imposed under that Act. All of the func-
11 tions and powers of the Federal Trade Commission under
12 the Federal Trade Commission Act are available to the
13 Commission to enforce compliance by any person with the
14 requirements imposed under this title, irrespective of
15 whether that person is engaged in commerce or meets any
16 other jurisdictional tests in the Federal Trade Commission
17 Act, including the power to enforce any regulation pre-
18 scribed by the Director under this title in the same man-
19 ner as if the violation had been a violation of a Federal
20 Trade Commission trade regulation rule.''; and
21 (C) in subsection (d), by striking ''Board''
22 and inserting ''Agency''.
23 (5) SECTION 704a.—Section 704A(a)(1) of the
24 Equal Credit Opportunity Act (15 U.S.C. 1691c–

1(a)(1)) is amended in by striking ''Board'' and inserting ''Agency''.

(6) SECTION 705.—Section 705 of the Equal Credit Opportunity Act (15 U.S.C. 1691d) is amended—

(A) in subsection (f), by striking ''Board'' each place such term appears and inserting ''Agency''; and

(B) in subsection (g), by striking ''Board'' and inserting ''Agency''.

(7) SECTION 706.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended—

(A) in subsection (e)—

(i) by striking ''Board'' each place such term appears and inserting ''Agency''; and

(ii) by striking ''Federal Reserve System'' and inserting ''Consumer Financial Protection Agency'';

(B) in subsection (f), by striking ''two years'' each place such term appears and inserting ''5 years'';

(C) in subsection (g)—

(i) by striking ''The agencies having'', in the 1st sentence, and inserting ''The Agency and the agencies having''

(ii) by striking ''Each agency referred'', in the 2nd sentence, and inserting ''The Agency and each agency referred'';

(iii) by striking ''Each such agency'', in the 3rd sentence, and inserting ''The Agency and each such agency''; and

(iv) by striking ''whenever the agency'' in the 3rd sentence, and inserting ''whenever the Agency or an agency having responsibility for administrative enforcement under section 704''; and

(D) in subsection (k)—

(i) by striking ''Whenever an agency'' and inserting ''Whenever the Agency or an agency''; and

(ii) by striking ''the agency shall notify'' and inserting ''the Agency, or an agency referred to in any such paragraph, as the case may be, shall notify''.

(8) SECTION 707.—Section 707 of the Equal Credit Opportunity Act (15 U.S.C. 1691f) is amend-

ed by striking ''Board'' each place such term appears and inserting ''Agency''.

(d) FAIR DEBT COLLECTION PRACTICES ACT.—

(1) SECTION 803.—Section 803 of the Fair Debt Collection Practices Act (15 U.S.C. 1692a) is amended—

(A) by redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) as paragraphs (2), (3), (4), (5), (6), (7), (8), and (9), respectively; and

(B) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

''(1) The term 'Agency' means the Consumer Financial Protection Agency.''.

(2) SECTION 813.—Section 813(e) of the Fair Debt Collection Practices Act (15 U.S.C. 1692k(e)) is amended by striking ''Commission'' and inserting ''Agency''.

(3) SECTION 814.—Section 814 of the Fair Debt Collection Practices Act (15 U.S.C. 1692l) is amended—

(A) by striking subsection (a) and inserting the following new subsection:

''(a) FEDERAL TRADE COMMISSION.—Subject to section 4202 of the Consumer Financial Protection Agency

Act of 2009, compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.'';

(B) in subsection (b)—

(i) in the matter preceding paragraph (1), by striking ''Compliance'' and inserting ''ENFORCEMENT BY OTHER AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance''.

(ii) in paragraph (1)(A), by striking "Office of the Comptroller of the Currency;" and inserting "head of the agency responsible for chartering and regulating national banks;";

(iii) in paragraph (1)(B), by striking "and" after the semicolon;

(iv) in paragraph (1)(C), by inserting "and" after the semicolon;

(v) by inserting after subparagraph (C) of paragraph (1) the following new subparagraph:

"(D) savings associations and savings and loan holding companies by the Director of the Office of Thrift Supervision;"; and

(vi) by striking paragraph (2) and inserting the following new paragraph:

"(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency;"; and

(C) by striking subsection (d) and inserting the following new subsection:.

"(d) REGULATIONS.—The Agency may prescribe regulations with respect to the collection of debts by any debt collector.".

(4) SECTION 815.—Section 815 (15 U.S.C. 1692m) is amended—

(A) in the section heading, by striking "**Commission**" and inserting "**Agency**"; and

(B) by striking "Commission" each place such term appears and inserting "Agency".

(5) SECTION 817.—Section 817 (15 U.S.C. 1692o) is amended by striking "Commission" each place such term appears and inserting "Agency".

(e) ELECTRONIC FUND TRANSFER ACT.—

(1) SECTION 903.—Section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a) is amended—

(A) by striking paragraph (3) and inserting the following new paragraph:

"(3) the term 'Agency' means the Consumer Financial Protection Agency;"; and

(B) in paragraph (6), by striking "Board" and inserting "Agency".

(2) SECTION 904.—Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693b) is amended by striking "Board" each place such term appears and inserting "Agency".

(3) SECTION 905.—Section 905 of the Electronic Fund Transfer Act (15 U.S.C. 1693c) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(4) SECTION 906.—Section 906(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693d(b)) is amended by striking ''Board'' and inserting ''Agency''.

(5) SECTION 907.—Section 907(b) of the Electronic Fund Transfer Act (15 U.S.C. 1693e(b)) is amended by striking ''Board'' and inserting ''Agency''.

(6) SECTION 908.—Section 908(f)(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693f(f)(7)) is amended by striking ''Board'' and inserting ''Agency''.

(7) SECTION 910.—Section 910(a)(1)(E) of the Electronic Fund Transfer Act (15 U.S.C. 1693h(a)(1)(E)) is amended by striking ''Board'' and inserting ''Agency''.

(8) SECTION 911.—Section 911(b)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693i(b)(3) is amended by striking ''Board'' and inserting ''Agency''.

(9) SECTION 915.—Section 915(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693m(d)) is amended—

(A) by striking ''Board'' each place such term appears and inserting ''Agency''; and

(B) by striking ''Federal Reserve System'' and inserting ''Consumer Financial Protection Agency''.

(10) SECTION 917.—Section 917 of the Electronic Fund Transfer Act (15 U.S.C. 1693o) is amended—

(A) in subsection (a)—

(i) by striking ''Compliance'' and inserting ''Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(ii) in paragraph (1)(A), by striking ''Office of the Comptroller of the Currency'' and inserting ''head of the agency responsible for chartering and regulating national banks''; and

(iii) by striking paragraph (2) and inserting:

''(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency;''; and

(B) by striking subsection (c) and inserting the following new subsection:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) and subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.".

(11) SECTION 918.—Section 918 of the Electronic Fund Transfer Act (15 U.S.C. 1693p) is

amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(12) SECTION 919.—Section 919 of the Electronic Fund Transfer Act (15 U.S.C. 1693q) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(13) SECTION 920.—Section 920 of the Electronic Fund Transfer Act (15 U.S.C. 1693r) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(f) AMENDMENTS TO HOEPA RELATING TO THE TRUTH IN LENDING ACT.—Section 158 of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 nt.) (relating to hearings on home equity lending) is amended—

(1) in subsection (a), by striking ''Board of Governors of the Federal Reserve System, in consultation with the Consumer Advisory Council of the Board,'' and inserting ''Consumer Financial Protection Agency, in consultation with the Advisory Board to the Agency''; and

(2) in subsection (b), by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Consumer Financial Protection Agency''.

(g) AMENDMENT TO THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 RELATING TO THE FAIR CREDIT REPORTING ACT.—Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681s–3 nt.) is amended by striking ''The Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act and'' and inserting ''The Consumer Financial Protection Agency, with respect to a person subject to the enforcement authority of the Agency, the Commodity Futures Trading Commission, and''.

SEC. 4805. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) SECTION 605.—Section 605(f)(1) of the Expedited Funds Availability Act (12 U.S.C. 4004(f)(1)) is amended by inserting '', in consultation with the Director of the Consumer Financial Protection Agency,''after ''Board''.

(b) SECTION 609.—Section 609(a) of the Expedited Funds Availability Act (12 U.S.C. 4008(a)) is amended by inserting '', in consultation with the Director of the Consumer Financial Protection Agency,''after ''Board''.

SEC. 4806. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) SECTION 8.—Section 8(t) the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), as amended by section 1111(b)(2), is further amended by adding at the end the following new paragraph:

"(7) REFERRAL TO CONSUMER FINANCIAL PROTECTION COMMISSION.—Each appropriate Federal banking agency shall make a referral to the Consumer Financial Protection Agency when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in section 4202(e)(2) of the Consumer Financial Protection Agency Act of 2009, by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.".

(b) SECTION 43.—Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

(1) in subsection (c), by striking "Federal Trade Commission" and inserting "Agency";

(2) in subsection (d), by striking "Federal Trade Commission" and inserting "Agency";

(3) in subsection (e)—

(A) in paragraph (2)(B), by striking ''Federal Trade Commission'' and inserting ''Agency''; and

(B) by adding at the end the following new paragraph:

''(5) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''.

(c) SECTION 43(f).—Section 43(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(f)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

''(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Agency Act of 2009 by the Agency with respect to any person (and without regard to the provision of a consumer financial product or service).''; and

(2) in paragraph (2), by striking subparagraph (C) and inserting the following new subparagraph:

''(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Agency has instituted an enforcement action for a violation of this section, no appropriate State

supervisory may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Agency for any violation of this section that is alleged in that complaint.''.

SEC. 4807. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

(a) SECTION 504.—Section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) is amended—

(1) by striking ''The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury,'' and inserting ''The Consumer Financial Protection Agency and''; and

(2) by striking '', and the Federal Trade Commission''.

(b) SECTION 505.—

(1) Section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) is amended—

(A) in the matter preceding paragraph (1), by striking ''This subtitle and the regulations prescribed thereunder shall be enforced by'' and inserting ''Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, this subtitle and the regulations pre-

scribed under this title shall be enforced by the Consumer Financial Protection Agency,''; and

(B) by inserting after paragraph (7) the following new paragraph:

''(8) Under the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency in the case of financial institutions and other covered persons and service providers subject to the jurisdiction of the Agency under that Act, but not with respect to the standards under section 501.''.

(2) Section 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(b)(1)) is amended by inserting '', other than the Consumer Financial Protection Agency,'' after ''described in subsection (a)''.

SEC. 4808. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT OF 1975.

(a) SECTION 303.—Section 303 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802) is amended—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), and (6) as paragraphs (2), (3), (4), (5), (6), and (7), respectively; and

(2) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) The term 'Agency' means the Consumer Financial Protection Agency.".

(b) UNIVERSAL AMENDMENT RELATING TO AGENCY.—Except as provided in subsections (c), (d), (e), and (f), the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801–11) is amended by striking "Board" each place such term appears and inserting "Agency".

(c) SECTION 304.—Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended—

(1) in subsection (b)—

(A) by striking "and" after the semicolon at the end of paragraph (3);

(B) by striking "and gender" in paragraph (4), and inserting "age, and gender";

(C) by striking the period at the end of paragraph (4) and inserting a semicolon; and

(D) by inserting after paragraph (4) the following new paragraphs:

"(5) the number and dollar amount of mortgage loans grouped according to the following measurements:

"(A) the total points and fees payable at origination in connection with the mortgage as determined by the Agency, taking into account

1 section 103(aa)(4) of the Truth in Lending Act
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 Agency
12 may require; and
13 "(6) the number and dollar amount of mort-
14 gage loans and completed applications grouped ac-
15 cording to the following measurements:
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;

"(D) the actual or proposed term in months of the mortgage loan;

"(E) the channel through which application was made, including retail, broker, and other relevant categories;

"(F) as the Agency may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008;

"(G) as the Agency may determine to be appropriate, a universal loan identifier;

"(H) as the Agency may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

"(I) the credit score of mortgage applicants and mortgagors in such form as the Agency may prescribe, except that the Agency shall modify or require modification of credit score data that is or will be available to the public to protect the compelling privacy interest of the mortgage applicant or mortgagors; and

"(J) such other information as the Agency may require.";

(2) by striking subsection (h) and inserting the following new subsection:

"(h) SUBMISSION TO AGENCIES.—

"(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Agency or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Agency. Institutions will not be required to report new data required under section 4808(c) before the first January 1 that occurs after the end of the 9-month period beginning on the date that regulations prescribed by the Agency are prescribed in final form.

"(2) REGULATIONS.—Notwithstanding the requirement of section 304(a)(2)(A) for disclosure by census tract, the Agency, in cooperation with other appropriate regulators, including—

"(A) the head of the agency responsible for chartering and regulating national banks for national banks and Federal branches, Federal agencies of foreign banks, and savings associations;

"(B) the Federal Deposit Insurance Corporation for depository institutions insured by the Federal Deposit Insurance Corporation

(other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks;

"(C) the Director of the Office of Thrift Supervision for Federal savings associations and savings and loan holding companies;

"(D) the National Credit Union Administration Board for credit unions; and

"(E) the Secretary of Housing and Urban Development for other lending institutions not regulated by an agency referred to in subparagraphs (A), (B), (C), or (D),

shall develop regulations prescribing the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public.

"(3) REQUIRED DISCLOSURES.—The regulations prescribed under paragraph (2) shall require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title, and, in addition, shall require disclosure of the class of the purchaser of such loans.

"(4) ADDITIONAL DATA OR EXPLANATIONS.—Any reporting institution may submit in writing to the Agency or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.";

(3) in subsection (i), by striking "subsection (b)(4)" and inserting "paragraphs (4), (5), and (6) of subsection (b)";

(4) in subsection (j)—

(A) by striking "(as" where such term appears in paragraph (1) and inserting "(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise";

(B) by striking "in the format in which such information is maintained by the institution" where such term appears in paragraph (2)(A), and inserting "in such formats as the Agency may require"; and

(C) by striking paragraph (3) and inserting the following new paragraph:

"(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the infor-

mation required under such paragraph in such formats as the Agency may require.''; and

(5) by striking paragraph (2) of subsection (m) and inserting the following new paragraph:

''(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Agency may require.''.

(d) SECTION 305.—Section 305 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804) is amended—

(1) by striking subsection (b) and inserting the following new subsection:

''(b) POWERS OF CERTAIN OTHER AGENCIES.—Compliance with the requirements imposed under this title shall be enforced under—

''(1) section 8 of the Federal Deposit Insurance Act, in the case of—

''(A) national banks, and Federal branches and Federal agencies of foreign banks, by the head of the agency responsible for chartering and regulating national banks;

''(B) member banks of the Federal Reserve System (other than national banks), branches

and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board;

''(C) depository institutions insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System, Federal savings associations, and savings and loan holding companies) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

''(D) Federal savings associations, and savings and loan holding companies, by the Director of the Office of Thrift Supervision;

''(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency;

''(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any credit union; and

''(4) other lending institutions, by the Secretary of Housing and Urban Development. The terms

used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978.''; and

(2) by inserting at the end of section 305 the following new subsection:

''(d) OVERALL ENFORCEMENT AUTHORITY OF THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). The Agency may exercise its authorities under the Consumer Financial Protection Agency Act of 2009 to exercise principal authority to examine and enforce compliance by any person with the requirements under this title.''.

(e) SECTION 306.—Subsection 306(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is amended to read as follows:

''(b) The Agency may, by regulation, exempt from the requirements of this title any State chartered depository institution within any State or subdivision of any state if the Agency determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the head of the agency responsible for chartering and regulating national banks under section 8 of the Federal Deposit Insurance Act in the case of national banks and savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.''.

(f) SECTION 307.—Section 307 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2806) is amended to read as follows:

''SEC. 307. RESEARCH AND IMPROVED METHODS.

''(a) ENHANCED COMPLIANCE IN ECONOMICAL MANNER.—

"(1) IN GENERAL.—The Director of the Consumer Financial Protection Agency, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Consumer Financial Protection Agency deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

"(2) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated such sums as may be necessary to carry out this subsection.

"(3) AUTHORITY OF AGENCY.—The Director of the Consumer Financial Protection Agency is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

"(b) RECOMMENDATIONS TO THE CONGRESS.—The Director of the Consumer Financial Protection Agency shall recommend to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate such

additional legislation as the Director of the Consumer Financial Protection Agency deems appropriate to carry out the purpose of this title.''.

SEC. 4809. AMENDMENTS TO DIVISION D OF THE OMNIBUS APPROPRIATIONS ACT, 2009.

(a) Section 626(a) of title VI of division D of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.) (as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended—

(1) by striking by paragraph (1) and inserting the following new paragraph: ''(1) The Director of the Consumer Financial Protection Agency shall have authority to prescribe regulations with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a regulation prescribed under this subsection shall be treated as a violation of a regulation prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Agency Act of 2009.'';

(2) by striking paragraph (2);

(3) by striking paragraph (3); and

(4) by striking paragraph (4) and inserting the following new paragraph:

''(2) The Director of the Consumer Financial Protection Agency shall enforce the regulations issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Consumer Financial Protection Agency Act of 2009 were incorporated into and made part of this section.''.

(b) Section 626(b) of title VI of division D of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 nt.) (as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended by striking ''primary Federal regulator'' each place it appears and inserting ''Consumer Financial Protection Agency''.

SEC. 4810. AMENDMENTS TO THE HOMEOWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in the matter preceding paragraph (1) of subsection (a), by striking ''Compliance'' and inserting ''Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(2) in subsection (a)(2), by striking ''and'' after the semicolon at the end;

(3) in subsection (a)(3), by striking the period at the end and inserting ''; and'';

(4) by inserting after subsection (a)(3), the following new paragraph:

''(4) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency.''; and.

(5) in subsection (b)(2), by inserting '', subject to section 4202 of the Consumer Financial Protection Agency Act of 2009'' before the period at the end.

SEC. 4811. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

(a) SECTION 3.—Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602) is amended—

(1) in paragraph (7), by striking ''and'' after the semicolon at the end;

(2) in paragraph (8), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph

"(9) the term 'Agency' means the Consumer Financial Protection Agency.".

(b) SECTION 4.—Section 4 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2603) is amended—

(1) in subsection (a), by striking the first sentence and inserting the following: "The Agency shall publish a single, integrated disclosure for mortgage loan transactions, including real estate settlement cost statements, which include the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) that, taken together, may apply to transactions subject to both or either law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.";

(2) by striking "Secretary" each place such term appears and inserting "Agency"; and

(3) by striking "form" each place such term appears and inserting "forms".

(c) SECTION 5.—Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) is amended—

(1) by striking ''Secretary'' each place such term appears, and inserting ''Agency''; and

(2) by striking the first sentence of subsection (a), and inserting ''The Agency shall prepare and distribute booklets jointly complying with the requirements of the Truth in Lending Act (15 U.S.C. 1601 note et seq.) and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.''.

(d) SECTION 6.—Section 6(j)(3) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(j)(3)) is amended—

(1) by striking ''Secretary'' and inserting ''Director of the Agency''; and

(2) by striking ''by regulations that shall take effect not later than April 20, 1991,'' and inserting ''by regulation,''.

(e) SECTION 7.—Section 7 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2606) is amend-

ed by striking ''Secretary'' and inserting ''the Director of the Agency''.

(f) SECTION 8.—Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended—

(1) in subsection (c)(5), by striking ''prescribed by the Secretary'' and inserting ''prescribed by the Director of the Agency''; and

(2) in subsection (d)(4)—

(A) by striking ''The Secretary,'' and inserting ''The Agency, the Secretary,''; and

(B) by adding at the end the following new sentence: ''However, to the extent that a Federal law authorizes the Agency and other Federal and State agencies to enforce or administer the law, the Agency shall have primary authority to enforce or administer that Federal law in accordance with section 4202 of the Consumer Financial Protection Agency Act of 2009.''.

(g) SECTION 10.—Section 10(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(d)) is amended by striking ''Secretary'' and inserting ''Agency''.

(h) SECTION 16.—Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is

amended by inserting ''the Agency,'' before ''the Secretary''.

(i) SECTION 18.—Section 18 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2616) is amended by striking ''Secretary'' each place such term appears and inserting ''Agency''.

(j) SECTION 19.—Section 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617) is amended—

(1) in the section heading, by striking ''SECRETARY'' and inserting ''AGENCY''; and

(2) by striking ''Secretary'' each place such term appears and inserting ''Agency''.

SEC. 4812. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

(a) AMENDMENTS TO SECTION 1101.—Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

''(1) 'financial institution' means any bank, savings association, card issuer as defined in section 103(n) of the Truth in Lending Act, credit union, or consumer finance institution located in any State or territory of the United States, the District of Colum-

bia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;''; and

(2) in paragraph (7), by inserting after subparagraph (A) the following new subparagraph:

''(B) the Consumer Financial Protection Agency;''.

(b) AMENDMENTS TO SECTION 1112.—Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412) is amended by striking ''and the Commodity Futures Trading Commission is permitted'' and inserting ''the Commodity Futures Trading Commission, and the Consumer Financial Protection Agency is permitted''.

(c) AMENDMENTS TO SECTION 1113.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end the following new subsection—

''(r) DISCLOSURE TO THE CONSUMER FINANCIAL PROTECTION AGENCY.—Nothing in this chapter shall apply to the examination by or disclosure to the Consumer Financial Protection Agency of financial records or information in the exercise of its authority with respect to a financial institution.''.

SEC. 4813. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

(a) SECTION 1503.—Section 1503 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102) is amended—

(1) by striking paragraph (9);

(2) by redesignating paragraph (1) as paragraph (4), and transferring paragraph (4) (as so redesignated) and inserting such paragraph after paragraph (3) (as added by paragraph (5));

(3) by redesignating paragraphs (3), (4), (5), (6), (7), (8), (10), (11), and (12) as paragraphs (5), (6), (7), (8), (9), (10), (11), (12), and (13), respectively;

(4) by inserting before paragraph (2) the following new paragraph:

''(1) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''; and

(5) by inserting after paragraph (2) the following new paragraph:

''(3) DIRECTOR.—The term 'Director' means the Director of the Agency.''.

(b) UNIVERSAL AMENDMENTS RELATING TO AGENCY.—The Secure and Fair Enforcement for Mortgage Li-

1 censing Act of 2008 (12 U.S.C. 5101 et seq.) is amend-
2 ed—
3 (1) by striking ''Federal banking agencies''
4 each place such term appears (other than in sub-
5 section (a)(4) (as so redesignated by subsection (a),
6 relating to the definition of Federal banking agen-
7 cies) or in connection with a reference that is specifi-
8 cally amended by another provision of this section)
9 and inserting ''Agency''; and
10 (2) by striking ''Secretary'' each place such
11 term appears (other than in connection with a ref-
12 erence that is specifically amended by another provi-
13 sion of this section) and inserting ''Director''.
14 (c) SECTION 1507.—Section 1507 of the Secure and
15 Fair Enforcement for Mortgage Licensing Act of 2008 (12
16 U.S.C. 5106) is amended—
17 (1) in subsection (a)—
18 (A) by striking paragraph (1) and insert-
19 ing the following new paragraph:
20 ''(1) IN GENERAL.—The Agency shall develop
21 and maintain a system for registering employees of
22 any depository institution, employees of a subsidiary
23 that is owned and controlled by a depository institu-
24 tion and regulated by a Federal banking agency, or
25 employees of an institution regulated by the Farm

Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before July 30, 2010.''; and

(B) by striking ''appropriate Federal banking agency and the Farm Credit Administration'' in paragraph (2) and inserting ''Agency''; and

(2) in subsection (b), by striking ''Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration'' each place such term appears and inserting ''Agency''.

(d) SECTION 1508.—

(1) IN GENERAL.—Section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5107) is amended by adding at the end the following new subsection—

''(f) REGULATIONS.—

''(1) IN GENERAL.—The Agency may prescribe regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

"(2) FACTORS TAKEN INTO ACCOUNT.—Such regulations shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans as well as the need to ensure a competitive origination market that maximizes consumers' access to affordable and sustainable mortgage loans.".

(2) CLERICAL AMENDMENT.—The heading for section 1508 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 is amended by striking "**SECRETARY OF HOUSING AND URBAN DEVELOPMENT**" and inserting "**CONSUMER FINANCIAL PROTECTION AGENCY**".

(e) SECTION 1510.—Section 1510 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5109) is amended to read as follows:

"SEC. 1510. FEES.

"The Agency and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.".

(f) SECTION 1513.—Section 1513 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5112) is amended to read as follows:

"SEC. 1513. LIABILITY PROVISIONS.

''The Agency, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not by subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.''.

(g) SECTION 1514.—The heading for section 1514 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5113) is amended by striking ''**UNDER HUD BACKUP LICENSING SYSTEM**'' and inserting ''**BY THE AGENCY**''.

SEC. 4814. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

(a) SECTION 263.—Section 263 of the Truth in Savings Act (12 U.S.C. 4302) is amended in subsection (b)

by striking ''Board'' each place such term appears and inserting ''Agency''.

(b) SECTION 265.—Section 265 of the Truth in Savings Act (12 U.S.C. 4304) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(c) SECTION 266.—Section 266(e) of the Truth in Savings Act is amended (12 U.S.C. 4305) by striking ''Board'' and inserting ''Agency''.

(d) SECTION 269.—Section 269 of the Truth in Savings Act (12 U.S.C. 4308) is amended by striking ''Board'' each place such term appears and inserting ''Agency''.

(e) SECTION 270.—Section 270 of the Truth in Savings Act (12 U.S.C. 4309) is amended—

(1) in subsection (a)—

(A) by striking ''Compliance'' and inserting ''Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(B) by striking subparagraph (A) of paragraph (1) and inserting the following new subparagraph:

''(A) by the head of the agency responsible for chartering and regulating national banks for

national banks, and Federal branches and Federal agencies of foreign banks;''; and

(C) by adding at the end, the following new paragraph:

''(3) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the Agency.''; and

(2) in subsection (c)—

(A) in the subsection heading, by striking ''BOARD'' and insert ''AGENCY''; and

(B) by striking ''Board'' and inserting ''Agency''.

(f) SECTION 272.—Section 272 of the Truth in Savings Act (12 U.S.C. 4311) is amended—

(1) in subsection (a), by striking ''Board'' and inserting ''Agency''; and

(2) in subsection (b), by striking ''regulation prescribed by the Board'' each place such term appears and inserting ''regulation prescribed by the Agency''.

(g) SECTION 273.—Section 273 of the Truth in Savings Act (12 U.S.C. 4312) is amended in the last sentence by striking ''Board'' and inserting ''Agency''.

(h) SECTION 274.—Section 274 of the Truth in Savings Act (12 U.S.C. 4313) is amended—

(1) in paragraph (2) by striking ''Board'' and inserting ''Agency''; and

(2) by striking paragraph (4) and inserting the following new paragraph:

''(4) AGENCY.—The term 'Agency' means the Consumer Financial Protection Agency.''.

SEC. 4815. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.

(a) SECTION 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b), by inserting after the 2nd sentence ''In prescribing a regulation under this Act that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Agency Act, including any enumerated consumer law thereunder, the Commission shall consult with the Consumer Financial Protection Agency regarding the consistency of a proposed regulation with standards, purposes, or objectives administered by the Consumer Financial Protection Agency.''; and

(2) in subsection (c), by adding at the end ''Any violation of any regulation prescribed under

subsection (a) committed by a person subject to the Consumer Financial Protection Agency Act shall be treated as a violation of a regulation under section 4301 of the Consumer Financial Protection Agency Act regarding unfair, deceptive, or abusive acts or practices.''.

(b) AMENDMENTS TO SECTION 4.—Section 4(d) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6103(d)) is amended—

(1) in the subsection heading, by inserting after ''COMMISSION'' the following: ''OR THE CONSUMER FINANCIAL PROTECTION AGENCY''; and

(2) by inserting after ''Commission'' each place such term appears ''or the Consumer Financial Protection Agency''.

(c) AMENDMENTS TO SECTION 5.—Section 5(c) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6104(c)) is amended by inserting after ''Commission'' each place such term appears ''or the Consumer Financial Protection Agency''.

(d) AMENDMENT TO SECTION 6.—Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6105) is amended by adding at the end the following new subsection:

"(d) ENFORCEMENT BY CONSUMER FINANCIAL PROTECTION AGENCY.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, this Act shall be enforced by the Consumer Financial Protection Agency under subtitle E of the Consumer Financial Protection Agency Act.".

SEC. 4816. MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.

Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) the Director of the Consumer Financial Protection Agency; and".

SEC. 4817. EFFECTIVE DATE.

The amendments made by sections 4803 through 4815 shall take effect on the designated transfer date.

Subtitle I—Improvements to the Federal Trade Commission Act

SEC. 4901. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.

(a) Section 5(m)(1)(A) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)(A)) is amended—

(1) by inserting ''this Act or'' after ''violates'' the first place such term appears; and

(2) by inserting ''a violation of this Act or is'' before ''prohibited''.

(b) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection:

''(o) UNLAWFUL ASSISTANCE.—It is unlawful for any person, knowingly or recklessly, to provide substantial assistance to another in violating any provision of this Act or of any other Act enforceable by the Commission that relates to unfair or deceptive acts or practices. Any such violation shall constitute an unfair or deceptive act or practice described in section 5(a)(1) of this Act.''.

(c) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a(b)) is amended—

(1) by amending subsection (b) to read as follows:

"(b) PROCEDURE APPLICABLE.—When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of Title 5 (without regard to any reference in such section to sections 556 and 557 of such title).";

(2)(A) in subsection (d), by striking all that precedes paragraph (3);

(B) by striking subsections (c), (f), (i), and (j); and

(C) by redesignating subsections (e), (g) and (h) as subsections (d), (e) and (f);

(3) by redesignating paragraph (3) of subsection (d) as subsection (c); and

(4) in subsection (d) (as redesignated)—

(A) in paragraph (1)(B), by striking "the transcript required by subsection (c)(5),";

(B) in paragraph (3), by striking "error)" all that follows and inserting "error)."; and

(C) in paragraph (5), by striking subparagraph (C).

TITLE V—CAPITAL MARKETS

Subtitle A—Private Fund Investment Advisers Registration Act

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the ''Private Fund Investment Advisers Registration Act of 2009''.

SEC. 5002. DEFINITIONS.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following new paragraphs:

''(29) PRIVATE FUND.—The term 'private fund' means an issuer that would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by either section 3(c)(1) or section 3(c)(7) of such Act.

''(30) FOREIGN PRIVATE FUND ADVISER.—The term 'foreign private fund adviser' means an investment adviser who—

''(A) has no place of business in the United States;

''(B) during the preceding 12 months has had—

''(i) fewer than 15 clients in the United States; and

"(ii) assets under management attributable to clients in the United States of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in the public interest or for the protection of investors; and

"(C) neither holds itself out generally to the public in the United States as an investment adviser, nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53) and has not withdrawn such election.".

SEC. 5003. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE FUND ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended—

(1) in paragraph (1), by inserting ", except an investment adviser who acts as an investment adviser to any private fund," after "any investment adviser";

(2) by amending paragraph (3) to read as follows:

''(3) any investment adviser that is a foreign private fund adviser;'';

(3) in paragraph (5), by striking ''or'' at the end;

(4) in paragraph (6)—

(A) in subparagraph (A), by striking ''or'';

(B) in subparagraph (B), by striking the period at the end and adding ''; or''; and

(C) by adding at the end the following new subparagraph:

''(C) a private fund; or''; and

(5) by adding at the end the following:

''(7) any investment adviser who solely advises—

''(A) small business investment companies licensed under the Small Business Investment Act of 1958;

''(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked; or

''(C) applicants, related to one or more licensed small business investment companies

1 covered in subparagraph (A), that have applied
2 for another license, which application remains
3 pending.''.

4 **SEC. 5004. COLLECTION OF SYSTEMIC RISK DATA.**

5 Section 204 of the Investment Advisers Act of 1940
6 (15 U.S.C. 80b-4) is amended—

7 (1) by redesignating subsections (b) and (c) as
8 subsections (c) and (d), respectively; and

9 (2) by inserting after subsection (a) the fol-
10 lowing new subsection:

11 ''(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

12 ''(1) IN GENERAL.—The Commission is author-
13 ized to require any investment adviser registered
14 under this Act to maintain such records of and file
15 with the Commission such reports regarding private
16 funds advised by the investment adviser as are nec-
17 essary or appropriate in the public interest and for
18 the protection of investors or for the assessment of
19 systemic risk as the Commission determines in con-
20 sultation with the Board of Governors of the Federal
21 Reserve System. The Commission is authorized to
22 provide or make available to the Board of Governors
23 of the Federal Reserve System, and to any other en-
24 tity that the Commission identifies as having sys-
25 temic risk responsibility, those reports or records or

the information contained therein. The records and reports of any private fund, to which any such investment adviser provides investment advice, maintained or filed by an investment adviser registered under this Act, shall be deemed to be the records and reports of the investment adviser.

"(2) REQUIRED INFORMATION.—The records and reports required to be maintained or filed with the Commission under this subsection shall include, for each private fund advised by the investment adviser—

"(A) the amount of assets under management;

"(B) the use of leverage (including off-balance sheet leverage);

"(C) counterparty credit risk exposures;

"(D) trading and investment positions;

"(E) trading practices; and

"(F) such other information as the Commission, in consultation with the Board of Governors of the Federal Reserve System, determines necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

"(3) OPTIONAL INFORMATION.—The Commission may require the reporting of such additional information from private fund advisers as the Commission determines necessary. In making such determination, the Commission, taking into account the public interest and potential to contribute to systemic risk, may set different reporting requirements for different classes of private fund advisers, based on the particular types or sizes of private funds advised by such advisers.

"(4) MAINTENANCE OF RECORDS.—An investment adviser registered under this Act is required to maintain and keep such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

"(5) EXAMINATION OF RECORDS.—

"(A) PERIODIC AND SPECIAL EXAMINATIONS.—All records of a private fund maintained by an investment adviser registered under this Act shall be subject at any time and from time to time to such periodic, special, and other examinations by the Commission, or any

member or representative thereof, as the Commission may prescribe.

"(B) AVAILABILITY OF RECORDS.—An investment adviser registered under this Act shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.

"(6) INFORMATION SHARING.—The Commission shall make available to the Board of Governors of the Federal Reserve System, and to any other entity that the Commission identifies as having systemic risk responsibility, copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Board, or such other entity, may consider necessary for the purpose of assessing the systemic risk of a private fund. All such reports, documents, records, and information obtained by the Board, or such other entity, from the Commission under this subsection shall be kept confidential in a manner consistent with confidentiality established by the Commission pursuant to paragraph (8).

"(7) DISCLOSURES OF CERTAIN PRIVATE FUND INFORMATION.—An investment adviser registered under this Act shall provide such reports, records, and other documents to investors, prospective investors, counterparties, and creditors, of any private fund advised by the investment adviser as the Commission, by rule or regulation, may prescribe as necessary or appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

"(8) CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection. Nothing in this paragraph shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code,

this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.''.

SEC. 5005. ELIMINATION OF DISCLOSURE PROVISION.

Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by striking subsection (c).

SEC. 5006. EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is amended by adding at the end the following new subsection:

''(l) EXEMPTION OF AND REPORTING BY VENTURE CAPITAL FUND ADVISERS.—The Commission shall identify and define the term 'venture capital fund' and shall provide an adviser to such a fund an exemption from the registration requirements under this section (excluding any such fund whose adviser is exempt from registration pursuant to paragraph (7) of subsection (b)). The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.''.

SEC. 5007. EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3), as amended by section 5006, is further amended by adding at the end the following new subsections:

"(m) EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.—

"(1) IN GENERAL.—The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of such private funds has assets under management in the United States of less than $150,000,000.

"(2) REPORTING.—The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

"(n) REGISTRATION AND EXAMINATION OF MID-SIZED PRIVATE FUND ADVISERS.—In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy

of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.''.

SEC. 5008. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended—

(1) by amending subsection (a) to read as follows:

''(a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this title, including rules and regulations defining technical, trade, and other terms used in this title. For the purposes of its rules and regulations, the Commission may—

''(1) classify persons and matters within its jurisdiction based upon, but not limited to—

''(A) size;

''(B) scope;

''(C) business model;

''(D) compensation scheme; or

"(E) potential to create or increase systemic risk;

"(2) prescribe different requirements for different classes of persons or matters; and

"(3) ascribe different meanings to terms (including the term 'client', except the Commission shall not ascribe a meaning to the term 'client' that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser) used in different sections of this title as the Commission determines necessary to effect the purposes of this title."; and

(2) by adding at the end the following new subsection:

"(e) The Commission and the Commodity Futures Trading Commission shall, after consultation with the Board of Governors of the Federal Reserve System, within 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2009, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under sections 203(l) and 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under the Investment Advisers Act of 1940

(15 U.S.C. 80b-1 et seq.) and the Commodity Exchange Act (7 U.S.C. 1 et seq.).''.

SEC. 5009. GAO STUDY.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall carry out a study to assess the annual costs on industry members and their investors due to the registration requirements and ongoing reporting requirements under this subtitle and the amendments made by this subtitle.

(b) REPORT TO THE CONGRESS.—Not later than the end of the 2-year period beginning on the date of the enactment of this title, the Comptroller General of the United States shall submit a report to the Congress containing the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a).

SEC. 5010. EFFECTIVE DATE; TRANSITION PERIOD.

(a) EFFECTIVE DATE.—This subtitle, and the amendments made by this subtitle, shall take effect with respect to investment advisers after the end of the 1-year period beginning on the date of the enactment of this title.

(b) TRANSITION PERIOD.—The Securities and Exchange Commission shall prescribe rules and regulations to permit an investment adviser who will be required to register with the Securities and Exchange Commission by

reason of this subtitle with the option of registering with the Securities and Exchange Commission before the date described under subsection (a).

SEC. 5011. QUALIFIED CLIENT STANDARD.

Section 205(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5(e)) is amended by adding at the end the following: ''With respect to any factor used by the Commission in making a determination under this subsection, if the Commission uses a dollar amount test in connection with such factor, such as a net asset threshold, the Commission shall, not later than one year after the date of the enactment of the Private Fund Investment Advisers Registration Act of 2009, and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of $1,000 shall be rounded to the nearest multiple of $1,000.''.

Subtitle B—Accountability and Transparency in Rating Agencies Act

SEC. 6001. SHORT TITLE.

This subtitle may be cited as the ''Accountability and Transparency in Rating Agencies Act of 2009''.

SEC. 6002. ENHANCED REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) is amended—

(1) in subsection (a)—

(A) in paragraph (1)(A), by striking ''furnish to'' and inserting ''file with'';

(B) in paragraph (2)(A), by striking ''furnished to'' and inserting ''filed with''; and

(C) in paragraph (2)(B)(i)(II), by striking ''furnished to'' and inserting ''filed with'';

(2) in subsection (b)—

(A) in paragraph (1)(A), by striking ''furnished'' and inserting ''filed'' and by striking ''furnishing'' and inserting ''filing'';

(B) in paragraph (1)(B), by striking ''furnishing'' and inserting ''filing''; and

(C) in the first sentence of paragraph (2), by striking ''furnish to'' and inserting ''file with'';

(3) in subsection (c)—

(A) paragraph (2)—

(i) in the second sentence by inserting ''including the requirements of this sec-

tion,'' after ''Notwithstanding any other provision of law,''; and

(ii) by inserting before the period at the end of the last sentence '', provided that this paragraph does not afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provision of the securities laws'';

(B) by adding at the end the following new paragraph:

''(3) REVIEW OF INTERNAL PROCESSES FOR DETERMINING CREDIT RATINGS.—

''(A) IN GENERAL.—The Commission shall examine credit ratings issued by, and the policies, procedures, and methodologies employed by, each nationally recognized statistical rating organization to review whether—

''(i) the nationally recognized statistical rating organization has established and documented a system of internal controls, due diligence and implementation of methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe by rule;

"(ii) the nationally recognized statistical rating organization adheres to such system; and

"(iii) the public disclosures of the nationally recognized statistical rating organization required under this section about its credit ratings, methodologies, and procedures are consistent with such system.

"(B) MANNER AND FREQUENCY.—The Commission shall conduct reviews required by this paragraph no less frequently than annually in a manner to be determined by the Commission.

"(4) PROVISION OF INFORMATION TO THE COMMISSION.—Each nationally recognized statistical rating organization shall make available and maintain such records and information, for such a period of time, as the Commission may prescribe, by rule, as necessary for the Commission to conduct the reviews under paragraph (3).

"(5) DISCLOSURES WITH RESPECT TO STRUCTURED SECURITIES.—

"(A) REGULATIONS REQUIRED.—The rules and regulations prescribed by the Commission pursuant to this section with respect to nation-

ally recognized statistical rating organizations shall, with respect to the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings for structured securities—

"(i) specify the information required to be disclosed to such rating organizations by the sponsor, issuers, and underwriters of such structured securities on the collateral underlying such structured securities; and

"(ii) establish and implement procedures to collect and disclose information about the processes used by such sponsor, issuers, and underwriters to assess the accuracy and integrity of their data and fraud detection.

"(B) DEFINITION.—For purposes of this paragraph, the Commission shall, by rule or regulation, define the term 'structured securities' as appropriate in the public interest and for the protection of investors.

"(6) HISTORICAL DEFAULT RATE DISCLOSURES.—The rules and regulations prescribed by the Commission pursuant to this section with respect to

nationally recognized statistical rating organizations shall require each nationally recognized statistical rating organization to establish and maintain, on a publicly accessible Internet site, a facility to disclose, in a central database, the historical default rates of all classes of financial products rated by such organization.''

(4) in subsection (d)—

(A) in the heading, by inserting ''FINE,'' after ''CENSURE,'';

(B) by striking ''shall censure'' and all that follows through ''revocation'' and inserting the following: ''shall censure, fine in accordance with section 21B(a), place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization (or with respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, fine in accordance with section 21B(a), place limitations on

the activities or functions of such person, suspend for a period not exceeding 12 months, or bar such person from being associated with a nationally recognized statistical rating organization), if the Commission finds, on the record after notice and opportunity for hearing, that such censure, fine, placing of limitations, bar, suspension, or revocation'';

(C) in paragraph (2), by striking ''furnished to'' and inserting ''filed with'';

(D) in paragraph (4)—

(i) by striking ''furnish'' and inserting ''file'';

(ii) by striking ''or'' at the end;

(E) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

''(6) has failed reasonably to supervise another person who commits a violation of the securities laws, the rules or regulations thereunder, or any rules of the Municipal Securities Rulemaking Board if such other person is subject to his or her supervision, except that no person shall be deemed to have failed reasonably to supervise any other person under this paragraph, if—

"(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

"(B) such person has reasonably discharged the duties and obligations incumbent upon him or her by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with; or

"(7) fails to conduct sufficient surveillance to ensure that credit ratings remain current and reliable, as applicable.";

(5) in subsection (e)—

(A) by striking paragraph (1); and

(B) in paragraph (2), by striking "(2) COMMISSION AUTHORITY.—" and moving the text of such paragraph to follow the heading of subsection (e);

(6) by amending subsection (h) to read as follows:

"(h) CORPORATE GOVERNANCE, ORGANIZATION, AND MANAGEMENT OF CONFLICTS OF INTEREST.—

"(1) BOARD OF DIRECTORS.—

"(A) IN GENERAL.—Each nationally recognized statistical rating organization or its ultimate holding company shall have a board of directors.

"(B) INDEPENDENT DIRECTORS.—At least ⅓ of such board, but no less than 2 of the members of the board of directors, shall be independent directors. In order to be considered independent for purposes of this subsection, a director of a nationally recognized statistical rating organization may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

"(i) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

"(ii) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof.

"(C) COMPENSATION AND TERM.—The compensation of the independent directors shall not be linked to the business performance of the nationally recognized statistical rating organiza-

tion and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period not exceeding 5 years and shall not be renewable.

"(D) DUTIES.—In addition to the overall responsibility of the board of directors, the board shall oversee—

"(i) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

"(ii) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

"(iii) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

"(iv) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

"(2) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and en-

force written policies and procedures reasonably designed, taking into consideration the nature of the business of the nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address, manage, and disclose any conflicts of interest that can arise from such business.

"(3) COMMISSION RULES.—The Commission shall issue rules to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including rules regarding—

"(A) conflicts of interest relating to the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

"(B) conflicts of interest relating to business relationships, ownership interests, and affiliations of nationally recognized statistical rating organization board members with obligors, or any other financial or personal interests between a nationally recognized statistical rating

organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

"(C) conflicts of interest relating to any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person who underwrites securities, money market instruments, or other instruments that are the subject of a credit rating;

"(D) a requirement that each nationally recognized statistical rating organization disclose on such organization's website a consolidated report at the end of each fiscal year that shows—

"(i) the percent of net revenue earned by the nationally recognized statistical rating organization or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, to the extent determined appropriate by the Commission, for that fiscal

year for providing services and products other than credit rating services to each person who paid for a credit rating; and

"(ii) the relative standing of each person who paid for a credit rating that was outstanding as of the end of the fiscal year in terms of the amount of net revenue earned by the nationally recognized statistical rating organization attributable to each such person and classified by the highest 5, 10, 25, and 50 percentiles and lowest 50 and 25 percentiles;

"(E) the establishment of a system of payment for credit ratings issued by each nationally recognized statistical rating organization that requires that payments are structured in a manner designed to ensure that the nationally recognized statistical rating organization conducts accurate and reliable surveillance of credit ratings over time, as applicable, and that incentives for reliable credit ratings are in place;

"(F) a requirement that a nationally recognized statistical rating organization disclose with the publication of a credit rating the type and number of credit ratings it has provided to

the person being rated or affiliates of such person, the fees it has billed for the credit rating, and the aggregate amount of net revenue earned by the nationally recognized statistical rating organization in the preceding 2 fiscal years attributable to the person being rated and its affiliates; and

''(G) any other potential conflict of interest, as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

''(4) LOOK-BACK REQUIREMENT.—

''(A) REVIEW BY THE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organiza-

tion and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

"(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

"(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

"(B) REVIEW BY COMMISSION.—

"(i) IN GENERAL.—The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

"(ii) TIMING OF REVIEWS.—The Commission shall review the code of ethics and

conflict of interest policy of each nationally recognized statistical rating organization—

"(I) not less frequently than annually; and

"(II) whenever such policies are materially modified or amended.

"(5) REPORT TO COMMISSION ON CERTAIN EMPLOYMENT TRANSITIONS.—

"(A) REPORT REQUIRED.—Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organization issued a credit rating during the 12-month period prior to such employment, if such employee—

"(i) was a senior officer of such organization;

"(ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or

"(iii) supervised an employee described in clause (ii).

"(B) PUBLIC DISCLOSURE.—Upon receiving such a report, the Commission shall make such information publicly available.";

(7) by amending subsection (j) to read as follows:

"(j) DESIGNATION OF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each nationally recognized statistical rating organization shall designate an individual to serve as a compliance officer.

"(2) DUTIES.—The compliance officer shall—

"(A) report directly to the board of the nationally recognized statistical rating organization;

"(B) review compliance with policies and procedures to manage conflicts of interest and assess the risk that the compliance (or lack of such compliance) may compromise the integrity of the credit rating process;

"(C) review compliance with the internal control system with respect to the procedures and methodologies for determining credit ratings, including qualitative methodologies and quantitative inputs used in the rating process,

and assess the risk that such internal control system is reasonably designed to ensure the integrity and quality of the credit rating process;

"(D) in consultation with the board of the nationally recognized statistical rating organization, resolve any conflicts of interest that may arise;

"(E) be responsible for administering the policies and procedures required to be established pursuant to this section;

"(F) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

"(G) establish procedures—

"(i) for the receipt, retention, and treatment of complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures required under this section;

"(ii) for the receipt, retention, and treatment of confidential, anonymous complaints by employees, obligors, issuers, and investors;

"(iii) for the remediation of non-compliance issues found during compliance office reviews, the reviews required under paragraph (7), internal or external audit findings, self-reported errors, or through validated complaints; and

"(iv) designed so that ratings that the nationally recognized statistical rating organization disseminates reflect consideration of all information in a manner generally consistent with the nationally recognized statistical rating organization's published rating methodology, including information which is provided, received, or otherwise obtained from obligor, issuer and non-issuer sources, such as investors, the media, and other interested or informed parties.

"(3) LIMITATIONS.—The compliance officer shall not, while serving in that capacity—

"(A) determine credit ratings;

"(B) participate in the establishment of the procedures and methodologies or the qualitative methodologies and quantitative inputs used to determine credit ratings;

"(C) perform marketing or sales functions; or

"(D) participate in establishing compensation levels, other than for employees working for the compliance officer.

"(4) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the nationally recognized statistical rating organization with the securities laws and such organization's internal policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the nationally recognized statistical rating organization that are required to be filed with the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

"(5) COMPENSATION.—The compensation of the compliance officer shall not be linked to the business performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of the officer's judgment.";

(8) in subsection (k)—

(A) by striking ", on a confidential basis,";

(B) by striking "furnish to" and inserting "file with";

(C) by striking "Each nationally" and inserting the following:

"(1) IN GENERAL.—Each nationally"; and

(D) by adding at the end the following new paragraph:

"(2) EXCEPTION.—The Commission may treat as confidential any information provided by a nationally recognized statistical rating organization under this section consistent with applicable Federal laws or Commission rules.";

(9) in subsection (l)(2)(A)(i), by striking "furnished" and inserting "filed";

(10) by amending subsection (p) to read as follows:

"(p) ESTABLISHMENT OF SEC OFFICE.—

"(1) IN GENERAL.—The Commission shall establish an office that administers the rules of the Commission with respect to the practices of nationally recognized statistical rating organizations.

"(2) STAFFING.—The office of the Commission established under this subsection shall be staffed

sufficiently to carry out fully the requirements of this section.

"(3) RULEMAKING AUTHORITY.—The Commission shall—

"(A) establish, by rule, fines and other penalties for any nationally recognized statistical rating organization that violates the applicable requirements of this title; and

"(B) issue such rules as may be necessary to carry out this section with respect to nationally recognized statistical rating organizations."; and

(11) by adding after subsection (p) the following new subsections:

"(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

"(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require each nationally recognized statistical rating organization to publicly disclose information on initial ratings and subsequent changes to such ratings for the purpose of providing a gauge of the performance of ratings and allowing investors to compare performance of ratings by different nationally recognized statistical rating organizations.

1 "(2) CONTENT.—The rules of the Commission
2 under this subsection shall require, at a minimum,
3 disclosures that—
4 "(A) are comparable among nationally rec-
5 ognized statistical rating organizations, so that
6 investors can compare rating performance
7 across rating organizations;
8 "(B) are clear and informative for a wide
9 range of investor sophistication;
10 "(C) include performance information over
11 a range of years and for a variety of classes of
12 credit ratings, as determined by the Commis-
13 sion;
14 "(D) are published and made freely avail-
15 able by the nationally recognized statistical rat-
16 ing organization, on an easily accessible portion
17 of its website and in written form when re-
18 quested by investors; and
19 "(E) each nationally recognized statistical
20 rating organization include an attestation with
21 any credit rating it issues affirming that no
22 part of the rating was influenced by any other
23 business activities, that the rating was based
24 solely on the merits of the instruments being
25 rated, and that such rating was an independent

evaluation of the risks and merits of the instrument.

"(r) CREDIT RATINGS METHODOLOGIES.—

"(1) IN GENERAL.—The Commission shall prescribe rules, in the public interest and for the protection of investors, that require each nationally recognized statistical rating organization to establish, maintain, and enforce written procedures and methodologies and an internal control system with respect to such procedures and methodologies that are reasonably designed to—

"(A) ensure that credit ratings are determined using procedures and methodologies, including qualitative methodologies and quantitative inputs that are determined in accordance with the policies and procedures of the nationally recognized statistical rating organization for developing and modifying credit rating procedures and methodologies;

"(B) ensure that when major changes to credit rating procedures and methodologies, including to qualitative methodologies and quantitative inputs, are made, that the changes are applied consistently to all credit ratings to which the changed procedures and methodolo-

gies apply and, to the extent the changes are made to credit rating surveillance procedures and methodologies, they are applied to current credit ratings within a time period to be determined by the Commission by rule, and that the reason for the change is publicly disclosed;

''(C) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, of the procedure or methodology, including qualitative methodologies and quantitative inputs, used with respect to a particular credit rating;

''(D) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, when a change is made to a procedure or methodology, including to qualitative methodologies and quantitative inputs, or an error is identified in a procedure or methodology that may result in credit rating actions, and the likelihood of the change resulting in

current credit ratings being subject to rating actions; and

"(E) use credit rating symbols that distinguish credit ratings for structured products from credit ratings for other products that the Commission determines appropriate or necessary in the public interest and for the protection of investors.

"(2) RATING CLARITY AND CONSISTENCY.—

"(A) COMMISSION OBLIGATION.—Subject to subparagraphs (B) and (C), the Commission shall require, by rule, each nationally recognized statistical rating organization to establish, maintain, and enforce written policies and procedures reasonably designed—

"(i) with respect to credit ratings of securities and money market instruments, to assess the risk that investors in securities and money market instruments may not receive payment in accordance with the terms of such securities and instruments;

"(ii) to define clearly any credit rating symbol used by that organization; and

"(iii) to apply such credit rating symbol in a consistent manner for all types of securities and money market instruments.

"(B) ADDITIONAL CREDIT FACTORS.—Nothing in subparagraph (A)—

"(i) prohibits a nationally recognized statistical rating organization from using additional credit factors that are documented and disclosed by the organization and that have a demonstrated impact on the risk an investor in a security or money market instrument will not receive repayment in accordance with the terms of issuance;

"(ii) prohibits a nationally recognized statistical rating organization from considering credit factors that are unique to municipal securities; or

"(iii) prohibits a nationally recognized statistical rating organization from using an additional symbol with respect to the ratings described in subparagraph (A)(i) for the purpose of distinguishing the ratings of a certain type of security or money market instrument from ratings of any

other types of securities or money market instruments.

"(C) COMPLEMENTARY RATINGS.—The Commission shall not impose any requirement under subparagraph (A) that prevents nationally recognized statistical rating organizations from establishing ratings that are complementary to the ratings described in subparagraph (A)(i) and that are created to measure a discrete aspect of the security's or instrument's risk.

"(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION REVIEWED.—

"(1) IN GENERAL.—The Commission shall require, by rule, a nationally recognized statistical rating organization to include with the publication of each credit rating regardless of whether the credit rating is made readily accessible for free or a reasonable fee a form that discloses information about the assumptions underlying the procedures and methodologies used, and the data relied on, to determine the credit rating in the format prescribed in paragraph (2) and containing the information described in paragraph (3).

"(2) FORMAT.—The Commission shall prescribe a form for use under paragraph (1) that—

"(A) is designed in a user-friendly and helpful manner for investors to understand the information contained in the report;

"(B) requires the nationally recognized statistical rating organization to provide the content, as required by paragraph (3), in a manner that is directly comparable across securities; and

"(C) the nationally recognized statistical rating organization certifies the information on the form as true and accurate.

"(3) CONTENT.—The Commission shall prescribe a form that requires a nationally recognized statistical rating organization to disclose —

"(A) the main assumptions included in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating certain structured products;

"(B) the potential shortcomings of the credit ratings, and the types of risks not measured in the credit ratings that the nationally

recognized statistical rating organization is not commenting on, such as liquidity, market, and other risks;

"(C) information on the certainty of the rating, including information on the reliability, accuracy, and quality of the data relied on in determining the ultimate credit rating and a statement on the extent to which key data inputs for the credit rating were reliable or limited, including any limits on the reach of historical data, limits in accessibility to certain documents or other forms of information that would have better informed the credit rating, and the completeness of certain information considered;

"(D) whether and to what extent third party due diligence services have been utilized, and a description of the information that such third party reviewed in conducting due diligence services;

"(E) a description of relevant data about any obligor, issuer, security, or money market instrument that was used and relied on for the purpose of determining the credit rating;

"(F) a statement containing an overall assessment of the quality of information available

and considered in producing a credit rating for a security in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar obligors, securities, or money market instruments;

"(G) an explanation or measure of the potential volatility for the credit rating, including any factors that might lead to a change in the credit rating, and the extent of the change that might be anticipated under different conditions;

"(H) information on the content of the credit rating, including—

"(i) the expected default probability; and

"(ii) the loss given default;

"(I) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization, including—

"(i) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if such assumptions were proven false or inaccurate; and

"(ii) an analysis, using concrete examples, on how each of the 5 assumptions identified under clause (i) impacts a rating.

"(J) where applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

"(K) such additional information as may be required by the Commission.

"(4) DUE DILIGENCE SERVICES.—

"(A) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization or an issuer, underwriter, or sponsor in connection with the issuance of a credit rating, the firm providing the due diligence services shall provide to the nationally recognized statistical rating organization written certification of such due diligence, which shall be subject to review by the Commission, and the issuer, underwriter, or sponsor shall provide any reports issued by the provider

of such due diligence services to the nationally recognized statistical rating organization.

"(B) FORMAT AND CONTENT.—The Commission shall establish the appropriate format and content for written certifications required under subparagraph (A) to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for the nationally recognized statistical rating organization to provide a reliable rating.

"(C) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization to disclose to persons who have access to the credit ratings of the nationally recognized statistical rating organization regardless of whether they are made readily accessible for free or a reasonable fee the certification described in subparagraph (A) with the publication of the applicable credit rating in a manner that may permit the persons to determine the adequacy and level of due diligence services provided by the third party.

"(t) PROHIBITED ACTIVITIES.—Beginning 180 days from the date of enactment of the Accountability, Reliability, and Transparency in Rating Agencies Act, it shall be unlawful for a nationally recognized statistical rating organization, or an affiliate of a nationally recognized statistical rating organization, or any person associated with a nationally recognized statistical rating organization, that provides a credit rating for an issuer, underwriter, or placement agent of a security to provide any non-rating service, including—

"(1) risk management advisory services;

"(2) advice or consultation relating to any merger, sales, or disposition of assets of the issuer;

"(3) ancillary assistance, advice, or consulting services unrelated to any specific credit rating issuance; and

"(4) such further activities or services as the Commission may determine as necessary or appropriate in the public interest or for the protection of investors.".

SEC. 6003. STANDARDS FOR PRIVATE ACTIONS.

(a) IN GENERAL.—Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is amended by inserting before the period at the end of the following: ", and in the case of an action brought under

this title for money damages against a nationally recognized statistical rating organization, it shall be sufficient for purposes of pleading any required state of mind for purposes of such action that the complaint shall state with particularity facts giving rise to a strong inference that the nationally recognized statistical rating organization knowingly or recklessly violated the securities laws''.

(b) PLEADING STANDARD.—Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) amended to read as follows:

''(m) APPLICATION OF ENFORCEMENT PROVISIONS; PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.—Statements made by nationally recognized statistical rating organizations shall not be deemed forward looking statements for purposes of section 21E. In any private right of action commenced against a nationally recognized statistical rating organization under this title, the same pleading standards with respect to knowledge and recklessness shall apply to the nationally recognized statistical rating organization as would apply to any other person in the same or a similar private right of action against such person.''.

SEC. 6004. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.

The Securities and Exchange Commission shall adopt rules under authority of the Securities Act of 1933 (15

U.S.C. 77a, et seq.) to require issuers to disclose preliminary credit ratings received from nationally recognized statistical rating agencies on structured products and all forms of corporate debt.

SEC. 6005. CHANGE TO DESIGNATION.

The Securities Act of 1933 and the Securities Exchange Act of 1934 are each amended by striking ''nationally recognized statistical rating'' each place it appears and inserting ''nationally registered statistical rating''.

SEC. 6006. TIMELINE FOR REGULATIONS.

Unless otherwise specified in this subtitle, the Securities and Exchange Commission shall adopt rules and regulations, as required by the amendments made by this subtitle, not later than 365 days after the date of enactment.

SEC. 6007. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.

Not later than 90 days after the date of enactment of this subtitle, the Securities Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii)).

SEC. 6008. ADVISORY BOARD.

(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this subtitle, the Securities

1 and Exchange Commission shall establish an advisory
2 board to be known as the Credit Ratings Agency Advisory
3 Board (in this section referred to as ''the Board'').

4 (b) APPOINTMENT AND TERMS OF SERVICE.—The
5 Board shall consist of 7 members appointed by the Com-
6 mission, no more than 2 of whom may be former employ-
7 ees of a credit rating agency. Members of the Board shall
8 be prominent individuals of integrity and reputation who
9 have a demonstrated commitment to the interests of inves-
10 tors and the public, and an understanding of the role that
11 credit ratings play to a broad range of investors. Terms
12 of service shall be staggered as determined by the Com-
13 mission.

14 (c) DUTIES.—The Board shall—

15 (1) advise the Commission concerning the rules
16 and regulations required by the amendments made
17 by this subtitle;

18 (2) ensure that the Commission properly and
19 fully executes its oversight functions and responsibil-
20 ities with the respect to nationally recognized statis-
21 tical rating organizations and individual partici-
22 pants; and

23 (3) issue an annual report to Congress detailing
24 its work and recommending any additional Congres-
25 sional actions necessary to aid the Commission and

such additional reports from time to time as appropriate when it feels that the Commission is not properly executing its oversight functions.

SEC. 6009. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 28(d)—

(A) in the subsection heading, by striking ''NOT OF INVESTMENT GRADE'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation'';

(C) in paragraph (2), by striking ''not of investment grade'';

(D) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(E) in paragraph (3) (as so redesignated)—

(i) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(ii) in subparagraph (B) (as so redesignated), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation'';

(2) in section 28(e)—

(A) in the subsection heading, by striking ''NOT OF INVESTMENT GRADE'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation''; and

(C) in paragraphs (2) and (3), by striking ''not of investment grade'' each place that it appears and inserting ''that does not meet standards of credit-worthiness established by the Corporation''; and

(3) in section 7(b)(1)(E)(i), by striking ''credit rating entities, and other private economic'' and insert ''private economic, credit,''.

(b) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended—

(1) in the section heading, by striking ''**BY RATING ORGANIZATION**''; and

(2) by striking ''that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking ''is rated investment grade by not less than 1 nationally recognized statistical rating organization'' and inserting ''meets such standards of credit-worthiness that the Commission shall adopt''.

(d) REVISED STATUTES.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking ''any applicable rating'' and inserting ''standards of credit-worthiness established by the Comptroller of the Currency'';

(2) in the heading for subsection (a)(3) by striking ''RATING OR COMPARABLE REQUIREMENT'' and inserting ''REQUIREMENT'';

(3) subsection (a)(3), by amending subparagraph (A) to read as follows:

"(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.".

(4) in the heading for subsection (f), by striking "MAINTAIN PUBLIC RATING OR" and inserting "MEET STANDARDS OF CREDIT-WORTHINESS"; and

(5) in subsection (f)(1), by striking "any applicable rating" and inserting "standards of credit-worthiness established by the Comptroller of the Currency".

(e) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking "is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization" and inserting "meets standards of credit-worthiness as defined by the Commission"; and

(2) in paragraph (53)(A), by striking "is rated in 1 of the 4 highest rating categories by at least 1

nationally recognized statistical rating organization'' and inserting ''meets standards of credit-worthiness as defined by the Commission''.

(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking ''rating'' and inserting ''worthiness''.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect after the end of the 6-month period beginning on the date of the enactment of this subtitle.

SEC. 6010. REVIEW OF RELIANCE ON RATINGS.

(a) AGENCY REVIEW.—

(1) REVIEW.—Not later than 1 year after the date of the enactment of this subtitle, each Federal agency listed in paragraph (4) shall, to the extent applicable, review—

(A) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument, and

(B) any references to or requirements in such regulations regarding credit ratings.

(2) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under paragraph (1) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(3) REPORT.—Upon conclusion of the review required under paragraph (1), each Federal agency listed in paragraph (4) shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to paragraph (2).

(4) APPLICABLE AGENCIES.—The agencies required to conduct the review and report required by this subsection are—

(A) the Securities and Exchange Commission;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of Thrift Supervision;

(D) the Office of the Comptroller of the Currency;

(E) the Board of Governors of the Federal Reserve;

(F) the National Credit Union Administration; and

(G) the Federal Housing Finance Agency.

(b) GAO REVIEW OF OTHER AGENCIES.—

(1) REVIEW.—The Comptroller General shall conduct a comprehensive review of the use of credit ratings by Federal agencies other than those listed in subsection (a)(3), including an analysis of the provisions of law or regulation applicable to each such agency that refer to and require the use of credit ratings by the agency, and the policies and practices of each agency with respect to credit ratings.

(2) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General shall transmit to Congress a report

on the findings of the study conducted pursuant to paragraph (1), including recommendations for any legislation or rulemaking necessary or appropriate in order for such agencies to reduce their reliance on credit ratings.

SEC. 6011. PUBLICATION OF RATING HISTORIES ON THE EDGAR SYSTEM.

Not later than 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall revise its rules in section 240.17g-2(a) and (d) of title 17, Code of Federal Regulations, to require that the random sample of ratings histories of credit ratings required under such rules to be disclosed on the website of a nationally recognized statistical rating organization also be provided to the Commission in a format consistent with publication by the Commission on the EDGAR system.

SEC. 6012. EFFECT OF RULE 436(G).

Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.

SEC. 6013. STUDIES.

(a) GAO STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study of—

(A) the implementation of this subtitle and the amendments made by this subtitle by the Securities and Exchange Commission;

(B) the appropriateness of relying on ratings for use in Federal, State, and local securities and banking regulations, including for determining capital requirements; and

(C) the effect of liability in private actions arising under the Securities Exchange Act of 1934;

(D) alternative means for compensating credit rating agencies that would create incentives for accurate credit ratings and what, if any, statutory changes would be required to permit or facilitate the use of such alternative means of compensation; and

(E) alternative methodologies to assess credit risk, including market-based measures.

(2) REPORT.—Not later than 30 months after the date of enactment of this subtitle, the Comptroller General shall submit to Congress and the Securities Exchange Commission, a report containing the findings under the study required by subsection (a).

1 (b) SEC STUDY ON ASSIGNING CREDIT RATING
2 AGENCIES ON A ROTATING BASIS.—The Securities and
3 Exchange Commission shall undertake a study on creating
4 a system whereby nationally recognized statistical rating
5 organizations are assigned on a rotating basis to issuers
6 and obligors seeking a credit rating. Not later than 1 year
7 after the date of enactment of this subtitle, the Securities
8 and Exchange Commission shall transmit to Congress a
9 report containing the findings of the study.

10 (c) SEC STUDY ON EFFECT OF NEW REQUIRE-
11 MENTS ON NRSRO REGISTRATION.—The Securities and
12 Exchange Commission shall conduct a study on the effect
13 of the amendments made by section 2 on credit rating
14 agencies seeking to register as nationally recognized sta-
15 tistical rating organizations, including whether the new re-
16 quirements in such amendments deter credit rating agen-
17 cies from registering as nationally recognized statistical
18 rating organizations. Not later than 1 year after the date
19 of enactment of this subtitle, the Commission shall trans-
20 mit to the Committee on Financial Services of the House
21 of Representatives and the Committee on Banking, Hous-
22 ing, and Urban Affairs of the Senate a report on the find-
23 ings of such study.

24 (d) STUDY OF CREDIT RATINGS OF DIFFERENT
25 CLASSES OF BONDS.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study of the treatment of different classes of bonds (municipal versus corporate) by the nationally recognized statistical rating organizations. Such study shall examine—

(A) whether there are fundamental differences in the treatment of different classes of bonds by such rating organizations that cause some classes of bonds to suffer from undue discrimination;

(B) if there are such differences, what are the causes of such differences and how can they be alleviated;

(C) whether there are factors other than risk of loss that are appropriate for the credit ratings agencies to consider when rating bonds, and do those factors vary across different sectors

(D) the types of financing arrangement used by municipal issuers

(E) the differing legal and regulatory regimes governing disclosures for corporate bonds and municipal bonds;

(F) the extent to which retail investors could be disadvantaged by a single ratings scale; and

(G) practices, policies, and methodologies by the nationally recognized statistical rating organizations with respect to rating municipal bonds.

(2) REPORT.—Within 6 months after the date of enactment of this subtitle, the Securities and Exchange Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Development of the Senate. Such report shall include as assessment of each of the issues and subjects described in subparagraphs (A) through (G) of paragraph (1).

(e) SEC STUDY ON MEANINGFUL MULTI DIGIT RATING SYMBOLS.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study on the feasibility and desirability of implementing a standardized rating system whereby ratings symbols contain multiple characters, each representing a range of default probabilities and loss expectations under standard-

ized and increasingly severe levels of market stress. The study shall optimize the definitions of the symbols to maximize their overall usefulness for users of credit ratings.

(2) INITIAL EXAMPLE FOR GUIDANCE.—An example to provide initial guidance for the study is a ratings symbol consisting of three digits, each of which corresponds to default probabilities under different levels of market stress as follows:

(A) The first digit represents the default probability under ''normal'' market stress, characterized by normal economic fluctuations in addition to a 5 percent decline in asset value and 2 percent increase in unemployment.

(B) The second digit represents the default probability under more severe market stress, characterized a 20 percent decline in asset value and 5 percent increase in unemployment.

(C) The third digit represents the default probability under extreme market stress, characterized by a 50 percent decline in asset value and 10 percent increase in unemployment.

(3) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Commission shall transmit to Congress a report of the study

conducted pursuant to paragraph (1), including recommendations on whether the system similar to that described in paragraph (2) should be implemented and, if so, any necessary legislation required to implement such a system.

(f) SEC STUDY ON RATINGS STANDARDIZATION.—

(1) IN GENERAL.—The Securities and Exchange Commission shall undertake a study on the feasability and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings shall correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this subtitle, the Securities and

Exchange Commission shall transmit to Congress a report containing the findings of the study and the recommendations of the Commission.

Subtitle C—Investor Protection Act

SEC. 7001. SHORT TITLE.

This subtitle may be cited as the ''Investor Protection Act of 2009''.

PART 1—DISCLOSURE

SEC. 7101. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 4C the following new section:

''SEC. 4D. INVESTOR ADVISORY COMMITTEE.

''(a) ESTABLISHMENT AND PURPOSE.—There is established an Investor Advisory Committee (in this section referred to as the 'Committee') to advise and consult with the Commission on—

''(1) regulatory priorities and issues regarding new products, trading strategies, fee structures and the effectiveness of disclosures;

''(2) initiatives to protect investor interest; and

''(3) initiatives to promote investor confidence in the integrity of the marketplace.

''(b) MEMBERSHIP.—

"(1) APPOINTMENT.—The Chairman of the Commission shall appoint the members of the Committee, which members shall—

"(A) represent the interests of individual investors;

"(B) represent the interests of institutional investors; and

"(C) use a wide range of investment approaches.

"(2) MEMBERS NOT COMMISSION EMPLOYEES.—Members shall not be considered employees or agents of the Commission solely because of membership on the Committee.

"(c) MEETINGS.—The Committee shall meet from time to time at the call of the Commission, but, at a minimum, shall meet at least twice each year.

"(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Committee who are not full-time employees of the United States shall—

"(1) be entitled to receive compensation at a rate fixed by the Commission while attending meetings of the Committee, including travel time; and

"(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

"(e) COMMITTEE FINDINGS.—Nothing in this section requires the Commission to accept, agree, or act upon the findings or recommendations of the Committee.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary for the activities of the Committee.".

SEC. 7102. CLARIFICATION OF THE COMMISSION'S AUTHORITY TO ENGAGE IN CONSUMER TESTING.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following new subsection:

"(e) For the purposes of evaluating its rules and programs and for considering, proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.".

(b) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 23 of the Securities Exchange Act of 1934

(15 U.S.C. 78w) is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and inserting after subsection (a) the following:

"(b) For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.".

(c) AMENDMENT TO INVESTMENT COMPANY ACT OF 1940.—Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–38) is amended by adding at the end the following new subsection:

"(d) GATHERING INFORMATION.—For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commis-

sion may delegate to its staff some or all of the authority conferred by this subsection.''.

(d) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) (as amended by section 5008(2)) is further amended by adding at the end the following new subsection:

''(f) For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.''.

SEC. 7103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR BROKERS, DEALERS, AND INVESTMENT ADVISERS, AND HARMONIZATION OF REGULATION.

(a) IN GENERAL.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) (as amended by section 1951(c)) is fur-

1 ther amended by adding at the end the following
2 new subsections:
3 "(m) STANDARD OF CONDUCT.—
4 "(1) IN GENERAL.—Notwithstanding any other
5 provision of this Act or the Investment Advisers Act
6 of 1940, the Commission shall promulgate rules to
7 provide that, with respect to a broker or dealer,
8 when providing personalized investment advice about
9 securities to a retail customer (and such other cus-
10 tomers as the Commission may by rule provide), the
11 standard of conduct for such broker or dealer with
12 respect to such customer shall be the same as the
13 standard of conduct applicable to an investment ad-
14 viser under the Investment Advisers Act of 1940.
15 The receipt of compensation based on commission or
16 other standard compensation for the sale of securi-
17 ties shall not, in and of itself, be considered a viola-
18 tion of such standard applied to a broker or dealer.
19 "(2) DISCLOSURE OF RANGE OF PRODUCTS OF-
20 FERED.—Where a broker or dealer sells only propri-
21 etary or other limited range of products, as deter-
22 mined by the Commission, the Commission shall by
23 rule require that such broker or dealer provide no-
24 tice to each retail customer and obtain the consent
25 or acknowledgment of the customer. The sale of only

1 proprietary or other limited range of products by a
2 broker or dealer shall not, in and of itself, be consid-
3 ered a violation of the standard set forth in para-
4 graph (1).

5 ''(3) RETAIL CUSTOMER DEFINED.—For pur-
6 poses of this subsection, the term 'retail customer'
7 means a natural person, or the legal representative
8 of such natural person, who—

9 ''(A) receives personalized investment ad-
10 vice about securities from a broker or dealer;
11 and

12 ''(B) uses such advice primarily for per-
13 sonal, family, or household purposes.

14 ''(n) OTHER MATTERS.—The Commission shall—

15 ''(1) facilitate the provision of simple and clear
16 disclosures to investors regarding the terms of their
17 relationships with brokers, dealers, and investment
18 advisers, including any material conflicts of interest;
19 and

20 ''(2) examine and, where appropriate, promul-
21 gate rules prohibiting or restricting certain sales
22 practices, conflicts of interest, and compensation
23 schemes for brokers, dealers, and investment advis-
24 ers that the Commission deems contrary to the pub-
25 lic interest and the protection of investors.''.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as amended by section 7102(d), is further amended by adding at the end the following new subsections:

"(g) STANDARD OF CONDUCT.—

"(1) IN GENERAL.—The Commission shall promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice. In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 206(1) and (2) of this Act when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term 'customer' that would include an investor in a private fund managed by an investment adviser, where such private fund has en-

tered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

"(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

"(A) receives personalized investment advice about securities from a broker, dealer, or investment adviser; and

"(B) uses such advice primarily for personal, family, or household purposes.

"(h) OTHER MATTERS.—The Commission shall—

"(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

"(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advis-

ers that the Commission deems contrary to the public interest and the protection of investors.''.

(b) HARMONIZATION OF ENFORCEMENT.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934, as amended by subsection (a)(1), is further amended by adding at the end the following new subsection:

''(o) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

''(1) the enforcement authority of the Commission with respect to such violations provided under this Act, and

''(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent

as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.''.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as amended by subsection (a)(2), is further amended by adding at the end the following new subsection:

''(i) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

''(1) the enforcement authority of the Commission with respect to such violations provided under this Act, and

''(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment advisor under this Act to same extent as the Commission prosecutes and sanctions violators of the standard

of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.''.

SEC. 7104. COMMISSION STUDY ON DISCLOSURE TO RETAIL CUSTOMERS BEFORE PURCHASE OF PRODUCTS OR SERVICES.

(a) STUDY REQUIRED.—Prior to proposing any rules or regulations pursuant to subsection (b)(1) regarding the manner in which investment products or services are sold or provided in the United States to retail customers or the information that must be provided to retail customers prior to the purchase of such products or services, and within 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall publish a study that examines—

(1) the nature of a ''retail customer'', taking into consideration the definition in section 15(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 7103 of this subtitle;

(2) the range of products and services sold or provided to retail customers, and the sellers or providers of such products and services, that are within the Commission's jurisdiction;

(3) how such products and services are sold or provided to retail customers, the fees charged for

such products and services, and the conflicts of interest that may arise during the sales process or provision of services;

(4) information that retail customers should receive prior to purchasing each product or service, and the appropriate person or entity to provide such information; and

(5) ways to ensure that, where possible, reasonably similar products and services are subject to similar regulatory treatment, including with respect to information that must be provided to retail customers prior to the purchase of such products or services and how such information is provided.

(b) RULEMAKING.—

(1) Notwithstanding any other provision of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), following completion of the study required by subsection (a), the Commission is authorized to promulgate rules to require that the appropriate persons or entities provide designated documents or information to retail customers prior to the purchase of identified investment products or services. Any such rules shall—

(A) take into account the findings of the study conducted pursuant to subsection (a);

(B) take into consideration, to the extent possible, the need for such documents and information to be consistent and comparable across investment products or services sold or provided to retail customers; and

(C) reduce, to the extent possible, disruptions to the purchase process for investment products and services sold or provided to retail customers, by means such as permitting required disclosures to be made via the Internet.

(2) Notwithstanding paragraph (1), the Commission is authorized to promulgate rules in connection with—

(A) the implementation of section 7103; and

(B) disclosure to retail customers other than in connection with the purchase of investment products or services.

SEC. 7105. BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.

(a) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1)—

(A) by inserting after ''within ten days after such acquisition'' the following: ''or within such shorter time as the Commission may establish by rule''; and

(B) by striking ''send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and'';

(2) in subsection (d)(2)—

(A) by striking ''in the statements to the issuer and the exchange, and''; and

(B) by striking ''shall be transmitted to the issuer and the exchange and'';

(3) in subsection (g)(1), by striking ''shall send to the issuer of the security and''; and

(4) in subsection (g)(2)—

(A) by striking ''sent to the issuer and''; and

(B) by striking ''shall be transmitted to the issuer and''.

(b) SHORT-SWING PROFIT REPORTING.—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(1) in paragraph (1), by striking ''(and, if such security is registered on a national securities exchange, also with the exchange)''; and

(2) in paragraph (2)(B), by inserting after ''officer'' the following: '', or within such shorter time as the Commission may establish by rule''.

SEC. 7106. REVISION TO RECORDKEEPING RULES.

(a) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended—

(1) in subsection (a)(1), by adding at the end the following: ''Each person with custody or use of a registered investment company's securities, deposits, or credits shall maintain and preserve all records that relate to the person's custody or use of the registered investment company's securities, deposits, or credits for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors.''; and

(2) in subsection (b), by adding at the end the following new paragraph:

''(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), records of persons with custody or use of a registered investment company's securities, deposits, or credits, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

"(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Persons subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing the Commission with a detailed listing, in writing, of the registered investment company's securities, deposits, or credits within such person's custody or use.".

(b) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of

1940 (15 U.S.C. 80b–4) is amended by adding at the end the following new subsection:

"(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—

"(1) IN GENERAL.—Records of persons with custody or use of a client's securities, deposits, or credits, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

"(2) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Persons subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the client's securities, deposits, or credits within such person's custody or use.".

SEC. 7107. STUDY ON ENHANCING INVESTMENT ADVISOR EXAMINATIONS.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this subtitle;

(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on

Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this subtitle, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 7108. GAO STUDY OF FINANCIAL PLANNING.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study on the regulation and oversight of financial planning. The study shall consider—

(1) the unique role of financial planners in providing comprehensive advice in investment planning, income tax planning, education planning, retirement planning, estate planning, risk management, and other areas with respect to the management of financial resources; and

(2) any gaps in the regulation of financial planners given existing State and Federal regulation of financial planning activities and the need to provide related consumer protections for such financial planning activities.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this sub-

title, the Comptroller General of the United States shall submit to the Congress a report containing the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a), including recommendations for the appropriate regulation of, or standards for, financial planners as a profession and how such regulations or standards should be established.

PART 2—ENFORCEMENT AND REMEDIES

SEC. 7201. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 7103, is further amended by adding at the end the following new subsection:

"(p) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limita-

tions are in the public interest and for the protection of investors.''.

(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following new subsection:

''(f) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.''.

SEC. 7202. COMPTROLLER GENERAL STUDY TO REVIEW SECURITIES ARBITRATION SYSTEM.

(a) STUDY.—The Comptroller General of the United States shall conduct a study to review—

(1) the costs to parties of an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission as compared to litigation;

(2) the percentage of recovery of the total amount of a claim in an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission; and

(3) other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a), including in such report recommendations for improvements to the arbitration system referenced in such subsection.

SEC. 7203. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 21E the following new section:

"SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

"(a) IN GENERAL.—In any judicial or administrative action brought by the Commission under the securities

laws that results in monetary sanctions exceeding $1,000,000, the Commission, under regulations prescribed by the Commission and subject to subsection (b), may pay an award or awards not exceeding an amount equal to 30 percent, in total, of the monetary sanctions imposed in the action or related actions to one or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the action. Any amount payable under the preceding sentence shall be paid from the fund described in subsection (f).

"(b) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

"(1) DETERMINATION OF AMOUNT OF AWARD.—The determination of the amount of an award, within the limit specified in subsection (a), shall be in the sole discretion of the Commission. The Commission may take into account the significance of the whistleblower's information to the success of the judicial or administrative action described in subsection (a), the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in such action, the Commission's programmatic interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful

enforcement of such laws, and such additional factors as the Commission may establish by rules or regulations.

"(2) DENIAL OF AWARD.—No award under subsection (a) shall be made—

"(A) to any whistleblower who is, or was at the time he or she acquired the original information submitted to the Commission, a member, officer, or employee of any appropriate regulatory agency, the Department of Justice, the Public Company Accounting Oversight Board, or a self-regulatory organization;

"(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section; or

"(C) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

"(c) REPRESENTATION.—

"(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (a) may be represented by counsel.

"(2) REQUIRED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (a) must be represented by counsel if the whistleblower submits the information upon which the claim is based anonymously. Prior to the payment of an award, the whistleblower must disclose his or her identity and provide such other information as the Commission may require.

"(d) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (a), unless the Commission, by rule or regulation, so requires.

"(e) APPEALS.—Any determinations under this section, including whether, to whom, or in what amounts to make awards, shall be in the sole discretion of the Commission, and any such determinations shall be final and not subject to judicial review.

"(f) INVESTOR PROTECTION FUND.—

"(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the 'Securities and Exchange Commission Investor Protection Fund' (referred to in this section as the 'Fund').

"(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropria-

tion or fiscal year limitation, for the following purposes:

"(A) Paying awards to whistleblowers as provided in subsection (a).

"(B) Funding investor education initiatives designed to help investors protect themselves against securities fraud or other violations of the securities laws, or the rules and regulations thereunder.

"(3) DEPOSITS AND CREDITS.—There shall be deposited into or credited to the Fund—

"(A) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds $100,000,000;

"(B) any monetary sanction added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002

that is not distributed to the victims for whom the disgorgement fund or other fund was established, unless the balance of the Fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds $100,000,000; and

"(C) all income from investments made under paragraph (4).

"(4) INVESTMENTS.—

"(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission's judgment, required to meet the current needs of the Fund.

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

"(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held

in the Fund shall be credited to, and form a part of, the Fund.

"(5) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Commission shall transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

"(A) the Commission's whistleblower award program under this section, including a description of the number of awards that were granted and the types of cases in which awards were granted during the preceding fiscal year;

"(B) investor education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

"(C) the balance of the Fund at the beginning of the preceding fiscal year;

"(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

"(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;

"(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (a);

"(G) the amount paid from the Fund during the preceding fiscal year for investor education initiatives described in paragraph (1)(B);

"(H) the balance of the Fund at the end of the preceding fiscal year; and

"(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

"(g) PROTECTION OF WHISTLEBLOWERS.—

"(1) PROHIBITION AGAINST RETALIATION.—

"(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee, contractor, or agent in the terms and conditions of employment because of any lawful act done by the employee, contractor, or agent in providing information to the Commission in accordance with subsection (a), or in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

"(B) ENFORCEMENT.—

"(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

"(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

"(iii) STATUTE OF LIMITATIONS.—An action under this subsection may not be brought more than 6 years after the date on which the violation of subparagraph (A) occurred, or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A), but in no event after 10 years after the date on which the violation occurs.

"(C) RELIEF.—An employee, contractor, or agent prevailing in any action brought under

subparagraph (B) shall be entitled to all relief necessary to make that employee, contractor, or agent whole, including reinstatement with the same seniority status that the employee, contractor, or agent would have had, but for the discrimination, 2 times the amount of back pay, with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys' fees.

''(2) CONFIDENTIALITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), all information provided to the Commission by a whistleblower shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552), or otherwise, unless and until required to be disclosed to a defendant or respondent in connection with a proceeding instituted by the Commission or any

entity described in subparagraph (B). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552. Nothing herein is intended to limit the Attorney General's ability to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

"(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and protect investors, be made available to—

"(i) the Attorney General of the United States,

"(ii) an appropriate regulatory authority,

"(iii) a self-regulatory organization,

"(iv) the Public Company Accounting Oversight Board,

"(v) State attorneys general in connection with any criminal investigation, and

"(vi) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged, in accordance with the requirements in subparagraph (A).

"(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

"(h) PROVISION OF FALSE INFORMATION.—Any whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18, United States Code.

"(i) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section.

1 "(j) DEFINITIONS.—For purposes of this section, the
2 following terms have the following meanings:
3 "(1) ORIGINAL INFORMATION.—The term
4 'original information' means information that—
5 "(A) is based on the direct and inde-
6 pendent knowledge or analysis of a whistle-
7 blower;
8 "(B) is not known to the Commission from
9 any other source, unless the whistleblower is the
10 initial source of the information; and
11 "(C) is not based on allegations in a judi-
12 cial or administrative hearing, in a govern-
13 mental report, hearing, audit, or investigation,
14 or from the news media, unless the whistle-
15 blower is the initial source of the information
16 that resulted in the judicial or administrative
17 hearing, governmental report, hearing, audit, or
18 investigation, or the news media's report on the
19 allegations.
20 "(2) MONETARY SANCTIONS.—The term 'mone-
21 tary sanctions', when used with respect to any judi-
22 cial or administrative action, means any monies, in-
23 cluding but not limited to penalties, disgorgement,
24 and interest, ordered to be paid, and any monies de-
25 posited into a disgorgement fund or other fund pur-

suant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

"(3) RELATED ACTION.—The term 'related action', when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subsection (g)(2)(B) that is based upon the same original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

"(4) WHISTLEBLOWER.—The term 'whistleblower' means an individual, or two or more individuals acting jointly, who submit information to the Commission as provided in this section.".

(b) ADMINISTRATION AND ENFORCEMENT.—The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 21F of the Securities Exchange Act of 1934, as added by subsection (a). Such office shall report annually to Congress on its activities, whistleblower complaints, and the response of the Commission to such complaints.

SEC. 7204. CONFORMING AMENDMENTS FOR WHISTLE-BLOWER PROTECTION.

(a) IN GENERAL.—Each of the following provisions is amended by inserting ''and section 21F of the Securities Exchange Act of 1934'' after ''the Sarbanes-Oxley Act of 2002'':

(1) Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)).

(2) Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)).

(3) Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)).

(b) SECURITIES EXCHANGE ACT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 21(d)(3)(C)(i) (15 U.S.C. 78u(d)(3)(C)(i)), by inserting ''and section 21F of this title'' after ''the Sarbanes-Oxley Act of 2002'';

(2) in section 21A(d)(1) (15 U.S.C. 78u–1(d)(1))—

(A) by striking ''(subject to subsection (e))''; and

(B) by inserting ''and section 21F of this title'' after ''the Sarbanes-Oxley Act of 2002''; and

(3) in section 21A, by striking subsection (e) and redesignating subsections (f) and (g) as subsection (e) and (f), respectively.

SEC. 7205. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTIONS.

(a) IMPLEMENTING RULES.—The Securities and Exchange Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this part, no later than 270 days after the date of enactment of this subtitle.

(b) ORIGINAL INFORMATION.—Information submitted to the Commission by a whistleblower in accordance with regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this part, shall not lose its status as original information, as defined in subsection (i)(1) of such section, solely because the whistleblower submitted such information prior to the effective date of such regulations, provided such information was submitted after the date of enactment of this subtitle, or related to insider trading violations for which a bounty could have been paid at the time such information was submitted.

(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this part, regardless of whether any

violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of this subtitle.

SEC. 7206. COLLATERAL BARS.

(a) SECTION 15 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking ''12 months, or bar such person from being associated with a broker or dealer,'' and inserting ''12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,''.

(b) SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking ''twelve months or bar any such person from being associated with a municipal securities dealer,'' and inserting ''12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,''.

(c) SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 17A(c)(4)(C) of the Securities

Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking ''twelve months or bar any such person from being associated with the transfer agent,'' and inserting ''12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, or nationally recognized statistical rating organization,''.

(d) SECTION 203 OF THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking ''twelve months or bar any such person from being associated with an investment adviser,'' and inserting ''12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,''.

SEC. 7207. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT AND THE INVESTMENT COMPANY ACT.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(1) by striking ''Every person who'' and inserting ''(a) CONTROLLING PERSONS.—Every person who''; and

(2) by adding at the end the following:

''(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 20, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.''.

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a–48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

''(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.''.

SEC. 7208. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF THE INVESTMENT ADVISERS ACT.

Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9) is amended by inserting at the end the following new subsections:

''(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.

''(g) ENFORCEMENT BY NATIONAL SECURITIES ASSOCIATIONS.—The Commission may permit or require a national securities association registered under the Securities Exchange Act of 1934 to enforce compliance by its members and persons associated with its members with the provisions of this Act, the rules and regulations thereunder, and to adopt such rules (subject to any rule or order of the Commission pursuant to the Securities Exchange Act of 1934) as the association may deem necessary and in the public interest to further the purposes of this Act.''.

SEC. 7209. DEADLINE FOR COMPLETING EXAMINATIONS, INSPECTIONS AND ENFORCEMENT ACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4D (as added by section 7101) the following new section:

"SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT INVESTIGATIONS AND COMPLIANCE EXAMINATIONS AND INSPECTIONS.

"(a) ENFORCEMENT INVESTIGATIONS.—

"(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

"(2) EXCEPTIONS FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of

the Commission, extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the head of any division or office within the Commission or his designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

''(b) COMPLIANCE EXAMINATIONS AND INSPECTIONS.—

''(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded without findings or that the staff requests the entity undertake corrective action.

"(2) EXCEPTION FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection or regarding the staff requests the entity undertake corrective action cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.".

SEC. 7210. NATIONWIDE SERVICE OF SUBPOENAS.

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: "In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: ''In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of docu-

ments or tangible things (or both) at a hearing or trial may be served at any place within the United States.''.

SEC. 7211. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

''(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

''(1) GROUNDS FOR IMPOSING.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if it finds, on the record after notice and opportunity for hearing, that—

''(A) such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

''(B) such penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in

1 paragraph (1) shall be $7,500 for a natural
2 person or $75,000 for any other person.
3 "(B) SECOND TIER.—Notwithstanding
4 paragraph (A), the maximum amount of pen-
5 alty for each such act or omission shall be
6 $75,000 for a natural person or $375,000 for
7 any other person if the act or omission de-
8 scribed in paragraph (1) involved fraud, deceit,
9 manipulation, or deliberate or reckless dis-
10 regard of a regulatory requirement.
11 "(C) THIRD TIER.—Notwithstanding para-
12 graphs (A) and (B), the maximum amount of
13 penalty for each such act or omission shall be
14 $150,000 for a natural person or $725,000 for
15 any other person if—
16 "(i) the act or omission described in
17 paragraph (1) involved fraud, deceit, ma-
18 nipulation, or deliberate or reckless dis-
19 regard of a regulatory requirement; and
20 "(ii) such act or omission directly or
21 indirectly resulted in substantial losses or
22 created a significant risk of substantial
23 losses to other persons or resulted in sub-
24 stantial pecuniary gain to the person who
25 committed the act or omission.

"(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.".

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Subsection (a) of section 21B of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) by striking "(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—In any proceeding" and inserting the following:

"(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—

"(1) IN GENERAL.—In any proceeding";

(2) by redesignating paragraphs (1) through (4) of such subsection as subparagraphs (A) through

(D), respectively, and moving such redesignated subparagraphs and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such subsection the following new paragraph:

"(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to section 21C of this title against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

"(A) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

"(B) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.".

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Paragraph (1) of section 9(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) by striking "(1) AUTHORITY OF COMMISSION.—In any proceeding" and inserting the following:

"(1) AUTHORITY OF COMMISSION.—

"(A) IN GENERAL.—In any proceeding";

(2) by redesignating subparagraphs (A) through (C) of such paragraph as clauses (i) through (iii), respectively, and by moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

"(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

"(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

"(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.".

(d) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Paragraph (1) of section 203(i) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) by striking ''(1) AUTHORITY OF COMMISSION.—In any proceeding'' and inserting the following:

''(1) AUTHORITY OF COMMISSION.—

''(A) IN GENERAL.—In any proceeding'';

(2) by redesignating subparagraphs (A) through (D) of such paragraph as clauses (i) through (iv), respectively, and moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.''.

SEC. 7212. FORMERLY ASSOCIATED PERSONS.

(a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(8)) is amended by striking ''any member or employee'' and inserting ''any person who is, or at the time of the alleged misconduct was, a member or employee''.

(b) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended—

(1) in subsection (c)(1)(C), by striking ''or seeking to become associated,'' and inserting ''seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'';

(2) in subsection (c)(2)(A), by inserting '', seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'' after ''any person associated''; and

(3) in subsection (c)(2)(B), by inserting '', seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'' after ''any person associated''.

(c) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-

TIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting ", or, as to any act or practice, or omission to act, while associated with a member, formerly associated" after "member or a person associated".

(d) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting "or, as to any act or practice, or omission to act, while a participant, was a participant," after "in which such person is a participant,".

(e) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking "any officer or director" and inserting "any person who is, or at the time of the alleged misconduct was, an officer or director"; and

(2) by striking "such officer or director" and inserting "such person".

(f) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking "a person serving or acting" and inserting "a person who is, or at the time of the alleged misconduct was, serving or acting"; and

(2) by striking ''such person so serves or acts'' and inserting ''such person so serves or acts, or at the time of the alleged misconduct, so served or acted''.

(g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(1) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following new subparagraph:

''(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of the provisions of sections 3(c), 101(c), 105, and 107(c) and Board or Commission rules thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except—

''(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, while such person was associated or seeking to

become associated with a registered public accounting firm; and

"(ii) the authority to commence a proceeding under section 105(c)(1), or impose disciplinary sanctions under section 105(c)(4), against such person shall apply only on—

"(I) the basis of conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

"(II) non-cooperation as described in section 105(b)(3) with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.".

(2) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking "or a person associated with such a firm" and inserting ", a person associated with such a firm, or, as to any act, practice, or omis-

sion to act while associated with such firm, a person formerly associated with such a firm''.

(h) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking ''the supervisory personnel'' and inserting ''any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person''; and

(2) in subparagraph (B)—

(A) by striking ''No associated person'' and inserting ''No current or former supervisory person''; and

(B) by striking ''any other person'' and inserting ''any associated person''.

(i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking ''any member'' and inserting ''any person who is, or at the time of the alleged misconduct was, a member''.

SEC. 7213. SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.

Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(2) in subsection (e), as redesignated, by striking "as provided in subsection (e)" and inserting "as provided in subsection (f)"; and

(3) by inserting after subsection (c) the following new subsection:

"(d) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—

"(1) PRIVILEGED INFORMATION PROVIDED BY THE COMMISSION.—The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

"(A) any agency (as defined in section 6 of title 18, United States Code);

"(B) any foreign securities authority;

"(C) the Public Company Accounting Oversight Board;

"(D) any self-regulatory organization;

"(E) any foreign law enforcement authority; or

"(F) any State securities or law enforcement authority.

"(2) NON-DISCLOSURE OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—Except as provided in subsection (f), the Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

"(3) NON-WAIVER OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—

"(A) IN GENERAL.—Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

"(B) EXCEPTION WITH RESPECT TO CERTAIN ACTIONS.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) The term 'privilege' includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, foreign, or State law.

"(B) The term 'foreign law enforcement authority' means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law.

"(C) The term 'State securities or law enforcement authority' means the authority of any State or territory that is empowered under State or territory law to detect, investigate or prosecute potential violations of law.".

SEC. 7214. EXPANDED ACCESS TO GRAND JURY MATERIAL.

(a) IN GENERAL.—Title VI of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following new section:

"SEC. 605. ACCESS TO GRAND JURY INFORMATION.

"(a) DISCLOSURE.—

"(1) IN GENERAL.—Upon motion of an attorney for the government, a court may direct disclosure of matters occurring before a grand jury during an investigation of conduct that may constitute a

violation of any provision of the securities laws to the Commission for use in relation to any matter within the jurisdiction of the Commission.

"(2) SUBSTANTIAL NEED REQUIRED.—A court may issue an order under paragraph (1) only upon a finding of a substantial need in the public interest.

"(b) USE OF MATTER.—A person to whom a matter has been disclosed under this section shall not use such matter other than for the purpose for which such disclosure was authorized.

"(c) DEFINITIONS.—As used in this section, the terms 'attorney for the government' and 'grand jury information' have the meanings given to those terms in section 3322 of title 18, United States Code.".

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Sarbanes-Oxley Act of 2002 is amended by inserting after the item relating to section 604 the following:

"Sec. 605. Access to grand jury information.".

SEC. 7215. AIDING AND ABETTING STANDARD OF KNOWLEDGE SATISFIED BY RECKLESSNESS.

Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by inserting "or recklessly" after "knowingly".

SEC. 7216. EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection:

''(c) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory described under subsection (a) includes violations of section 17(a), and all suits in equity and actions at law under that section, involving—

''(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

''(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.''.

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(1) by striking ''The district'' and inserting the following:

"(a) IN GENERAL.—The district"; and

(2) by inserting at the end the following new subsection:

"(b) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States described under subsection (a) includes violations of the antifraud provisions of this title, and all suits in equity and actions at law under those provisions, involving—

"(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

"(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.".

(c) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended—

(1) by striking "The district" and inserting the following:

"(a) IN GENERAL.—The district"; and

(2) by inserting at the end the following new subsection:

"(b) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States described under subsection (a) includes violations of section 206, and all suits in equity and actions at law under that section, involving—

"(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

"(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.".

SEC. 7217. FIDELITY BONDING.

Section 17(g) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(g)) is amended to read as follows:

"(g) FIDELITY BONDING.—

"(1) IN GENERAL.—The Commission is authorized to require that a registered management company provide and maintain a fidelity bond against loss as to any officer or employee who has access to

securities or funds of the company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank), in such form and amount as the Commission may prescribe by rule, regulation, or order for the protection of investors.

"(2) DEFINITIONS.—For purposes of this subsection:

"(A) MANAGEMENT COMPANY.—The term 'management company' has the meaning given such term under section 4 of the Investment Company Act of 1940.

"(B) OFFICER OR EMPLOYEE.—The term 'officer or employee' means—

"(i) any officer or employee of the management company; and;

"(ii) any officer or employee of any investment adviser to the management company, or of any affiliated company of any such investment adviser, as the Commission may prescribe by rule, regulation, or order for the protection of investors.

"(C) OTHER DEFINITIONS.—The terms 'affiliated company' and 'investment adviser' shall have the meaning given such terms under section 2 of the Investment Company Act of 1940.".

SEC. 7218. ENHANCED SEC AUTHORITY TO CONDUCT SURVEILLANCE AND RISK ASSESSMENT.

(a) SECURITIES EXCHANGE ACT OF 1934 AMENDMENTS.—Section 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended by adding at the end the following new paragraph:

"(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.".

(b) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)), as amended by section

7106(a)(2), is further amended by adding at the end the following new paragraph:

"(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in paragraph (1) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.".

(c) INVESTMENT ADVISERS ACT OF 1940 AMENDMENTS.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4), as amended by section 7106(b), is further amended by adding at the end the following new subsection:

"(e) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets,

persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.''.

SEC. 7219. INVESTMENT COMPANY EXAMINATIONS.

Section 31(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended to read as follows:

''(1) IN GENERAL.—All records of each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall be subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.''.

SEC. 7220. CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT.

Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is amended by inserting after ''controlled person is liable,'' the following: ''including to the Commission in any action brought under paragraph (1) or (3) of section 21(d),''.

SEC. 7221. ENHANCED APPLICATION OF ANTI-FRAUD PROVISIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 9—

(A) by striking ''registered on a national securities exchange'' each place it appears and inserting ''other than a government security'';

(B) in subsection (b), by striking ''by use of any facility of a national securities exchange,''; and

(C) in subsection (c), by inserting after ''unlawful for any'' the following: ''broker, dealer, or'';

(2) in section 10(a)(1), by striking ''registered on a national securities exchange'' and inserting ''other than a government security''; and

(3) in section 15(c)(1)(A), by striking ''otherwise than on a national securities exchange of which it is a member''.

SEC. 7222. SEC AUTHORITY TO ISSUE RULES ON PROXY ACCESS.

Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end the following:

''(2) The authority of the Commission to prescribe rules and regulations under paragraph (1) includes rules and regulations that require the inclusion and set proce-

dures relating to the inclusion, in a solicitation of a proxy or consent or authorization by or on behalf of an issuer, of a nominee or nominees submitted by shareholders to serve on the issuer's board of directors.''.

PART 3—COMMISSION FUNDING AND ORGANIZATION

SEC. 7301. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

''SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

''In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

''(1) for fiscal year 2010, $1,115,000,000;

''(2) for fiscal year 2011, $1,300,000,000;

''(3) for fiscal year 2012, $1,500,000,000;

''(4) for fiscal year 2013, $1,750,000,000;

''(5) for fiscal year 2014, $2,000,000,000; and

''(6) for fiscal year 2015, $2,250,000,000.''.

SEC. 7302. INVESTMENT ADVISER REGULATION FUNDING.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) (as amended by sections 5006 and 5007) is further amended by adding at the end the following new subsection:

1 "(o) ANNUAL ASSESSMENT.—

2 "(1) IN GENERAL.—The Commission shall, in
3 accordance with this subsection, promulgate rules
4 pursuant to which it may collect from investment
5 advisers required to register with the Commission
6 under this title, fees designed to help recover the
7 cost of inspections and examinations of registered
8 investment advisers conducted by the Commission
9 pursuant to this title.

10 "(2) FEE PAYMENT REQUIRED.—An investment
11 adviser shall, at the time of registration with the
12 Commission, and each fiscal year thereafter during
13 which such adviser is so registered, pay to the Com-
14 mission a fair and reasonable fee determined by the
15 Commission. In determining such fee, the Commis-
16 sion shall consider objective factors such as—

17 "(A) the investment adviser's size;

18 "(B) the number of clients of the invest-
19 ment adviser;

20 "(C) the types of clients of the investment
21 adviser; and

22 "(D) such other relevant factors as the
23 Commission determines to be appropriate.

24 "(3) AMOUNT AND USE OF FEES.—

"(A) MINIMUM AGGREGATE AMOUNT.—The aggregate amount of fees determined by the Commission under this subsection for any fiscal year shall be greater than the amount the Commission spent on inspections and examinations of registered investment advisers during the 2009 fiscal year.

"(B) EXCESS FEES.—The Commission may retain any excess fees collected under this subsection during a fiscal year for application towards the costs of inspections and examinations of investment advisers in future fiscal years.

"(4) REVIEW AND ADJUSTMENT OF FEES.—The Commission may review fee rates established pursuant to this section before the end of any fiscal year and make any appropriate adjustments prior to collecting any such fee in the following fiscal year.

"(5) PENALTY FEE.—The Commission shall prescribe by rule or regulation an additional fee to be assessed as a penalty for late payment of fees required by this subsection.

"(6) JUDICIAL REVIEW.—Increases or decreases in fees made pursuant to this section shall not be subject to judicial review.".

SEC. 7303. AMENDMENTS TO SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934.

Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(1) in subsection (e)(2), by striking ''September 30'' and inserting ''September 25'';

(2) in subsection (g), by striking ''April 30'' and inserting ''August 31''; and

(3) in subsection (j)(2)—

(A) by striking ''5 months'' and inserting ''4 months''; and

(B) by striking ''(including fees collected during such 5-month period and assessments collected under subsection (d))'' and inserting ''(including fees estimated to be collected under subsections (b) and (c) prior to the effective date of the uniform adjusted rate and assessments estimated to be collected under subsection (d))''.

SEC. 7304. COMMISSION ORGANIZATIONAL STUDY AND REFORM.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—Not later than the end of the 90-day period beginning on the date of the enactment of this subtitle, the Securities and Exchange Commission (hereinafter in this section re-

ferred to as the "SEC") shall hire an independent consultant of high caliber and with expertise in organizational restructuring and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as the SEC's relationship with the reliance on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the SEC's oversight.

(2) SPECIFIC AREAS FOR STUDY.—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the SEC;

(B) improving communications between SEC offices and divisions;

(C) the need to put in place a clear chain-of-command structure, particularly for enforcement examinations and compliance inspections;

(D) the effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market;

(E) the SEC's hiring authorities, workplace policies, and personal practices, including—

(i) whether there is a need to further streamline hiring authorities for those who are not lawyers, accountants, compliance examiners, or economists;

(ii) whether there is a need for further pay reforms;

(iii) the diversity of skill sets of SEC employees and whether the present skill set diversity efficiently and effectively fosters the SEC's mission of investor protection; and

(iv) the application of civil service laws by the SEC;

(F) whether the SEC's oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the SEC's reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than the end of the 150-day period after being retained, the independent consultant hired pursuant to subsection (a)(1) shall issue a report to the SEC and the Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1);

(2) recommendations for legislative, regulatory, or administrative action that the consultant determines appropriate to enable the SEC and other entities on which it reports to perform their statutorily or otherwise mandated missions.

(c) SEC REPORT.—Not later than the end of the 6-month period beginning on the date the consultant issues the report under subsection (b), and every 6-months thereafter during the 2-year period following the date on which the consultant issues such report, the SEC shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the SEC's implementation of the regulatory and administrative recommendations contained in the consultant's report.

SEC. 7305. CAPITAL MARKETS SAFETY BOARD.

There is established within the Securities and Exchange Commission an office to be known as the Capital Markets Safety Board whose purpose shall be to conduct investigations, at the direction of the Commission, of failed institutions registered with the Commission, to determine what caused such institutions to fail. Upon the conclusion of an investigation, the Board shall make available on the Commission's website a report of its findings, including recommendations regarding how others can avoid similar mistakes. No information that may compromise an ongoing Federal investigation shall be made available in any such report.

SEC. 7306. REPORT ON IMPLEMENTATION OF "POST-MADOFF REFORMS".

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this subtitle, the Securities and Exchange Commission shall provide to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the implementation of reforms outlined by the Commission in the wake of the discovery of fraud by Bernie Madoff.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include an analysis of—

(1) how many of the post-Madoff reforms have been implemented and to what extent; and

(2) whether there is overlap between any of the Commission's reform proposals and those recommended by the Inspector General of the Commission.

(c) PUBLICATION OF REPORT.—The Commission and the Committees referred to in subsection (a) shall publish the report required by such subsection on their Web sites.

SEC. 7307. JOINT ADVISORY COMMITTEE.

The Securities and Exchange Commission and the Commodities Futures Trading Commission may jointly form and operate a joint advisory committee composed of members of each Commission and industry experts and participants. The purposes of such an advisory committee include—

(1) considering and developing solutions to emerging and ongoing issues of common interest in the futures and securities markets;

(2) identifying emerging regulatory risks and assess and quantify their implications for investors and other market participants, and provide recommendations for solutions;

(3) serving as a vehicle for discussion and communication on regulatory issues of mutual concerns

affecting each Commission, the regulated markets, and the industry generally; and

(4) reporting regularly to each Commission and to Congress on its activities.

PART 4—ADDITIONAL COMMISSION REFORMS

SEC. 7401. REGULATION OF SECURITIES LENDING.

Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following new subsection:

''(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(2) Nothing in paragraph (1) shall be construed to limit the authority of an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency identified under law as having a systemic risk responsibility from prescribing rules or regulations to impose restrictions on transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.''.

SEC. 7402. LOST AND STOLEN SECURITIES.

Section 17(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(1)) is amended—

(1) in subparagraph (A), by striking ''missing, lost, counterfeit, or stolen securities'' and inserting ''securities that are missing, lost, counterfeit, stolen, cancelled, or any other category of securities as the Commission, by rule, may prescribe''; and

(2) in subparagraph (B), by striking ''or stolen'' and inserting ''stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe''.

SEC. 7403. FINGERPRINTING.

Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

(1) by striking ''and registered clearing agency,'' and inserting ''registered clearing agency, registered securities information processor, national securities exchange, and national securities association''; and

(2) by striking ''or clearing agency,'' and inserting ''clearing agency, securities information processor, national securities exchange, or national securities association,''.

SEC. 7404. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking ''an exchange required thereby'' and inserting ''a self-regulatory organization,''.

SEC. 7405. CLARIFICATION THAT SECTION 205 OF THE INVESTMENT ADVISERS ACT OF 1940 DOES NOT APPLY TO STATE-REGISTERED ADVISERS.

Section 205(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(a)) is amended—

(1) by striking '', unless exempt from registration pursuant to section 203(b),'' and inserting ''registered or required to be registered with the Commission'';

(2) by striking ''make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to''; and

(3) by striking ''to'' after ''in any way''.

SEC. 7406. CONFORMING AMENDMENTS FOR THE REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)), by striking "the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.),"; and

(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

"(7) DEFINITION.—For purposes of this subsection, the term 'emergency' means—

"(A) a major market disturbance characterized by or constituting—

"(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

"(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

"(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

"(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

"(ii) the transmission or processing of securities transactions.".

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking "section 18(c) of the Public Utility Holding Company Act of 1935,".

(b) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by amending paragraph (17) to read as follows:

"(17) The terms 'Securities Act of 1933' and 'Securities Exchange Act of 1934' shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this title.";

(2) in section 308 (15 U.S.C. 77hhh), by striking "Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935" each place it appears and inserting "Securities Act of 1933 or the Securities Exchange Act of 1934";

(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c);

(4) in section 311 (15 U.S.C. 77kkk) by striking subsection (c);

(5) in section 323(b) (15 U.S.C. 77www(b)), by striking ''Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935'' and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934''; and

(6) in section 326 (15 U.S.C. 77zzz), by striking ''Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,'' and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934''.

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(44) (15 U.S.C. 80a–2(a)(44)), by striking '' 'Public Utility Holding Company Act of 1935','';

(2) in section 3(c) (15 U.S.C. 80a–3(c)), by amending paragraph (8) to read as follows:

''(8) [Repealed]'';

(3) in section 38(b) (15 U.S.C. 80a–37(b)), by striking ''the Public Utility Holding Company Act of 1935,''; and

(4) in section 50 (15 U.S.C. 80a–49), by striking "the Public Utility Holding Company Act of 1935,".

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(21) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(21)) is amended by striking "'Public Utility Holding Company Act of 1935',".

SEC. 7407. PROMOTING TRANSPARENCY IN FINANCIAL REPORTING.

(a) FINDINGS.—Congress finds the following:

(1) Transparent and clear financial reporting is integral to the continued growth and strength of our capital markets and the confidence of investors.

(2) The increasing detail and volume of accounting, auditing, and reporting guidance pose a major challenge.

(3) The complexity of accounting and auditing standards in the United States has added to the costs and effort involved in financial reporting.

(b) TESTIMONY REQUIRED ON REDUCING COMPLEXITY IN FINANCIAL REPORTING.—The Securities and Exchange Commission, the Public Company Accounting Oversight Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933 shall annually provide oral testimony by their re-

spective Chairpersons or a designee of the Chairperson, beginning in 2010, and for 5 years thereafter, to the Committee on Financial Services of the House of Representatives on their efforts to reduce the complexity in financial reporting to provide more accurate and clear financial information to investors, including—

(1) reassessing complex and outdated accounting standards;

(2) improving the understandability, consistency, and overall usability of the existing accounting and auditing literature;

(3) developing principles-based accounting standards;

(4) encouraging the use and acceptance of interactive data; and

(5) promoting disclosures in ''plain English''.

SEC. 7408. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking ''; and'' and inserting ''; or''.

SEC. 7409. PROTECTING CONFIDENTIALITY OF MATERIALS SUBMITTED TO THE COMMISSION.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 17(i) of the Securities Exchange Act of 1934 (as amended by section 1314(2)) is amended to read as follows:

1 "(i) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
2 MATION.—
3 "(1) IN GENERAL.—Notwithstanding any other
4 provision of law, the Commission shall not be com-
5 pelled to disclose any information, documents,
6 records, or reports that relate to an examination,
7 surveillance, or risk assessment of a person subject
8 to or described in this section, or the financial or
9 operational condition of such persons, or any infor-
10 mation supplied to the Commission by any domestic
11 or foreign regulatory agency or self-regulatory orga-
12 nization that relates to the financial or operational
13 condition of such persons, of any associated person
14 of such persons, or any affiliate of an investment
15 bank holding company.
16 "(2) CERTAIN EXCEPTIONS.—Nothing in this
17 subsection shall authorize the Commission to with-
18 hold information from the Congress, prevent the
19 Commission from complying with a request for infor-
20 mation from any other Federal department or agen-
21 cy, the Public Company Accounting Oversight
22 Board, or any self-regulatory organization request-
23 ing the information for purposes within the scope of
24 its jurisdiction, or prevent the Commission from
25 complying with an order of a court of the United

States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination, surveillance, or risk assessment of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

"(3) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.

"(4) CERTAIN INFORMATION TO BE CONFIDENTIAL.—In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(3) as confidential information for purposes of section 24(b)(2) of this title.".

(b) INVESTMENT COMPANY ACT OF 1940.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)), as amended by sections 7106(a)(2) and 7218(b)(4), is further amended by adding at the end the following new paragraph:

"(6) CONFIDENTIALITY.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination, surveillance, or risk assessment of a person subject to or described in this section.

"(B) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from the Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, or the Public Company Accounting Oversight Board requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

"(C) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.".

(c) INVESTMENT ADVISERS ACT OF 1940.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4), as amended by sections 7106(b) and 7218(c), is further amended by adding at the end the following new subsection:

"(f) CONFIDENTIALITY.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination of a person subject to or described in this section.

"(2) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from Congress, prevent the Commission from complying with a request for information from any other Federal department or agency, the Public Company Accounting Oversight Board, or a self-regulatory organization requesting the information for purposes within the scope of its jurisdic-

tion, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

"(3) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.".

SEC. 7410. TECHNICAL CORRECTIONS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by striking "individual;" and inserting "individual,";

(2) in the matter following paragraph (5) of section 11(a), by striking "earning statement" and inserting "earnings statement".

(3) in section 18(b)(1)(C) (15 U.S.C. 77r(b)(1)(C)), by striking "is a security" and inserting "a security";

(4) in section 18(c)(2)(B)(i) (15 U.S.C. 77r(c)(2)(B)(i)), by striking ''State, or'' and inserting ''State or'';

(5) in section 19(d)(6)(A) (15 U.S.C. 77s(d)(6)(A)), by striking ''in paragraph (1) of (3)'' and inserting ''in paragraph (1) or (3)''; and

(6) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–2(c)(1)(B)(ii)), by striking ''business entity;'' and inserting ''business entity,''.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 2(1)(a) (15 U.S.C. 78b(1)(a)), by striking ''affected'' and inserting ''effected'';

(2) in section 3(a)(55)(A) (15 U.S.C. 78c(a)(55)(A)), by striking ''section 3(a)(12) of the Securities Exchange Act of 1934'' and inserting ''section 3(a)(12) of this Act'';

(3) in section 3(g) (15 U.S.C. 78c(g)), by striking ''company, account person, or entity'' and inserting ''company, account, person, or entity'';

(4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j–1(i)(1)(B)(i)), by striking ''nonaudit'' and inserting ''non-audit'';

(5) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking ''earning statement'' and inserting ''earnings statement'';

(6) in section 15(b)(1) (15 U.S.C. 78o(b)(1))—

(A) by striking the sentence beginning ''The order granting'' and ending ''from such membership.'' in subparagraph (B); and

(B) by inserting such sentence in the matter following such subparagraph after ''are satisfied.'';

(7) in section 15C(a)(2) (15 U.S.C. 78o–5(a)(2))—

(A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively;

(B) by striking the sentence beginning ''The order granting'' and ending ''from such membership.'' in such subparagraph (B), as redesignated; and

(C) by inserting such sentence in the matter following such redesignated subparagraph after ''are satisfied.'';

(8) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking ''15A(k) gives'' and inserting ''15A(k), give''; and

(9) in section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)), by striking ''paragraph (1) subsection'' and inserting ''Paragraph (1)''.

(c) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking ''section 2 of such Act'' and inserting ''section 2(a) of such Act'';

(2) in section 313(a)(4) (15 U.S.C. 77mmm(a)(4)) by striking ''subsection (b) of section 311'' and inserting ''section 311(b)''; and

(3) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking ''(1),'' and inserting ''(1)''.

(d) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(19)(B) (15 U.S.C. 80a–2(a)(19)(B)) by striking ''clause (vi)'' both places it appears in the last two sentences and inserting ''clause (vii)'';

(2) in section 9(b)(4)(B) (15 U.S.C. 80a–9(b)(4)(B)), by inserting ''or'' after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a–12(d)(1)(J)), by striking ''any provision of this subsection'' and inserting ''any provision of this paragraph'';

(4) in section 13(a)(3) (15 U.S.C. 80a–13(a)(3)), by inserting ''or'' after the semicolon at the end;

(5) in section 17(f)(4) (15 U.S.C. 80a–17(f)(4)), by striking ''No such member'' and inserting ''No member of a national securities exchange'';

(6) in section 17(f)(6) (15 U.S.C. 80a–17(f)(6)), by striking ''company may serve'' and inserting ''company, may serve''; and

(7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–60(a)(3)(B)(iii))—

(A) by striking ''paragraph (1) of section 205'' and inserting ''section 205(a)(1)''; and

(B) by striking ''clause (A) or (B) of that section'' and inserting ''section 205(b)(1) or (2)''.

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

(1) in each of the following sections, by striking ''principal business office'' or ''principal place of

business'' (whichever and wherever it appears) and inserting ''principal office and place of business'': sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b), and 222(c) (15 U.S.C. 80b–3(c)(1)(A), 80b–3(k)(4)(B), 80b–13(a), 80b–18a(b), and 80b–18a(c)); and

(2) in section 206(3) (15 U.S.C. 80b–6(3)), by inserting ''or'' after the semicolon at the end.

SEC. 7411. MUNICIPAL SECURITIES.

Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(b)) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) COMPOSITION OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Not later than October 1, 2010, the Municipal Securities Rulemaking Board (hereinafter in this section referred to as the 'Board'), shall be composed of members which shall perform the duties set forth in this section and shall consist of—

''(A) a majority of independent public representatives, at least one of whom shall be representative of investors in municipal securities and at least one of whom shall be representative of issuers of municipal securities (which mem-

bers are hereinafter referred to as 'public representatives');

''(B) at least one individual who is representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'broker-dealer representatives'); and

''(C) at least one individual who is representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'bank representatives').''; and

(2) by amending paragraph (2)(B) to read as follows:

''(B) Establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules—

''(i) shall establish requirements regarding the independence of public representatives;

"(ii) shall provide that the number of public representatives of the Board shall at all times exceed the total number of broker-dealer representatives and bank representatives;

"(iii) shall establish minimum knowledge, experience, and other appropriate qualifications for individuals to serve as public representatives, which may include, among other things, prior work experience in the securities, municipal finance, or municipal securities industries;

"(iv) shall specify the term members shall serve; and

"(v) may increase or decrease the number of members which shall constitute the whole Board, but in no case may such number be an even number.".

SEC. 7412. INTERESTED PERSON DEFINITION.

Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) by striking clauses (v) and (vi);

(2) by inserting after clause (iv) the following new clause:

"(v) any natural person who is a member of a class of persons who the Commission, by rule or regulation, deter-

mines are unlikely to exercise an appropriate degree of independence as a result of—

"(I) a material business or professional relationship with such company or any affiliated person of such company; or

"(II) a close familial relationship with any natural person who is an affiliated person of such company;";

(3) by redesignating clause (vii) as clause (vi); and

(4) in clause (vi), as redesignated, by striking "two completed fiscal years" and inserting "five completed fiscal years".

SEC. 7413. RULEMAKING AUTHORITY TO PROTECT REDEEMING INVESTORS.

Section 22(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–22(e)) is amended by adding at the end the following: "The Commission may, by rules and regulations, limit the extent to which a registered open-end investment company may own, hold, or invest in illiquid securities or other illiquid property.".

SEC. 7414. STUDY ON SEC REVOLVING DOOR.

(a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—The Comptroller General of the United States shall conduct a study that will—

(1) review the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission;

(2) determine how many employees who leave the Securities and Exchange Commission worked on cases that involved financial institutions regulated by such Commission;

(3) review the length of time employees work for the Securities and Exchange Commission before leaving to be employed by financial institutions regulated by such Commission;

(4) review existing internal controls and make recommendations on strengthening such controls to ensure that employees of the Securities and Exchange Commission who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission;

(5) determine if greater post-employment restrictions are necessary to prevent employees of the

Securities and Exchange Commission from being employed by financial institutions after employment with such Commission;

(6) determine if the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions has led to inefficiencies in enforcement;

(7) determine if employees of the Securities and Exchange Commission who are later employed by financial institutions have engaged in information sharing or assisted such institutions in circumventing Federal rules and regulations while employed by such Commission;

(8) review any information that may address the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions, and make recommendations to Congress; and

(9) review other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and

the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a).

SEC. 7415. STUDY ON INTERNAL CONTROL EVALUATION AND REPORTING COST BURDENS ON SMALLER ISSUERS.

(a) STUDY REQUIRED.—The Government Accountability Office and the Securities and Exchange Commission shall each conduct a study evaluating the costs and benefits of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7262(b)) on issuers who are not accelerated or large accelerated filers as defined by Commission Rule 12b-2. The study shall—

(1) include recommendations, administrative reforms, and legislative proposals on implementation steps that could be taken to reduce compliance burdens on these issuers; and

(2) determine the efficacy of the Securities and Exchange Commission's measures to limit the cost of compliance on smaller issuers.

(b) REPORTS REQUIRED.—On or before June 1, 2010, the Government Accountability Office and the Securities and Exchange Commission shall submit separate reports to Congress containing the findings and conclusions of the studies required under subsection (a), together with

1 such recommendations for regulatory, legislative, or ad-
2 ministrative action as may be appropriate.

3 (c) EFFECTIVE DATE CONTINGENT ON REPORTS.—
4 Requirements under section 404(b) of the Sarbanes-Oxley
5 Act of 2002 on issuers described under subsection (a) shall
6 not become effective until the results of the report are de-
7 livered, but in no case before June 1, 2011.

8 **SECTION 7416. ANALYSIS OF RULE REGARDING SMALLER**
9 **REPORTING COMPANIES.**

10 (a) FINDINGS.—Congress finds the following:

11 (1) Many small businesses in cutting-edge tech-
12 nology sectors require significant capital investment
13 to develop new technologies related to clean energy,
14 drug treatments for terminal diseases and food pro-
15 duction in hunger-stricken areas of the World.

16 (2) Many technology companies conducting re-
17 search do not meet the definition of ''smaller report-
18 ing company'' under the Securities and Exchange
19 Commission's Rule 12b–2 due to unusually high
20 public floats despite low or zero revenue.

21 (3) The Final Report of the Advisory Com-
22 mittee on Smaller Public Companies to the Securi-
23 ties and Exchange Commission recommended that a
24 company with a market capitalization of less than
25 about $787,000,000 be considered a smallcap com-

pany and that the Commission provide exemptions from section 404(b) of the Sarbanes-Oxley Act to companies with less than $250,000,000 in annual revenues.

(b) STUDY OF USING REVENUE AS CRITERIA TO DEFINE SMALLER REPORTING COMPANY.—The Securities and Exchange Commission shall conduct a study of the inclusion of revenue as a criteria used in defining smaller reporting company as defined under the Commission's Rule 12b-2 to account for smaller public companies with public floats less than $700,000,000 and revenues less than $250,000,000. Not later than 180 days after the date of enactment of this subtitle, the Commission shall provide the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate a report of the findings of the study.

SEC. 7417. FINANCIAL REPORTING FORUM.

(a) ESTABLISHMENT.—There is hereby established a Financial Reporting Forum (hereinafter referred to as the ''Forum''), which shall consist of—

(1) the Chairman of the Securities Exchange Commission (hereinafter referred to as the ''SEC'');

(2) the head of the Financial Accounting Standards Board;

(3) the Chairman of the Public Company Accounting Oversight Board;

(4) the head of each appropriate Federal banking agency, as such term is defined under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));

(5) the Administrator of the National Credit Union Administration;

(6) the Secretary of the Treasury;

(7) a representative of a non-financial institution, appointed by the SEC;

(8) a representative of a financial institution, appointed by the SEC;

(9) a representative of auditors, appointed by the SEC; and

(10) a representative of investors, appointed by the SEC.

(b) MEETINGS.—The Forum shall meet no less often than quarterly.

(c) DUTIES.—The Forum shall meet to discuss immediate and long-term issues critical to financial reporting.

(d) REPORTING.—The Forum shall issue an annual report to the Congress detailing any determinations or findings made by the Forum during the previous year, in-

1 cluding any legislative recommendations the Forum may
2 have related to financial reporting matters.

3 **SEC. 7418. INVESTMENT ADVISERS SUBJECT TO STATE AU-**
4 **THORITIES.**

5 Section 203A(a) of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b–3a(a)) is amended—

7 (1) by redesignating paragraph (2) as para-
8 graph (3); and

9 (2) by inserting after paragraph (1) the fol-
10 lowing new paragraph:

11 ''(2) TREATMENT OF CERTAIN MID-SIZED IN-
12 VESTMENT ADVISERS.—Notwithstanding paragraph
13 (1), an investment adviser that—

14 ''(A) is regulated and examined, or re-
15 quired to be regulated and examined, by a
16 State; and

17 ''(B) has assets under management be-
18 tween—

19 ''(i) the amount specified under sub-
20 paragraph (A) of paragraph (1), as such
21 amount may have been adjusted by the
22 Commission pursuant to that subpara-
23 graph, and

24 ''(ii) $100,000,000, or such higher
25 amount as the Commission may, by rule,

deem appropriate in accordance with the purposes of this title,

shall register with, and be subject to examination by, such State. The Commission shall publish a list of the States that regulate and examine, or require regulation and examination of, investment advisers to which the requirements of this paragraph apply.''.

SEC. 7419. CUSTODIAL REQUIREMENTS.

Not later than 180 days after the date of the enactment of this subtitle, the Securities and Exchange Commission shall adopt a rule pursuant to its authority under section 211(a) of the Investment Advisers Act of 1940 making it unlawful under section 206(4) of such Act for an investment adviser registered under the Act to have custody of funds or securities of a client the value of which exceeds $10,000,000, subject to such exception the Commission determines in such rule are in the public interest and consistent with the protection of investors, unless—

(1) the funds and securities are maintained with a qualified custodian either in a separate account for each client under the client's name, or in accounts that contain only client funds and securities under the name of the investment adviser as agent or trustee for the client; and

(2) the qualified custodian does not directly or indirectly provide investment advice with respect to such funds or securities.

SEC. 7420. OMBUDSMAN.

(a) APPOINTMENT.—Not later than 180 days after the date of the enactment of this subtitle, the Chairman of the Securities and Exchange Commission shall appoint an Ombudsman who shall report directly to the Chairman.

(b) DUTIES.—The Ombudsman appointed under subsection (a) shall—

(1) act as a liaison between the Commission and any affected person with respect to any problem such person may have in dealing with the Commission resulting from the regulatory activities of the Commission;

(2) review and make recommendations regarding Commission policies and procedures to encourage persons to present questions to the Commission regarding compliance with Federal securities laws; and

(3) maintain confidentiality of communications between such persons and the Ombudsman.

(c) LIMITATION.—In carrying out the duties under subsection (b), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this

section shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office in any other agency.

(d) REPORT.—Each year, the Ombudsman shall submit a report to the Commission for inclusion in the annual report that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. In that report, the Ombudsman shall include solicited comments and evaluations from registrants in regards to the effectiveness of the Ombudsman.

PART 5—SECURITIES INVESTOR PROTECTION ACT AMENDMENTS

SEC. 7501. INCREASING THE MINIMUM ASSESSMENT PAID BY SIPC MEMBERS.

Section 4(d)(1)(C) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended by striking ''$150 per annum'' and inserting the following: ''0.02 percent of the gross revenues from the securities business of such member of SIPC''.

SEC. 7502. INCREASING THE BORROWING LIMIT ON TREASURY LOANS.

Section 4(h) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(h)) is amended by striking ''of not to exceed $1,000,000,000'' and inserting ''the lesser

of $2,500,000,000 or the target amount of the SIPC Fund specified in the bylaws of SIPC''.

SEC. 7503. INCREASING THE CASH LIMIT OF PROTECTION.

Section 9 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3) is amended—

(1) in subsection (a)(1), by striking ''$100,000 for each such customer'' and inserting ''the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)''; and

(2) by adding the following new subsections:

''(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT DEFINED.—For purposes of this section, the term 'standard maximum cash advance amount' means $250,000, as such amount may be adjusted after March 31, 2010, as provided under subsection (e).

''(e) INFLATION ADJUSTMENT.—

''(1) IN GENERAL.—No later than April 1, 2010, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 3(e)(2), the Board of Directors of SIPC shall determine whether an inflation adjustment to the standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the stand-

ard maximum cash advance amount shall be an amount equal to—

"(A) $250,000 multiplied by,

"(B) the ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

"(2) ROUNDING.—If the standard maximum cash advance amount determined under paragraph (1) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

"(3) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

"(A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and

"(B) the Board of Directors of SIPC shall submit a report to the Congress containing stating the standard maximum cash advance amount.

"(4) IMPLEMENTATION PERIOD.—Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

"(5) INFLATION ADJUSTMENT CONSIDERATIONS.—In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

"(A) the overall state of the fund and the economic conditions affecting members of SIPC;

"(B) the potential problems affecting members of SIPC; and

"(C) such other factors as the Board of Directors of SIPC may determine appropriate.".

SEC. 7504. SIPC AS TRUSTEE IN SIPA LIQUIDATION PROCEEDINGS.

Section 5(b)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(3)) is amended—

(1) by striking ''SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than $750,000 and that''; and

(2) by striking ''five hundred'' and inserting ''five thousand''.

SEC. 7505. INSIDERS INELIGIBLE FOR SIPC ADVANCES.

Section 9(a)(4) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(4)) is amended by inserting ''an insider,'' after ''or net profits of the debtor,''.

SEC. 7506. ELIGIBILITY FOR DIRECT PAYMENT PROCEDURE.

Section 10(a)(4) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–4(a)(4)) is amended by striking ''$250,000'' and inserting ''$850,000''.

SEC. 7507. INCREASING THE FINE FOR PROHIBITED ACTS UNDER SIPA.

Section 14(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

(1) in paragraph (1), by striking ''$50,000'' and inserting ''$250,000''; and

(2) in paragraph (2), by striking "$50,000" and inserting "$250,000".

SEC. 7508. PENALTY FOR MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.

Section 14 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj) is amended by adding at the end the following new subsection:

"(d) MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.—

"(1) IN GENERAL.—Any person who falsely represents by any means (including, without limitation, through the Internet or any other medium of mass communication), with actual knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this Act or by SIPC, shall be liable for any damages caused thereby and shall be fined not more than $250,000 or imprisoned for not more than five years.

"(2) INTERNET SERVICE PROVIDERS.—Any Internet service provider that, on or through a system or network controlled or operated by the Internet service provider, transmits, routes, provides con-

nections for, or stores any material containing any misrepresentation of the kind prohibited in paragraph (1) shall be liable for any damages caused thereby, including damages suffered by SIPC, if the Internet service provider—

"(A) has actual knowledge that the material contains a misrepresentation of the kind prohibited in paragraph (1), or

"(B) in the absence of actual knowledge, is aware of facts or circumstances from which it is apparent that the material contains a misrepresentation of the kind prohibited in paragraph (1), and

upon obtaining such knowledge or awareness, fails to act expeditiously to remove, or disable access to, the material.

"(3) INJUNCTIONS.—Any court having jurisdiction of a civil action arising under this Act may grant temporary injunctions and final injunctions on such terms as the court deems reasonable to prevent or restrain any violation of paragraph (1) or (2). Any such injunction may be served anywhere in the United States on the person enjoined, shall be operative throughout the United States, and shall be enforceable, by proceedings in contempt or otherwise,

by any United States court having jurisdiction over that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all papers in the case on file in such clerk's office.''.

SEC. 7509. FUTURES HELD IN A PORTFOLIO MARGIN SECURITIES ACCOUNT PROTECTION.

(a) SIPC ADVANCES.—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(1)) is amended by inserting ''or options on futures contracts'' after ''claim for securities''.

(b) DEFINITIONS.—Section 16 of such Act (15 U.S.C. 78lll) is amended—

(1) by amending paragraph (2) to read as follows:

''(2) CUSTOMER.—

''(A) IN GENERAL.—The term 'customer' of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale,

to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer. The term 'customer' includes any person who has a claim against the debtor arising out of sales or conversions of such securities.

"(B) INCLUDED PERSONS.—The term 'customer' includes—

"(i) any person who has deposited cash with the debtor for the purpose of purchasing securities; and

"(ii) any person who has a claim against the debtor for, or a claim against the debtor arising out of sales or conversions of, cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission.

"(C) EXCLUDED PERSONS.—The term 'customer' does not include—

"(i) any person to the extent that the claim of such person arises out of trans-

actions with a foreign subsidiary of a member of SIPC;

"(ii) any person to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor; or

"(iii) any person to the extent such person has a claim relating to any open repurchase or open reverse repurchase agreement.

For purposes of this paragraph, the term 'repurchase agreement' means the sale of a security at a specified price with a simultaneous agreement or obligation to repurchase the security at a specified price on a specified future date.";

(2) in paragraph (4), by inserting after the first sentence the following new sentence: "In the case of

portfolio margining accounts of customers that are carried as securities accounts pursuant to a portfolio margining program approved by the Commission, such term shall also include futures contracts and options on futures contracts received, acquired, or held by or for the account of a debtor from or for such accounts, and the proceeds thereof.'';

(3) in paragraph (9), by inserting before ''Such term'' in the matter following subparagraph (L) the following: ''The term includes revenues earned by a broker or dealer in connection with transactions in customers' portfolio margining accounts carried as securities accounts pursuant to a portfolio margining program approved by the Commission.''; and

(4) in paragraph (11)—

(A) by amending subparagraph (A) to read as follows:

''(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date—

''(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

"(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; minus"; and

(B) by inserting before "In determining" in the matter following subparagraph (C) the following: "A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission, or a claim for a security futures contract, shall be deemed to be a claim for the mark-to-market (variation) payments due with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash.".

SEC. 7510. STUDY AND REPORT ON THE FEASIBILITY OF RISK-BASED ASSESSMENTS FOR SIPC MEMBERS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study on whether the Securities Investor Protection Corporation (hereafter in this section referred to as "SIPC") should be required to impose assessments, on its member brokers and dealers,

1 based on risk for the purpose of adequately maintaining
2 the SIPC Fund.
3 (b) CONTENT.—The Comptroller General in con-
4 ducting this study shall—
5 (1) identify and examine available approaches,
6 including modeling, to measure broker and dealer
7 operational risk;
8 (2) analyze whether the available approaches to
9 measure broker and dealer operational risk can be
10 used in managing the aggregate risk to the SIPC
11 Fund;
12 (3) explore whether objective measures like the
13 volume of assets of the SIPC member, previous en-
14 forcement and compliance actions taken by regu-
15 latory bodies against the SIPC member, or the num-
16 ber of years the SIPC member has been in oper-
17 ation, among other factors, can be used to assess the
18 probability the fund will incur a loss with respect to
19 the SIPC member;
20 (4) examine the impact that risk-based assess-
21 ments could have on large and small brokers and
22 dealers; and
23 (5) examine the impact that risk-based assess-
24 ments could have on institutional and retail brokers
25 and dealers.

(c) CONSULTATION.—The Comptroller General in planning and conducting this study shall consult with the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, SIPC, the Financial Industry Regulatory Authority, and any other public or private sector organization that the Comptroller General considers appropriate.

(d) REPORT REQUIRED.—Not later than one year after the date of enactment of this subtitle, the Comptroller general shall submit a report of the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 7511. BUDGETARY TREATMENT OF COMMISSION LOANS TO SIPC.

Section 4(g) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(g)) is amended by adding at the end the following: ''Any loan made by the Commission to SIPC under this subsection shall not be considered to result in a new direct loan obligation or a new loan guarantee commitment for purposes of section 504 of the Federal Credit Reform Act of 1990.''.

PART 6—SARBANES-OXLEY ACT AMENDMENTS

SEC. 7601. PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD OVERSIGHT OF AUDITORS OF BROKERS AND DEALERS.

(a) DEFINITIONS.—(1) Title I of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following new section:

"SEC. 110. DEFINITIONS.

''For the purposes of this title, and notwithstanding section 2:

''(1) AUDIT.—The term 'audit' means an examination of the financial statements, reports, documents, procedures or controls, or notices, of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such financial statements, reports, documents, procedures or controls, or notices.

''(2) AUDIT REPORT.—The term 'audit report' means a document, report, notice, or other record—

''(A) prepared following an audit performed for purposes of compliance by an issuer,

broker, or dealer with the requirements of the securities laws; and

"(B) in which a public accounting firm either—

"(i) sets forth the opinion of that firm regarding a financial statement, report, notice, other document, procedures, or controls; or

"(ii) asserts that no such opinion can be expressed.

"(3) PROFESSIONAL STANDARDS.—The term 'professional standards' means—

"(A) accounting principles that are—

"(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

"(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a par-

ticular registered public accounting firm; and

"(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

"(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

"(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

"(4) BROKER.—The term 'broker' means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

"(5) DEALER.—The term 'dealer' means a dealer (as such term is defined in section 3(a)(5) of

the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

"(6) SELF-REGULATORY ORGANIZATION.—The term 'self-regulatory organization' has the same meaning as in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)).".

(2) The table of sections in section 1(b) of such Act is amended, by inserting after the item relating to section 109 the following new item:

"Sec. 110. Definitions.".

(b) ESTABLISHMENT AND ADMINISTRATION OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 101 of such Act is amended—

(1) by striking "issuers" each place it appears and inserting "issuers, brokers, and dealers";

(2) in subsection (a), by striking "public companies" and inserting "companies"; and

(3) in subsection (a), by striking "for companies the securities of which are sold to, and held by and for, public investors".

(c) REGISTRATION WITH THE BOARD.—Section 102 of such Act is amended—

(1) in subsection (a), by striking ''Beginning 180 days after the date of the determination of the Commission under section 101(d), it'' and inserting ''It'';

(2) in subsections (a) and (b)(2)(G), by striking ''issuer'' each place it appears and inserting ''issuer, broker, or dealer''; and

(3) in subsection (b)(2)(A), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''.

(d) AUDITING AND INDEPENDENCE.—Section 103(a) of such Act is amended—

(1) in paragraph (1), by striking ''and such ethics standards'' and inserting ''such ethics standards, and such independence standards'';

(2) in paragraph (2)(A)(iii), by striking ''describe in each audit report'' and inserting ''in each audit report for an issuer, describe''; and

(3) in paragraph (2)(B)(i), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''.

(e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.—Section 104 of such Act is amended—

(1) in subsection (a), by striking ''issuers'' and inserting ''issuers, brokers, and dealers'';

(2) in subsection (b)(1)(A)—

(A) by striking ''audit reports'' and inserting ''audit reports on annual financial statements''; and

(B) by striking ''and'';

(3) in subsection (b)(1)(B)—

(A) by striking ''audit reports'' and inserting ''audit reports on annual financial statements''; and

(B) by striking the period at the end and inserting ''; and''; and

(4) by adding at the end of subsection (b)(1) the following new subparagraph:

''(C) with respect to each registered public accounting firm that regularly provides audit reports and is not described under subparagraph (A) or (B), on a basis to be determined by the Board, by rule, consistent with the public interest and protection of investors.''.

(f) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—Section 105(c)(7)(B) of such Act is amended—

(1) in the subparagraph heading, by inserting ", BROKER, OR DEALER" after "ISSUER";

(2) by striking "any issuer" each place it appears and inserting "any issuer, broker, or dealer"; and

(3) by striking "an issuer under this subsection" and inserting "a registered public accounting firm under this subsection".

(g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section 106 of such Act is amended—

(1) in subsection (a)(1), by striking "issuer" and inserting "issuer, broker, or dealer"; and

(2) in subsection (a)(2), by striking "issuers" and inserting "issuers, brokers, or dealers".

(h) FUNDING.—Section 109 of such Act is amended—

(1) in subsection (c)(2), by striking "subsection (i)" and inserting "subsection (j)";

(2) in subsection (d)(2), by striking "allowing for differentiation among classes of issuers, as appropriate" and inserting "and among brokers and dealers in accordance with subsection (h), and allowing for differentiation among classes of issuers and brokers and dealers, as appropriate";

(3) in subsection (d), by inserting at the end the following new paragraph:

"(3) BROKERS AND DEALERS.—The rules of the Board under paragraph (1) shall provide that the allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1) with respect to brokers and dealers shall not begin until the first day of the first full fiscal year beginning after the date of the enactment of this paragraph.";

(4) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(5) by inserting after subsection (g) the following new subsection:

"(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

"(1) IN GENERAL.—Any amount due from brokers and dealers (or a particular class of such brokers and dealers) under this section to fund the budget of the Board shall be allocated among and payable by such brokers and dealers (or such brokers and dealers in a particular class, as applicable). A broker or dealer's allocation shall be in proportion to the broker or dealer's net capital compared to the

total net capital of all brokers and dealer, in accordance with the rules of the Board.

"(2) OBLIGATION TO PAY.—Every broker or dealer shall pay the share of a reasonable annual accounting support fee or fees allocated to such broker or dealer under this section.".

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY ORGANIZATION.—Section 105(b)(4)(B) of the Sarbanes-Oxley Act of 2002 is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following new clause:

"(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization;".

(j) USE OF DOCUMENTS RELATED TO AN INSPECTION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of such Act is amended—

(1) in subclause (III), by striking "and";

(2) in subclause (IV), by striking the comma and inserting "; and"; and

(3) by inserting after subclause (IV) the following new subclause:

"(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization,".

SEC. 7602. FOREIGN REGULATORY INFORMATION SHARING.

(a) DEFINITION.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by inserting after paragraph (16) the following:

"(17) FOREIGN AUDITOR OVERSIGHT AUTHORITY.—The term 'foreign auditor oversight authority' means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.".

(b) AVAILABILITY TO SHARE INFORMATION.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:

"(C) AVAILABILITY TO FOREIGN OVERSIGHT AUTHORITIES.—When in the Board's discretion it is necessary to accomplish the pur-

poses of this Act or to protect investors, and without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm within the inspection authority, or other regulatory or law enforcement jurisdiction, of a foreign auditor oversight authority may be made available to the foreign auditor oversight authority if the foreign auditor oversight authority provides such assurances of confidentiality as the Board determines appropriate.''.

(c) CONFORMING AMENDMENT.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(A)) is amended by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''.

SEC. 7603. EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED WITH FOREIGN COUNTERPARTS.

Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by amending subsection (b) to read as follows:

''(b) PRODUCTION OF DOCUMENTS.—

"(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm issues an audit report, performs audit work, conducts interim reviews, or performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, the foreign public accounting firm shall produce its audit work papers and all other documents related to any such audit work or interim review to the Commission or the Board when requested by the Commission or the Board and the foreign public accounting firm shall be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request of such documents.

"(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

"(A) produce the foreign public accounting firm's audit work papers and all other documents related to any such work in response to a request for production by the Commission or the Board; and

"(B) secure the agreement of any foreign public accounting firm to such production, as a condition of its reliance on the work of that foreign public accounting firm.";

(2) by redesignating subsection (d) as subsection (g); and

(3) by inserting after subsection (c) the following new subsections:

"(d) SERVICE OF REQUESTS OR PROCESS.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic firm a written irrevocable consent and power of attorney that designates the domestic firm as an agent upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section. Any foreign public accounting firm that issues an audit report, performs audit work, performs interim reviews, or performs other material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, shall designate to the Commission or the Board an agent in the United States upon whom may be served any process, pleading, or other papers in any action brought to enforce this section or any request by the Commission or the Board under this section.

"(e) SANCTIONS.—A willful refusal to comply, in whole in or in part, with any request by the Commission or the Board under this section, shall be a violation of this Act.

"(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provision of this section, the staff of the Commission or Board may allow foreign public accounting firms subject to this section to meet production obligations under this section though alternate means, such as through foreign counterparts of the Commission or Board.".

SEC. 7604. CONFORMING AMENDMENT RELATED TO REGISTRATION.

Section 102(b)(3)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S. Code 7212(b)(3)(A)) is amended by striking "by the Board" and inserting "by the Commission or the Board".

SEC. 7605. FAIR FUND AMENDMENTS.

Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended—

(1) by amending subsection (a) to read as follows:

"(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws

(as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the Commission obtains a civil penalty against any person for a violation of such laws or the rules and regulations thereunder, or such person agrees in settlement of any such action to such civil penalty, the amount of such civil penalty or settlement shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.'';

(2) in subsection (b), by—

(A) striking ''for a disgorgement fund described in subsection (a)'' and inserting ''for a disgorgement fund or other fund described in subsection (a)''; and

(B) striking ''in the disgorgement fund'' and inserting ''in such fund''; and

(3) by striking subsection (e).

SEC. 7606. EXEMPTION FOR NONACCELERATED FILERS.

(a) EXEMPTION.—Section 404 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

''(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is not an accelerated filer with-

in the meaning Rule 12b–2 of the Commission (17 C.F.R. 240.12b–2).''.

(b) STUDY.—The Securities and Exchange Commission and the Comptroller General shall jointly conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between $75,000,000 and $250,000,000 for the relevant reporting period while maintaining investor protections for such companies. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 180 days after the date of the enactment of this subtitle, the Commission and the Comptroller General shall transmit a report of such study to Congress.

SEC. 7607. WHISTLEBLOWER PROTECTION AGAINST RETALIATION BY A SUBSIDIARY OF AN ISSUER.

Section 1514A(a) of title 18, United States Code, is amended by inserting ''including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company,'' after ''(15 U.S.C. 78o(d)),''.

SEC. 7608. CONGRESSIONAL ACCESS TO INFORMATION.

Section 101 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

''(i) CONGRESSIONAL ACCESS TO INFORMATION.—Nothing in this section shall—

''(1) affect the Boards obligations, if any, to provide access to records under the Right to Financial Privacy Act; or

''(2) authorize the Board to withhold information from Congress or prevent the Board from complying with an order of a court of the United States in an action commenced by the United States or the Board.''.

SEC. 7609. CREATION OF OMBUDSMAN FOR THE PCAOB.

(a) OMBUDSMAN.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.), as amended by section 7601(a)(1), is further amended by adding at the end the following new section:

''SEC. 111. OMBUDSMAN.

''(a) ESTABLISHMENT REQUIRED.—Not later than 180 days after the date of enactment of the Investor Protection Act, the Board shall appoint an ombudsman for the Board. The Ombudsman shall report directly to the Chairman.

1 ''(b) DUTIES OF OMBUDSMAN.—The ombudsman ap-
2 pointed in accordance with subsection (a) for the Board
3 shall—
4 ''(1) act as a liaison between the Board and—
5 ''(A) any registered public accounting firm
6 or issuer with respect to issues or disputes con-
7 cerning the preparation or issuance of any audit
8 report with respect to that issuer; and
9 ''(B) any affected registered public ac-
10 counting firm or issuer with respect to—
11 ''(i) any problem such firm or issuer
12 may have in dealing with the Board result-
13 ing from the regulatory activities of the
14 Board, particularly with regard to the im-
15 plementation of section 404; and
16 ''(ii) issues caused by the relationships
17 of registered public accounting firms and
18 issuers generally; and
19 ''(2) assure that safeguards exist to encourage
20 complainants to come forward and to preserve con-
21 fidentiality; and
22 ''(3) carry out such activities, and any other ac-
23 tivities assigned by the Board, in accordance with
24 guidelines prescribed by the Board.''.

(b) CONFORMING AMENDMENT.—The table of sections in section 1(b) of such Act is amended, by inserting after the item relating to section 110 (as added by section 601(a)(2)) the following new item:

"Sec. 111. Ombudsman.".

SEC. 7610. AUDITING OVERSIGHT BOARD.

The Sarbanes-Oxley Act of 2002 is amended—

(1) in section 2(a)(5), by striking "Public Company Accounting Oversight Board" and inserting "Auditing Oversight Board";

(2) in section 101(a), by striking "Public Company Accounting Oversight Board" and inserting "Auditing Oversight Board"; and

(3) in the heading of title I, by striking "**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**" and inserting "**AUDITING OVERSIGHT BOARD**".

PART 7—SENIOR INVESTMENT PROTECTION

SEC. 7701. FINDINGS.

Congress finds that—

(1) many seniors are targeted by salespersons and advisers using misleading certifications and professional designations;

(2) many certifications and professional designations used by salespersons and advisers represent limited training or expertise, and may in fact

be of no value with respect to advising seniors on financial and estate planning matters, and far too often, such designations are obtained simply by attending a weekend seminar and passing an open book, multiple choice test;

(3) many seniors have lost their life savings because salespersons and advisers holding a misleading designation have steered them toward products that were unsuitable for them, given their retirement needs and life expectancies;

(4) seniors have a right to clearly know whether they are working with a qualified adviser who understands the products and is working in their best interest or a self-interested salesperson or adviser advocating particular products; and

(5) many existing State laws and enforcement measures addressing the use of certifications, professional designations, and suitability standards in selling financial products to seniors are inadequate to protect senior investors from salespersons and advisers using such designations.

SEC. 7702. DEFINITIONS.

For purposes of this part:

(1) MISLEADING DESIGNATION.—The term ''misleading designation''—

(A) means the use of a purported certification, professional designation, or other credential, that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include any legitimate certification, professional designation, license, or other credential, if—

(i) it has been offered by an academic institution having regional accreditation; or

(ii) it meets the standards for certifications, licenses, and professional designations outlined by the North American Securities Administrators Association (in this part referred to as the ''NASAA'') Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this subtitle, or any successor thereto, or it was issued by or obtained from any State.

(2) FINANCIAL PRODUCT.—The term ''financial product'' means securities, insurance products (including insurance products which pay a return, whether fixed or variable), and bank and loan products.

(3) MISLEADING OR FRAUDULENT MARKETING.—The term ''misleading or fraudulent marketing'' means the use of a misleading designation when selling to or advising a senior about the sale of a financial product.

(4) SENIOR.—The term ''senior'' means any individual who has attained the age of 62 years or more.

(5) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, and the unincorporated territories of Puerto Rico and the U.S. Virgin Islands.

SEC. 7703. GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLEAD BY FALSE DESIGNATIONS.

(a) GRANT PROGRAM.—The Securities and Exchange Commission (in this part referred to as the ''Commission'')—

(1) shall establish a program in accordance with this part to provide grants to States—

(A) to investigate and prosecute misleading and fraudulent marketing practices; or

(B) to develop educational materials and training aimed at reducing misleading and

fraudulent marketing of financial products toward seniors; and

(2) may establish such performance objectives, reporting requirements, and application procedures for States and State agencies receiving grants under this part as the Commission determines are necessary to carry out and assess the effectiveness of the program under this part.

(b) USE OF GRANT AMOUNTS.—A grant under this part may be used (including through subgrants) by the State or the appropriate State agency designated by the State—

(1) to fund additional staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing of financial products to seniors;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution

of those targeting seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers of financial products;

(5) to provide educational materials and training to seniors to increase their awareness and understanding of designations; and

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors.

(c) GRANT REQUIREMENTS.—

(1) MAXIMUM.—The amount of a grant under this part may not exceed $500,000 per fiscal year per State, if all requirements of paragraphs (2), (3), (4), and (5) are met. Such amount shall be limited to $100,000 per fiscal year per State in any case in which the State meets the requirements of—

(A) paragraphs (2) and (3), but not each of paragraphs (4) and (5); or

(B) paragraphs (4) and (5), but not each of paragraphs (2) and (3).

(2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the ap-

1 propriate use of designations in the offer or sale of
2 securities or investment advice, which shall meet or
3 exceed the minimum requirements of the NASAA
4 Model Rule on the Use of Senior-Specific Certifi-
5 cations and Professional Designations, as in effect
6 on the date of the enactment of this subtitle, or any
7 successor thereto.

8 (3) SUITABILITY RULES FOR SECURITIES.—A
9 State shall have adopted standard rules on the suit-
10 ability requirements in the sale of securities, which
11 shall, to the extent practicable, conform to the min-
12 imum requirements on suitability imposed by self-
13 regulatory organization rules under the securities
14 laws (as defined in section 3 of the Securities Ex-
15 change Act of 1934).

16 (4) STANDARD DESIGNATION RULES FOR IN-
17 SURANCE PRODUCTS.—A State shall have adopted
18 standard rules on the appropriate use of designa-
19 tions in the sale of insurance products, which shall,
20 to the extent practicable, conform to the minimum
21 requirements of the National Association of Insur-
22 ance Commissioners Model Regulation on the Use of
23 Senior-Specific Certifications and Professional Des-
24 ignations in the Sale of Life Insurance and Annu-

ities, as in effect on the date of the enactment of this subtitle, or any successor thereto.

(5) SUITABILITY AND SUPERVISION RULES FOR ANNUITY PRODUCTS.—

(A) IN GENERAL.—A State shall have adopted rules governing insurer supervision of, suitability of, and insurer and insurance producer conduct relating to, the sale of annuity products, including fixed and index annuities.

(B) ANNUITY PRODUCTS CRITERIA.—The rules required by subparagraph (A) shall, to the extent practicable, provide—

(i) that insurers, and insurance producers are responsible for, and liable for penalties for, the suitability of each recommended annuity transaction;

(ii) that insurers and insurance producers are required to apply a standard for determining the suitability of each recommended annuity transaction, including fixed and index annuities, that is at least as protective of the interests of the consumer as rule 2821(b) of the Financial Industry Regulatory Authority (in this paragraph referred to as ''FINRA''), as in ef-

fect on the date of the enactment of this subtitle, or any successor to such rule;

(iii) that insurers and insurance producers are required to maintain a process for review of the suitability, and approval or disapproval, of each recommended annuity transaction that is at least as protective of the interests of the consumer as the principal review required under rule 2821(c) of FINRA, as in effect on the date of the enactment of this subtitle, or any successor to such rule;

(iv) that insurers and insurance producers are required to maintain processes for the supervision of direct annuity sales and insurance producer-recommended annuity sales (including procedures for the insurer to obtain and confirm consumer suitability information and for the insurer to confirm consumer understanding of the annuity transaction) that are at least as protective of the interests of the consumer as member broker and dealer supervision requirements of FINRA, as in effect on

the date of the enactment of this subtitle, or any successor to such requirements;

(v) that insurers are required to verify that each insurance producer successfully completes, and each insurance producer is required to receive, training designed to ensure that the insurance producer is competent to recommend each class of annuity;

(vi) that insurers are required to verify that insurance producers receive, and insurance producers are required to receive, training regarding the features of each offered annuity product, to an extent that is at least as protective of the interests of the consumer as the FINRA firm element training requirements, as in effect on the date of the enactment of this subtitle, or any successor to such requirements;

(vii) for coordination of such rules with the rules of FINRA governing member brokers, dealers, and security representatives, to the extent appropriate, consistent with protecting the interests of consumers, for State insurance regulators

to rely on, or to avoid duplication of FINRA rules; and

(viii) for exemption from such rules only if such exemption is consistent with the protection of consumers.

SEC. 7704. APPLICATIONS.

To be eligible for a grant under this part, the State or appropriate State agency shall submit to the Commission a proposal to use the grant money to protect seniors from misleading or fraudulent marketing techniques in the offer and sale of financial products, which application shall—

(1) identify the scope of the problem;

(2) describe how the proposed program will help to protect seniors from misleading or fraudulent marketing in the sale of financial products, including, at a minimum—

(A) by proactively identifying senior victims of misleading and fraudulent marketing in the offer and sale of financial products;

(B) how the proposed program can assist in the investigation and prosecution of those using misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(C) how the proposed program can help discourage and reduce future cases of misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(3) describe how the proposed program is to be integrated with other existing State efforts.

SEC. 7705. LENGTH OF PARTICIPATION.

A State receiving a grant under this part shall be provided assistance funds for a period of 3 years, after which the State may reapply for additional funding.

SEC. 7706. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this part, $8,000,000 for each of the fiscal years 2011 through 2015.

PART 8—REGISTRATION OF MUNICIPAL FINANCIAL ADVISORS

SEC. 7801. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (as amended by section 3204) is amended by inserting after section 15F (15 U.S.C. 78o–7) the following new section:

"SEC. 15G. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

''(a)(1)(A) It shall be unlawful for any person to make use of the mails or any means or instrumentality of interstate commerce to act as a municipal financial adviser unless such person is registered as a municipal financial adviser in accordance with subsection (b).

''(B) Subparagraph (A) shall not apply to a natural person associated with a municipal financial adviser, as long as such adviser is registered in accordance with subsection (b) and is not a natural person.

''(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this section any municipal financial adviser or class of municipal financial advisers specified in such rule or order.

''(b)(1) A municipal financial adviser may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal financial adviser and any persons associated with such municipal financial adviser as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of the filing of such application (or within such longer period

as to which the applicant consents), the Commission shall—

"(A) by order grant registration, or

"(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4).

"(2) An application for registration of a municipal financial adviser to be formed or organized may be made by a municipal financial adviser to which the municipal financial adviser to be formed or organized is to be the

successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the 45th day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

''(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal financial adviser or any person acting on behalf of such a municipal financial adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

"(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any municipal financial adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such municipal financial adviser, whether prior or subsequent to becoming such, or any person associated with such municipal financial adviser, whether prior or subsequent to becoming so associated—

"(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein;

"(B) has been convicted within 10 years preceding the filing of any application for registration or at any time thereafter of any felony or mis-

demeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

"(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

"(ii) arises out of the conduct of the business of a municipal financial adviser, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

"(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conver-

sion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

"(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, or a violation of a substantially equivalent foreign statute;

"(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as a municipal financial adviser, investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regu-

lation or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

"(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or is unable to comply with any such provision;

"(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph, no person shall be deemed to have failed reasonably to supervise any other person, if—

"(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

"(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

"(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a municipal financial adviser;

"(G) has been found by a foreign financial regulatory authority to have—

"(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to

state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

''(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

''(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

"(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

"(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

"(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

"(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any

registered municipal financial adviser may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal financial adviser is no longer in existence or has ceased to do business as a municipal financial adviser, the Commission, by order, shall cancel the registration of such municipal financial adviser.

''(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a municipal financial adviser, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a municipal financial adviser, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

''(i) has committed or omitted any act, or is subject to an order or finding, enumerated in sub-

paragraph (A), (D), or (E) of paragraph (4) of this subsection;

"(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

"(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

"(B) It shall be unlawful—

"(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a municipal financial adviser in contravention of such order; or

"(ii) for any municipal financial adviser to permit such a person, without the consent of the Commission, to become or remain, a person associated with the municipal financial adviser in contravention of such order, if such municipal financial adviser knew, or in the exercise of reasonable care should have known, of such order.

"(7) No registered municipal financial adviser shall act as such unless it meets such standards of operational capability and such municipal financial adviser and all

natural persons associated with such municipal financial adviser meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

"(A) specify that all or any portion of such standards shall be applicable to any class of municipal financial advisers and persons associated with municipal financial advisers;

"(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations) engaged in the management of the municipal financial adviser, include questions relating to bookkeeping, accounting, supervision of employees, maintenance of records, and other appropriate matters; and

"(C) provide that persons in any such class other than municipal financial advisers and partners, officers, and supervisory employees of municipal financial advisers, may be qualified solely on the basis of compliance with such standards of training and

1 such other qualifications as the Commission finds
2 appropriate.
3 The Commission, by rule, may prescribe reasonable fees
4 and charges to defray its costs in carrying out this para-
5 graph, including, but not limited to, fees for any test ad-
6 ministered by it or under its direction.
7 ''(c)(1)(A) No municipal financial adviser shall make
8 use of the mails or any means or instrumentality of inter-
9 state commerce in connection with which such municipal
10 financial adviser engages in any fraudulent, deceptive, or
11 manipulative act or practice or violates such rules and reg-
12 ulations regarding conflicts of interest or fair practices,
13 including but not limited to rules and regulations related
14 to political contributions, as the Commission shall pre-
15 scribe in the public interest or for the protection of inves-
16 tors or to maintain fair and orderly markets.
17 ''(B) The Commission shall, for the purposes of this
18 paragraph as the Commission finds necessary or appro-
19 priate in the public interest or for the protection of inves-
20 tors, by rules and regulations define, and prescribe means
21 reasonably designed to prevent, such acts and practices
22 as are fraudulent, deceptive, or manipulative.
23 ''(2) If the Commission finds, after notice and oppor-
24 tunity for a hearing, that any person subject to the provi-
25 sions of this section or any rule or regulation thereunder

has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

''(d) Every registered municipal financial adviser shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such municipal financial adviser's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such municipal financial adviser or any person associated with such municipal financial adviser. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

"(e) A municipal financial adviser and any person associated with such municipal financial adviser shall be deemed to have a fiduciary duty to any municipal securities issuer for whom such municipal financial adviser acts as a municipal financial adviser. A municipal financial adviser may not engage in any act, practice, or course of business which is not consistent with a municipal financial adviser's fiduciary duty. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are not consistent with a municipal financial adviser's fiduciary duty to its clients.".

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by section 3201(6)) is amended by adding at the end the following new paragraphs:

"(78) MUNICIPAL FINANCIAL ADVISER.—

"(A) The term 'municipal financial adviser' means a person who, for compensation, engages in the business of—

"(i) providing advice to a municipal securities issuer with respect to—

"(I) the issuance or proposed issuance of securities, including any

remarketing of municipal securities directly or indirectly by or on behalf of a municipal securities issuer;

''(II) the investment of proceeds from securities issued by such municipal securities issuer;

''(III) the hedging of any risks associated with subclauses (I) or (II), including advice as to swap agreements (as defined in section 206A of the Gramm-Leach-Bliley Act regardless of whether the counterparties constitute eligible contract participants); or

''(IV) preparation of disclosure documents in connection with the issuance, proposed issuance, or previous issuance of securities issued by a municipal securities issuer, including, without limitation, official statements and documents prepared in connection with a written agreement or contract for the benefit of holders of such securities described in section

240.15c2–12 of title 17, Code of Federal Regulations;

"(ii) assisting a municipal securities issuer in selecting or negotiating guaranteed investment contracts or other investment products; or

"(iii) assisting any municipal securities issuer in the primary offering of securities not involving a public offering.

"(B) Such term does not include—

"(i) an attorney, if the attorney is offering advice or providing services that are of a traditional legal nature;

"(ii) a nationally recognized statistical rating organization to the extent it is involved in the process of developing credit ratings;

"(iii) a registered broker-dealer when acting as an underwriter, as such term is defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. section 77b(a)(11)); or

"(iv) a State or any political subdivision thereof.

"(79) MUNICIPAL SECURITIES ISSUER.—The term 'municipal securities issuer' means—

"(A) any entity that has the ability to issue a security the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1986 and the regulations thereunder; or

"(B) any person who receives the proceeds generated from the issuance of municipal securities.

"(80) PERSON ASSOCIATED WITH A MUNICIPAL FINANCIAL ADVISER; ASSOCIATED PERSON OF A MUNICIPAL FINANCIAL ADVISER.—The term 'person associated with a municipal financial adviser' or 'associated person of a municipal financial adviser' means any partner, officer, director, or branch manager of such municipal financial adviser (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such municipal financial adviser, or any employee of such municipal financial adviser, except that any person associated with a municipal financial adviser whose functions are solely clerical or ministerial shall not be included in the meaning of such term for pur-

poses of section 15G(b) (other than paragraph (6) thereof).''.

SEC. 7802. CONFORMING AMENDMENTS.

(a) SECURITIES EXCHANGE ACT OF 1934 .—The Securities Exchange Act of 1934 is amended—

(1) in section 15(b)(4)(B)(ii) (15 U.S.C. 78o(b)(4)(B)(ii)), by inserting ''municipal finance adviser,'' after ''nationally recognized statistical rating organization,'';

(2) in section 15(b)(4)(C) (15 U.S.C. 78o(b)(4)(C)), by inserting ''municipal finance adviser,'' after ''nationally recognized statistical rating organization,''; and

(3) in section 17(a)(1) (15 U.S.C. 78q(a)(1)), by inserting ''registered municipal financial adviser,'' after ''nationally recognized statistical rating organization,''.

(b) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 is amended—

(1) in section 2(a) (15 U.S.C. 80a–2(a)), by inserting at the end the following new paragraph:

''(54) The term 'municipal finance adviser' has the same meaning as in section 3 of the Securities Exchange Act of 1934.'';

(2) in section 9(a)(1) (15 U.S.C. 80a–9(a)(1)), by inserting ''municipal finance adviser,'' after ''credit rating agency,''; and

(3) in section 9(a)(2) (15 U.S.C. 80a–9(a)(2)), by inserting ''municipal finance adviser,'' after ''credit rating agency,''.

(c) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 is amended—

(1) in section 202(a) (15 U.S.C. 80b–2(a)), by inserting at the end the following new paragraph:

''(31) The term 'municipal finance adviser' has the same meaning as in section 3 of the Securities Exchange Act of 1934.'';

(2) in section 203(e)(2)(B) (15 U.S.C. 80b–3(e)(2)(B)), by inserting ''municipal finance adviser,'' after ''credit rating agency,''; and

(3) in section 203(e)(4) (15 U.S.C. 80b–3(e)(4)) is amended by inserting ''municipal finance adviser,'' after ''credit rating agency,''.

SEC. 7803. EFFECTIVE DATES.

(a) IN GENERAL.—The amendments made by this part shall take effect 30 days after the date of the enactment of this subtitle.

(b) EFFECTIVE DATE AND REQUIREMENTS FOR REGULATIONS.—Notwithstanding subsection (a), the Se-

curities and Exchange Commission shall, within 120 days after the date of the enactment of this subtitle, publish for notice and public comment such regulations as are initially required to implement this part, and shall take final action with respect to such regulations not later than 270 days after the date of enactment of this subtitle.

(c) REGISTRATION DATE.—No person may continue to act as a municipal financial adviser, as such term is defined in section 3(a)(65) of the Securities Exchange Act of 1934 (as added by this part), after 30 days after the date the regulations described in subsection (b) become effective unless such person has been registered as required by the amendment made by section 7701 of this part.

TITLE VI—FEDERAL INSURANCE OFFICE

SEC. 8001. SHORT TITLE.

This title may be cited as the ''Federal Insurance Office Act of 2009''.

SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by transferring and inserting section 312 after section 313;

(2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and 315, respectively; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

"SEC. 313. FEDERAL INSURANCE OFFICE.

"(a) ESTABLISHMENT OF OFFICE.—There is established the Federal Insurance Office as an office in the Department of the Treasury.

"(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of such Director shall be a career reserved position in the Senior Executive Service.

"(c) FUNCTIONS.—

"(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office shall have the authority, pursuant to the direction of the Secretary, as follows:

"(A) To monitor the insurance industry to gain expertise.

"(B) To identify issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system.

"(C) To recommend to the Financial Services Oversight Council that it designate an insurer, including its affiliates, as an entity subject to stricter standards.

"(D) To assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

"(E) To coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States as appropriate in the International Association of Insurance Supervisors or any successor organization and assisting the Secretary in negotiating covered agreements.

"(F) To determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements.

"(G) To consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance.

"(H) To perform such other related duties and authorities as may be assigned to it by the Secretary.

"(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

"(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

"(e) GATHERING OF INFORMATION.—

"(1) GENERAL.—In carrying out its functions under subsection (c), the Office may request, receive, and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports regarding all lines of insurance except health insurance.

"(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3) and subject to paragraph (4), the Office may require an insurer, or affiliate of an insurer, to submit such data or information that the Office may reasonably require in carrying out its functions under subsection (c). Notwithstanding sub-

1 section (p) and for the purposes of this paragraph
2 only, the term 'insurer' means any entity that is au-
3 thorized to write insurance or reinsure risks and
4 issue contracts or policies in one or more States.

5 "(3) EXCEPTION FOR SMALL INSURERS.—Para-
6 graph (2) shall not apply with respect to any insurer
7 or affiliate thereof that meets a minimum size
8 threshold that may be established by the Office by
9 order or rule. Such threshold shall be appropriate to
10 the particular request and need for the data or in-
11 formation.

12 "(4) ADVANCE COORDINATION.—Before col-
13 lecting any data or information under paragraph (2)
14 from an insurer, or affiliate of an insurer, the Office
15 shall coordinate with each relevant Federal agency
16 and State insurance regulator (or other relevant
17 Federal or State regulatory agency, if any, in the
18 case of an affiliate of an insurer) and any publicly
19 available sources to determine if the information to
20 be collected is available from, or may be obtained in
21 a timely manner by, such Federal agency or State
22 insurance regulator, individually or collectively, other
23 regulatory agency, or publicly available sources. If
24 the Director determines that such data or informa-
25 tion is available, or may be obtained in a timely

manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act) in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

"(5) CONFIDENTIALITY.—

"(A) The submission of any non-publicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

"(B) Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

"(C) Any data or information obtained by the Office may be made available to State insurance regulators individually or collectively through an information sharing agreement that shall comply with applicable Federal law and that shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

"(D) Section 552 of title 5, United States Code, shall apply to any data or information

1 submitted by an insurer or affiliate of an in-
2 surer.
3 "(f) PREEMPTION OF STATE INSURANCE MEAS-
4 URES.—
5 "(1) STANDARD.—A State insurance measure
6 shall be preempted pursuant to this section or sec-
7 tion 314 if, and only to the extent that the Director
8 determines, in accordance with this subsection, that
9 the measure—
10 "(A) directly results in less favorable treat-
11 ment of a non-United States insurer domiciled
12 in a foreign jurisdiction that is subject to a cov-
13 ered agreement than a United States insurer
14 domiciled, licensed, admitted, or otherwise au-
15 thorized in that State; and
16 "(B) is inconsistent with a covered agree-
17 ment that is entered into on a date after the
18 date of the enactment of this Act.
19 "(2) DETERMINATION.—
20 "(A) NOTICE OF POTENTIAL INCONSIST-
21 ENCY.—Before making any determination of in-
22 consistency, the Director shall—
23 "(i) notify and consult with the appro-
24 priate State regarding any potential incon-
25 sistency or preemption;

"(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

"(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

"(iv) provide interested parties a reasonable opportunity to submit written comments to the Office;

"(v) consider the effect of preemption on—

"(I) the protection of policyholders and policy claimants;

"(II) the maintenance of the safety, soundness, integrity, and financial responsibility of any entity involved in the business of insurance or insurance operations;

"(III) ensuring the integrity and stability of the United States financial system; and

"(IV) the creation of a gap or void in financial or market conduct regulation of any entity involved in the business of insurance or insurance operations in the United States; and

"(vi) consider any comments received. The Director shall provide the notifications required under clauses (i), (ii), and (iii) contemporaneously.

"(B) SCOPE OF REVIEW.—For purposes of this section, the Director's determination of State insurance measures shall be limited to the subject matter of the prudential measures applicable to the business of insurance contained within the covered agreement involved.

"(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination of inconsistency, the Director shall—

"(i) notify the appropriate State of the determination and the extent of the inconsistency;

"(ii) establish a reasonable period of time, which shall not be shorter than 90 days, before the determination shall become effective; and

"(iii) notify the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the inconsistency.

"(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for the determination of inconsistency still exists, the determination shall become effective and the Director shall—

"(A) cause to be published notice in the Federal Register that the preemption has become effective, as well as the effective date; and

"(B) notify the appropriate State.

"(4) LIMITATION.—No State may enforce a State insurance measure to the extent that it has been preempted under this subsection.

"(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.—Determinations of inconsistency pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination

of inconsistency, the court shall determine the matter de novo.

"(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies and procedures to implement this section.

"(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually and collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

"(j) SAVINGS PROVISIONS.—Nothing in this section shall—

"(1) preempt any State insurance measure that governs any insurer's rates, premiums, underwriting or sales practices, or State coverage requirements for insurance, or to the application of the antitrust laws of any State to the business of insurance;

"(2) preempt any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure directly results in less favorable treatment of a non-United States insurer than a United States insurer;

"(3) be construed to alter, amend, or limit the responsibility of the Consumer Financial Protection Agency;

"(4) preempt any State insurance measure because of inconsistency with any agreement that is not a covered agreement (as such term in defined in subsection (p)); or

"(5) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

"(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish a general supervisory or regulatory authority of the Office or the Department of the Treasury over the business of insurance.

"(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multi-national regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

"(m) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative

pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

"(n) REPORTS TO CONGRESS.—

"(1) ANNUAL REPORT.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on the insurance industry, any actions taken by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

"(2) OTHER REPORTS.—The Director shall submit to the President and the Committees referred to in paragraph (1) any other information or reports as deemed relevant by the Director or as requested by the Chairman or Ranking Member of any of such Committees.

"(o) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and other Department of the Treasury resources available

to the Secretary and the Secretary shall dedicate specific personnel to the Office.

"(p) DEFINITIONS.—For purposes of this section and section 314, the following definitions shall apply:

"(1) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any person that controls, is controlled by, or is under common control with the insurer.

"(2) COVERED AGREEMENT.—The term 'covered agreement' means a written bilateral or multilateral recognition agreement that—

"(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

"(B) provides for recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

"(3) DETERMINATION OF INCONSISTENCY.—The term 'determination of inconsistency' means a determination that a State insurance measure is preempted under subsection (f).

1 "(4) FEDERAL FINANCIAL REGULATORY AGEN-
2 CY.—The term 'Federal financial regulatory agency'
3 means the Department of the Treasury, the Board
4 of Governors of the Federal Reserve System, the Of-
5 fice of the Comptroller of the Currency, the Office
6 of Thrift Supervision, the Securities and Exchange
7 Commission, the Commodity Futures Trading Com-
8 mission, the Federal Deposit Insurance Corporation,
9 the Federal Housing Finance Agency, or the Na-
10 tional Credit Union Administration.
11 "(5) INSURER.—The term 'insurer' means any
12 person engaged in the business of insurance, includ-
13 ing reinsurance.
14 "(6) NON-UNITED STATES INSURER.—The term
15 'non-United States insurer' means an insurer that is
16 organized under the laws of a jurisdiction other than
17 a State, but does not include any United States
18 branch of such an insurer.
19 "(7) OFFICE.—The term 'Office' means the
20 Federal Insurance Office established by this section.
21 "(8) SECRETARY.—The term 'Secretary' means
22 the Secretary of the Treasury.
23 "(9) STATE.—The term 'State' means any
24 State, commonwealth, territory, or possession of the
25 United States, the District of Columbia, the Com-

monwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

"(10) STATE INSURANCE MEASURE.—The term 'State insurance measure' means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

"(11) STATE INSURANCE REGULATOR.—The term 'State insurance regulator' means any State regulatory authority responsible for the supervision of insurers.

"(12) UNITED STATES INSURER.—The term 'United States insurer' means—

"(A) an insurer that is organized under the laws of a State; or

"(B) a United States branch of a non-United States insurer.

"(q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office such sums as may be necessary for each fiscal year.

"SEC. 314. COVERED AGREEMENTS.

"(a) AUTHORITY.—The Secretary and the United States Trade Representative are authorized, jointly, to ne-

gotiate and enter into covered agreements on behalf of the United States.

"(b) REQUIREMENTS FOR CONSULTATION WITH CONGRESS.—

"(1) IN GENERAL.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

"(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

"(A) the nature of the agreement;

"(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

"(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

"(c) SUBMISSION AND LAYOVER PROVISIONS.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

"(1) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

"(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.".

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking "and" at the end;

(2) in paragraph (8)(C), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

"Sec. 312. Terrorism and Financial Intelligence.
"Sec. 313. Federal Insurance Office.
"Sec. 314. Covered agreements.
"Sec. 315. Continuing in office.".

SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.

Not later than September 30, 2011, the Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States.

SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT OF INSURANCE REGULATION IN THE UNITED STATES.

(a) STUDY.—The Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall conduct a study on how to modernize and improve the system of insurance regulation in the United

States. Such study shall include consideration of the following:

(1) Effective systemic risk regulation with respect to insurance.

(2) Strong capital standards and an appropriate match between capital allocation and liabilities for all risk.

(3) Meaningful and consistent consumer protection for insurance products and practices.

(4) Increased national uniformity through either a Federal charter or effective action by the States.

(5) Improved and broadened regulation of insurance companies and affiliates on a consolidated basis, including affiliates outside of the traditional insurance business.

(6) International coordination.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) the results of the study conducted under subsection (a); and

(2) any legislative, administrative, or regulatory recommendations that the Director considers appropriate to modernize and improve the system of insurance regulation in the United States.

(c) CONSULTATION.—In carrying out subsections (a) and (b), the Director shall consult with State insurance commissioners, consumer organizations, representatives of the insurance industry, policyholders, and other persons, as the Director considers appropriate.

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