To improve financial stability, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 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 the Judiciary, Agriculture, 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

A BILL

To improve financial stability, and for other purposes.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

TITLE I—FINANCIAL STABILITY

IMPROVEMENT

SEC. 1000. SHORT TITLE; DEFINITIONS; TABLE OF CON-

TENTS.

(a) SHORT TITLE.—This title may be cited as the

“Financial Stability Improvement Act of 2009”.

(b) DEFINITIONS.—For purposes of this Act, the fol-

lowing 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 of this Act.

(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, American Samoa, or the United States Virgin Islands;

(ii) 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(b)); or

(iii) a United States affiliate or other United States operating entity of a com-
pany 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) The term “identified financial holding company” means a financial company that the Council has identified for heightened prudential standards under subtitle B of this Act, unless such financial company is required to establish an intermediate holding company under section 6 of the Bank Holding Company Act, in which case the “identified financial holding company” is such 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) a 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 identified financial holding company 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) after the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C, any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners’ Loan Act) and any subsidiary (as such term is defined in the Bank Holding Com-
pany Act) of a 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;

(v) 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

(vi) 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 applies 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 sub-
title 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 respect to the investment advisory activities of such company and activities incidental to such advisory activities; and

(iv) any clearing agency registered with the Securities and Exchange Commis-

(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 [Text missing?]


(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.

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

Sec. 1000. Short title; definitions; table of contents.

Subtitle A—The Financial Services Oversight Council

Sec. 1001. Financial Services Oversight Council established.
Sec. 1002. Resolution of disputes among Federal financial regulatory agencies.
Sec. 1003. Technical and professional advisory committees.
Sec. 1004. Financial Services Oversight Council meetings and council governance.
Sec. 1005. Council staff and funding.
Sec. 1006. Reports to the Congress.
Sec. 1007. Applicability of certain Federal laws.

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

Sec. 1101. Council and Board authority to obtain information.
Sec. 1102. Council prudential regulation recommendations to primary regulators.
Sec. 1103. Identification of financial companies for heightened prudential standards for financial stability purposes.
Sec. 1104. Regulation of identified financial holding companies for financial stability purposes.
Sec. 1105. Authority to file involuntary petition for bankruptcy.
Sec. 1106. Identification of activities or practices for heightened prudential standards and safeguards for financial stability purposes.
Sec. 1107. Regulation of identified activities for financial stability purposes.
Sec. 1108. Effect of rescission of identification.
Sec. 1109. Emergency financial stabilization.
Sec. 1110. Examinations and enforcement actions for insurance and resolutions purposes.
Sec. 1111. Rule of construction.

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

Sec. 1201. Definitions.
Sec. 1202. Amendments to the Home Owners’ Loan Act relating to transfer of functions.
Sec. 1203. Amendments to the revised statutes.
Sec. 1204. Power and duties transferred.
Sec. 1205. Transfer date.
Sec. 1206. Office of Thrift Supervision abolished.
Sec. 1207. Savings provisions.
Sec. 1208. Regulations and orders.
Sec. 1209. Coordination of transition activities.
Sec. 1210. Interim responsibilities of office of the comptroller of the currency and office of thrift supervision.
Sec. 1211. Employees transferred.
Sec. 1212. Property transferred.
Sec. 1213. Funds transferred.
Sec. 1214. Disposition of affairs.
Sec. 1215. Continuation of services.
Sec. 1216. Treatment of savings and loan holding companies.
Sec. 1217. Practices of certain mutual thrift holding companies preserved.
Sec. 1218. Composition of board of directors of the Federal Deposit Insurance Corporation.
Sec. 1219. Amendments to section 3.
Sec. 1220. Amendments to section 7.
Sec. 1221. Amendments to section 8.
Sec. 1222. Amendments to section 11.
Sec. 1223. Amendments to section 13.
Sec. 1224. Amendments to section 18.
Sec. 1225. Amendments to section 28.
Sec. 1227. Amendments to the Bank Holding Company Act of 1956.
Sec. 1228. Amendments to the Bank Protection Act of 1968.
Sec. 1229. Amendments to the Bank Service Company Act.
Sec. 1230. Amendments to the Community Reinvestment Act of 1977.
Sec. 1231. Amendments to the Depository Institution Management Interlocks Act.
Sec. 1232. Amendments to the Emergency Homeowner's Relief Act.
Sec. 1233. Amendments to the Equal Credit Opportunity Act.
Sec. 1234. Amendments to the Federal Credit Union Act.
Sec. 1236. Amendments to the Federal Home Loan Bank Act.
Sec. 1237. Amendments to the Federal Reserve Act.
Sec. 1239. Amendments to the Housing Act of 1948.
Sec. 1242. Amendments to the National Housing Act.
Sec. 1246. Amendment to the Flood Disaster Protection Act of 1973.
Sec. 1247. Amendments to the Investment Company Act of 1940.
Sec. 1248. Amendments to the Neighborhood Reinvestment Corporation Act.
Sec. 1250. Amendments to title 18, United States Code.
Sec. 1251. Amendments to title 31, United States Code.

Subtitle D—Further Improvements to the Regulation of Bank Holding Companies and Depository Institutions

Sec. 1301. Treatment of credit card banks, industrial loan companies, and certain other companies under the Bank Holding Company Act.
Sec. 1302. Registration of certain companies as bank holding companies.
Sec. 1303. Reports and examinations of bank holding companies; regulation of functionally regulated subsidiaries.
Sec. 1304. Requirements for financial holding companies to remain well capitalized and well managed.
Sec. 1305. Standards for interstate acquisitions.
Sec. 1306. Enhancing existing restrictions on bank transactions with affiliates.
Sec. 1307. Eliminating exceptions for transactions with financial subsidiaries.
Sec. 1308. Lending limits applicable to credit exposure on derivative transactions, repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions.
Sec. 1309. Application of national bank lending limits to insured State banks.
Sec. 1310. Restriction on conversions of troubled banks.
Sec. 1311. Lending limits to insiders.
Sec. 1312. Limitations on purchases of assets from insiders.
Sec. 1313. Rules regarding capital levels of bank holding companies.
Sec. 1314. Enhancements to factors to be considered in certain acquisitions.
Sec. 1315 Elimination of elective investment bank holding company framework.
Sec. 1316. Examination fees for large bank holding companies.

Subtitle E—Payment, Clearing, and Settlement Supervision

Sec. 1401. Short title.
Sec. 1402. Findings and purposes.
Sec. 1403. Definitions.
Sec. 1404. Identification of systemically important financial market utilities and payment, clearing, and settlement activities.

Sec. 1405. Standards for systemically important financial market utilities and payment, clearing, or settlement activities.

Sec. 1406. Operations and changes to rules, procedures, or operations of identified financial market utilities.

Sec. 1407. Examination of and enforcement actions against identified financial market utilities.

Sec. 1408. Examination of and enforcement actions against financial institutions subject to standards for identified activities.

Sec. 1409. Provision of information, reports, or records.

Sec. 1410. Rulemaking.

Sec. 1411. Other authority.

Sec. 1412. Effective date.

Subtitle F—Improvements to the Asset-backed Securitization Process

Sec. 1501. Short title.

Sec. 1502. Credit risk retention.


Sec. 1504. Representations and warranties in asset-backed offerings.

Sec. 1505. Exempted transactions under the Securities Act of 1933.

Subtitle G—Enhanced Resolution Authority

Sec. 1601. Short title.

Sec. 1602. Definitions.

Sec. 1603. Systemic risk determination.

Sec. 1604. Resolution; stabilization.

Sec. 1605. Judicial review.

Sec. 1606. Directors not liable for acquiescing in appointment of receiver or qualified receiver.

Sec. 1607. Termination and exclusion of other actions.

Sec. 1608. Rulemaking.

Sec. 1609. Powers and duties of corporation.

Sec. 1610. Clarification of prohibition regarding concealment of assets from qualified receiver, receiver, or liquidating agent.

Sec. 1611. Miscellaneous provisions.

Subtitle H—Additional Improvements for Financial Crisis Management

Sec. 1701. Additional improvements for financial crisis management.
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 of this title.

(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.

(e) Duties.—The Council shall have the following duties.
(1) To advise the Congress on financial regulation 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 financial companies and financial activities that should be subject to heightened prudential standards in order to promote financial stability and mitigate systemic risk in accordance with sections subtitles B and E of this title.

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

(5) To facilitate information sharing and coordination among the members of the Council regarding financial services policy development, rulemakings, examinations, reporting requirements, and enforcement actions.

(6) To provide a forum for discussion and analysis of emerging market developments and financial regulatory issues among its members.
(7) At the request of an agency that is a Council member, to resolve a jurisdictional or regulatory dispute between that agency and another agency that is a Council member in accordance with section 1002 of this subtitle.

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.

(e) 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 car-
rying 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 stall 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.—The Council shall submit an annual report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that—

(1) describes significant financial market developments and potential emerging threats to the stability of the financial system;

(2) recommends actions that will improve financial stability;

(3) describes any company or activity identifications made under subtitles B and E; and

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

(b) CONFIDENTIALITY.—The Committees of the Congress receiving the Council’s report shall maintain the confidentiality of the identity of companies described in accordance with subsection (a)(3) and the information relating to dispute resolutions described in accordance with subsection (a)(4).

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 appointed by the Council (except that, if an advisory, tech-
nical, 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.

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 market-
place to identify potential threats to the stability of
the United States financial system; or

(2) to otherwise carry out any of the provisions
of this title, including to ascertain a primary finan-
cial regulatory agency’s implementation of rec-
ommended prudential standards under this subtitle.

(b) Submission by Council Members.—Notwith-
standing any provision of law, any voting or nonvoting
member of the Council is authorized to provide informa-
tion to the Council, and the members of the Council shall maintain the confidentiality of such information.

(c) Financial 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 Federal 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.

SEC. 1102. COUNCIL PRUDENTIAL REGULATION RECOMMENDATIONS TO PRIMARY REGULATORS.

(a) In General.—The Council is authorized to issue formal recommendations, publicly or privately, that a Fed-
eral financial regulatory agency adopt heightened pruden-
tial standards for firms it regulates to mitigate systemic
risk.

(b) AGENCY AUTHORITY TO IMPLEMENT STAND-
ARDS.—A Federal financial regulatory agency specifically
is authorized to impose, require reports regarding, exam-
ine for compliance with, and enforce heightened 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 finan-
cial 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 rec-
commendation; or
sec. 1103. IDENTIFICATION OF FINANCIAL COMPANIES FOR HEIGHTENED PRUDENTIAL STANDARDS FOR FINANCIAL STABILITY PURPOSES.

(a) In General.—The Council may subject a financial company to heightened prudential standards under section 1104 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, 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 and nature of the company’s off-balance sheet exposures.
(4) The extent and nature of the company’s transactions and relationships with other financial companies.

(5) 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.

(6) The nature, scope, and mix of the company’s activities.

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

(c) 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 heightened 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 an identified finan-
cial holding company continues to merit height-
ен prudential standards; and

(B) rescind the action subjecting a com-
pany to heightened prudential supervision if the
Council determines that the company no longer
meets the conditions for identification in sub-
sections (a) and (b).

(d) Procedure for Identifying or Rescinding
Identification of a Company.—

(1) Council and Board Coordination.—The
Council shall inform the Board if the Council is con-
sidering whether to identify or cease to identify a
company under this section.

(2) Notice and Opportunity for Consider-
atation of Written Materials.—

(A) In General.—The Board shall, in an
executive capacity on behalf of the Council, in-
form a financial company that the Council is
considering whether to identify or cease to iden-
tify such company under this section, including
an explanation of the basis of the Council’s con-
sideration, and shall provide such financial com-
pany 30 days to submit written materials to in-
form the Council’s decision. The Council shall
make its decision, and the Board shall notify
the company of the Council’s decision by order,
within 60 days of the due date for such written
materials

(B) EMERGENCY EXCEPTION TO PROCESS
REQUIREMENTS.—The Council may waive or
modify the requirements of subparagraph (A)
with respect to a company if the Council deter-
mines that such waiver or modification is nec-
essary or appropriate to prevent or mitigate
threats posed by the company to financial sta-
bility. The Board shall, in an executive capacity
on behalf of the Council, provide notice of such
waiver or modification to the financial company
concerned as soon as practicable, which shall be
no later than 24 hours after the waiver or
modification.

(3) CONSULTATION.—If a financial company
being considered for identification under this section
is, or has one or more subsidiaries that are, subject
to regulation by a Federal financial regulatory agen-
cy, as such subsidiaries are described in section
2(6) of this subtitle, the Council shall consult with
the relevant Federal financial regulatory agency for
each such subsidiary before making any decision
under this section.
(4) 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 heightened prudential standards under this section immediately to prevent destabilization of the financial system or economy, the Secretary, the Board, and the Corporation may identify a financial company under this section upon certification by the President of the United States.

(e) Effect of identification.—

(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 of its identification under this section, shall—

(A) if such company conducts at the time of its identification only activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act, 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, as amended, the Federal
Deposit Insurance Act, as amended, and all other Federal laws and regulations governing bank holding companies and financial holding companies; or

(B) if such company conducts at the time of its identification 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 in an intermediate holding company established under section 6 of the Bank Holding Company Act, which intermediate holding company shall be the “identified financial holding company” for purposes of this subtitle.

(2) Exemptive Authority.—Notwithstanding any provision of the Bank Holding Company Act, the Board may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, issue such exemptions from that Act as may be necessary with regard to identified financial holding companies that do not control an insured depository institution.
(3) Heightened Prudential Regulation.—

The Board shall apply heightened prudential standards to each identified financial holding company subject to this title.

(f) No Public List of Identified Companies.—

The Council and the Board may not publicly release a list of companies identified under this section.

SEC. 1104. REGULATION OF IDENTIFIED FINANCIAL HOLDING COMPANIES FOR FINANCIAL STABILITY PURPOSES.

(a) Prudential Standards for Identified Financial Holding Companies.—

(1) In general.—To mitigate risks to financial stability and the economy posed by an identified financial holding company, the Board shall impose heightened 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 identified pursuant to this subtitle (including by addressing additional or different types of risks than otherwise applicable standards), and reflect the po-
tential risk posed to financial stability by the identified financial holding company.

(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 (d));

(vi) resolution plan requirements (as specified in subsection (e)); and

(vii) overall risk management requirements.

(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 (as specified in paragraph (5)).

(3) Application of required standards.—

In imposing prudential standards under this sub-
section, the Board may differentiate among identified financial holding companies 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.**—An identified financial holding company shall at all times after it files its registration statement as an identified financial holding company be well capitalized and well managed as defined by the Board.

(5) **MITIGATION OF SYSTEMIC RISK.**—If the Board determines, after notice and an opportunity for hearing, that the size of an identified financial holding company or the scope or nature of activities directly or indirectly conducted by an identified financial holding company poses a threat to the safety and soundness of such company or to the financial stability of the United States, the Board may require the identified financial holding company to sell or otherwise transfer assets or off-balance sheet items to unaffiliated firms, to terminate one or more activities, or to impose conditions on the manner in
which the identified financial holding company conducts one or more activities.

(6) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board shall prescribe regulations regarding the application of heightened 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 an identified financial holding company, giving due regard to the principle of national treatment and equality of competitive opportunity.

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

(1) BOARD AUTHORITY TO RECOMMEND STANDARDS.—With respect to a functionally regulated subsidiary (as such term is defined in section 5 of the Bank Holding Company Act) or a subsidiary depository institution of an identified financial holding company, the Board may recommend that the relevant primary financial regulatory agency for such functionally regulated subsidiary or subsidiary depository institution prescribe heightened 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 identified financial holding company.

(2) Agency Authority to Implement Heightened Standards and Safeguards.—Each primary 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 described in section 2(6) for which it is the primary financial regulatory agency. This authority is in addition to and does not limit any other authority of the primary financial regulatory agencies. Compliance by an entity with actions taken by a primary 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 primary financial regulatory agency
under this subsection shall be the standards rec-
ommended by the Board or any other similar stand-
ards that the Board deems acceptable after consulta-
tion between the Board and the primary financial
regulatory agency.

(4) Failure to adopt standards; notice
to council and board.—If a primary financial
regulatory agency fails to implement the prudential
standards recommended by the Board or other simi-
lar standards that are acceptable to the Board with-
in 60 days of the Board’s recommendation, the
agency shall justify in writing the failure of such
agency to act to the Council and the Board within
that same time period.

(5) Backup authority of the board.—
(A) In general.—When notified that a
primary financial regulatory agency has failed
to impose the heightened prudential standards
recommended by the Board for financial sta-
bility purposes under this subsection, the Board
is authorized to directly impose, require reports
regarding, examine for compliance with, and en-
force such heightened prudential standards
under this subsection with respect to a func-
tionally regulated subsidiary for which the pri-
mary financial regulatory agency ordinarily is
responsible.

(B) LIMITATIONS ON BOARD BACKUP Au-
THORITY.—The Board’s standard-imposition,
report-related, examination, and enforcement
activities under this subsection shall be limited
to the heightened prudential standards imposed
under this subsection.

(e) CONCENTRATION LIMITS FOR IDENTIFIED Fi-
NANCIAL HOLDING COMPANIES.—

(1) STANDARDS.—In order to limit the risks
that the failure of any company could pose to an
identified financial holding company and to the sta-
bility of the United States financial system, the
Board, by regulation, shall prescribe standards that
limit the risks posed by the exposure of an identified
financial holding company to any other company.

(2) LIMITATION ON CREDIT EXPOSURE.—The
regulations prescribed by the Board shall prohibit
each identified financial holding company from hav-
ing credit exposure to any unaffiliated company that
exceeds 25 percent of the identified financial holding
company’s capital stock and surplus or such lower
amount as the Board may determine by regulation
to be necessary to mitigate risks to financial sta-

(3) CREDIT EXPOSURE.—For purposes of this
subsection, an identified financial holding company’s
“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 identified financial holding company to the
company;

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

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

(F) counterparty credit exposure to the
company in connection with a derivative trans-
action between the identified financial holding
company 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 an identified financial holding company 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.—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 be effective until three years from the effective date of this subsection. The Board can extend the effective date for
up to two additional years to promote financial sta-

bility.

(d) Prompt Corrective Action for Identified

Financial Holding Companies.—

(1) Prompt corrective action required.—
The Board shall take prompt corrective action to re-
solve the problems of identified financial holding
companies.

(2) Definitions.—For purposes of this sec-
tion—

(A) Capital categories.—

(i) Well capitalized.—An identi-
fied financial holding company is “well
capitalized” if it exceeds the required min-
imum level for each relevant capital mea-
ure.

(ii) Undercapitalized.—An identi-
fied financial holding company is “under-
capitalized” if it fails to meet the required
minimum level for any relevant capital
measure.

(iii) Significantly undercapital-
ized.—An identified financial holding
company is “significantly undercapitalized”
if it is significantly below the required min-
imum level for any relevant capital measure.

(iv) Critically undercapitalized.—An identified financial holding company 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 an identified financial holding company to its owners made on account of that ownership, but not including any dividend consisting only of shares of the identified financial holding company or rights to purchase such shares;

(ii) a payment by an identified financial holding company to repurchase, re-
deem, retire, or otherwise acquire any of
its shares or other ownership interests, in-
cluding any extension of credit to finance
any person’s acquisition of those shares or
interests; or

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

(C) Capital restoration plan.—The
term “capital restoration plan” means a plan
submitted under paragraph (6)(B).

(D) Compensation.—The term “com-
pensation” includes any payment of money or
provision of any other thing of value in consid-
eration 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 re-
spect to each relevant capital measure, the min-
imum 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 subsection 6(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1845(c)) 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 an identified financial holding company 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 an identified financial holding company 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 an identified financial holding company 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.—An identified financial holding company shall make no capital distribution if, after making the distribution, the identified financial holding company would be undercapitalized.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Board may permit an identified financial holding company 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 identified financial holding company in at least an equivalent amount; and

(ii) will reduce the identified financial holding company’s financial obligations or otherwise improve the identified financial holding company’s financial condition.
(6) Provisions applicable to undercapitalized identified financial companies.—

(A) Monitoring required.—The Board shall—

(i) closely monitor the condition of any undercapitalized identified financial holding company;

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

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

(B) Capital restoration plan required.—

(i) In general.—Any undercapitalized identified financial holding company 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 identified financial holding company will take to become well capitalized;

(bb) the levels of capital to be attained by the identified financial holding company during each year in which the plan will be in effect;

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

(dd) the types and levels of activities in which the identified financial holding company will engage; and

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

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

(I) complies with subparagraph (B);

(II) is based on realistic assumptions, and is likely to succeed in restoring the identified financial holding company’s capital; and

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

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

(I) provide identified financial holding companies with reasonable time to submit capital restoration plans, and generally require an identified financial holding company 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 identified financial holding company shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

(i) the Board has accepted the identified financial holding company’s capital restoration plan;

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

(iii) the identified financial holding company’s ratio of tangible equity to total assets 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 identified financial holding company 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 identi-
ified financial holding company’s capital
restoration plan, the identified financial
holding company is implementing the plan,
and the Board determines that the pro-
posed 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 iden-
tified financial holding company from the
requirements of this paragraph with re-
spect to the class of acquisitions that in-
cludes the proposed action.

(E) DISCRETIONARY SAFEGUARDS.—The
Board may, with respect to any undercapital-
ized identified financial holding company, take
actions described in any subparagraph of para-
graph (7)(B) if the Board determines that
those actions are necessary.

(7) PROVISIONS APPLICABLE TO SIGNIFICANTLY
UNDERCAPITALIZED IDENTIFIED FINANCIAL HOLD-
ING COMPANIES AND UNDERCAPITALIZED IDENTI-
FIED FINANCIAL HOLDING COMPANIES THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

(A) IN GENERAL.—This paragraph shall apply with respect to any identified financial holding company 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 subsection (e)(2)(D); 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 identified financial holding company to sell enough shares or obligations of the identified financial holding company so that the identified financial holding
company will be well capitalized after the sale.

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

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

(ii) Restricting transactions with affiliates.—

(I) Requiring the identified financial holding company 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 identified financial holding company’s transactions with affiliates and insiders.

(iii) Restricting asset growth.— Restricting the identified financial holding company’s asset growth more stringently than subsection (6)(C), or requiring the
identified financial holding company to re-
duce its total assets.

(iii) Restricting Activities.—Re-
quiring the identified financial holding
company or any of its subsidiaries to alter,
reduce, or terminate any activity that the
Board determines poses excessive risk to
the identified financial holding company.

(v) Improving Management.—Doing
one or more of the following:

(I) New Election of Directors.—Ordering a new election for
the identified financial holding com-
pany’s board of directors.

(II) Dismissing Directors or
Senior Executive Officers.—Re-
quiring the identified financial holding
company to dismiss from office any
director or senior executive officer
who had held office for more than 180
days immediately before the identified
financial holding company became
undercapitalized. Dismissal under this
clause shall not be construed to be a
removal under section 8 of the Fed-

(III) EMPLOYING QUALIFIED SENIOR EXECUTIVE OFFICERS.—Requiring the identified financial holding company 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 identified financial holding company 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 identified financial holding company, or is likely to cause a significant dissipation of the identified financial holding company’s assets or earnings.

(vii) REQUIRING OTHER ACTION.—Requiring the Identified financial company to take any other action that the Board determines will better carry out the purpose of this section than any of the actions described in this paragraph.
(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 (II) of subparagraph (B)(i) (relating to requiring the sale of shares or obligations, or requiring the identified financial holding company to be acquired by or combine with another company).

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

(D) **Senior Executive Officers’ Compensation Restricted.**—

(i) **In General.**—The identified financial holding company 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 identified financial holding company became undercapitalized.

(ii) Failing to Submit Plan.—The Board shall not grant any approval under clause (i) with respect to an identified financial holding company 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 de-
termination of the Board and actions pursuant
to such determination.

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

(A) IN GENERAL.—If the Board deter-
dines (after notice and an opportunity for
hearing) that an identified financial holding
company 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 identified financial holding company
to be engaging in an unsafe or unsound prac-
tice, the Board may—

(i) if the identified financial holding
company is well capitalized, require the
identified financial holding company to
comply with one or more provisions of
paragraphs (5) and (6), as if the institu-
tion were undercapitalized; or

(ii) if the identified financial holding
company is undercapitalized, take any one
or more actions authorized under para-
graph (7)(B) as if the identified financial
holding company were significantly under-
capitalized.
(B) CONTENTS OF PLAN.—A plan that may be required pursuant to subparagraph (A)(i) shall specify the steps that the identified financial holding company will take to correct the unsafe or unsound condition or practice.

(9) MANDATORY BANKRUPTCY PETITION FOR CRITICALLY UNDERCAPITALIZED IDENTIFIED FINANCIAL COMPANIES.—The Board shall, not later than 90 days after an identified financial holding company becomes critically undercapitalized—

(A) require the identified financial holding company to file a petition for bankruptcy under section 301 of title 11, United States Code; or

(B) file a petition for bankruptcy against the identified financial holding company under section 303 of title 11, United States Code.

(10) 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 section.

(11) 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.
(12) CONSULTATION.—The Board and the Secretary of the Treasury shall consult with their foreign counterparties 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.

(13) 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 identified financial holding company’s ability—

(i) to become well capitalized, to the extent that the order is based on the identified financial holding company’s capital level or 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).

(c) Reports Regarding Rapid and Orderly Resolution and Credit Exposure.—

(1) In general.—The Board shall require each identified financial holding company 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 identified financial holding company has credit exposure to other significant financial companies; and

(C) the nature and extent to which other significant financial companies have credit ex-
posure to the identified financial holding com-
pany.

(2) No limiting effect on receiver or
qualified receiver.—A rapid resolution plan sub-
mitted in accordance with this subsection shall not
be binding on a receiver or qualified receiver ap-
pointed under subtitle G, a bankruptcy court, or any
other authority that is authorized or required to re-
solve the identified financial holding company or any
of its subsidiaries or affiliates.

(f) Avoiding duplication.—The Board shall take
any action the Board deems appropriate to avoid imposing
duplicative requirements under this chapter for identified
financial holding companies that are also bank holding
companies.

SEC. 1105. AUTHORITY TO FILE INVOLUNTARY PETITION
FOR BANKRUPTCY.

Section 303 of title 11, United States Code is amend-
ed—

[(1) in subsection (h)—]

[(A) by striking “or” at the end of para-
graph (1); and]

[(B) by striking the period at the end of
paragraph (2) and inserting “; or”; and]

(2) by adding the following new subsection:
“(m) Notwithstanding subsections (a) and (b) of this section, an involuntary case may be commenced by the Board of Governors of the Federal Reserve System against an identified financial holding company as defined in section 2(t) of the Bank Holding Company Act of 1956. Such involuntary case may be commenced on the ground that the identified financial holding company is critically undercapitalized as defined in section 6A(b) of the Bank Holding Company Act of 1956.”.

SEC. 1106. IDENTIFICATION OF ACTIVITIES OR PRACTICES FOR HEIGHTENED PRUDENTIAL STANDARDS AND SAFEGUARDS FOR FINANCIAL STABILITY PURPOSES.

(a) In General.—The Council may subject a financial activity or practice to heightened prudential standards and safeguards under section 1107 if the Council determines that the conduct 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 thereby threaten the stability of the financial system.

(b) Periodic Review of Activity Identifications.—

(1) Submission of assessment.—The Board shall periodically submit a report to the Council con-
taining an assessment of whether each activity or
practice subjected to heightened prudential stand-
ards should continue to be subject to such stand-
ards.

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

(A) review the assessment submitted pur-
suant to paragraph (1) and any information or
recommendation submitted by members of the
Council regarding whether an identified finan-
cial activity continues to merit heightened pru-
dential standards; and

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

(c) PROCEDURE FOR IDENTIFYING OR RESCINDING
IDENTIFICATION OF AN ACTIVITY OR PRACTICE.—

(1) COUNCIL AND BOARD COORDINATION.—The
Council shall inform the Board if the Council is con-
sidering whether to identify or cease to identify an
activity under this section.

(2) NOTICE AND OPPORTUNITY FOR CONSIDER-
ATION OF WRITTEN MATERIALS.—
(A) IN GENERAL.—The Board shall, in an executive capacity on behalf of the Council, provide notice to financial companies that the Council is considering whether to identify an activity or practice for heightened prudential regulation, and shall provide a financial company engaged in such activity or practice 30 days to submit written materials to inform the Council’s decision. The Council shall decide, and the Board shall provide notice of the Council’s decision, within 60 days of the due date for such written materials.

(B) EMERGENCY EXCEPTION.—The Council may waive or modify the requirements of subparagraph (A) if the Council determines that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by an activity to financial stability. The Board shall, in an executive capacity on behalf of the Council, provide notice of such waiver or modification 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.

(d) **Effect of Identification.**—The Board shall, in accordance with section 1107, recommend to the appropriate primary financial regulatory agencies specific heightened prudential standards to be applied to an activity or practice that the Council or the Board identifies under this section.

**SEC. 1107. REGULATION OF IDENTIFIED ACTIVITIES FOR FINANCIAL STABILITY PURPOSES.**

(a) **Limitations on Identified Financial Activities and Practices.**—

(1) **Recommendations.**—To mitigate the risks to United States financial stability and the United States economy posed by financial activities and practices that the Council or the Board identifies for heightened prudential scrutiny in accordance with section 1103, the Board shall recommend prudential standards to the appropriate primary financial regulatory agencies to apply to such identified activities and practices.

(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, 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 2(6) for which it is the primary financial regulatory agency. This authority is in addition to and does not limit any other authority of the primary financial regulatory agencies. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective primary financial regu-
latory agency’s jurisdiction over the entity as if the agency action were taken under those statutes.

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

(3) FAILURE TO ADOPT STANDARDS; NOTICE TO COUNCIL AND BOARD.—If a primary financial regulatory agency fails to implement the prudential standards recommended by the Board or other similar standards that are acceptable to the Board within 60 days of the Board’s recommendation, the primary financial regulatory agency shall justify the failure of such agency to act in writing to the Council and the Board within that same time period.

(4) BACKUP AUTHORITY OF THE BOARD.—

(A) IN GENERAL.—When notified that a primary financial regulatory agency has failed to impose heightened prudential standards recommended by the Board for financial stability purposes under this section, the Board is authorized to directly impose, require reports re-
garding, examine for compliance with, and en-
force such heightened prudential standards
under this section with respect to entities de-
scribed in section 2(6) for which the primary fi-
nancial regulatory agency ordinarily is respon-
sible.

(B) LIMITATION ON BOARD BACKUP AU-
THORITY.—The Board’s standard-imposition,
report-related, examination, and enforcement
activities under this subsection shall be limited
to heightened prudential standards imposed
under this section and shall be done in coordi-
nation with the primary financial regulatory
agency.

SEC. 1108. EFFECT OF RESCISSION OF IDENTIFICATION.

(a) NOTICE.—When the Council or the Board deter-
mines that a company or activity no longer is identified
for heightened prudential scrutiny, the Board shall inform
the relevant primary financial regulatory agency or agen-
cies (if different from the Board) of that finding.

(b) DETERMINATION OF PRIMARY FINANCIAL REGU-
LATORY AGENCY TO CONTINUE.—A primary financial
regulatory agency that has imposed heightened prudential
standards for financial stability purposes under this sub-

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title shall determine whether standards that it has im-
posed under this subtitle should remain in effect.

SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.

(a) IN GENERAL.—Upon the written approval of the
Board of Governors of the Federal Reserve System (which
approval shall be made upon a vote of not less than two-
thirds of the members of such Board then serving) and
the Board of Directors of the Corporation (which approval
shall be made upon a vote of not less than two-thirds of
the members of such Board then serving), and with the
written consent of the Secretary of the Treasury (after
consulting with the President), the Corporation may ex-
tend credit to or guarantee obligations of solvent insured
depository institutions or other solvent companies that are
predominantly engaged in activities that are financial in
nature, if necessary to prevent financial instability during
times of severe economic distress, provided that a credit
extension or guarantee of obligations under this section
shall not include provision of equity in any form.

(b) POLICIES AND PROCEDURES.—Prior to exercising
any authority under this section, the Corporation shall es-
tablish policies and procedures governing the extension of
credit and the issuance of guarantees. The terms and con-
ditions of any extensions of credit or guarantees issued
shall be established by the Corporation with the approval
of the Secretary of the Treasury and the Board of Governors of the Federal Reserve System.

(c) FUNDING.—There shall be available to the Corporation to carry out this section amounts in the Treasury not otherwise appropriated, including for the payment of reasonable administrative expenses. Notwithstanding section 7(d) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)), such amounts shall be subject to apportionment for the purposes of chapter 15 of title 31, United States Code. Amounts received by the Corporation from assessments imposed under subsection (d), extensions of credit, and guarantees, including payments of principal, interest, and guarantee fees, shall be covered into the Treasury as miscellaneous receipts.

(d) RECOUPMENT; ASSESSMENT.—Any losses incurred by the Corporation pursuant to subsection (a) shall be recovered from Corporation assessments on large financial companies in the manner provided in section 1609(o) of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009.

(e) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The term “activities that are financial in nature” means activities that are determined to be
financial in nature under section 4(k) of the Bank
Holding Company Act of 1956 (12 U.S.C. 1843(k))
and activities that are identified for heightened pru-
dential standards under section 1106 of this title.

(2) COMPANY.—The term “company” means
any entity other than a natural person that is incor-
porated or organized under Federal law or the laws
of any State.

(3) CORPORATION.—The term “Corporation”
means the Federal Deposit Insurance Corporation.

(4) INSURED DEPOSITORY INSTITUTION.—The
term “insured depository institution” shall have the
same meaning as in section 3 of the Federal Deposit

(5) SOLVENT.—The term “solvent” means as-
sets are more than the obligations to creditors.

SEC. 1110. EXAMINATIONS AND ENFORCEMENT ACTIONS
FOR INSURANCE AND RESOLUTIONS PUR-
POSES.

(a) EXAMINATIONS FOR INSURANCE AND RESOLU-
TIONS PURPOSES.—Section 10(b)(3) of the Federal De-
posit Insurance Act (12 U.S.C. 1820(b)(3)) is amended
by striking beginning “whenever the Board of Directors
determines” through the period and inserting “or identi-
fied financial holding company (as defined in section 2(5))
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 identified financial holding company for resolution purposes.”.

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

(1) at the end of subparagraph (B) by striking “or”;

(2) at the end of subparagraph (C) by striking the period and inserting “; or”;

(3) by inserting new subparagraph (D), as follows:

“(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

(4) by adding new paragraph (6) at the end as follows—

“(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 appro-
priate 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 com-
pany and its affiliates have with respect to the
appropriate Federal banking agency.”

SEC. 1111. RULE OF CONSTRUCTION.

The authorities granted to agencies under this sub-
title are in addition to any rulemaking, report-related, ex-
amination, 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 Su-
pervision 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.


(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 “sub-
sidiary” 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
by amending paragraph (1) to read as follows:

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

(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:

“(a) Establishment of Division of Thrift Su-
pervision.—To carry out the purposes of this Act, there
is hereby established the Division of Thrift Supervision,
which shall be a division within the Office of the Com-
troller of the Currency.”;

(2) in subsection (b)—

(A) by striking paragraph (1) and insert-
ing the following new paragraph:

“(1) IN GENERAL.—The Division of Thrift Su-
pervision shall be headed by a Deputy Comptroller
of the Currency who shall be subject to the general
oversight of the Comptroller of the Currency.”;

(B) in paragraph (2), by striking “Direc-
tor” and inserting “Comptroller of the Cur-
rency”; and

(C) by striking paragraph (3) and (4);

(3) by striking subsections (c), (d), and (e) and
inserting the following new subsection:
“(c) POWERS OF THE COMPTROLLER OF THE CUR-
RENCY.—The Comptroller of the Currency shall have all
the powers, duties, and functions transferred by the Fi-
nancial Stability Improvement Act of 2009 to the Comp-
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 there-
of” and inserting “expenses incurred by the Com-
troller of the Currency in carrying out this Act”.

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(c) AmendMents to Section 4.—Section 4 of the Home Owners’ Loan Act (12 U.S.C. 1463) is amended by striking “Director” every 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 term appears 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. 11466a, 1467) are each amended by striking “Director”
(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITIONS.—Section 2 of the Home
Owners’ Loan Act (12 U.S.C. 1462) is amended—

(A) by striking paragraph (1) and (3); and

(B) by redesignating paragraphs (2), (4),
(5), (6), (7), (8), and (9) as paragraphs (1),
(2), (3), (4), (5), (6), (7), and (8), respectively.

(2) SECTION 3.—

(A) The heading for section 3 of the Home
Owners’ Loan Act is amended by striking “DI-
RECTOR OF THE OFFICE OF THRIFT SU-
PERVISION” and inserting “DIVISION OF
THRIFT SUPERVISION”.

(B) The heading for subsection (e) of sec-
tion (3) of the Home Owners’ Loan Act is
amended by striking “DIRECTOR” and inserting
“COMPTROLLER OF THE CURRENCY”.

(3) 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
striking the item relating to section 3 and inserting the following new item:

“Sec. 3. Division of Thrift Supervision.”.

SEC. 1203. AMENDMENTS TO THE REVISED STATUTES.

(a) Amendment to Section 324.—Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is amended to read as follows:

“SEC. 324. COMPTROLLER OF THE CURRENCY.

“There shall be in the Department of the Treasury a bureau, the chief officer of which bureau shall be called the Comptroller of the Currency, and shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Comptroller of the Currency shall have the same authority over matters as were vested in the Director of the Office of Thrift Supervision or the Office of Thrift Supervision on the day before the date of enactment of the Financial Stability Improvement Act of 2009. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency.”.

(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 First Deputy Comptroller of the Currency; and

“(2) 1 of whom shall be designated the Deputy Comptroller of the Division of Thrift Supervision.

“(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 following the First Deputy Comptroller as the Comptroller shall direct.”.

(e) 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 481.—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 five, 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 482.—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 five, 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.

(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) 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

(3) 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 Act.

(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 Act 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 title is not
feasible on the date that is 1 year after the date of enactment of this Act;

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

(iii) a description of the steps that will be taken to effect an orderly and timely implementation of this title 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 Act.

(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. 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. 1207. SAVINGS PROVISIONS.

(a) Office of Thrift Supervision.—

(1) Existing rights, duties, and obligations not affected.—Sections 1204(a)(1) and 1206 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 Act 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; or

(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; or

(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) 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 (c) 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 (c) that will be enforced by the Corporation; and

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

(d) 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. 1208. 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. 1209. 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 Act 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 Act 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. 1210. 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 1209(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 1209(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 1209(2)(C).

(b) NOTICE REQUIRED.—The Comptroller of the Currency shall give the Office of Thrift Supervision rea-
sonable prior notice of any request that the Office of the Comptroller of the Currency intends to make under sub-
section (a).

SEC. 1211. 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 transferred 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; and

(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 finan-
cial 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 Act.—If any provision of this title conflicts with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title 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 REQUIRE-
MENTS.—Examiners transferred to the Office of the
Comptroller of the Currency or the Corporation shall not
be subject to any additional certification requirements be-
fore being placed in a comparable examiner’s position at
the Office of the Comptroller of the Currency or the Cor-
poration examining the same types of institutions as they
examined before they were transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) 1-YEAR PROTECTION.—Except as provided
in paragraph (2), each employee transferred from
the Office of Thrift Supervision holding a permanent
position on the day before the transfer date shall
not, during the 1-year period beginning on the
transfer date, be involuntarily separated, or involun-
tarily reassigned outside his or her locality pay area
as defined by the Office of Personnel Management.

(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.

(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 trans-
ferred 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 insurance program, to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER’S CONTRIBUTION.—

The Office of the Comptroller of the Currency or the Corporation shall pay any employer cost 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 transfer date, the Office of the Comptroller of the Currency or the Corporation decides not to continue participation in any dental, vision, or life 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 enroll, without regard to any regularly scheduled open season, 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 Act 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.—

(I) IN GENERAL.—Subject to subclause (II), an individual enrolled in a life insurance plan under this clause 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 Act 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 Curr-
rency or the Corporation shall trans-
fer 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 Office of
the Comptroller of the Currency or
the Corporation and the Office of
Management and Budget, to be nec-
essary to reimburse the Fund for the
cost to the Fund of providing benefits
under this subparagraph not other-
wise paid for by the employee under
subclause (I).

(IV) Credit for Time En-
rolled in Other Plans.—For em-
ployees transferred under this section,
enrollment in a life insurance plan ad-
ministered by the Office of the Comp-
troller 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 in-
surance 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 dis-
advantage transferred employees relative to other
employees of the Office of the Comptroller of the
Currency 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.
SEC. 1212. PROPERTY TRANSFERRED.

(a) In General.—Not later than 90 days after the transfer date, all property 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 1211(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. 1213. FUNDS TRANSFERRED.

Except to the extent needed to dispose of affairs under section 1214, 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 1211(a), on the transfer date.

SEC. 1214. 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 title—

(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 1212; 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 title, 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 title 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. 1215. 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, 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. 1216. TREATMENT OF SAVINGS AND LOAN HOLDING COMPANIES.

(a) Section 2 of the Home Owners’ Loan Act (12 U.S.C. 1462) is amended in paragraph (1) by striking “DIRECTOR.—The term ‘Director’ means the Director of the Office of Thrift Supervision” and inserting “COMPTROLLER.—The term ‘Comptroller’ means the Comptroller of the Currency”.

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

(1) In subsection (a)(1)(A) by striking “Director” and inserting “Comptroller of the Currency”;

(2) In subsection (m) as follows:

(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) in paragraph (4)(D) by striking “Director” and inserting “Comptroller”;

(H) in paragraph (4)(E) by striking “Director” and inserting “Comptroller”; and

(I) in paragraph (7)(B) by striking “Director” and inserting “Comptroller”;

(3) In subsection (o) as follows:

(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 “Board”;

(F) in paragraph (3)(E) by striking “Director” and inserting “Board”;

(G) in paragraph (3)(F) by striking “Director” and inserting “Board”;

(H) in paragraph (3)(G) by striking “Director” and inserting “Board”;

(I) in paragraph (3)(H) by striking “Director” and inserting “Board”;

(J) in paragraph (3)(I) by striking “Director” and inserting “Board”;

(K) in paragraph (3)(J) by striking “Director” and inserting “Board”;

(L) in paragraph (3)(K) by striking “Director” and inserting “Board”;

(M) in paragraph (3)(L) by striking “Director” and inserting “Board”;

(N) in paragraph (3)(M) by striking “Director” and inserting “Board”;

(O) in paragraph (3)(N) by striking “Director” and inserting “Board”;

(P) in paragraph (3)(P) by striking “Director” and inserting “Board”;

(Q) in paragraph (3)(Q) by striking “Director” and inserting “Board”;

(R) in paragraph (3)(R) by striking “Director” and inserting “Board”;

(S) in paragraph (3)(S) by striking “Director” and inserting “Board”;

(T) in paragraph (3)(T) by striking “Director” and inserting “Board”;

(U) in paragraph (3)(U) by striking “Director” and inserting “Board”;

(V) in paragraph (3)(V) by striking “Director” and inserting “Board”;

(W) in paragraph (3)(W) by striking “Director” and inserting “Board”;

(X) in paragraph (3)(X) by striking “Director” and inserting “Board”;

(Y) in paragraph (3)(Y) by striking “Director” and inserting “Board”;

(Z) in paragraph (3)(Z) by striking “Director” and inserting “Board”;

(3) In subsection (o) as follows:

(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 (7) by striking “chartered by the Director” and inserting “chartered by the Comptroller”; and 

(G) in paragraph (7) by striking “regulations as the Director may” and inserting “regulations as the Board may”; and 

[(4) by striking subsections “(a)” through “(n)”, and “(p)” through “(t)”, and redesignating current subsections “(m)” and “(o)” as “(a)” and “(b)”, respectively.]

SEC. 1217. 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 (12 U.S.C. 1842(g)) is amended by inserting new paragraphs (3) through (7) as follows:

“(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;

“(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

“(C) 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. 1218. 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. 1219. 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 inserting “, and”;

(3) in subsection (q) (relating to the definition of the term “appropriate Federal banking agency”)—

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

“(1) the Comptroller of the Currency, in the case of any national bank, any Federal branch or agency of a foreign bank, or any savings association or savings and loan holding company;”;

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

(C) in paragraph (3), by striking “; and” and inserting a period;

(D) by amending paragraph (3) to read as follows:
“(3) the Federal Deposit Insurance Corporation
in the case of a State nonmember insured bank,
State savings association, or a foreign bank having
an insured branch.”; and

(E) by striking paragraph (4); and

(4) in subsection (z) (relating to the definition
of the term “Federal banking agency”), by striking
“the Director of the Office of Thrift Supervision,”.

SEC. 1220. 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) in subparagraph (A)—

(i) in the first sentence, by striking
“the Director of the Office of Thrift Su-
pervision”; and

(ii) in the second sentence, by striking
“the Director of the Office of Thrift Su-
pervision”; and

(B) in subparagraph (B), by striking
“Comptroller of the Currency, the Board of
Governors of the Federal Reserve System, and
the Director of the Office of Thrift Super-
vision,” and inserting “Comptroller of the Cur-
rency and the Board of Governors of the Federal Reserve System,”;

(2) in paragraph (3), in the first sentence, by striking “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 “Director of the Office of Thrift Supervision,”.

SEC. 1221. 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 successor to” after “as a successor to” and before “the Federal Savings and Loan Insurance Corporation”; and

(2) in subsection (o)—
(A) 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. 1222. 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”; and 

(C) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; and

(2) in subsection (d)—

(A) in paragraph (2)(F)(i), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; 

(B) in paragraph (17)(A)—
(i) by striking “Comptroller of the Currency”; and

(ii) by striking “appropriate”; and

(C) in paragraph (18)(B), by striking “or the Director of the Office of Thrift Supervision”.

SEC. 1223. AMENDMENTS TO SECTION 13.


SEC. 1224. 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;”;

(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);

(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 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”;

(B) in paragraph (2)—

(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” each place it appears and inserting “Comptroller of the Currency”; 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. 1225. AMENDMENTS TO SECTION 28.

Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

(1) in subsection (c)—

(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 Super-
vision” 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. 1226. 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) 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) is amended—

(1) by amending paragraph (1) to read as fol-
loows:

“(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 pre-
scribed by the Comptroller of the Currency to the
extent that such regulations are authorized by rule-
making authority granted to the Comptroller of the
Currency under laws other than this section.”; and

(2) by striking paragraph (3).

SEC. 1227. AMENDMENTS TO THE BANK HOLDING COM-
PANY ACT OF 1956.

Section 4(f)(12)(A) of the Bank Holding Company
Act of 1956 (12 U.S.C. 1843) is amended striking “Reso-
lution Trust Corporation”.

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SEC. 1228. 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” at the
end and inserting a period; and

(4) by striking paragraph (4).

SEC. 1229. 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 “Office of Thrift Supervision”
and inserting “Office of the Comptroller of the Cur-
rency”; and

(3) by striking “, the Federal Savings and Loan
Insurance Corporation,”.
SEC. 1230. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.

Section 803(1) of the Community Reinvestment Act of 1977 (12 U.S.C. 2902(1)) is amended—

(1) 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)”;

(2) in subparagraph (B), by striking “and bank holding companies;” and inserting “, bank holding companies and savings and loan holding companies;”; and

(3) by striking subparagraph (D).

SEC. 1231. 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).

(e) 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. 1232. AMENDMENTS TO THE EMERGENCY HOME-
OWNER'S RELIEF ACT.

Section 110 of the Emergency Homeowner’s 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. 1233. AMENDMENTS TO THE EQUAL CREDIT OPPOR-
TUNITY ACT.

Section 704 of the Equal Credit Opportunity Act (15
U.S.C. 1691c) is amended in subsection (a)—

(1) in paragraph (1)(A), by striking “and Fed-
eral branches and Federal agencies of foreign
banks,” and inserting “, Federal branches and Fed-
eral agencies of foreign banks, or a savings associa-
tion 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. 1234. 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) by inserting “and” after the semi-
 colon at the end of clause (v);]

(B) in clause (vi)—

(i) by striking “Federal Housing Fi-
 nance Board” and inserting “Federal
 Housing Finance Agency”; and

(ii) by striking “; and” after the semi-
 colon and inserting a period; and

(C) by striking clause (vii);

(2) in subparagraph (D)—

[(A) by inserting “and” after the semi-
 colon at the end of clause (iii);]

(B) by striking “; and” at the end of
 clause (iv) and inserting a period; and

(C) striking clause (v).
SEC. 1235. 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—

(1) 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) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

SEC. 1236. 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) AMENDMENTS TO SECTION 21A.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is repealed.

SEC. 1237. AMENDMENTS TO THE FEDERAL RESERVE ACT.

Section 19 of the Federal Reserve Act (12 U.S.C. 461(b)) 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. 1238. 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 En-
forcement Act of 1989 (12 U.S.C. 1467a nt.) 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 (12 U.S.C. 1464(b)(1) nt.)
is amended by striking “Director of the Office of Thrift
Supervision” and inserting “Comptroller of the Curren-

cy”.

(c) Amendment to Section 308.—Section 308(a)
of the Financial Institutions Reform, Recovery, and En-
forcement Act of 1989 (12 U.S.C. 1463 nt.) is amended
by striking “Director of the Office of Supervision” and
“Comptroller of the Currency”.

(d) Amendments to Section 402.—Section 402 of
the Financial Institutions Reform, Recovery, and Enforce-
ment Act of 1989 (12 U.S.C. 1437 nt.) 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)—

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(A) in paragraph (1), by striking “the 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) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) 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 nt.) is amended—  

(1) in paragraph (1)—
(A) in subparagraph (B), by striking “Director of the Office of Thrift Supervision” and inserting “Comptroller of the Currency”; (B) by striking subparagraph (D); and (C) by redesignating subparagraphs (E) and (F) as paragraphs (D) and (E), respectively; (2) in paragraph (2), by striking “paragraph (1)(F)” and inserting “paragraph (1)(E)”; and (3) in paragraph (5), by striking “through (E)” and inserting “through (D)”. (g) Amendments to Section 1206.—Section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) is amended— (1) by striking “the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation”; (2) by inserting “and” after “the Federal Housing Finance Board” and before “the Farm Credit Administration”; and (3) 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); and
   (B) by redesignating paragraphs (3), and (4), as paragraphs (2), and (3), respectively;
(2) in subsection (c)—
   (A) by striking “the Director of the Office of Thrift Supervision,” and inserting “, and’’;
   and
   (B) by striking “the Thrift Depositor protection 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. 1239. 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”.

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(a) Amendments to Section 543.—Section 543 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 nt.) is amended—

(1) in subsection (c)(1)—

(A) by amending subparagraph (C) to read as follows:

“(C) Comptroller of the Currency”;

(B) by striking subparagraphs (D) through (F); and

(C) 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 “Office of Thrift Supervision,” and inserting “Comptroller of the Currency,”; and

(B) in paragraph (3)—

(i) by striking “the Office of Thrift Supervision,” and inserting “Comptroller of the Currency,”; and
(ii) in subparagraph (D), by striking “Office of Thrift Supervision,” and inserting “Comptroller of the Currency.”.

(b) Amendment to Section 1315.—Section 1315(b) of the Housing and Community Development 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.—Section 1317(c) of the Housing and Community Development 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. 1241. AMENDMENTS TO THE HOUSING AND URBAN-RURAL RECOVERY ACT OF 1983.


SEC. 1242. AMENDMENTS TO THE NATIONAL HOUSING ACT.

Section 203(s) of the National Housing Act (12 U.S.C. 1709(s)) is amended—
(1) in paragraph (5), by revising the paragraph to read as follows:

“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 (7) by inserting “or State savings association” after “State bank”; and

(3) by striking paragraph (8).

SEC. 1243. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

Section 11(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is amended—

(1) by striking subparagraph (B); and

(2) by redesignating subparagraphs (C) through (I) as subparagraphs (B) through (H), respectively.

SEC. 1244. 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 “Director of the Office of Thrift Supervision”.

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(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. 1245. 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”.


Section 3(a)(5) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4003(a)(5)) is amended by striking “the Office of Thrift Supervision”.
SEC. 1247. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940.


SEC. 1248. AMENDMENTS TO THE NEIGHBORHOOD REINVESTMENT CORPORATION ACT.

The Neighborhood Reinvestment Corporation Act (42 U.S.C. 8105(c)(3)) is amended by striking the “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency”.

SEC. 1249. 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;”;

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(B) by striking clause (iv); and

(C) 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) by striking clause (iv); and

(C) 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) by striking clause (iv); and
(C) 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. 1250. 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 “Resolution Trust Corporation”;
2. and
3. 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 “Resolution Trust Corporation”;
2. and
3. 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”;
2. and
3. by striking “the Resolution Trust Corporation”.

(f) **AMENDMENT TO SECTION 1014.**—Section 1014 of title 18, United States Code, is amended—
(1) by striking “Office of Thrift Supervision”; and
(2) by striking “Resolution Trust Corporation”.

(g) Amendment to Section 1032.—Section 1032 of title 18, United States Code, is amended—
(1) by striking “or the Director of the Office of Thrift Supervision”; and
(2) by striking “the Resolution Trust Corporation”.

SEC. 1251. 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) by inserting “and” at the end of subsection (e)(1);
(2) in subsection (c)(2) by striking “Comptroller of the Currency; and” and inserting “Comptroller of the Currency.”; and

(3) by striking subsection (e).

(c) AMENDMENTS TO SECTION 714.—Section 714 of title 31, United States Code, is amended 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.”.

Subtitle D—Further Improvements to the Regulation of Bank Holding Companies and Depository Institutions

SEC. 1301. TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, 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) in subsection (a)(5), by adding at the end the following new subparagraph:

“(G) No company is a bank holding company by virtue of its ownership or control of a section six holding company or any subsidiary of a section six holding company, so long as the
requirements of sections 4(p) and 6 of this Act
are met, as applicable, by the section six hold-
ing company;”

(2) in subsection (c)(1)(A), by striking “insured
bank” and inserting “insured depository institu-
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.”;

(3) in subsection (c)(2)—

(A) by striking subparagraph (B);

(B) by striking subparagraphs (F) and
(H); and

(C) by redesigning existing subpara-
graphs (C), (D), (E), and (G) as subparagraphs
(B), (C), (D), and (E), respectively; and

(4) at the end of section 2, adding the following
new subsection:

“(r) SECTION SIX HOLDING COMPANIES.—A ‘section
six 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
1843) is amended—
(1) in subsection (f)(1)(B) by striking “for purposes of this Act” and inserting “for purposes of section 4(a)”;

(2) by adding after subsection (f)(2)(C) the following:

“(D) such company fails to—

“(i) establish and register a section six holding company pursuant to section 6 of this Act within 90 days after the date of enactment 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; and

“(ii) conduct all its activities which are financial in nature or incidental thereto as determined under section 4(k) through such section six holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act.”; and

(3) by inserting at the end the following new subsection:

“(p) CERTAIN COMPANIES NOT SUBJECT TO THIS ACT.—
“(1) IN GENERAL.—Except as provided in paragraphs (6) and (7), any company which—

“(A)(i) was—

“(I) a unitary savings and loan holding company on May 4, 1999, or became a unitary savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and that—

“(aa) on June 30, 2009, continued to control not fewer than one savings association that it controlled on May 4, 1999, which became a bank for purposes of the Bank Holding Company Act as a result of the enactment of section 1301(a)(2)(A); and

“(bb) 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 June 30, 2009, controlled—

“(I) an institution which became a bank as a result of the enactment of section 1301(a)(2)(B) of the Financial Stability Improvement Act of 2009, or

“(II) 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—

“(aa) a bank holding company;

or

“(bb) 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

“(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 restric-
tions on financial holding companies in section 4 in accordance with regulations prescribed by the Board, 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 six holding company established pursuant to section 6.

“(2) Loss of Exemption.—A company described in paragraph (1) shall no longer qualify for the exemption provided under that paragraph if—

“(A) such company fails to—

“(i) establish and register a section six holding company pursuant to section 6 of this Act within 90 days after the date of enactment 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; and
“(ii) maintain a section six holding company in compliance with all the requirements for a section six holding company under section 6 of this Act;

“(B) such company directly or indirectly (including through the section six holding company it must form pursuant to this subsection and section 6 of this Act) acquires ownership or control of more than 5 percent of the shares or assets of an additional bank or insured depository institution after June 30, 2009, other than—

“(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; and

“(vii) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period 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;

“(C)(i) the section six 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 (12 U.S.C. 1817(j)), 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 beginning 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 com-
pany 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 de-
scribed 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 AUTHOR-
ity.—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.”.

(e) SECTION SIX HOLDING COMPANIES.—The Bank
Holding Company Act (12 U.S.C. 1841 et seq.) is amend-
ed by inserting after section 5 the following new section:

“SEC. 6. SPECIAL-PURPOSE HOLDING COMPANIES.
“(a) ESTABLISHMENT, PURPOSE AND REQUIRE-
MENTS OF SPECIAL PURPOSE HOLDING COMPANIES.—
“(1) REQUIREMENT.—A special purpose hold-
ing 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 heightened 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 heightened 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) A company that is required to form a section 6 holding company shall conduct all of its activities that are determined to be financial in nature or incidental thereto under section 4(k) and shall hold any shares of a bank or insured depository institution controlled by such company, through the section 6 holding company, unless the Board specifically determines otherwise in accordance with paragraph (6).

“(B) A section 6 holding company shall be prohibited from conducting any activities or investing in any companies other than those permissible for a financial holding company under section 4, unless the Board specifically determines otherwise in accordance with paragraph (6).

“(3) Registration.—

“(A) A section 6 holding company required to be established by a company described in subparagraph (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 subparagraph (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 heightened 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 com-
pany.

“(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 require-
ment to establish a section 6 holding company, pro-
vised that such existing intermediate holding com-
pany complies with all other provisions applicable to
a section 6 holding company.

“(5) Limitations on Authority of Commer-
cial 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 an iden-
tified financial holding company, pursuant to sub-
title 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 com-
pany; 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 may, at its discretion, prescribe rules and regulations or issue orders regarding:

“(i) the establishment and operation of section 6 holding companies;

“(ii) exemptions from the requirement to conduct all activities that are financial or incidental thereto, as defined in section 4(k), through the section 6 holding company if such exemption—

“(I) would not threaten the safety and soundness of the section 6 holding company or any subsidiary of the section 6 holding company;

“(II) would not increase systemic risk or threaten the stability of the overall financial system; and

“(III) would not result in unfair competitive advantage to the parent
company of such section 6 holding company; and

“(iii) exemptions from the affiliate transaction requirements of subsection (b) if such exemption—

“(I) is consistent with the purposes of this section, and section 23A and section 23B of the Federal Reserve Act;

“(II) would not threaten the safety and soundness of the section 6 holding company or any subsidiary of the section 6 holding company;

“(III) would not increase systemic risk or threaten the stability of the overall financial system; and

“(IV) would not result in unfair competitive advantage to the parent company of such section 6 holding company.

“(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 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.

“(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 viola-
tion 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 established under
this section (including any subsidiary of such
company) and any affiliate of such company
that is not a subsidiary of 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 sec-
tion 6 holding company were a member bank.

“(B) Covered transactions.—

“(i) 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 Re-
serve Act) with any affiliate that is not the
section 6 holding company or a subsidiary
of the section 6 holding company.

“(ii) For purposes of this subpara-
graph (B), any transaction by a depository
institution controlled by a section 6 hold-
ing company with any person shall be
deemed to be a transaction with an affil-
iate that is not the section 6 holding com-
pany or a subsidiary of the section 6 hold-
ing company to the extent that the pro-
ceeds of the transaction are used for the
benefit of, or transferred to, that affiliate.

“(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 sec-
section 23A or 23B of the Federal Reserve Act with re-
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 com-
pany.

“(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) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—

“(1) IN GENERAL.—A section 6 holding company shall not—

“(A) offer or market, directly or through any arrangement, any product or service of an affiliate that is not a subsidiary of the section 6 holding company; or

“(B) permit any of the products or services of the section 6 holding company or any subsidiary thereof to be offered or marketed, directly or through any arrangement, by or
through any affiliate that is not a subsidiary of
the section 6 holding company.

“(2) Board authority to grant exemp-
tions.—The Board may grant exemptions from the
restrictions in this subsection if—

“(A) the arrangement does not violate sec-
tion 106 of the Bank Holding Company Act
Amendments of 1970; and

“(B) the Board determines that the ar-
angement is in the public interest, does not
undermine the separation of banking and com-
merce, and is consistent with the safety and
soundness of the section 6 holding company.

“(e) Financial holding company require-
ments.—A section 6 holding company shall be subject
to—

“(1) the conditions for engaging in expanded fi-
nancial activities in section 4(l); and

“(2) the provisions applicable to financial holding
companies that fail to meet certain requirements
in section 4(m).

“(f) Independence of Section 6 Holding Com-
pany.—

“(1) No less than 25 percent of the members
of the board of directors of a section 6 holding com-

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pany, and each subsidiary of a section 6 holding
company shall be independent of the parent com-
pany of the section 6 holding company and any sub-
sidiary of such parent company. For purposes of this
subsection, a director shall be independent of the
parent company if such person is not currently serv-
ing, and has not within the previous two-year period
served, as a director, officer, or employee of any af-
fliate 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 com-
pany that is not a subsidiary of the section 6 holding
company.

“(3) The Board shall issue regulations that re-
quire 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.

“(g) SOURCE OF STRENGTH.—A company that di-
rectly or indirectly controls a section 6 holding company
shall serve as a source of financial strength to its sub-
sidiary 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(e)(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 Com-
modity 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 inci-
dental to such commodities activities.”

(e) EXAMINATIONS OF BANK HOLDING COMPA-
NIES.—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 com-
pany or subsidiary with applicable provisions of
law.

“(B) FUNCTIONALLY REGULATED AND DE-
POSITORY INSTITUTION SUBSIDIARIES.—The
Board shall, to the fullest extent possible, use
reports of examination of functionally regulated
subsidiaries and subsidiary depository institu-
tions 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).


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 striking clause (ii) and inserting the following new clause:

“(i) a certification that the company meets the requirements of subparagraphs (A) through (C).”.

SEC. 1305. STANDARDS FOR INTERSTATE ACQUISITIONS.


(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 trans-
actions with the affiliate;

(6) in subsection (c)(1), by striking “at the time of the transaction,” and inserting “at all times”;

(7) in subsection (e)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respec-
tively;

(8) in subsection (c)(3) (as so redesignated by paragraph (7)), by inserting “or other debt obliga-
tions” 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); and

(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 ex-
emption 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 Cor-
poration 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 fol-
lowing new paragraph:

“(3) The Board may not grant an exemption or
exclusion under this section unless the Board ob-
tains the concurrence of the Chairman of the Fed-
eral 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 para-
graph (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 in that paragraph 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 asso-
ciation 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 para-
graph (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, cur-
cencies, interest or other rates, indices, or other as-
sets.”; and

(4) in subsection (d), by inserting after para-
graph (2) the following new paragraph:

“(3) The Comptroller of the Currency shall pre-
scribe rules to administer and carry out the pur-
poses of this section with respect to credit exposures
arising from any derivative transaction, repurchase
agreement, reverse repurchase agreement, securities
lending transaction, or securities borrowing trans-
action. 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. APPLICATION OF NATIONAL BANK LENDING LIMITS TO INSURED STATE BANKS.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end a new subsection:

“(y) APPLICATION OF LENDING LIMITS TO INSURED STATE BANKS.—Section 84 of this title shall apply to every insured depository institution in the same manner and to the same extent as if the insured depository institution were a national banking association.”.

SEC. 1310. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.

(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 and Desist order, memorandum of understanding, or other enforcement action entered into with or issued by the Comptroller of the Currency.”
(b) CONVERSION OF A STATE BANK TO A NATIONAL BANK.—Section 5154 of the Revised Statutes (12 U.S.C. 35) is amended by adding at the end the following new sentence: "The Comptroller of the Currency shall not approve the conversion of a State bank to a national bank during any period of time in which the State bank is subject to a Cease and Desist order, memorandum of understanding, or other enforcement action entered into or issued by a State bank supervisor, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or a Federal Reserve Bank.”.

SEC. 1311. 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. 1312. 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 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 section (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. 1313. 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 “, in-
Including regulations relating to the capital levels of bank holding companies” before the period at the end.

SEC. 1314. 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.—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.”.

(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 “, or risk to the stability of the United States financial system or the economy of the United States”.

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(2) Section 4(k)(6) of the Bank Holding Company Act 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) striking “and” before “the convenience and needs of the community to be served”; and

(2) inserting before the period at the end “, and the risk to the stability of the United States financial system and the economy of the United States”.

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SEC. 1315. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.

Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by striking subsection (i) and redesignating the following subsections accordingly.

SEC. 1316. EXAMINATION FEES FOR LARGE BANK HOLDING COMPANIES.

The Bank Holding Company Act is amended by adding a new section 5A:

``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—Payment, Clearing, and Settlement Supervision

SEC. 1401. SHORT TITLE.

This subtitle may be cited as the “Payment, Clearing, and Settlement Supervision Act of 2009”.

SEC. 1402. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrange-
ments for the clearing and settlement of payment, securities and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary to provide consistency, to promote robust risk management and safety and soundness, to reduce systemic risks, and to support the stability of the broader financial system.

(b) PURPOSES.—The purposes of this subtitle are to mitigate systemic risk in the financial system and promote financial stability by—
(1) authorizing the Board of Governors of the Federal Reserve System to prescribe uniform standards for the management of risks by systemically important financial market utilities and for the conduct of systemically important payment, clearing and settlement activities by financial institutions;

(2) providing for appropriate supervision and enforcement of such risk management standards for systemically important financial market utilities and payment, clearing, and settlement activities; and

(3) strengthening the liquidity of systemically important financial market utilities.

SEC. 1403. DEFINITIONS.

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

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

(2) Appropriate Financial Regulator.—The term “appropriate financial regulator” means the following:

(A) The Comptroller of the Currency, with respect to—

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(i) any national banks or a Federal branch or Federal agency of a foreign bank; and

(ii) after the functions of the Director of the Office of Thrift Supervision are transferred under subtitle C, any Federal savings association.

(B) the Board of Directors of the Corporation, with respect to—

(i) any insured State nonmember bank or any insured branch of a foreign bank (other than a Federal branch); and

(ii) after the functions of the Director of the Office of Thrift Supervision are transferred under subtitle C, any State savings association.

(C) The Director of the Office of Thrift Supervision, with respect to any savings association and any savings and loan holding company, until the functions of the Director of the Office of Thrift Supervision are transferred under subtitle C.

(D) The Board, with respect to—

(i) any State member bank;
(ii) any branch or agency of a foreign bank (other than any Federal branch, Federal agency, or insured State branch of a foreign bank);

(iii) any commercial lending company owned or controlled by a foreign bank;

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

(v) any bank holding company and any nondepository subsidiary of a bank holding company (other than any broker, dealer, investment company, or investment adviser registered with the Securities and Exchange Commission, or any futures commission merchant, commodity trading advisor, or commodity pool operator registered with the Commodity Futures Trading Commission); and

(vi) after the functions of the Director of Thrift Supervision are transferred under subtitle C, any savings and loan holding company and any non-depository subsidiary of a savings and loan holding company (other than any broker, dealer, in-
vestment company, or investment adviser registered with the Securities and Exchange Commission, or any futures commission merchant, commodity trading advisor, or commodity pool operator registered with the Commodity Futures Trading Commission).

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

(F) 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.); and

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

(G) The Commodity Futures Trading Commission, with respect to futures commission merchants, commodity trading advisors, and commodity pool operators registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(H) The State insurance authority of the State in which an insurance company is domiciled, with respect to any financial institution engaged in providing insurance under State insurance law.

(I) The Board, with respect to any other financial institution engaged in an identified activity.

(3) BOARD.—The term “Board” means the Board of Governors of the Federal Reserve System.

(4) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

(5) FINANCIAL INSTITUTION.—The term “financial institution” means an entity other than a financial market utility that is—
(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) (12 U.S.C. 1813);
(B) a branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978) (12 U.S.C. 3101);
(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.);
(D) a credit union (as defined in section 101 of the Federal Credit Union Act) (12 U.S.C. 1752);
(E) a broker or dealer (as defined in section 3 of the Securities Exchange Act of 1934) (15 U.S.C. 78c);
(F) an investment company (as defined in section 3 of the Investment Company Act of 1940) (15 U.S.C. 80a–3);
(G) an insurance company (as defined in section 2 of the Investment Company Act of 1940) (15 U.S.C. 80a–2);
(H) an investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) (15 U.S.C. 80b–2);
(I) a futures commission merchant, commodity trading advisor, or commodity pool operator (as defined in section 1a of the Commodity Exchange Act) (7 U.S.C. 1a); and

(J) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(6) Financial market utility.—The term “financial market utility” means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(7) Identified activity.—The term “identified activity” means a payment, clearing, or settlement activity that the Council has identified as systemically important under section 1404.

(8) Identified financial market utility.—The term “identified financial market utility” means a financial market utility that the Council has identified as systemically important under section 1404.
(9) Payment, clearing, or settlement activity.—

(A) In general.—The term “payment, clearing, or settlement activity” means one of the following activities carried out by one or more financial institutions after the parties to a financial transaction agree to the transaction to facilitate the completion of the financial transaction: the calculation and communication of unsettled financial transactions between financial institutions; netting or aggregating of financial transactions; provision and maintenance of trade, contract, or instrument information; the management of risks associated with unsettled financial transactions; transmittal and storage of payment instructions; movement of funds; final settlement of financial transactions; and other similar activities that the Board may determine by rule or order. “Payment, clearing, or settlement activity” does not include, among other things, activities inclusive of or prior to trade execution.

(B) Financial transaction.—For purposes of subparagraph (A), the term “financial transaction” means a funds transfer, securities
contract, contract of sale of a commodity for future delivery, forward contract, repurchase agreement, swap agreement, foreign exchange contract, financial derivatives contract, and any similar transaction that the Board determines, by rule or order, to be a financial transaction for purposes of this subtitle.

(10) **PERSON.**—The term “person” means any corporation, company, association, firm, partnership, society, joint stock company, or other legal entity other than a natural person.

(11) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

(12) **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, or the United States Virgin Islands.

(13) **SUPERVISORY AGENCY.**—The term “Supervisory Agency” means the Federal agency that has primary jurisdiction over an identified financial market utility under Federal banking, securities, or commodity futures laws, including—
(A) the Securities and Exchange Commission, with respect to an identified financial market utility that is a clearing agency registered with the Securities and Exchange Commission;

(B) the Commodity Futures Trading Commission, with respect to an identified financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission;

(C) the Board of Directors of the Corporation, with respect to an identified financial market utility that is—

(i) an insured State nonmember bank or an insured branch of a foreign bank; and

(ii) after the functions of the Director of the Office of Thrift Supervision are transferred under subtitle C, a State savings association;

(D) the Comptroller of the Currency, with respect to an identified financial market utility that is—

(i) a national bank or a Federal branch (other than an insured branch) or a Federal agency of a foreign bank; and
(ii) after the functions of the Director of the Office of Thrift Supervision are transferred under subtitle C, a Federal savings association;

(E) the Board, with respect to an identified financial market utility that is—

(i) a State member bank;

(ii) a branch or agency of a foreign bank (other than any Federal branch, Federal agency, or insured State branch of a foreign bank);

(iii) a commercial lending company owned or controlled by a foreign bank;

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

(v) a bank holding company and any non-depository subsidiary of a bank holding company (other than any broker, dealer, investment company, or investment adviser registered with the Securities and Exchange Commission, or any futures commission merchant, commodity trading adviser, or commodity pool operator registered
with the Commodity Futures Trading Commission); and

(vi) after the functions of the Director of the Office of Thrift Supervision are transferred under subtitle C, any savings and loan holding company and any non-depository subsidiary of a savings and loan holding company (other than any broker, dealer, investment company, or investment adviser registered with the Securities and Exchange Commission, or any futures commission merchant, commodity trading advisor, or commodity pool operator registered with the Commodity Futures Trading Commission); and

(F) the Director of the Office of Thrift Supervision, with respect to an identified financial market utility that is a savings association or a savings and loan holding company, until the functions of the Director of the Office of Thrift Supervision are transferred under subtitle C.

If a financial market utility is subject to supervision by more than one agency listed in paragraphs (A) through (F), and those agencies cannot agree which has primary jurisdiction, the Council shall decide
which agency is the Supervisory Agency for purposes of this subtitle.

(14) **Systemically important and systemic importance.**—The terms “systemically important” and “systemic importance” mean a situation in which the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity, credit, or other problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

**SEC. 1404. IDENTIFICATION OF SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, AND SETTLEMENT ACTIVITIES.**

(a) **In General.**—The Council shall, at its own initiative or at the request of the Board, consider whether to identify a financial market utility or a payment, clearing, or settlement activity as systemically important.

(b) **Criteria for Identification.**—The Council shall identify a financial market utility or payment, clearing, or settlement activity if the Council determines that such financial market utility or activity is, or is likely to
become, systemically important, based on consideration of
the following:

(1) The aggregate monetary value of the trans-
actions processed by the financial market utility or
carried out through the payment, clearing, or settle-
ment activity.

(2) The aggregate exposure of counterparties to
the financial market utility.

(3) The relationship, interdependencies, or
other interactions of the financial market utility or
payment, clearing, or settlement activity with other
financial market utilities or payment, clearing, or
settlement activities.

(4) The effect that the failure of or a disruption
to the financial market utility or payment, clearing,
or settlement activity would have on critical markets,
financial institutions, or the broader financial sys-
tem.

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

(c) Periodic Review and Rescission of Identifi-
cations.—The Council shall, at its own initiative or at
the request of the Board—
(1) review periodically whether a financial mar-
ket utility or a payment, clearing, or settlement ac-
tivity continues to be systemically important; and

(2) rescind identification of a financial market
utility or a payment, clearing, or settlement activity
that it determines no longer should be identified.

(d) Procedure for Identifying or Rescinding
A Systemically Important Identification.—

(1) Consultation.—Before making any deter-
mination under this section, the Council shall con-
sult with the Board, and in the case of a determina-
tion regarding identification or rescission of identi-
fication of a financial market utility, the Council
shall consult with the relevant Supervisory Agency.

(2) Notice and Opportunity for Consider-
atation of Written Materials.—

(A) In General.—The Board shall, in an
executive capacity on behalf of the Council, pro-
vide notice to a financial market utility or, in
the case of a payment, clearing, or settlement
activity, financial institutions, that the Council
is considering whether to identify or cease to
identify such financial market utility or such
payment, clearing, or settlement activity, in-
cluding an explanation of the basis of the Coun-
cil's consideration, and provide such financial
market utilities or financial institutions 30 days
to submit written materials to inform the Coun-
cil’s decision. The Council shall make its deci-
sion, and the Board shall notify the financial
market utility or financial institutions of the
Council’s decision, within 60 days of the due
date for such written materials.

(B) EMERGENCY EXCEPTION.—The Coun-
cil may waive or modify the requirements of
subparagraph (A) if the Council determines
that the waiver or modification is necessary or
appropriate to prevent or mitigate an imme-
diate threat to financial stability posed by the
financial market utility or the payment, clear-
ing, or settlement activity. The Board shall, in
an executive capacity on behalf of the Council,
notify the financial market utility concerned or,
in the case of a payment, clearing, or settle-
ment activity, financial institutions, as soon as
practicable, which shall be no later than 24
hours after the waiver or modification in the
case of a financial market utility.

(3) FORM OF NOTIFICATION.—The Board shall,
in an executive capacity on behalf of the Council,
provide notice of a decision under this section re-
garding—

(A) a financial market utility to such fi-
nancial market utility by order; and

(B) a payment, clearing, or settlement ac-
tivity to financial institutions by posting a no-
tice on the Board’s Web site and by publishing
a notice in the Federal Register.

SEC. 1405. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-
NANCIAL MARKET UTILITIES AND PAYMENT,

CLEARING, OR SETTLEMENT ACTIVITIES.

(a) Board Requirement To Prescribe Stan-
dards.—The Board shall, by regulation or order and in
consultation with the Council and relevant supervisory
agencies, prescribe or issue risk management standards
governing the operations of identified financial market
utilities and the conduct of identified activities by financial
institutions, taking into consideration relevant inter-
national standards and existing prudential requirements
applicable to such financial market utilities and payment,
clearing, or settlement activities.

(b) Objectives And Principles.—The objectives
and principles for the risk management standards pre-
scribed under subsection (a) shall be to—

(1) promote robust risk management;
(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(c) Scope.—

(1) In general.—The standards prescribed under subsection (a) may address areas such as risk management policies and procedures; margin and collateral requirements; participant or counterparty default policies and procedures; the ability to complete timely clearing and settlement of financial transactions; capital and financial resource requirements for identified financial market utilities; and other areas that the Board determines, by rule or order, are necessary to achieve the objectives and principles in subsection (b).

(2) Interaction with existing standards.—The standards prescribed under this section may—

(A) be different than existing standards that address the same or similar subject areas; and

(B) may address subject areas that are not covered by existing regulations.
(3) Threshold Level.—The standards prescribed under subsection (a) governing the conduct of identified activities shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(4) Categorization and Tiering.—In prescribing or issuing standards under subsection (a) governing the conduct of identified activities and the operations of identified financial market utilities, the Board shall, where appropriate, differentiate among identified financial market utilities and identified activities by taking into consideration their risk, complexity, leverage, frequency and dollar amount, interconnectedness to the financial system, and any other factors the Board deems appropriate.

(d) Compliance Required.—Identified financial market utilities and financial institutions engaged in identified activities shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board.
SEC. 1406. OPERATIONS AND CHANGES TO RULES, PROCEDURES, OR OPERATIONS OF IDENTIFIED FINANCIAL MARKET UTILITIES.

(a) Reference.—For purposes of paragraphs (b) and (c), all references to the phrase “Supervisory Agency or the Board” mean “Supervisory Agency or, in the absence of a Supervisory Agency, the Board”.

(b) Advance Notice of Proposed Changes.—

(1) Advance Notice Required.—Subject to subsection (c), an identified financial market utility shall provide at least 60 days advance notice to the Supervisory Agency or the Board of any proposed change to its rules, procedures, or operations that could, as defined in rules of the Board, materially affect the nature or level of risks presented by the identified financial market utility.

(2) Terms and Standards Prescribed by the Board.—The Board shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under paragraph (1).

(3) Consultation and Avoidance of Duplication.—In prescribing regulations under paragraph (2), the Board shall—

(A) consult with the Commodity Futures Trading Commission and the Securities and
Exchange Commission regarding the extent to which the regulations of those agencies already require advance notice of rule, procedural, or operational changes; and

(B) seek to avoid duplicative requirements under this section whenever possible.

(4) CONTENTS OF NOTICE.—Any notice of a proposed change provided by an identified financial market utility under paragraph (1) shall describe—

(A) the nature of the change;

(B) any expected effects on risks to the identified financial market utility, its participants, or the market; and

(C) the manner in which the identified financial market utility plans to manage any identified risks.

(5) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board may require an identified financial market utility to provide any information necessary to assess—

(A) the effect the proposed change would have on the nature or level of risks associated with the identified financial market utility’s payment, clearing, or settlement activities; and
(B) the sufficiency of any proposed risk
management techniques.

(6) NOTICE OF OBJECTION.—The Supervisory
Agency or the Board will notify the identified finan-
cial market utility of any objection regarding the
proposed change before the end of the 60-day period
beginning on the later of—

(A) the date that the notice of the pro-
posed change is received; or

(B) the date any further information re-
quested for consideration of the notice is re-
ceived.

(7) CHANGE NOT ALLOWED IF OBJECTION.—An
identified financial market utility shall not imple-
ment a change to which the Supervisory Agency or
Board has an objection.

(8) CHANGE ALLOWED IF NO OBJECTION WITH-
IN 60 DAYS.—An identified financial market utility
may implement a change if it has not received an
objection to the proposed change before the end of
the 60-day period beginning on the later of—

(A) the date that the Supervisory Agency
or the Board receives the notice of proposed
change; or
(B) the date the Supervisory Agency or the Board receives any further information that the Supervisory Agency or the Board requests for consideration of the notice.

(9) **Review Extension for Novel or Complex Issues.**—

(A) **In General.**—The Supervisory Agency or the Board may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency or the Board providing the identified financial market utility with prompt written notice of the extension.

(B) **Extension of Other Time Periods.**—Any time period referred to under paragraphs (6) and (8) shall be extended by the amount of any extension of time under clause (A).

(10) **Change Allowed Earlier If Notified of No Objection.**—An identified financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency or the Board, or
the date the Supervisory Agency or the Board receives any further information it requested, if—

(A) the Supervisory Agency or the Board notifies the identified financial market utility in writing that it does not object to the proposed change; and

(B) authorizes the identified financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency or the Board.

(c) EMERGENCY CHANGES.—

(1) IN GENERAL.—An identified financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(A) an emergency exists; and

(B) immediate implementation of the change is necessary for the identified financial market utility to continue to provide its services in a safe and sound manner.

(2) NOTICE REQUIRED WITHIN 24 HOURS.—Any identified financial market utility that implements a change pursuant to a determination under paragraph (1) shall provide notice of such an emergency change to its Supervisory Agency or the Board as
soon as practicable, which shall be no later than 24 hours after implementation of the change.

(3) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required under subsection (b) for any change requiring an advance notice, the notice under paragraph (2) of an emergency change must describe—

(A) the nature of the emergency; and

(B) the reason the change was necessary for the identified financial market utility to continue to provide its services in a safe and sound manner.

(4) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency or the Board may require a modification or a rescission of any change of which the Supervisory Agency or the Board receives notice under this subsection if the Supervisory Agency or the Board finds that the change is not consistent with the purposes of this subtitle or any regulations, orders, or standards prescribed, issued, or established by the Board hereunder.

(d) COORDINATION BETWEEN AGENCIES AND THE BOARD.—In the case of an identified financial market
utility that has a Supervisory Agency other than the
Board, the Supervisory Agency shall—

   (1) provide the Board concurrently with a com-
plete copy of any notice, request, or other informa-
tion such agency issues, submits, or receives under
this subsection with respect to such utility; and

   (2) consult with the Board before taking any
action on or completing any review of a change pro-
posed by an identified financial market utility.

SEC. 1407. EXAMINATION OF AND ENFORCEMENT ACTIONS
AGAINST IDENTIFIED FINANCIAL MARKET
UTILITIES.

   (a) EXAMINATION.—Notwithstanding any other pro-
vision of law and subject to subsection (d), the Supervisory
Agency shall conduct examinations of an identified finan-
cial market utility at least annually in order to inform
itself of—

   (1) the nature of the operations of, and the
risks borne by, the identified financial market util-
ity;

   (2) the financial and operational risks presented
by the identified financial market utility to financial
institutions, critical markets, or the broader finan-
cial system;
(3) the resources and capabilities of the identified financial market utility to monitor and control such risks;

(4) the safety and soundness of the identified financial market utility; and

(5) the identified financial market utility’s compliance with this subtitle and the rules and orders prescribed by the Board under this subtitle.

(b) SERVICE PROVIDERS.—

(1) Whenever a service integral to the operation of an identified financial market utility is performed for the identified financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the identified financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the identified financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—Except as provided in subsections (e) and (g), an identified financial market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same
extent as if the identified financial market utility were an
insured depository institution for which the Supervisory
Agency is the appropriate Federal banking agency as de-
defined in section 3 of the Federal Deposit Insurance Act

(d) BOARD INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD CONSULTATION ON EXAMINATION
PLANNING.—The Supervisory Agency shall consult
with the Board regarding the scope and methodology
of any examination conducted under subsections (a)
and (b).

(2) BOARD PARTICIPATION IN EXAMINATION.—
The Board may, in its discretion, participate in any
examination led by a Supervisory Agency and con-
ducted under subsections (a) and (b).

(e) BOARD ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board may at
any time recommend to the Supervisory Agency that
it take enforcement action against an identified fi-
nancial market utility. The recommendation shall be
in writing and shall provide a detailed analysis sup-
porting the Board's recommendation.

(2) CONSIDERATION.—The Supervisory Agency
shall consider the Board’s recommendation and sub-
mit a response to the Board within 30 days.
(3) **MEDICATION**.—If the Supervisory Agency re-
jects, in whole or in the part, the Board’s rec-
ommendation, then the Council shall mediate be-
tween the parties and encourage them to reach
agreement on whether an enforcement action should
be brought, and if so by which agency.

(4) **ENFORCEMENT ACTION**.—If the Super-
visory Agency fails to respond to the Board’s rec-
ommendation in accordance with paragraph (2), if
the Supervisory Agency reaches agreement with the
Board that the Board should take an enforcement
action, or if the Supervisory Agency rejects the
Board’s recommendation and the Council is unable
to resolve the dispute under paragraph (3), then the
Board may exercise the enforcement authority re-
ferenced in subsection (c) as if it were the Super-
visory Agency and take enforcement action against
the identified financial market utility.

(f) **IDENTIFIED FINANCIAL MARKET UTILITIES**

**Without a Supervisory Agency**.—In the case of an
identified financial market utility that is not under the pri-
mary jurisdiction of a Supervisory Agency, the Board shall
have examination and enforcement authority under sub-
sections (a) through (c) with respect to the identified fi-
nancial market utility and any service providers in the
same manner and to the same extent as if the Board were
the Supervisory Agency.

(g) EMERGENCY ENFORCEMENT ACTIONS BY THE
BOARD.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—
The Board may, after consulting with the Super-
visory Agency, take enforcement action against an
identified financial market utility if the Board has
reasonable cause to believe that—

(A) either—

(i) an action engaged in, or con-
templated by, an identified financial mar-
ket utility (including any change proposed
by the identified financial market utility to
its rules, procedures, or operations that
would otherwise be subject to section
1406(b) or (c)); or

(ii) the condition of an identified fi-
nancial market utility, poses an imminent
risk of substantial harm to financial insti-
tutions, critical markets, or the broader fi-
nancial system; and

(B) the imminent risk of substantial harm
precludes the Board’s use of the procedures in
subsection (e).
(2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under paragraph (1) against an identified financial market utility as if the identified financial market utility were an insured depository institution for which the Board is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board shall provide written notice to the identified financial market utility’s Supervisory Agency containing a detailed analysis of the Board’s action, with supporting documentation included.

SEC. 1407. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST IDENTIFIED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of an identified financial market utility at least annually in order to inform itself of—
(1) the nature of the operations of, and the
risks borne by, the identified financial market util-
ity;

(2) the financial and operational risks presented
by the identified financial market utility to financial
institutions, critical markets, or the broader finan-
cial system;

(3) the resources and capabilities of the identi-
fied financial market utility to monitor and control
such risks;

(4) the safety and soundness of the identified
financial market utility; and

(5) the identified financial market utility’s com-
pliance with this subtitle and the rules and orders
prescribed by the Board under this subtitle.

(b) Service Providers.—Whenever a service inte-
gral to the operation of an identified financial market util-
ity is performed for the identified financial market utility
by another entity, whether an affiliate or nonaffiliate and
whether on or off the premises of the identified financial
market utility, the Supervisory Agency may examine
whether the provision of that service is in compliance with
applicable law, rules, orders, and standards to the same
extent as if the identified financial market utility were per-
forming the service on its own premises.
(c) **ENFORCEMENT.**—Except as provided in subsections (e) and (g), an identified financial market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the identified financial market utility were an insured depository institution for which the Supervisory Agency is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(d) **BOARD INVOLVEMENT IN EXAMINATIONS.**—

(1) **BOARD CONSULTATION ON EXAMINATION PLANNING.**—The Supervisory Agency shall consult with the Board regarding the scope and methodology of any examination conducted under subsections (a) and (b).

(2) **BOARD PARTICIPATION IN EXAMINATION.**—The Board may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) **BOARD ENFORCEMENT RECOMMENDATIONS.**—

(1) **RECOMMENDATION.**—The Board may at any time recommend to the Supervisory Agency that it take enforcement action against an identified financial market utility. The recommendation shall be
in writing and shall provide a detailed analysis supporting the Board’s recommendation.

(2) CONSIDERATION.—The Supervisory Agency shall consider the Board’s recommendation and submit a response to the Board within 30 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the Board’s recommendation, then the Council shall mediate between the parties and encourage them to reach agreement on whether an enforcement action should be brought, and if so by which agency.

(4) ENFORCEMENT ACTION.—If the Supervisory Agency fails to respond to the Board’s recommendation in accordance with paragraph (2), if the Supervisory Agency reaches agreement with the Board that the Board should take an enforcement action, or if the Supervisory Agency rejects the Board’s recommendation and the Council is unable to resolve the dispute under paragraph (3), then the Board may exercise the enforcement authority referenced in subsection (c) as if it were the Supervisory Agency and take enforcement action against the identified financial market utility.

(f) IDENTIFIED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In the case of an
identified financial market utility that is not under the primary jurisdiction of a Supervisory Agency, the Board shall have examination and enforcement authority under subsections (a) through (c) with respect to the identified financial market utility and any service providers in the same manner and to the same extent as if the Board were the Supervisory Agency.

(g) **Emergency Enforcement Actions by the Board.**—

(1) **Imminent Risk of Substantial Harm.**—

The Board may, after consulting with the Supervisory Agency, take enforcement action against an identified financial market utility if the Board has reasonable cause to believe that—

(A) either—

(i) an action engaged in, or contemplated by, an identified financial market utility (including any change proposed by the identified financial market utility to its rules, procedures, or operations that would otherwise be subject to section 1406(b) or (c)); or

(ii) the condition of an identified financial market utility, poses an imminent risk of substantial harm to financial insti-
tutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board’s use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under paragraph (1) against an identified financial market utility as if the identified financial market utility were an insured depository institution for which the Board is the appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board shall provide written notice to the identified financial market utility’s Supervisory Agency containing a detailed analysis of the Board’s action, with supporting documentation included.

SEC. 1408. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR IDENTIFIED ACTIVITIES.

(a) EXAMINATION.—The appropriate financial regulator shall periodically conduct examinations of a financial
institution that is subject to the standards prescribed by
the Board for an identified activity in order to inform the
appropriate financial regulator of the following:

(1) the nature and scope of the identified activi-
ties engaged in by the financial institution;

(2) the financial and operational risks the iden-
tified activities engaged in by the financial institu-
tion may pose to the safety and soundness of the fi-
nancial institution;

(3) the financial and operational risks the iden-
tified activities engaged in by the financial institu-
tion may pose to other financial institutions, critical
markets, or the broader financial system;

(4) the resources available to and the capabili-
ties of the financial institution to monitor and con-
trol the risks described in paragraphs (2) and (3);

and

(5) the financial institution’s compliance with
this subtitle and the rules and orders prescribed by
the Board under this subtitle.

(b) ENFORCEMENT.—The appropriate financial regu-
lator shall take such actions that it deems necessary to
ensure that a financial institution that is subject to the
standards prescribed by the Board for an identified activi-
ity complies with this subtitle and the rules and orders
prescribed by the Board under this subtitle.

(c) **TECHNICAL ASSISTANCE.**—The Board shall con-
sult with and provide such technical assistance as may be
required by the appropriate financial regulators to ensure
that the Board’s rules and orders prescribed under this
subtitle are interpreted and applied in as consistent and
uniform a manner as practicable.

(d) **DELEGATION.**—

(1) **EXAMINATION.**—

(A) **REQUEST TO BOARD.**—The appro-
priate financial regulator may request the
Board to conduct, or to participate in, an exam-
ination of a financial institution subject to the
standards prescribed by the Board for an iden-
tified activity in order to assess the financial in-
stitution’s compliance with this subtitle or the
Board’s rules or orders prescribed under this
subtitle.

(B) **EXAMINATION BY BOARD.**—Upon re-
cipient of an appropriate written request, the
Board will conduct the examination under such
terms and conditions to which the Board and
the appropriate financial regulator mutually
agree.
(2) Enforcement.—

(A) Request to Board.—An appropriate financial regulator may request the Board to enforce this subtitle or the rules or orders prescribed by the Board under this subtitle against a financial institution subject to the standards prescribed by the Board for an identified activity.

(B) Enforcement by Board.—Upon receipt of an appropriate written request, the Board shall—

(i) determine whether an enforcement action is warranted; and

(ii) if so, it shall enforce compliance with this subtitle or the rules or orders prescribed by the Board under this subtitle.

(C) Enforcement Authority.—For purposes of carrying out subparagraph (B), the Board shall have authority under subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act with respect to a financial institution in the same manner and to the same extent as if the financial institution were an insured depository institution for which the Board
is the appropriate Federal banking agency (as
defined in section 3 of such Act).

(c) Back-Up Authority of the Board.—

(1) Examination and Enforcement.—Not-
withstanding any other provision of law, the Board
may—

(A) conduct an examination of any finan-
cial institution that is subject to the standards
prescribed by the Board for an identified activ-
ity; and

(B) enforce the provisions of this subtitle
or any rules or orders prescribed by the Board
under this subtitle against any financial institu-
tion subject to the standards prescribed by the
Board for an identified activity.

(2) Limitations.—

(A) Examination.—The Board may exer-
cise the authority described in paragraph (1)(A)
only if the Board has—

(i) reasonable cause to believe that a
financial institution is not in compliance
with this subtitle or the rules or orders
prescribed by the Board under this subtitle
with respect to an identified activity;
(ii) notified, in writing, the appropriate financial regulator of its belief under clause (i) with supporting documentation included;

(iii) requested the appropriate financial regulator to conduct a prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the appropriate financial regulator within 30 days after the date of the Board’s notification under clause (ii); or

(II) reasonable cause to believe that the financial institution’s non-compliance with this subtitle or the rules or orders prescribed by the Board under this subtitle poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board affording the appropriate financial
regulator a reasonable opportunity to participate in the examination.

(B) ENFORCEMENT.—The Board may exercise the authority described in paragraph (1)(B) only if the Board has—

(i) reasonable cause to believe that a financial institution is not in compliance with this subtitle or the rules or orders prescribed by the Board under this subtitle with respect to an identified activity;

(ii) notified, in writing, the appropriate financial regulator of its belief under clause (i) with supporting documentation included and with a recommendation that the appropriate financial regulator take one or more specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the appropriate financial regulator of the commencement of an enforcement action recommended by the Board against the financial institution within 30 days from the date of the notification under clause (ii); or
(II) reasonable cause to believe that the financial institution’s non-compliance with this subtitle or the rules or orders prescribed by the Board under this subtitle poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board notifying the appropriate financial regulator of the Board’s enforcement action.

(3) Enforcement Provisions.—The Board shall have authority under subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) with respect to a financial institution subject to the standards prescribed by the Board for an identified activity in the same manner and to the same extent as if the financial institution were an insured depository institution for which the Board is the appropriate Federal banking agency (as defined in section 3 of such Act).

SEC. 1409. PROVISION OF INFORMATION, REPORTS, OR RECORDS.

(a) Information To Assess Systemic Importance.—
(1) Financial market utilities.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the purpose of assessing whether that financial market utility is systemically important if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set out in section 1404 of this subtitle.

(2) Financial institutions engaged in payment, clearing, or settlement activities.—The Council is authorized to require any financial institution to submit such information as the Council may require for the purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set out in section 1404 of this subtitle.

(b) Reporting after identification.—

(1) Identified financial market utilities.—The Board may require an identified financial market utility to submit reports or data to the Board in such frequency and form as deemed nee-
necessary by the Board in order to assess the safety
and soundness of the utility and the systemic risk
that the utility’s operations pose to the financial sys-
tem.

(2) **Financial institutions subject to the**
standards prescribed by the board.—The
Board may require 1 or more financial institutions
subject to the standards prescribed by the Board for
an identified activity to submit, in such frequency
and form as deemed necessary by the Board, reports
and data to the Board solely with respect to the con-
duct of the identified activity and solely to assess
whether——

(A) any regulation, order, standard, or
guideline prescribed by the Board with respect
to the identified activity appropriately address
the risks to the financial system presented by
such activity; and

(B) the financial institutions are in compli-
ance with this subtitle and the rules and orders
prescribed by the Board under this subtitle with
respect to the identified activity.

(e) **Coordination with appropriate federal**

**Supervisory agency.**—
(1) ADVANCE COORDINATION.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Council and the Board shall coordinate with the Supervisory Agency for a financial market utility or the appropriate financial regulator for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Council or the Board.

(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agencies, the appropriate financial regulators, the Council, and the Board are authorized to disclose to each other a copy of the relevant portion of any examination report or similar report regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the information, report, records, or data requested by the Council or the Board under subsection (c)(1) are not provided in full by the Supervisory Agency or the appropriate financial regulator
within 30 days after the date on which the material is requested, the Council or the Board may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the Supervisory Agency or the appropriate financial regulator.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the Council, the Board, the appropriate financial regulator, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about an identified financial market utility or any financial institution subject to the standards prescribed by the Board for an identified activity; and

(B) share appropriate reports, information or data relating to such concerns.

(2) OTHER.—Notwithstanding any other provision of law, the Council or the Board may, under such terms and conditions it deems appropriate and subject to reasonable assurances of confidentiality, provide confidential supervisory information and other information obtained under this subtitle to other persons it deems appropriate, including the
Secretary, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries.

(f) PRIVILEGE MAINTAINED.—The Council, the Board, the appropriate financial regulator, the Supervisory Agency, and any financial market utility or financial institution providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data to the other party or by permitting the reports or data, or any copies thereof, to be used by the other party.

(g) DISCLOSURE EXEMPTION.—

(1) IN GENERAL.—Information obtained by the Board under this section and any materials prepared by the Board in connection with its supervision of identified financial market utilities and identified activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code.

(2) For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3) of section 552.
SEC. 1410. RULEMAKING.

The Board is authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out the purposes of this subtitle and prevent evasions thereof.

SEC. 1411. OTHER AUTHORITY.

The authorities granted to agencies under this subtitle are in addition to any rulemaking, examination, enforcement, or other authorities that those agencies may have under other law and in no way shall be construed to limit such other authority, except that any standards imposed by the Board under section 1405 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

SEC. 1412. EFFECTIVE DATE.

This subtitle is effective as of the date of enactment.

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.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 28 the following new section:

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“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 Federal banking agencies and the Commission shall jointly 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 Federal banking agencies and the Commission 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 Federal banking agencies and the Commission may jointly 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 jointly
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 con-
sumers 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 di-
rectly 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
10 percent of the credit risk on any loan that is
transferred, sold, or conveyed by such creditor or
securitized by such securitizer except—

“(A) if the Federal banking agencies and
the Commission determine the credit under-
writing by the creditor or the due diligence by
the securitizer meets such standards as the
Federal banking agencies and the Commission shall specify, the percentage of risk retention may be less than 10 percent of the credit risk, but in no case less than 5 percent of credit risk; and

“(B) if the Federal banking agencies and the Commission determine the underwriting by the creditor or due diligence by the securitizer is insufficient, the percentage of risk retention may be higher than 10 percent;

“(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 Federal banking agencies and the Commission shall have authority to jointly provide exemptions or adjustments to the requirements of this section, including exemptions or adjustments relating to the 10 percent risk retention threshold 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 access for consumers to credit on reasonable terms, or otherwise serve the public interest.

“(e) ENFORCEMENT.—

“(1) Compliance with the requirements imposed under this subchapter shall be enforced under—

“(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

“(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

“(ii) 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 (12 U.S.C. 601 et seq., 611 et seq.),
bank holding companies, and subsidiaries of bank holding companies (other than ins-
ured 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 Ins-
surance 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 subchapter is specifically committed to some other Government agency under subparagraph (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.

“(f) 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.”.

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 protec-
tion of investors. The Commission may, for the pur-
poses of this subsection, classify issuers and pre-
scribe requirements appropriate for each class of
issuer of asset-backed security.’’; and

(3) by inserting after the fifth sentence the fol-
lowing: ‘‘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 fea-
sible, facilitate comparison of such data across secu-
rities 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 per-
form 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 dif-
fer from representations, warranties, and enforce-
ment mechanisms in similar issuances; and

(2) require disclosure on fulfilled repurchase re-
quests across all trusts aggregated by originator, so
that investors may identify asset originators with
clear underwriting deficiencies.

SEC. 1505. EXEMPTED TRANSACTIONS UNDER THE SECURI-
TIES 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).


Subtitle G—Enhanced Resolution Authority

SEC. 1601. SHORT TITLE.

This subtitle may be cited as the “Resolution Authority for Large, Interconnected Financial Companies Act of 2009”.

SEC. 1602. DEFINITIONS.

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

(1) APPROPRIATE FEDERAL REGULATORY AGENCY.—

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

(i) the Corporation; and

(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 Securi-
ties Exchange Act of 1934 (15 U.S.C. 78o(b) (other than an insured depository institution)).

(B) Rules of Construction.—More than 1 agency may be an appropriate Federal regulatory agency with respect to any given financial company. In such instances, the Commission shall be the appropriate Federal regulatory agency for purposes of section 1603 if the largest subsidiary of the financial company is a broker or dealer as measured by total assets as of the end of the previous calendar quarter, and otherwise the Corporation shall be the appropriate Federal regulatory agency for purposes of section 1603.

(2) Bridge Financial Company.—The term “bridge financial company” means a new financial company organized in accordance with section 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 com-
pany 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)(iv) of this section.

(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; and

(B) is—

(i) a 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 identified financial holding company, as defined in section 1000(b)(5), that has been subjected to heightened prudential regulation;

(iii) any company predominantly engaged in activities that are financial in na-
ture 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 heightened pruden-
tial standards under section 1106 of this
title; or

(iv) any subsidiary of companies de-
scribed in clauses (i) through (iii) (other
than an insured depository institution, any
broker or dealer registered with the Com-
mission under section 15(b) of the Securi-
78o(b)) that is a member of the Securities
Investor Protection Corporation, or an ins-
urance company).

(10) FUND.—The term “Fund” means the Sys-
temic Resolution Fund established in accordance
with section 1609(n).

(11) IDENTIFIED FINANCIAL HOLDING COM-
PANY.—The term “identified financial holding com-
pany” means a financial company that is subject to
heightened prudential standards, as defined in sec-
tion 1000(b)(5) of this Act.

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

(13) SECRETARY.—The term “Secretary” shall
mean the Secretary of the Treasury.

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

(15) CERTAIN OTHER TERMS.—The terms “af-
iliate”, “company”, “control”, “deposit”, “deposi-
tory institution”, “foreign bank”, “insured deposi-
tory institution”, and “subsidiary” have the same
meanings as in section 3 of the Federal Deposit In-

SEC. 1603. SYSTEMIC RISK DETERMINATION.

(a) WRITTEN RECOMMENDATION OF THE FEDERAL
RESERVE BOARD AND THE APPROPRIATE FEDERAL REG-
ULATORY 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 Federal regulatory agency shall, or on their own initiative the Federal Reserve Board and the appropriate Federal regulatory agency may, consider whether to make the written recommendation provided for in paragraph (2) with respect to a financial company that is an identified financial holding 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 Federal regulatory agency, as applicable.

(2) RECOMMENDATION REQUIRED.—Any written recommendations made by the Federal Reserve Board and the appropriate Federal regulatory agency under paragraph (1) shall contain the following:

(A) A description of the effect that the default of the identified financial holding company would have on economic conditions or financial stability in the United States.

(B) A recommendation regarding the nature and the extent of actions that the Board and the appropriate Federal regulatory agency
recommend be taken under section 1604 re-
garding the identified financial holding com-
pany.

(b) DETERMINATION BY THE SECRETARY.—Notwith-
standing 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 com-
mission of the appropriate Federal regulatory agency as
provided for in subsection (a)(1), the Secretary (in con-
sultation with the President) determines that—

(1) the identified financial holding company is
in default or is in danger of default;

(2) the failure of the identified financial holding
company and its resolution under otherwise applica-
ble 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 consid-
eration the effectiveness of the action in mitigating
potential adverse effects on the financial system or
economic conditions, the cost to the general fund of
the Treasury, and the potential to increase moral
hazard on the part of creditors, counterparties, and
shareholders in the identified financial holding company,
then the Secretary must take action under section 1604(a), the Corporation must act in accordance with section 1604(b), and the Corporation may take one or more actions specified in section 1604(c) in accordance with the requirements of that subsection.

(c) Documentation and Review.—

(1) In general.—The Secretary shall—

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

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

(2) GAO review.—The Comptroller General of 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 identified financial holding companies and their creditors, counterparties, and shareholders.
(3) REPORT TO CONGRESS.—Within 30 days 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), an identified financial holding company 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 identified financial holding company under title 11, United States Code.

(2) The identified financial holding company is critically undercapitalized, as such term has been or may be defined by the Federal Reserve Board.

(3) The identified financial holding company 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 identified financial holding company’s assets are, or are likely to be, less than its obligations to creditors and others.

(5) The identified financial holding company 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.—Upon the Secretary making a determination in accordance with section 1603(b), the Secretary shall appoint the Corporation as receiver or qualified receiver for the covered financial company. There shall be a strong presumption that the Secretary will appoint the Corporation as receiver. The presumption may be overcome only if the Secretary, the Federal Reserve Board, and the Corporation agree that the appointment of a qualified receiver is necessary to avoid or mitigate serious adverse effects on financial stability.

(b) CONSULTATION.—The Corporation, as receiver or qualified 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.

(e) Emergency Stabilization After Appointment of Receiver or Qualified Receiver.—Upon the Secretary appointing the Corporation as receiver or qualified 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 (d) through (e), 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) Acquiring any type of equity interest or security of the covered financial company or any covered subsidiary.

(5) 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.

(6) Selling or transferring all, or any part thereof, of such acquired assets, liabilities, obligations, equity interests or securities of the covered financial company or any covered subsidiary.

(d) MANDATORY TERMS AND CONDITIONS FOR ALL STABILIZATION ACTIONS.—The Corporation as receiver or
qualified receiver is authorized to take the stabilization ac-
tions listed in subsection (e) only if—

(1) the Secretary and the Corporation deter-
mine that such action is necessary for the purpose
of financial stability and not for the purpose of pre-
serving the covered financial company;

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

(3) the Corporation ensures that unsecured
creditors bear losses; and

(4) the Corporation ensures that management
responsible for the failed condition of the covered fi-
nancial company is removed (if such management
has not already been removed at the time the Cor-
poration is appointed as receiver or qualified re-
ceiver).

(c) RECOUPMENT OF FUNDS EXPENDED FOR SYS-
TEMIC 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 attri-
utable to—
(A) the proceeds of the sale of, or income from, the assets of the covered financial company; and

(B) the proceeds of the transfer of any securities obtained under subsection (c).

(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 or qualified 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 or qualified receiver be removed, and the court shall, upon the merits, dismiss such action or direct the receiver or qualified receiver to be removed. Review of such an action shall be limited to the appointment of a receiver or qualified receiver under section 1604.
SEC. 1606. DIRECTORS NOT LIABLE FOR ACQUIESCING IN
APPOINTMENT OF RECEIVER OR QUALIFIED RECEIVER.

The members of the board of directors (or body perform-
ing 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 Corpora-
tion as receiver or qualified 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 ACO-
TIONS.

The Corporation’s acting as receiver or qualified re-
ceiver 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 com-
pany under title 11, United States Code, or any pro-
ceeding under any State insolvency law with respect to the
covered financial company, and no such case or proceeding
may be commenced with respect to the covered financial
company at any time while the Corporation acts as re-
ceiver or qualified receiver for the covered financial com-
pany.
SEC. 1608. RULEMAKING.

The Corporation may prescribe such rules or regulations it 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 or qualified 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 or qualified 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 cov-
ered 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 cov-
ered financial company in the name of the
covered financial company;

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

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

(C) FUNCTIONS OF COVERED FINANCIAL
COMPANY’S OFFICERS, DIRECTORS, AND SHARE-
HOLDERS.—

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

(ii) Presumption.—There shall be a strong presumption that the Corporation, as receiver or qualified 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 or qualified receiver).

(D) Powers of and duration as qualified receiver.—

(i) In general.—The Corporation may, as qualified receiver, and subject to all legally enforceable and perfected security interests in the assets of the covered financial company, take such action as may be—

(I) necessary to put the covered financial company in a sound and solvent condition; and

(II) appropriate to carry on the business of the covered financial company and preserve and conserve the
assets and property of the covered financial company.

(ii) Duration.—The status of the Corporation as qualified receiver shall terminate at the end of the 2-year period following the date of its appointment as qualified receiver, unless the Corporation, with the approval of the Secretary and the Federal Reserve Board, terminates the qualified receivership before the end of the 2-year period. At the end of the two-year period, the qualified receivership shall become a receivership with the Corporation as receiver.

(iii) Extension of Qualified Receivership.—The Corporation may, with the approval of the Secretary and the Federal Reserve Board, extend the qualified receivership for 3 additional 1-year periods beyond the initial two-year period if necessary to promote financial stability.

(E) 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 trans-
fer of assets to a bridge financial company es-
tablished under subsection (h), or the exercise
of any other rights or privileges granted to the
receiver under this section.

(F) ORGANIZATION OF NEW COMPANIES.—
The Corporation as receiver may organize a
bridge financial company under subsection (h).

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

(i) IN GENERAL.—Subject to clause
(ii), the Corporation as receiver or quali-
fied receiver may—

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

(II) transfer any asset or liability
of the covered financial company (in-
cluding assets and liabilities associ-
ated with any trust or custody busi-
ness) 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 Chairman 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.

(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver or qualified 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 or qualified receiver in accordance with the prescriptions and limitations of this title.
(I) 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 realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act as if the covered financial company were an insured depository institution.

   (ii) Rule of construction.—This section shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) under any other provision of law.

(J) Incidental powers.—The Corporation, as receiver or qualified receiver, may—

   (i) exercise all powers and authorities specifically granted to receivers or qualified receivers under this section and such inci-
dental powers as shall be necessary to
carry out such powers; and

(ii) take any action authorized by this
section, which the Corporation determines
is in the best interests of the covered fi-
nancial company, its customers, its credi-
tors, its counterparties, or the stability of
the financial system.

(K) Utilization of Private Sector.—
In carrying out its responsibilities in the man-
agement and disposition of assets from a cov-
ered financial company, the Corporation, as re-
ceiver or qualified receiver, may utilize the serv-
ices of private persons, including real estate and
loan portfolio asset management, property man-
agement, auction marketing, legal, and broker-
age services, if such services are available in the
private sector and the Corporation determines
utilization of such services is practicable, effi-
cient, and cost effective.

(L) Shareholders and Creditors of
Covered Financial Company.—Notwith-
standing any other provision of law, the Cor-
poration as receiver or qualified receiver for a
covered financial company pursuant to this sec-
tion and its succession, by operation of law, to
the rights, titles, powers, and privileges de-
scribed 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 sat-
isfaction 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
provision s in section 1609(b).

(M) COORDINATION WITH FOREIGN FINAN-
CIAL AUTHORITIES.—The Corporation as re-
ceiver or qualified receiver for a covered finan-
cial company shall coordinate with the appro-
priate foreign financial authorities regarding
the resolution of subsidiaries of the covered fi-
nancial company that are established in a coun-
try other than the United States.

(2) AUTHORITY OF CORPORATION TO DETER-
MINE 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 determination 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.

(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 company 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 of-
(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

(iii) 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 or qualified receiver for a covered financial company, the Corporation may request a stay for a period not to exceed—

(i) 45 days, in the case of any qualified receiver; and

(ii) 90 days, in the case of any receiver,

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 Cor-
poration pursuant to subparagraph (A) for a
stay of any non-criminal judicial action or pro-
ceeding 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 com-
petent jurisdiction which was rendered before
the appointment of the Corporation as receiver
or qualified receiver.

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

(i) have all the rights and remedies
available to the covered financial company
(before the appointment of the receiver or
qualified receiver under section 1604) and
the Corporation, including but not limited
to removal to Federal court and all appel-
late 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 or qualified receiver in connection with any covered financial company for which the Corporation is acting as receiver or qualified 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 or qualified 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 or qualified 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 or qualified receiver, the Corporation may bring an action as receiver or qualified 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 or qualified 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 ap-
pointed receiver or qualified 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 trans-
fer or the institution-affiliated party or
person for whose benefit such transfer was
made; or

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

(C) Rights of Transferee or Obli-
gee.—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,
(ii) any immediate or mediate good faith transferee of such transferee.

(D) RIGHTS UNDER THIS SUBSECTION.—

The rights of the Corporation as receiver or qualified 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 regulation 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 control 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 avail-
able under the laws of such State provide sub-
stantially similar protections to such party’s
right to due process as rule 65 (as modified
with respect to such proceeding by subpara-
graph (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 COR-
PORATION AS RECEIVER OR QUALIFIED RECEIVER.—
Notwithstanding any other provision of this sub-
section, any final and unappealable judgment for
monetary damages entered against the Corporation
as receiver or qualified receiver for a covered finan-
cial company for the breach of an agreement exe-
cuted or approved by the Corporation after the date
of its appointment shall be paid as an administrative
expense of the receiver or the qualified receiver.
Nothing in this paragraph shall be construed to limit
the power of a receiver or qualified receiver to exer-
cise any rights under contract or law, including to
terminate, breach, cancel, or otherwise discontinue
such agreement.

(16) ACCOUNTING AND RECORDKEEPING RE-
QUIREMENTS.—

(A) IN GENERAL.—The Corporation as re-
ceiver or qualified receiver shall, consistent with
the accounting and reporting practices and pro-
cedures established by the Corporation, main-
tain a full accounting of each qualified receiver-
ship, receivership, or other disposition of any
covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—
With respect to each receivership or qualified
receivership to which the Corporation was ap-
pointed, 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 re-
port 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).

(b) Priority of Expenses and Unsecured Claims.—

(1) In General.—Unsecured claims against a covered financial company, or the receiver for such
covered financial company under this section, that 
are proven to the satisfaction of the receiver shall 
have priority in the following order:

(A) Administrative expenses of the re-
ceiver.

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

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

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

(E) Any obligation to shareholders, mem-
ers, general partners, limited partners or other 
persons with interests in the equity of the cov-
ered financial company arising as a result of 
their status as shareholders, members, general 
partners, limited partners or other persons with 
interests in the equity of the covered financial 
company.

(2) POST-RECEIVERSHIP FINANCING PRI-
ORITY.—In the event that the Corporation as re-
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 com-
pany which shall have priority over any or all admin-
istrative expenses of the receiver under paragraph
(1)(A).

(3) Claims of the United States.—Unse-
cured claims of the United States shall, at a min-
imum, have a higher priority than liabilities of the
covered financial company that count as regulatory
capital.

(4) Creditors Similarly Situated.—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 disposi-
tion of the assets of the covered financial com-
pany, or to contain or address serious adverse
effects on financial stability or the U.S. econ-
omy; and

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

(5) SECURED CLAIMS UNAFFECTED.—This sub-
section 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 be-
tween the claim and the amount realized from the
security.

(6) DEFINITIONS.—As used in this subsection,
the term "administrative expenses of the receiver" in-
cludes—

(A) the actual, necessary costs and ex-
penses incurred by the receiver in preserving
the assets of a covered financial company or liq-
uidating or otherwise resolving the affairs of a
covered financial company for which the Cor-
poration has been appointed as receiver; and

(B) any obligations that the receiver deter-
mines are necessary and appropriate to facili-
tate the smooth and orderly liquidation or other
resolution of the covered financial company.

(c) **Provisions Relating to Contracts Entered**

**Into Before Appointment of Receiver or Qualified Receiver.—**

(1) **Authority to Repudiate Contracts.—**

In addition to any other rights a receiver or qualified receiver may have, the Corporation as receiver
or qualified receiver for any covered financial com-
pany 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
or qualified receiver, in the receiver’s or quali-
fied receiver’s discretion, determines to be bur-
densome; and

(C) the disaffirmance or repudiation of
which the receiver or qualified receiver deter-
mines, in the receiver’s or qualified receiver’s
discretion, will promote the orderly administra-
tion of the covered financial company’s affairs.

(2) **Timing of Repudiation.—** The receiver or
qualified receiver appointed for any covered financial
company under section 1604 shall determine wheth-
er 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 or qualified 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 qualified 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 opportu-
nity; 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 rea-
sonable costs of cover or other reasonable measures of damages utilized in the indus-
tries for such contract and agreement claims; and

(ii) paid in accordance with this sub-
section and subsection (d) except as other-
wise specifically provided in this sub-
section.

(4) **Leases under which the Covered Financial Company is the Lessee.**—

(A) **In General.**—If the receiver or quali-
fied receiver disaffirms or repudiates a lease under which the covered financial company was the lessee, the receiver or qualified 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—

(II) 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 or qualified 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; and

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(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 or qualified 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 or qualified 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 non-performance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the receiver or qualified 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 or qualified 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 or qualified 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 or qualified receiver, any claim of such person for services performed before the appointment of the receiver or qualified 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 or qualified 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 or qualified receiver accepts performance by the other person before the receiver or qualified 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 or qualified receivership.

(C) Acceptance of Performance No
Bar to Subsequent Repudiation.—The ac-
ceptance by any receiver or qualified receiver of
services referred to in subparagraph (B) in con-
nection with a contract described in such sub-
paragraph shall not affect the right of the re-
ceiver or qualified receiver to repudiate such
contract under this section at any time after
such performance.

(8) Certain Qualified Financial Con-
tracts.—

(A) Rights of Parties to Contracts.—
Subject to paragraphs (9) and (10) of this sub-
section 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 ex-
ercising—
(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); and

(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 sub-paragraph (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 or qualified 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 or qualified 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, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

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

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the
foregoing, including any option to
purchase or sell any such security,
certificate of deposit, mortgage loan,
interest, group or index, or option,
and including any repurchase or re-
verse repurchase transaction on any
such security, certificate of deposit,
mortgage loan, interest, group or
index, or option (whether or not such
repurchase or reverse repurchase
transaction is a “repurchase agree-
ment,” as defined in clause (v));

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

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

(IV) means the guarantee (in-
cluding by novation) by or to any se-
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curities clearing agency of any settle-
ment of cash, securities, certificates of
deposit, mortgage loans or interests
therein, group or index of securities,
certificates of deposit or mortgage
loans or interests therein (including
any interest therein or based on the
value thereof) or option on any of the
foregoing, including any option to
purchase or sell any such security,
certificate of deposit, mortgage loan,
interest, group or index, or option
(whether or not such settlement is in
connection with any agreement or
transaction referred to in subclauses
(I) through (XII) (other than sub-
clause (II));

(V) means any margin loan;

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

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

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

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

(X) means any option to enter
into any agreement or transaction re-
ferred 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 commodity 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 dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated trans-
action, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), 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 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 enhance-
ment 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 deter-
mined by regulation or order adopted
by the Federal Reserve Board) or se-
curities 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 certifi-
cates of deposit, eligible bankers’ ac-
ceptances, securities, mortgage loans,
or interests with a simultaneous
agreement by such transferee to
transfer to the transferor thereof cer-
tificates 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 repur-
chase obligation under a participation
in a commercial mortgage loan unless
the Corporation determines by regula-
tion, 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 se-
curiosities 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 enhance-
ment 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 agree-
ment 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 finan-
cial 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, abso-
lute 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) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF QUALIFIED RECEIVER.—Notwithstanding any other provision of this section (other than paragraph (10) of this subsection and subsection (a)(7) of this section), 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 in a qualified receivership based upon a default under such financial contract which is enforceable under applicable noninsolvency law;
(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); or

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) 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.

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E) and sections 403 and 404 of the Fed-
eral 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 suspended 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 or qualified 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.

(H) 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 or qualified 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 or qualified 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 fi-
nancial 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 con-
tract described in subclause (I) or any
claim described in subclause (II) or
(III) under any such contract; or
(ii) transfer none of the qualified fi-
nancial contracts, claims, property or other
credit enhancement referred to in clause (i)
(with respect to such person and any affil-
iate of such person).
(B) Transfer to foreign bank, finan-
cial institution, or branch or agency
thereof.—In transferring any qualified finan-
cial contracts and related claims and property
under subparagraph (A)(i), the receiver or
qualified receiver for the covered financial com-
pany 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 agree-
ments or arrangements, or other credit en-
hancements are enforceable substantially to the
same extent as permitted under this section.

(C) Transfer of Contracts Subject
to the Rules of a Clearing Organiza-
tion.—In the event that a receiver or qualified
receiver transfers any qualified financial con-
tract 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 or-
ganization shall not be required to accept the
transferee as a member by virtue of the trans-
fer.
(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 or qualified 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 or qualified 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 in the case of a re-
ceivership, or the business day following such transfer in the case of a qualified receivership.

(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) Qualified receivership.—A person who is a party to a qualified finan-
cial contract with a covered financial com-
pany may not exercise any right such per-
son has to terminate, liquidate, or net such
contract under paragraph (8)(E) of this
subsection or section 403 of Federal De-
posit Insurance Corporation Improvement
Act of 1991 solely by reason of or inci-
dental to the appointment under this sec-
tion of a qualified receiver for the covered
financial company (or the insolvency or fi-
nancial condition of the covered financial
comp any for which the qualified receiver
has been appointed).

(iii) NOTICE.—For purposes of this
paragraph, the receiver or qualified re-
ceiver for a covered financial company
shall be deemed to have notified a person
who is a party to a qualified financial con-
tract with such covered financial company
if the receiver or qualified receiver has
taken steps reasonably calculated to pro-
vide 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 consid-
ered 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 pur-
poses 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 re-
ceiver or qualified receiver with respect to any quali-
fied financial contract to which a covered financial
company is a party, the receiver or qualified receiver
for such covered financial shall either—

(A) disaffirm or repudiate all qualified fi-
nancial 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 sub-
paragraph (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 or qualified 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 exer-
exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a receiver or qualified receiver.

(B) **CERTAIN RIGHTS NOT AFFECTED.**—

No provision of this paragraph may be construed as impairing or affecting any right of the receiver or qualified receiver to enforce or recover under a director’s or officer’s liability insurance contract or financial institution bond under other applicable law.

(C) **CONSENT REQUIREMENT.**—

(i) **IN GENERAL.**—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party, or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the receiver or qualified receiver, as appropriate, of the covered financial company during the 45-day period beginning on the
date of the appointment of the qualified re-
ceiver, or during the 90-day period begin-
ning on the date of the appointment of the
receiver, as applicable.

(ii) CERTAIN EXCEPTIONS.—No provi-
sion of this subparagraph shall apply to a
director or officer liability insurance con-
tract or a financial institution bond, to the
rights of parties to certain qualified finan-
cial contracts pursuant to paragraph (8),
or to the rights of parties to netting con-
tracts pursuant to subtitle A of title IV of
the Federal Deposit Insurance Corporation
et seq.), or shall be construed as permit-
ting the receiver or qualified receiver to fail
to comply with otherwise enforceable provi-
sions of such contract.

(14) EXCEPTION FOR FEDERAL RESERVE
BANKS AND CORPORATION SECURITY INTEREST.—
No provision of this subsection shall apply with re-
spect to—

(A) any extension of credit from any Fed-
eral 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 characteriza-
tion, definition, or treatment of any similar terms
under any other statute, regulation, or rule, includ-
ing, 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 de-
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 com-
pany.

(2) MAXIMUM LIABILITY.—The maximum li-
ability of the Corporation, acting as receiver or in
any other capacity, to any person having a claim
against the receiver or the covered financial com-
pany 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 cov-
ered 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 but not limited to 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 Sec-
retary, make additional payments or credit ad-
ditional amounts to or with respect to or for the
account of any claimant or category of claim-
ants of a covered financial company if the Cor-
poration 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 ad-
verse effects to financial stability or the
United States economy.

(B) MANNER OF PAYMENT.—The Corpora-
tion may make payments or credit amounts
under subparagraph (A) directly to the claim-
ants or may make such payments or credit such
amounts to a company other than a covered fi-
nancial company or a bridge financial company
established with respect thereto in order to in-
duce such other company to accept liability for
such claims.

(e) LIMITATION ON COURT ACTION.—Except as pro-
vided in this section or at the request of the receiver or
qualified receiver appointed for a covered financial com-
pany, no court may take any action to restrain or affect
the exercise of powers or functions of the receiver or qual-
fied 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 de-
scribed 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 or qualified 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 qualified
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 cov-
ered 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 dem-
onstrates a greater disregard of a duty of care (than
gross negligence) including intentional tortious con-
duct, 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 companies 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 PRIVI-
LEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding
any other provision of Federal law or the
law of any State, the Corporation may pro-
vide for a bridge financial company to suc-
cceed to and assume any rights, powers, au-
thorities or privileges of the covered finan-
cial company with respect to which the
bridge financial company was established
and, upon such determination by the Cor-
poration, the bridge financial company
shall immediately and by operation of law
succeed to and assume such rights, powers,
authorities and privileges.

(ii) EFFECTIVE WITHOUT AP-
PROVAL.—Any succession to or assumption
by a bridge financial company of rights,
powers, authorities or privileges of a cov-
ered 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 fiduciary 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 ad-
verse effects to financial stability or the
U.S. economy; and

(ii) all creditors that are similarly sit-
uated under subsection (b)(1) receive not
less than the amount provided in sub-
section (d)(2).

(F) LIMITATION ON TRANSFER OF LIABILITY-
ITIES.—Notwithstanding any other provision of
law, the aggregate amount of liabilities of a cov-
ered 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
purchased by, the bridge financial company
from the covered financial company.

(6) STAY OF JUDICIAL ACTION.—Any judicial
action to which a bridge financial company becomes
a party by virtue of its acquisition of any assets or
assumption of any liabilities of a covered financial
company shall be stayed from further proceedings
for a period of up to 45 days (or such longer period
as may be agreed to upon the consent of all parties)
at the request of the bridge financial company.
(7) AGREEMENTS AGAINST INTEREST OF THE
BRIDGE FINANCIAL COMPANY.—No agreement that
tends to diminish or defeat the interest of the bridge
financial company in any asset of a covered financial
company acquired by the bridge financial company
shall be valid against the bridge financial company
unless such agreement is in writing and executed by
an authorized officer or representative of the covered
financial company.

(8) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge financial
company is not an agency, establishment, or in-
strumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives
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 representa-
tive 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 com-
pany.—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 fol-
lowing the date it was granted a charter. The Cor-
poration may, in its discretion, extend the status of
the bridge financial company as such for 3 addi-
tional 1-year periods.

(12) Termination of bridge financial com-
pany 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, ei-
ther the assumption of all or substantially all of
the liabilities of the bridge financial company by
a company that is not a bridge financial com-
pany, 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 para-
graph (14).

(13) Effect of termination events.—

(A) Merger or consolidation.—A
merger or consolidation as provided in para-
graph (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
ccompany 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 para-
graph (12)(B), the Corporation may amend the
charter of the bridge financial company to re-
fect the termination of the status of the bridge
financial company as such, whereupon the com-
pany shall have all of the rights, powers, and
privileges under its constituent documents and
applicable State or Federal law. In connection
therewith, the Corporation may take such steps
as may be necessary or convenient to reincor-
porate the bridge financial company under the
laws of a State and, notwithstanding any provi-
sions of State or Federal law, such State-char-
tered 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 ef-
fect as if the bridge financial company had
merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company as provided in paragraph (12)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of State or Federal 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 provisions 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 prop-
erty 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 protec-
tion.

(16) EFFECT ON DEBTS AND LIENS.—The re-
versal 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 enti-
ty that extended such credit in good faith, whether
or not such entity knew of the pendency of the ap-
peal, 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 or qualified receiver for a covered financial company, the Federal Reserve Board and the company’s primary Federal regulatory agency, if any, shall each make all records relating to the company available to the receiver or qualified receiver which may be used by the receiver or qualified receiver in any manner the receiver or qualified 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 or qualified 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 Corporation in its capacity as receiver or qualified receiver for a covered financial company.

(m) Liquidation of Certain Covered Financial Companies or Bridge Financial Companies.—Notwithstanding any other provision of law (other than a conflicting provision of this section), the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

(1) in the case of any covered financial company or bridge financial company that is or has a
subsidiary that is a stockbroker (as that term is defined in section 101 of title 11 of the United States Code) but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of title 11 of the United States Code in respect of the distribution to any “customer” of all “customer name securities” and “customer property” (as such terms are defined in section 741 of such title 11) as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

(2) in the case of any covered financial company or bridge financial company that is a commodity 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 RESOLUTION FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury a separate fund called the Systemic
Resolution Fund, which shall be available without further appropriation for the cost of actions authorized by this title upon a determination made under section 1603(b) to the Corporation to carry out the authorities contained in this title, including the payment of administrative expenses, the Corporation’s payment of principal and interest on obligations issued under paragraph (3), and the exercise of authorities under section 1604.

(2) PROCEEDS.—Amounts received by the Corporation (including amounts borrowed under paragraph (3) and assessments received under subsection (o), but excluding amounts received by any covered financial company when the Corporation is acting in its capacity as receiver or qualified receiver for such company, and excluding amounts credited to the appropriate financing account as a means of financing credit activity, as applicable) shall be deposited into the Fund, subject to apportionment.

(3) CAPITALIZATION OF FUND.—

(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—In order to capitalize the Fund upon the Secretary making the determination provided for in section 1603(b), the Corporation
is authorized to issue obligations to the Secretary.

(B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary may, in the Secretary’s discretion and under such terms and conditions that the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purchases.

(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity.

(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may sell, upon such
terms and conditions and at such price or
prices as the Secretary shall determine, any of
the obligations acquired under this paragraph.

(E) Public Debt Transactions.—All
purchases and sales by the Secretary of such
obligations under this paragraph shall be treat-
ed as public debt transactions of the United
States, and the proceeds from the sale of any
obligations acquired by the Secretary under this
paragraph shall be covered into the Treasury as
miscellaneous receipts.

(o) Recovery of Expended Funds From Finan-
cial Companies.—

(1) Risk-based assessments.—The Corpora-
tion shall recover the amount of funds expended out
of the Fund under subsection (n) and which have
not otherwise been recouped. Steps to recover such
amounts shall include one or more risk-based assess-
ments on financial companies in such amount and
manner, and subject to such terms and conditions
that the Corporation determines, with the concur-
rence of the Secretary and the Federal Reserve
Board, are necessary to pay in full the obligations
issued by Corporation to the Secretary, within 60
months from the date of the Secretary’s determina-
tion under section 1603(b). The Corporation may, with the approval of the Secretary and the Federal Reserve Board, extend this time period if the Corporation determines that an extension is necessary to avoid having a serious adverse effect on the financial system or economic conditions in the United States.

(2) Assessment threshold and graduated assessment rate.—The Corporation shall not assess any financial company whose total assets on a consolidated basis are less than $10 billion. The Corporation shall assess any financial company with $10 billion or more in total consolidated assets on a graduated basis that assesses financial companies with greater assets at a higher rate.

(3) Risk-based assessment considerations.—In imposing assessments under paragraphs (1) and (2), the Corporation shall—

(A) take into account economic conditions generally affecting financial companies so as to allow assessments to be lower during less favorable economic conditions;

(B) take into account any assessments imposed on a subsidiary of a financial company that is—
(i) an insured depository institution pursuant to section 7 or section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. §1817 and 1823(e)(4)(G));

(ii) a member of the Securities Investor Protection Corporation pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd); or

(iii) an insurance company pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of rehabilitation, liquidation, or other State insolvency proceeding with respect to one or more insurance companies;

(C) take into account the risks presented by the financial company to financial stability or the U.S. economy and the extent to which the financial company has, benefitted, or likely would benefit, from the resolution of a financial company under this Act;

(D) take into account such other factors as the Corporation deems appropriate;

(E) distinguish among different classes of assets or different types of financial companies
in order to establish comparable assessment bases among financial companies subject to this subsection; and

(F) establish the parameters for the graduated assessment regime described in paragraph (2).

(4) COLLECTION OF INFORMATION.—The Corporation may impose on financial companies such collection of information requirements that the Corporation deems necessary to carry out this subsection after a determination under section 1603(b).

(5) RULEMAKING.—The Corporation shall, in consultation with the Secretary and the Federal Reserve Board, prescribe regulations to carry out this subsection.

(p) NO FEDERAL STATUS.—

(1) AGENCY STATUS.—A covered financial company (or any covered subsidiary thereof) that is placed into receivership or qualified 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 or
qualified 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 qualified receiver, or of any
Federal agency who serves at the request of the re-
ceiver or qualified receiver as an interim director, di-
rector, officer, employee, or agent of a covered finan-
cial company that is placed into receivership or
qualified 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 provi-
sion of law, or

(B) receive any salary or benefits for serv-
ice in any such capacity with respect to a cov-
ered financial company that is placed into re-
ceivership or qualified 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 QUALIFIED RECEIVER, 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. 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 Resolution 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(e)(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 sub-paragraph 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.”.


Subtitle H—Additional Improvements for Financial Crisis Management

SEC. 1701. ADDITIONAL IMPROVEMENTS FOR FINANCIAL CRISIS MANAGEMENT.

Section 13 of the Federal Reserve Act is amended in the 3rd undesignated paragraph (12 U.S.C. 343) to read as follows:
"In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, by the affirmative vote of not less than five members and with the written concurrence of the Secretary of the Treasury, may authorize any Federal reserve bank, during such periods as the said board may determine, at rates established in accordance with the provisions of section 14, subdivision (d) of this Act (12 U.S.C. 357), 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: Provided, That 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 Federal Reserve bank to discount notes, drafts, or bills of exchange for only a single and specific individual, partnership, or corporation: And provided further that before discounting any such note, draft, or bill of exchange for an individual, a partnership or corporation 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 paragraph 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.”.