To reform the financial regulatory system of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2009

Mr. BACHUS (for himself, Mr. BOEHNER, Mr. CANTOR, Mr. PENCE, Mr. SMITH of Texas, Mr. FRANKS of Arizona, Mr. ISSA, Mr. NEUGEBAUER, Mr. GARRETT of New Jersey, Mr. HENSARLING, Mr. PRICE of Georgia, Mrs. BRIGGERT, Mrs. CAPITO, Mr. JONES, Mr. POSEY, Mr. LANCE, Mr. MARCHANT, Mr. ROYCE, Mr. LEE of New York, Mr. LUCAS, Mr. ROSKAM, Mrs. BACHMANN, Ms. JENKINS, Mr. BARRETT of South Carolina, Mr. SCALISE, Mr. GOODLATTE, Mr. GERLACH, and Mr. RYAN of Wisconsin) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Education and Labor, Transportation and Infrastructure, the Judiciary, Agriculture, Oversight and Government Reform, the Budget, Rules, and Energy and Commerce, 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.
SECTION 1. SHORT TITLE.

This Act may be cited as the “Consumer Protection and Regulatory Enhancement Act”.

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TITLE I—RESOLUTION OF NON-BANK FINANCIAL INSTITUTIONS

SEC. 101. AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.

Title 28 of the United States Code is amended—

(1) in section 1408 by striking “section 1409” and inserting “sections 1409 and 1409A”,

(2) by inserting after section 1409 the following:

“§ 1409A. Venue of cases involving non-bank financial institutions

“A case under chapter 14 may be commenced in the district court of the United States for the district—

“(1) in which the debtor has its principal place of business or principal assets in the United States
if a Federal Reserve Bank is located in that district, or

“(2) if venue does not exist under paragraph (1), in which there is a Federal Reserve Bank and in a Federal circuit in which the debtor has its principal place of business or principal assets in the United States.”, and

(3) by amending the table of sections of chapter 87 of such title to insert after the item relating to section 1408 the following:

“1409A. Venue of cases involving non-bank financial institutions.”.

SEC. 102. AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (26) the following:

“(26A) The term ‘functional regulator’ means the Federal regulatory agency with the primary Federal regulatory authority over the debtor, such as an agency listed in section 509 of the Gramm-Leach-Bliley Act.”,

(2) by redesignating paragraphs (38A) and (38B) as paragraphs (38B) and (38C), respectively, and

(3) by inserting after paragraph (38) the following:
“(38A) the term ‘Market Stability and Capital Adequacy Board’ means the entity established in section 201 of the Consumer Protection and Regulator Enhancement Act.’’, and

(4) by inserting after paragraph (40) the following:

“(40A) The term ‘non-bank financial institution’ means an institution the business of which is engaging in financial activities that is not an insured depository institution.”.

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a) by striking “13” and inserting “13, and 14”,

(2) by redesignating subsection (k) as subsection (l), and

(3) by inserting after subsection (j) the following:

“(k) Chapter 14 applies only in a case under such chapter.”.

(c) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2) by striking “or” at the end,
(B) in paragraph (3) by striking the period at the end and insert and inserting “; or”, and
(C) by adding at the end the following:
“(4) a non-bank financial institution that has not been a debtor under chapter 14 of this title.”,
(2) in subsection (d) by striking “or commodity broker” and inserting “, commodity broker, or a non-bank financial institution”, and
(3) by adding at the end the following:
“(i) Only a non-bank financial institution may be a debtor under chapter 14 of this title.”.
(d) INVOLUNTARY CASES.—Section 303 of title 11, the United States Code, is amended—
(1) in subsection (a) by striking “or 11” and inserting “, 11, or 14”, and
(2) in subsection (b) by striking “or 11” and inserting “, 11, or 14”.
(e) OBTAINING CREDIT.—Section 364 of title 11, United States Code, is amended by adding at the end the following:
“(g) Notwithstanding any other provision of this section, the trustee may not, and the court may not authorize the trustee to, obtain credit, if the source of that credit either directly or indirectly is the United States.”.
(f) Chapter 14.—Title 11, United States Code, is amended—

(1) by inserting the following after chapter 13:

“CHAPTER 14—ADJUSTMENT TO THE DEBTS OF A NON-BANK FINANCIAL INSTITUTION

§1401. Inapplicability of other sections.

Except as provided in section 1408, sections 362(b)(6), 362(b)(7), 559, 560, and 561 do not apply in a case under this chapter.

§1402. Applicability of chapter 11 to cases under this chapter.

With the exception of sections 1104(d), 1109, 1112(a), 1115, and 1116, subchapters I, II, and III of chapter 11 apply in a case under this chapter.

§1403. Prepetition consultation.

(a) Subject to subsection (b)—

(1) a non-bank financial institution may not be a debtor under this chapter unless that institution has, at least 10 days prior to the date of the
filing of the petition by such institution, taken part
in the consultation described in subsection (c); and

“(2) a creditor may not commence an involun-
tary case under this chapter unless, at least 10 days
prior to the date of the filing of the petition by such
creditor, the creditor notifies the non-bank financial
institution, the functional regulator, and the Market
Stability and Capital Adequacy Board of its intent
to file a petition and requests a consultation as de-
scribed in subsection (c).

“(b) If the non-bank financial institution, the func-
tional regulator, and the Market Stability and Capital
Adequacy Board, in consultation with any agency charged
with administering a nonbankruptcy insolvency regime for
any component of the debtor, certify that the immediate
filing of a petition under section 301 or 303 is necessary,
or that an immediate filing would be in the interests of
justice, a petition may be filed notwithstanding subsection
(a).

“(c) The non-bank financial institution, the func-
tional regulator, the Market Stability and Capital Ade-
quacy Board, and any agency charged with administering
a nonbankruptcy insolvency regime for any component of
the debtor shall engage in prepetition consultation in order
to attempt to avoid the need for the non-bank financial
institution’s liquidation or reorganization in bankruptcy,
to make any liquidation or reorganization of the non-bank
financial institution under this title more orderly, or to
aid in the nonbankruptcy resolution of any of the non-
bank financial institution’s components under its non-
bankruptcy insolvency regime. Such consultation shall spe-
cifically include the attempt to negotiate forbearance of
claims between the non-bank financial institution and its
creditors if such forbearance would likely help to avoid the
commencement of a case under this title, would make any
liquidation or reorganization under this title more orderly,
or would aid in the nonbankruptcy resolution of any of
the non-bank financial institution’s components under its
nonbankruptcy insolvency regime. Additionally, the con-
sultation shall consider whether, if a petition is filed under
section 301 or 303, the debtor should file a motion for
an exemption authorized by section 1407.

“(d) The court may allow the consultation process to
continue for 30 days after the petition, upon motion by
the debtor or a creditor. Any post-petition consultation
proceedings authorized should be facilitated by the court’s
mediation services, under seal, and exclude ex parte com-
munications.

“(e) The Market Stability and Capital Adequacy
Board and the functional regulator shall publish and
transmit to Congress a report documenting the course of any consultation. Such report shall be published and transmitted to Congress within 30 days of the conclusion of the consultation.

“(f) Nothing in this section shall be interpreted to set aside any of the limitations on the use of Federal funds set forth in the Consumer Protection and Regulator Enhancement Act or the amendments made by such Act.

“§ 1404. Appointment of trustee

“In applying section 1104 to a case under this chapter, if the court orders the appointment of a trustee or an examiner, if the trustee or an examiner dies or resigns during the case or is removed under section 324, or if a trustee fails to qualify under section 322, the functional regulator, in consultation with the Market Stability and Capital Adequacy Board, shall submit a list of five disinterested persons that are qualified and willing to serve as trustees in the case and the United States trustee shall appoint, subject to the court’s approval, one of such persons to serve as trustee in the case.

“§ 1405. Right to be heard

“(a) The functional regulator, the Market Stability and Capital Adequacy Board, the Federal Reserve, the Department of the Treasury, the Securities and Exchange Commission, and any domestic or foreign agency charged
with administering a nonbankruptcy insolvency regime for any component of the debtor may raise and may appear and be heard on any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

“(b) A party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee may raise, and may appear and be heard on, any issue in a case under this chapter.

“§ 1406. Right to communicate

“The court is entitled to communicate directly with, or to request information or assistance directly from, the functional regulator, the Market Stability and Capital Adequacy Board, the Board of Governors of the Federal Reserve System, the Department of the Treasury, or any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, subject to the rights of a party in interest to notice and participation.

“§ 1407. Exemption with respect to certain contracts or agreements

“(a) Subject to subsection (b)—

“(1) upon motion of the debtor, consented to by the Market Stability and Capital Adequacy Board—
“(A) the debtor and the estate shall be exempt from the operation of sections 362(b)(6), 362(b)(7), 559, 560, and 561;

“(B) if the Market Stability and Capital Adequacy Board consents to the filing of such motion by the debtor, the Board shall inform the court of its reasons for consenting; and

“(C) the debtor may limit its motion, or the board may limit its consent, to exempt the debtor and the estate from the operation of section 362(b)(6), 362(b)(7), 559, 560, or 561, or any combination thereof; and

“(2) if the Market Stability and Capital Adequacy Board does not consent to the filing of a motion by the debtor under paragraph (1), the debtor may file a motion to exempt the debtor and the estate from the operation of sections 362(b)(6), 362(b)(7), 559, 560, and 561.

“(b) The court shall commence a hearing on a motion under subsection (a) not later than 5 days after the filing of the motion to determine whether to maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1) or, in the case of a motion under subsection (a)(2), grant the exemption. The court shall request that the functional regulator and the Market Stability and
Capital Adequacy Board files briefs on whether the court should maintain the exemption. The court shall decide the motion not later than 5 days after commencing such hearing unless—

“(1) the parties in interest consent to a extension for a specific period of time; or

“(2) except with respect to an exemption from the operation of section 559, the court sua sponte extends for 5 additional days the period for decision if such extension would be in the interests of justice or is required by compelling circumstances.

“(c) The court shall maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1), or, in the case of a motion under subsection (a)(2), grant the exemption only upon showing of good cause. In determining whether good cause has been shown, the court shall balance the interests of both debtor and creditors while attempting to preserve the debtor’s assets for repayment and reorganization of the debtors obligations, or to provide for a more orderly liquidation.

§ 1408. Conversion or dismissal

“In applying section 1112 to a case under this chapter, the debtor may convert a case under this chapter to a case under chapter 7 of this title if the debtor may be
a debtor under such chapter unless the debtor is not a
debtor in possession.”, and

(2) by amending the table of chapters of such
title by adding at the end the following:

“14. Adjustment to the Debts of a Non-Bank Financial Institution ...... 1401”.

SEC. 103. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in sub-
section (b), this Act and the amendments made by this
Act shall take effect on the date of the enactment of this
Act.

(b) APPLICATION OF AMENDMENTS.—The amend-
ments made by this Act shall apply only with respect to
cases commenced under title 11 of the United States Code
on or after the date of the enactment of this Act.

TITLE II—MARKET STABILITY
AND CAPITAL ADEQUACY

SEC. 201. ESTABLISHMENT OF MARKET STABILITY AND
CAPITAL ADEQUACY BOARD.

(a) IN GENERAL.—There is hereby established the
Market Stability and Capital Adequacy Board (hereafter
in this title referred to as the “Board”) as an independent
establishment in the Executive Branch.

(b) CONSTITUTION OF BOARD.—Subject to para-
graph (4), the Board shall have 11 members as follows:
(1) PUBLIC MEMBERS.—The following shall be members of the Board—

(A) The Secretary of the Treasury.

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

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

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

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

(F) The Chairperson of the Financial Institutions Regulator.

(2) PRIVATE MEMBERS.—The Board shall also have 5 members appointed by the President, by and with the advise and consent of the Senate, who shall be appointed from among individuals who—

(A) are specially qualified to serve on the Board by virtue of their education, training, and experience; and

(B) are not officers or employees of the Federal Government, including the Board of Governors of the Federal Reserve System.
(3) **CHAIRPERSON.**—The Secretary of the Treasury shall serve as the Chairperson of the Board.

(4) **DIRECTOR OF FHFA AS INTERIM MEMBER.**—Until such time as the charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are both repealed pursuant to section 506(d), the Board shall consist of 12 members with the Director of the Federal Housing Finance Agency serving as a public member under paragraph (1).

(c) **APPOINTMENTS.**—

(1) **TERM.**—

(A) **IN GENERAL.**—Each appointed member shall be appointed for a term of 5 years.

(B) **STAGGERED TERMS.**—Of the members of the Board first appointed under subsection (b)(2), as designated by the President at the time of appointment—

(i) 1 shall be appointed for a term of 5 years;

(ii) 1 shall be appointed for a term of 4 years;

(iii) 1 shall be appointed for a term of 3 years;
(iv) 1 shall be appointed for a term of 2 years; and

(v) 1 shall be appointed for a term of 1 year.

(2) INTERIM APPOINTMENTS.—Any member appointed to fill a vacancy occurring before the expiration of the term for which such member’s predecessor was appointed shall be appointed only for the remainder of such term.

(3) CONTINUATION OF SERVICE.—Each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(4) REAPPOINTMENT TO A 2ND TERM.—Each member appointed to a term on the Board under subsection (b)(2), including an interim appointment under paragraph (2), may be reappointed by the President to serve 1 additional term.

(d) VACANCY.—

(1) IN GENERAL.—Any vacancy on the Board shall be filled in the manner in which the original appointment was made.

(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in any position listed in sub-
section (b)(1) and pending the appointment of a suc-
cessor, or during the absence or disability of the in-
dividual serving in such position, any acting official
in such position shall be a member of the Board
while such vacancy, absence or disability continues
and the acting official continues acting in such posi-
tion.

(c) Ineligibility for Other Offices.—

(1) Postservice Restriction.—No member
of the Board may hold any office, position, or em-
ployment in any financial institution or affiliate of a
financial institution during—

(A) the time such member is in office; and

(B) the 2-year period beginning on the
date such member ceases to serve on the Board.

(2) Certification.—Upon taking office, each
member of the Board shall certify under oath that
such member has complied with this subsection and
such certification shall be filed with the secretary of
the Board.

(f) Qualifications; Initial Meeting.—

(1) Political Party Affiliation.—Not more
than 3 members of the Board appointed under sub-
section (b)(2) shall be from the same political party.
(2) QUALIFICATIONS GENERALLY.—It is the sense of the Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience commensurate with the duties of the Board.

(3) SPECIFIC APPOINTMENT QUALIFICATIONS FOR CERTAIN APPOINTED MEMBERS.—

(A) STATE BANK.—Of the members appointed to the Board under subsection (b)(2), at least 1 shall be appointed from among individuals who have had experience as a State bank supervisor or senior management executive with a State depository institution.

(B) INSURANCE COMMISSIONER.—Of the members appointed to the Board under subsection (b)(2), at least 1 shall be appointed from among individuals who have served as a State insurance commissioner or supervisor.

(4) INITIAL MEETING.—The Board shall meet and begin the operations of the Board as soon as practicable but not later than the end of the 180-day period beginning the date of the enactment of this Act.
(g) QUORUM.—Four of the members of the Board designated under subsection (b)(1) and 3 members of the Board appointed under (b)(2) shall constitute a quorum.

(h) QUARTERLY MEETINGS.—The Board shall meet upon the call of the chairperson or a majority of the members at least once in each calendar quarter.

SEC. 202. FUNCTIONS OF BOARD.

(a) PRINCIPAL FUNCTIONS.—The principal functions of the Board shall be to—

(1) monitor the interactions of various sectors of the financial system; and

(2) identify risks that could endanger the stability and soundness of the system.

(b) SPECIFIC REVIEW FUNCTIONS INCLUDED.—In carrying out the functions described in subsection (a), the Board shall—

(1) review financial industry data collected from the appropriate functional regulators;

(2) review insurance industry data, in coordination with State insurance supervisors, for all lines of insurance other than health insurance;

(3) monitor government policies and initiatives;

(4) review risk management practices within financial regulatory agencies;
(5) review capital standards set by the appropriate functional regulators and make recommendations to ensure capital and leverage ratios match risks regulated entities are taking on;

(6) review transparency and regulatory understanding of risk exposures in the over-the-counter derivatives markets and make recommendations regarding the appropriate clearing of trades in those markets through central counterparties;

(7) make recommendations regarding any government or industry policies and practices that are exacerbating systemic risk; and

(8) take such other actions and make such other recommendations as the Board, in the discretion of the Board, determines to be appropriate.

(e) Reports to Federal Functional Regulators and the Congress.—The Board shall periodically make a report to the Congress and the functional regulators on the findings, conclusions, and recommendations of the Board in a manner and within a time frame that allows the Congress and such regulators to act to contain risks posed by specific firms, industry practices, activities and interactions of entities under different regulatory regimes, or government policies.
(d) **TESTIMONY TO CONGRESS.**—Not later than February 20 and July 20 of each year, the Chairperson of the Board shall testify to the Congress at semiannual hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, about the state of systemic risk in the financial services industry and proposals or recommendations by the Board to address any undue risk.

(e) **RULE OF CONSTRUCTION.**—No provision of this title shall be construed as giving the Board any enforcement authority over any financial institution.

**SEC. 203. POWERS OF BOARD.**

(a) **CONTRACTING.**—The Board may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Board to discharge its duties under this title.

(b) **INFORMATION FROM FEDERAL AGENCIES.**—

(1) **IN GENERAL.**—The Board may secure directly from any executive department, agency, or independent establishment, or any other instrumentality of the United States information and recommendations for the purposes of this title.

(2) **DELIVERY OF REQUESTED INFORMATION.**—

Each executive department, agency, or independent
establishment, or any other instrumentality of the United States shall, to the extent authorized by law, furnish any information and recommendations requested under paragraph (1) directly to the Board, upon request made by the chairperson or any member designated by a majority of the Commission.

(3) Receipt, Handling, Storage, and Dissemination.—Information shall only be received, handled, stored, and disseminated by members of the Board and its staff consistent with all applicable statutes, regulations, and Executive orders.

(c) Assistance From Federal Agencies.—

(1) General Services Administration.—The Administrator of General Services shall provide to the Board on a reimbursable basis administrative support and other services for the performance of the Commission’s functions.

(2) Other Departments and Agencies.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law, including agencies represented on the Board under section 201(b)(1).
SEC. 204. RESPONSIBILITIES OF FEDERAL FUNCTIONAL REGULATORS.

(a) Federal Functional Regulator Defined.—For purposes of this title, the term “Federal functional regulator” has the same meaning as in section 509(2) of the Gramm-Leach-Bliley Act, except that such term includes the Commodity Futures Trading Commission.

(b) Assessments and Reviews.—In order to address current regulatory gaps, each Federal functional regulator shall, before each quarterly meeting of the Board,—

(1) assess the effects on macroeconomic stability of the activities of financial institutions that are subject to the jurisdiction of such agency;

(2) review how such financial institutions interact with entities outside the jurisdiction of such agency; and

(3) report the results of such assessment and review to the Board, together with such recommendations for administrative action as the agency determines to be appropriate.

SEC. 205. STAFF OF BOARD.

(a) Appointment and Compensation.—The chairperson, in accordance with rules agreed upon by the Board and title 5, United States Code, may appoint and fix the compensation of a staff director and such other personnel
as may be necessary to enable the Board to carry out its functions.

(b) **Detailees.**—Any Federal Government employee may be detailed to the Board and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) **Consultant Services.**—The Board may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**SEC. 206. COMPENSATION AND TRAVEL EXPENSES.**

(a) **Compensation.**—Each member of the Board appointed under section 201(b)(2) may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Board.

(b) **Travel Expenses.**—While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed inter-
mittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

**TITLE III—REGULATORY CONSOLIDATION AND CONSUMER PROTECTION**

**SEC. 301. ESTABLISHMENT.**

(a) IN GENERAL.—There is hereby established in the executive branch of the Government an independent agency to be known as the Financial Institutions Regulator (hereafter in this title referred to as the “FIR”).

(b) DIVISIONS OF THE FIR.—There are hereby established within the FIR—

(1) a division to be known as the Federal Banking Division; and

(2) a division to be known as the State Banking Division;

(c) INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this title, the term “insured depository institution” has the meaning given to such term in section 3(c) of the Federal Deposit Insurance Act.

**SEC. 302. BOARD OF DIRECTORS.**

(a) IN GENERAL.—The management of the FIR shall be vested in a Board of Directors consisting of 5 members—
(1) 1 of whom shall be the Chairman of the
FIR and who shall be appointed by the President,
by and with the advice and consent of the Senate;

(2) 1 of whom shall be the head of the Federal
Banking Division and who shall be appointed by the
President, by and with the advice and consent of the
Senate;

(3) 1 of whom shall be the head of the State
Banking Division and who shall be appointed by the
President, by and with the advice and consent of the
Senate;

(4) 1 of whom shall be the Chairman of the Na-
tional Credit Union Administration; and

(5) 1 of whom shall be the Chairperson of the
Board of Directors of the Federal Deposit Insurance
Corporation.

(b) Terms.—

(1) 5-Year Terms.—Each member appointed
under paragraphs (1), (2), and (3) of subsection (a)
shall be appointed for a term of 5 years.

(2) Interim Appointments.—Any member ap-
pointed to fill a vacancy occurring before the end of
the term to which such member’s predecessor was
appointed shall be appointed only for the remainder
of such term.
(3) Continuation of Service.—Any member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and confirmed.

(c) Vacancy.—Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

(d) Ineligibility for Other Offices.—

(1) Restrictions on Employment by Depository Institutions.—No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any affiliate (as defined in section 2(k) of the Bank Holding Company Act of 1956) of an insured depository institution during—

(A) the time such member is in office; and

(B) the 2-year period beginning on the date such member ceases to serve on the Board of Directors.

(2) Other Restrictions during Service as Member.—No member of the Board of Directors may—

(A) be an officer or director of any Federal Reserve bank or Federal home loan bank; or
(B) hold any stock in any insured depository institution or any affiliate (as defined in section 2(k) of the Bank Holding Company Act of 1956) of an insured depository institution.

(3) Certification.—Upon taking office, each member of the Board of Directors shall file a certification under oath with the secretary of the Board of Directors that such member has complied with the requirements of this subsection.

SEC. 303. POWERS AND DUTIES OF THE FIR.

(a) Regulation of National Banks.—

(1) Transfer to the FIR.—All functions of the Comptroller of the Currency are hereby transferred to the FIR.

(2) FIR powers.—The FIR shall have all powers, duties, and authority which, before the date of the enactment of this Act, were vested in the Comptroller of the Currency under any provision of Federal law to the extent such provision applies to national banks or the office, officers, or employees of the Comptroller of the Currency.

(b) Regulation of Member Banks, Bank Holding Companies and Affiliates, and Various International Banking Entities.—
(1) **TRANSFER TO THE FIR.**—All functions of the Board of Governors of the Federal Reserve System (and any Federal reserve bank) relating to—

   (A) the supervision and regulation of banks which are members of the Federal Reserve System,

   (B) the supervision and regulation of bank holding companies and any subsidiary or affiliate of a bank holding company which is not a depository institution,

   (C) the supervision and regulation of companies operating under section 25 or 25A of the Federal Reserve Act or the International Banking Act of 1978,

   (D) the supervision and regulation of any company which is subject to supervision and regulation by the Board of Governors under any title of the Consumer Credit Protection Act, and

   (E) the supervision and regulation of any foreign bank, any branch or agency of a foreign bank, and any commercial lending company controlled by a foreign bank,

are hereby transferred to the FIR.
(2) FIR powers.—The FIR shall have all powers, duties, and authority which, before the date of the enactment of this Act, were vested in the Board of Governors of the Federal Reserve System under any provision of Federal law to the extent such provisions apply to banks or other companies described in any subparagraph of paragraph (1).

(c) Regulation of Savings Associations and Savings and Loan Holding Companies.—

(1) Transfer to the Federal Banking Division.—All functions of the Director of the Office of Thrift Supervision are hereby transferred to the FIR.

(2) FIR powers.—The FIR shall have all powers, duties, and authority which, before the date of the enactment of this Act, were vested in the Director of the Office of Thrift Supervision under any provision of Federal law to the extent such provision applies to savings associations, savings and loan holding companies, or the office, officers, or employees of the Director.

(d) Regulation of State Nonmember Banks.—

(1) Transfer to the FIR.—All functions of the Federal Deposit Insurance Corporation relating to the supervision and regulation of State non-
member banks, including savings banks, (other than
insurance, conservatorship, or receivership functions)
and foreign banks with insured branches (as defined
in section 3(s)(3) of the Federal Deposit Insurance
Act) are hereby transferred to the FIR.

(2) FIR powers.—The FIR shall have all pow-
ers, duties, and authority which, before the date of
the enactment of this Act, were vested in the Fed-
eral Deposit Insurance Corporation under any provi-
sion of Federal law to the extent such provisions
apply to the supervision and regulation of State non-
member banks, including savings banks, (other than
insurance, conservatorship, or receivership functions)
and foreign banks with insured branches (as defined
in section 3(s)(3) of the Federal Deposit Insurance
Act).

(e) Regulations and orders.—In addition to any
authority under any provision referred to in subsection
(a), (b), (c), or (d), the FIR may prescribe such regula-
tions and issue such orders as the FIR may determine
to be appropriate to carry out the purposes of this title
and the powers and duties of the FIR under this title and
any provision referred to in any such subsection.
(f) No Intended Impact on Existing Rights and Judicial Precedent.—Nothing in this section shall be construed—

(1) to impact any existing right or obligation under any function or power transferred to the FIR, solely by reason of such transfer; or

(2) to impact any judicial precedent established with respect to any function or power transferred to the FIR, solely by reason of such transfer.

(g) Effective Date.—The provisions of this section shall take effect after the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 304. ALLOCATION OF RESPONSIBILITY AMONG FIR DIVISIONS.

(a) Federal Banking Division.—The Federal Banking Division shall have the primary responsibility for carrying out the FIR’s authority with respect to—

(1) national banking associations;

(2) foreign banks and Federal branches or agencies of a foreign bank;

(3) bank holding companies and any subsidiary or affiliate of a bank holding company which is not a depository institution, other than a bank holding company, subsidiary, or affiliate that consists solely of State banks that are insured banks (as such
terms is defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(4) companies operating under section 25 or 25A of the Federal Reserve Act or the International Banking Act of 1978;

(5) commercial lending companies, other than a Federal agency;

(6) savings associations;

(7) savings and loan holding companies; and

(8) such additional areas as the Board of Directors may prescribe.

(b) STATE BANKING DIVISION.—The State Banking Division shall have the primary responsibility for carrying out the FIR’s authority with respect to—

(1) any State bank that is an insured bank (as such terms is defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(2) any bank holding company or subsidiary or affiliate of a bank holding company, if such bank holding company, subsidiary, or affiliate consists solely of State banks described in paragraph (1); and

(3) such additional areas as the Board of Directors may prescribe.
SEC. 305. TECHNICAL AND CONFORMING AMENDMENTS RELATING TO TRANSFERS OF FUNCTIONS TO THE FIR.

(a) APPROPRIATE FEDERAL BANKING AGENCY REDefined.—Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) is amended to read as follows:

“(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ means the Financial Institutions Regulator.”.

(b) MEMBERS OF FDIC BOARD.—Section 2(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended—

(1) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(2) in subparagraph (A) (as so redesignated by paragraph (1)), by striking “Director of the Office of Thrift Supervision” and inserting “Chairman of the Financial Institutions Regulator”; and

(3) in subparagraph (B) (as so redesignated by paragraph (1)), by striking “3” and inserting “4”.

(c) EFFECTIVE DATE.—The provisions of this section shall take effect after the end of the 90-day period beginning on the date of the enactment of this Act.
SEC. 306. OFFICE OF COMPTROLLER OF THE CURRENCY

AND POSITION OF COMPTROLLER OF THE

CURRENCY ABOLISHED.

(a) In General.—Effective at the end of the 180-

day period beginning on the date of the enactment of this

Act, the Office of the Comptroller of the Currency and

the position of Comptroller of the Currency are hereby

abolished.

(b) Technical and Conforming Amendments.—

Effective at the end of the 180-day period beginning on

the date of the enactment of this Act:

(1) Chapter nine of title VII of the Revised

Statutes is amended by striking sections 324, 325,

and 326.

(2) Subchapter I of chapter 3 of title 31,

United States Code, is amended by striking section

307.

SEC. 307. OFFICE OF THRIFT SUPERVISION AND POSITION

OF DIRECTOR OF THE OFFICE OF THRIFT SU-

PERVISION ABOLISHED.

(a) In General.—Effective at the end of the 180-

day period beginning on the date of the enactment of this

Act, the Office of Thrift Supervision and the position of

Director of the Office of Thrift Supervision are hereby

abolished.
(b) Technical and Conforming Amendments.—

Effective at the end of the 180-day period beginning on the date of the enactment of this Act:

1. Section 3 of the Home Owners’ Loan Act (12 U.S.C. 1462a) is amended by striking subsections (a) and (b).

2. Subchapter I of chapter 3 of title 31, United States Code, is amended by striking section 309.


(a) Savings Provisions Relating to the Comptroller of the Currency.—

1. Existing rights, duties, and obligations not affected.—Sections 303(a)(1) and 306 shall not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, which—

   (A) arises under or pursuant to any provision of law referred to in section 303(a)(2); and

   (B) existed on the day before the date of the enactment of this Act.

2. Continuation of suits.—No action or other proceeding commenced by or against the Comptroller of the Currency or the Office of the
Comptroller of the Currency shall abate by reason of
the enactment of this Act, except that the FIR shall
be substituted for the Comptroller or Office as a
party to any such action or proceeding.

(b) SAVINGS PROVISIONS RELATING TO THE BOARD
OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 303(b)(1) shall not
affect the validity of any right, duty, or obligation of
the United States, the Board of Governors of the
Federal Reserve System, or any other person,
which—

(A) arises under or pursuant to any provi-
sion of law referred to in section 303(b)(2); and

(B) existed on the day before the date of
the enactment of this Act.

(2) CONTINUATION OF SUITS.—No action or
other proceeding commenced by or against the
Board of Governors of the Federal Reserve System
with respect to any function transferred to the FIR
shall abate by reason of the enactment of this Act,
extcept that the FIR shall be substituted for the
Board of Governors as a party to any such action
or proceeding.
(c) Savings Provisions Relating to the Director of the Office of Thrift Supervision.—

(1) Existing rights, duties, and obligations not affected.—Sections 303(c)(1) and 307 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, which—

(A) arises under or pursuant to any provision of law referred to in section 303(c)(2); and

(B) existed on the day before the date of the enactment of this Act.

(2) Continuation of suits.—No action or other proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision shall abate by reason of the enactment of this Act, except that the FIR shall be substituted for the Director or Office as a party to any such action or proceeding.

(d) Savings Provisions Relating to the Federal Deposit Insurance Corporation.—

(1) Existing rights, duties, and obligations not affected.—Section 303(d)(1) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance
Corporation, the Board of Directors of such Corporation, or any other person, which—

(A) arises under or pursuant to any provision of law referred to in section 303(d)(2); and

(B) existed on the day before the date of the enactment of this Act.

(2) Continuation of suits.—No action or other proceeding commenced by or against the Federal Deposit Insurance Corporation or the Board of Directors of such Corporation with respect to any function transferred to the FIR shall abate by reason of the enactment of this Act, except that the FIR may be substituted for the Corporation or Board of Directors, as the case may be, as a party to any such action or proceeding.

(e) Continuation of orders, resolutions, determinations, and regulations.—All orders, resolutions, determinations, and regulations, which—

(1) have been issued, made, prescribed, or allowed to become effective by the Director of the Office of Thrift Supervision, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System (including orders, resolutions, determinations, and regulations which relate to the con-
duct of conservatorships and receiverships), or by a

court of competent jurisdiction, in the performance

of functions which are transferred by this Act, and

(2) are in effect on the date this Act takes ef-

fect (or become effective after such date pursuant to

the terms of the order, resolution, determination or

regulation, as in effect on such date),

shall continue in effect according to the terms of such or-

ders, resolutions, determinations, and regulations and

shall be enforceable by or against the FIR until modified,

terminated, set aside, or superseded in accordance with

applicable law by the FIR, by any court of competent ju-

risdiction, or by operation of law.

(f) EFFECTIVE DATE.—The provisions of this section

shall take effect after the end of the 90-day period begin-

ning on the date of the enactment of this Act.

SEC. 309. REFERENCES IN FEDERAL LAW TO FEDERAL

BANKING AGENCIES.

(a) COMPTROLLER OF THE CURRENCY AND DIREC-

tor of the Office of Thrift Supervision.—Any ref-

cence in any Federal law to the Comptroller of the Curre-

ency, the Office of the Comptroller of the Currency, the

Director of the Office of Thrift Supervision, or the Office

of Thrift Supervision shall be deemed to be a reference

to the FIR.
(b) Board of Governors of the Federal Reserve System.—Any reference in any Federal law to the Board of Governors of the Federal Reserve System in connection with any function of the Board under any provision of law referred to in section 304(b)(2) shall be deemed to be a reference to the FIR.

(c) Federal Deposit Insurance Corporation.—Any reference in any Federal law to the Federal Deposit Insurance Corporation or the Board of Directors of such Corporation in connection with any function of the Corporation or Board of Directors under any provision of law referred to in section 303(d)(2) shall be deemed to be a reference to the FIR.

(d) Effective Date.—The provisions of this section shall take effect after the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 310. NATIONAL CREDIT UNION ADMINISTRATION MOVED WITHIN THE FIR.

(a) In General.—The Nation Credit Union Administration is hereby moved within the FIR and shall be maintained as a distinct entity within the FIR.

(b) Effective Date.—The provisions of this section shall take effect after the end of the 90-day period beginning on the date of the enactment of this Act.
SEC. 311. OFFICE OF CONSUMER PROTECTION.

(a) Office of Consumer Protection.—There is hereby established within the FIR an Office of Consumer Protection (hereinafter in this section referred to as the “Office”).

(b) Delegation of Authority to the Office.—The Office shall have the primary responsibility for carrying out the FIR’s authority with respect to laws and regulations relating to consumer protection, including the authority of the FIR under the Consumer Credit Protection Act.

(c) Rulemaking Approval.—No rule or regulation issued by the Office shall take effect unless the Board of Directors of the FIR approves such rule or regulation.

(d) Consumer Complaint Hotline and Website.—The Office shall establish a toll-free hotline and a website for consumers to contact regarding inquiries or complaints related to insured depository institutions. Such hotline and website shall then refer such inquiries or complaints to the appropriate FIR division, which will then respond to the inquiry or complaint.

(e) Disclosure Review.—Not less than once every 7 years, the Office shall undertake a comprehensive review of all public disclosures (including policies, procedures, guidelines, standards, and regulatory filings) made by the FIR and each division of the FIR. In making such review
the Office shall perform a cost and benefit analysis of each such disclosure and determine if the policy of the FIR towards such disclosure should remain the same or be revised.

(f) **Consumer Testing Requirement.**—Before prescribing any regulation pursuant to the authority of the FIR under the Consumer Credit Protection Act, the Office shall carry out consumer testing with respect to such regulation.

(g) **Periodic Review of Regulations.**—

(1) **Review.**—Not less than once every 7 years, the Office shall undertake a comprehensive review of all regulations issued by the Office, the FIR, or any entity preceding the FIR, with respect to the authority of the FIR under the Consumer Credit Protection Act. In making such review, the Office shall perform a cost and benefit analysis of each regulation and determine if such regulation should remain the same or if such regulation should be revised.

(2) **Report.**—After performing a review required by paragraph (1), the Office shall issue a report to the Congress describing the review process, any determinations made by the Office, and any revisions to regulations that the Office determined were needed.
TITLE IV—FEDERAL RESERVE REFORM

SEC. 401. GAO AUTHORITY TO AUDIT THE FEDERAL RESERVE SYSTEM.

(a) IN GENERAL.—Subsection (b) of section 714 of title 31, United States Code, is amended by striking all after “shall audit an agency” and inserting a period.

(b) AUDIT.—Section 714 of title 31, United States Code, is amended by adding at the end the following new subsection:

“(e) AUDIT AND REPORT OF THE FEDERAL RESERVE SYSTEM.—

“(1) IN GENERAL.—The audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks under subsection (b) shall be completed before the end of 2010.

“(2) REPORT.—

“(A) REQUIRED.—A report on the audit referred to in paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed and made available to the Speaker of the House, the majority and minority leaders of the House of Representatives, the majority and minority
leaders of the Senate, the Chairman and Rank-
ing Member of the committee and each sub-
committee of jurisdiction in the House of Rep-
resentatives and the Senate, and any other
Member of Congress who requests it.

“(B) CONTENTS.—The report under sub-
paragraph (A) shall include a detailed descrip-
tion of the findings and conclusion of the
Comptroller General with respect to the audit
that is the subject of the report, together with
such recommendations for legislative or admin-
istrative action as the Comptroller General may
determine to be appropriate.”.

SEC. 402. MONETARY POLICY AND INFLATION TARGETS.

Section 2A of the Federal Reserve Act (12 U.S.C.
225a) is amended to read as follows:

“SEC. 2A. MONETARY POLICY.

“(a) PRICE STABILITY.—The Board and the Federal
Open Market Committee shall—

“(1) establish an explicit numerical definition of
the term ‘price stability’;

“(2) implement such definition through infla-
tion targets; and

“(3) maintain a monetary policy that effectively
promotes long-term price stability.
“(b) Market Stability and Liquidity.—Subsection (a) shall not be construed as a limitation on the authority or responsibility of the Board—

“(1) to provide liquidity to markets in the event of a disruption that threatens the smooth functioning and stability of the financial sector; or

“(2) to serve as a lender of last resort under this Act when the Board determines such action is necessary.”.

SEC. 403. REFORMS OF SECTION 13 EMERGENCY POWERS.

(a) Restrictions on Emergency Powers.—The third undesignated paragraph of section 13 of the Federal Reserve Act is amended—

(1) by striking “In unusual and exigent” and inserting the following:

“(3) Emergency Authority.—

“(A) In general.—In unusual and exigent”; and

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

“(B) Requirement for Broad Availability of Discounts.—Subject to the limitations provided under subparagraph (A), any authorization made pursuant to the authority provided under subparagraph (A) shall require dis-
counts to be made broadly available to individuals, partnerships, and corporations within the market sector for which such authorization is being made.

“(C) TRANSPARENCY AND OVERSIGHT.—

“(i) Secretary of the Treasury

APPROVAL REQUIRED; NOTICE TO THE CONGRESS.—No authorization may be made pursuant to the authority provided under subparagraph (A) unless—

“(I) such authorization is first approved by the Secretary of the Treasury; and

“(II) the Secretary of the Treasury issues a notice to the Congress detailing what authorization the Secretary has approved.

“(ii) Programs moved on-budget after 90 days.—On and after the date that is 90 days after the date on which any authorization is made pursuant to the authority provided under subparagraph (A), all receipts and disbursements resulting from such authorization shall be counted
as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

“(I) the budget of the United States Government as submitted by the President;

“(II) the congressional budget; and

“(III) the Balanced Budget and Emergency Deficit Control Act of 1985.

“(D) JOINT RESOLUTION OF DISAPPROVAL.—

“(i) IN GENERAL.—With respect to an authorization made pursuant to the authority provided under subparagraph (A), if, during the 90-day period beginning on the date the Congress receives a notice described under subparagraph (C)(i)(II) with respect to such authorization, there is enacted into law a joint resolution disapproving such authorization, any action taken under such authorization must be discontinued and unwound not later than the end of the 180-day period beginning on the date that such authorization was made.
“(ii) CONTENTS OF JOINT RESOLUTION.—For the purpose of this paragraph, the term ‘joint resolution’ means only a joint resolution—

“(I) that is introduced not later than 3 calendar days after the date on which the notice referred to in clause (i) is received by the Congress;

“(II) which does not have a preamble;

“(III) the title of which is as follows: ‘Joint resolution relating to the disapproval of authorization under the emergency powers of the Federal Reserve Act’; and

“(IV) the matter after the resolving clause of which is as follows: ‘That Congress disapproves the authorization contained in the notice submitted to the Congress by the Secretary of the Treasury on the date of [_______________ relating to [______________].’ (The blank spaces being appropriately filled in.).
“(E) Fast track consideration in House of Representatives.—

“(i) Reconvening.—Upon receipt of a notice referred to in subparagraph (D)(i), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such report.

“(ii) Reporting and discharge.—Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 5 calendar days after the date of receipt of the notice referred to in subparagraph (D)(i). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

“(iii) Proceeding to consideration.—After each committee authorized to consider a joint resolution reports it to
the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after Congress receives the notice referred to in subparagraph (D)(i), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

“(iv) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an oppo-
A motion to reconsider the vote on passage of the joint resolution shall not be in order.

“(F) Fast track consideration in Senate.—

“(i) Reconvening.—Upon receipt of a notice referred to in subparagraph (D)(i), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

“(ii) Placement on calendar.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

“(iii) Floor consideration.—

“(I) In general.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on
which Congress receives a notice referred to in subparagraph (D)(i) and ending on the 6th day after the date on which Congress receives a notice referred to in subparagraph (D)(i) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

“(II) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more
than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

“(III) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

“(IV) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.
“(G) Rules relating to Senate and House of Representatives.—

“(i) Coordination with action by other house.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

“(I) The joint resolution of the other House shall not be referred to a committee.

“(II) With respect to a joint resolution of the House receiving the resolution—

“(aa) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

“(bb) the vote on passage shall be on the joint resolution of the other House.

“(ii) Treatment of joint resolution of other house.—If one House fails to introduce or consider a joint resolution under this section, the joint resolution
of the other House shall be entitled to expedited floor procedures under this section.

“(iii) Treatment of companion measures.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

“(iv) Vetoes.—If the President vetoes the joint resolution, debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

“(v) Rules of House of Representatives and Senate.—This subparagraph and subparagraphs (D), (E), and (F) are enacted by Congress—

“(I) as an exercise of the rule-making power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that
House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(II) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.”.

(b) Current Programs Moved On-Budget.—Not later than 90 days after the date of the enactment of this Act, all receipts and disbursements resulting from any authorization made before the date of the enactment of this Act pursuant to the authority granted by the third undesignated paragraph of section 13 of the Federal Reserve Act shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President;

(2) the congressional budget; and

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.
TITLE V—GOVERNMENT-SPONSORED ENTERPRISES REFORM

SEC. 501. SHORT TITLE.

This title may be cited as the “Government-Sponsored Enterprises Free Market Reform Act of 2009”.

SEC. 502. DEFINITIONS.

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

(1) CHARTER.—The term “charter” means—

(A) with respect to the Federal National Mortgage Association, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); and

(B) with respect to the Federal Home Loan Mortgage Corporation, the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).

(2) DIRECTOR.—The term “Director” means the Director of the Federal Housing Finance Agency.

(3) ENTERPRISE.—The term “enterprise” means—

(A) the Federal National Mortgage Association; and
(B) the Federal Home Loan Mortgage Corporation.

(4) GUARANTEE.—The term “guarantee” means, with respect to an enterprise, the credit support of the enterprise that is provided by the Federal Government through its charter as a Government-sponsored enterprise.

SEC. 503. TERMINATION OF CURRENT CONSERVATORSHIP.

(a) IN GENERAL.—Upon the expiration of the period referred to in subsection (b), the Director of the Federal Housing Finance Agency shall determine, with respect to each enterprise, if the enterprise is financially viable at that time and—

(1) if the Director determines that the enterprise is financially viable, immediately take all actions necessary to terminate the conservatorship for each of the enterprises; or

(2) if the Director determines that the enterprise is not financially viable, immediately appoint the Federal Housing Finance Agency as receiver under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and carry out such receivership under the authority of such section.
(b) **Timing.**—The period referred to in this subsection is, with respect to an enterprise—

(1) except as provided in paragraph (2), the 24-month period beginning upon the date of the enactment of this Act; or

(2) if the Director determines before the expiration of the period referred to in paragraph (1) that the financial markets would be adversely affected without the extension of such period under this paragraph with respect to that enterprise, the 30-month period beginning upon the date of the enactment of this Act.

(c) **Financial Viability.**—The Director may not determine that an enterprise is financially viable for purposes of subsection (a) if the Director determines that any of the conditions for receivership set forth in paragraph (3) or (4) of section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)) exists at the time with respect to the enterprise.

**SEC. 504. LIMITATION OF ENTERPRISE AUTHORITY UPON EMERGENCE FROM CONSERVATORSHIP.**

(a) **Revised Authority.**—Upon the expiration of the period referred to in section 503(b), if the Director
makes the determination under section 503(a)(1), the fol-
lowing provisions shall take effect:

(1) PORTFOLIO LIMITATIONS.—Subtitle B of
title XIII of the Housing and Community Develop-
ment Act of 1992 (12 U.S.C. 4611 et seq.) is
amended by adding at the end the following new sec-
tion:

“SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF EN-
TERPRISES.

“(a) RESTRICTION.—No enterprise shall own, as of
any applicable date in this subsection or thereafter, mort-
gage assets in excess of—

“(1) upon the expiration of the period referred
to in section 503(b) of the Government-Sponsored
Enterprises Free Market Reform Act of 2009,
$850,000,000,000; or

“(2) on December 31 of each year thereafter,
80.0 percent of the aggregate amount of mortgage
assets of the enterprise as of December 31 of the
immediately preceding calendar year;

except that in no event shall an enterprise be required
under this section to own less than $250,000,000,000 in
mortgage assets.

“(b) DEFINITION OF MORTGAGE ASSETS.—For pur-
poses of this section, the term ‘mortgage assets’ means,
with respect to an enterprise, assets of such enterprise consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such enterprise in accordance with generally accepted accounting principles in effect in the United States as of September 7, 2008 (as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time; and without giving any effect to any change that may be made after September 7, 2008, in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).”.


(A) in subsection (a), by striking “For purposes of this subtitle, the minimum capital
level for each enterprise shall be” and inserting
“The minimum capital level established under
subsection (g) for each enterprise may not be
lower than”;

(B) in subsection (c)—

(i) by striking “subsections (a) and”
and inserting “subsection”;

(ii) by striking “regulated entities”
the first place such term appears and in-
serting “Federal Home Loan Banks”;  

(iii) by striking “for the enterprises,”;

(iv) by striking “, or for both the en-
terprises and the banks,”;

(v) by striking “the level specified in
subsection (a) for the enterprises or”; and

(vi) by striking “the regulated entities
operate” and inserting “such banks oper-
ate”;

(C) in subsection (d)(1)—

(i) by striking “subsections (a) and”
and inserting “subsection”; and

(ii) by striking “regulated entity”
each place such term appears and inserting
“Federal home loan bank”;
(D) in subsection (e), by striking “regulated entity” each place such term appears and inserting “Federal home loan bank”; (E) in subsection (f)—

(i) by striking “the amount of core capital maintained by the enterprises,”; and

(ii) by striking “regulated entities” and inserting “banks”; and

(F) by adding at the end the following new subsection:

“(g) E STABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.—

“(1) IN GENERAL.—The Director shall cause the enterprises to achieve and maintain adequate capital by establishing minimum levels of capital for the enterprises and by using such other methods as the Director deems appropriate.

“(2) AUTHORITY.—The Director shall have the authority to establish such minimum level of capital for an enterprise in excess of the level specified under subsection (a) as the Director, in the Director’s discretion, deems to be necessary or appropriate in light of the particular circumstances of the enterprise.
“(h) FAILURE TO MAINTAIN REVISED MINIMUM CAPITAL LEVELS.—

“(1) UNSAFE AND UNSOUND PRACTICE OR CONDITION.—Failure of an enterprise to maintain capital at or above its minimum level as established pursuant to subsection (c) of this section may be deemed by the Director, in his discretion, to constitute an unsafe and unsound practice or condition within the meaning of this title.

“(2) DIRECTIVE TO ACHIEVE CAPITAL LEVEL.—

“(A) AUTHORITY.—In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Director may issue a directive to an enterprise that fails to maintain capital at or above its required level as established pursuant to subsection (c) of this section.

“(B) PLAN.—Such directive may require the enterprise to submit and adhere to a plan acceptable to the Director describing the means and timing by which the enterprise shall achieve its required capital level.

“(C) ENFORCEMENT.—Any such directive issued pursuant to this paragraph, including
plans submitted pursuant thereto, shall be enforceable under the provisions of subtitle C of this title to the same extent as an effective and outstanding order issued pursuant to subtitle C of this title which has become final.

“(3) ADHERENCE TO PLAN.—

“(A) CONSIDERATION.—The Director may consider such enterprise’s progress in adhering to any plan required under this subsection whenever such enterprise seeks the requisite approval of the Director for any proposal which would divert earnings, diminish capital, or otherwise impede such enterprise’s progress in achieving its minimum capital level.

“(B) DENIAL.—The Director may deny such approval where it determines that such proposal would adversely affect the ability of the enterprise to comply with such plan.”.

(3) REPEAL OF INCREASES TO CONFORMING LOAN LIMITS.—

(A) REPEAL OF TEMPORARY INCREASES.—

(i) ECONOMIC STIMULUS ACT OF 2008.—Section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185) is hereby repealed.
(ii) AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.—Section 1203 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 225) is hereby repealed.

(B) REPEAL OF GENERAL LIMIT AND PERMANENT HIGH-COST AREA INCREASE.—Paragraph (2) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and paragraph (2) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) are each amended to read as such sections were in effect immediately before the enactment of the Housing and Economic Recovery Act of 2008 (Public Law 110–289).

(C) REPEAL OF NEW HOUSING PRICE INDEX.—Section 1322 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as added by section 1124(d) of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), is hereby repealed.

(D) REPEAL.—Section 1124 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) is hereby repealed.
(E) **Establishment of Conforming Loan Limit.**—For the year in which the expiration of the period referred to in section 503(b) of this section occurs, the limitations governing the maximum original principal obligation of conventional mortgages that may be purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, referred to in section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), respectively, shall be considered to be—

(i) $417,000 for a mortgage secured by a single-family residence,

(ii) $533,850 for a mortgage secured by a 2-family residence,

(iii) $645,300 for a mortgage secured by a 3-family residence, and

(iv) $801,950 for a mortgage secured by a 4-family residence,

and such limits shall be adjusted effective each January 1 thereafter in accordance with such sections 302(b)(2) and 305(a)(2).
(F) Prohibition of purchase of mortgages exceeding median area home price.—

(i) Fannie Mae.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, the corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located."

(ii) Freddie Mac.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, the Corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for
the area in which such property subject to
the mortgage is located.”.

(4) Requirement to pay state and local
taxes.—

(A) FANNIE MAE.—Paragraph (2) of sec-
tion 309(c) of the Federal National Mortgage
Association Charter Act (12 U.S.C.
1723a(c)(2)) is amended—

(i) by striking “shall be exempt from”
and inserting “shall be subject to”; and

(ii) by striking “except that any” and
inserting “and any”.

(B) FREDDIE MAC.—Section 303(e) of the
Federal Home Loan Mortgage Corporation Act
(12 U.S.C. 1452(e)) is amended—

(i) by striking “shall be exempt from”
and inserting “shall be subject to”; and

(ii) by striking “except that any” and
inserting “and any”.

(5) Repeals relating to registration of
securities.—

(A) FANNIE MAE.—

(i) MORTGAGE-BACKED SECURI-
ties.—Section 304(d) of the Federal Na-
tional Mortgage Association Charter Act
(12 U.S.C. 1719(d)) is amended by striking the fourth sentence.

(ii) SUBORDINATE OBLIGATIONS.—

Section 304(e) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(e)) is amended by striking the fourth sentence.

(B) FREDDIE MAC.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by striking subsection (g).

(6) RECOUPMENT OF COSTS FOR FEDERAL GUARANTEE.—

(A) ASSESSMENTS.—The Director of the Federal Housing Finance Agency shall establish and collect from each enterprise assessments in the amount determined under subparagraph (B). In determining the method and timing for making such assessments, the Director shall take into consideration the determinations and conclusions of the study under subsection (b) of this section.

(B) DETERMINATION OF COSTS OF GUARANTEE.—Assessments under subparagraph (A) with respect to an enterprise shall be in such
amount as the Director determines necessary to recoup to the Federal Government the full value of the benefit the enterprise receives from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprise, based upon the dollar value of such benefit in the market to such enterprise when not operating under conservatorship or receivership. To determine such amount, the Director shall establish a risk-based pricing mechanism as the Director considers appropriate, taking into consideration the determinations and conclusions of the study under subsection (b) of this section.

(C) Treatment of recouped amounts.—The Director shall cover into the general fund of the Treasury any amounts received from assessments made under this paragraph.

(b) GAO Study Regarding Recoupment of Costs for Federal Government Guarantee.—The Comptroller General of the United States shall conduct a study to determine a risk-based pricing mechanism to accurately determine the value of the benefit the enterprises receive from the guarantee provided by the Federal
Government for the obligations and financial viability of the enterprises. Such study shall establish a dollar value of such benefit in the market to each enterprise when not operating under conservatorship or receivership, shall analyze various methods of the Federal Government assessing a charge for such value received (including methods involving an annual fee or a fee for each mortgage purchased or securitized), and shall make a recommendation of the best such method for assessing such charge. Not later than 12 months after the date of the enactment of this Act, the Comptroller General shall submit to the Congress a report setting forth the determinations and conclusions of such study.

SEC. 505. REQUIREMENT TO PERIODICALLY RENEW CHARTER UNTIL WIND DOWN AND DISSOLUTION.

(a) REQUIRED RENEWAL; WIND DOWN AND DISSOLUTION UPON NON-RENEWAL.—Upon the expiration of the 3-year period that begins upon the expiration of the period referred to in section 503(b), unless the charter of an enterprise is renewed pursuant to subsection (b) of this section, section 506 (relating to wind down of operations and dissolution of enterprise) shall apply to the enterprise.

(b) RENEWAL PROCEDURE.—

(1) APPLICATION; TIMING.—The Director shall provide for each enterprise to apply to the Director,
before the expiration of the 3-year period under sub-
section (a), for renewal of the charter of the enter-
prise.

(2) STANDARD.—The Director shall approve
the application of an enterprise for the renewal of
the charter of the enterprise if—

(A) the application includes a certification
by the enterprise that the enterprise is finan-
cially sound and is complying with all provisions
of, and amendments made by, section 504 of
this title applicable to such enterprise; and

(B) the Director verifies that the certifi-
cation made pursuant to subparagraph (A) is
accurate.

(c) OPTION TO REAPPLY.—Nothing in this section
may be construed to require an enterprise to apply under
this section for renewal of the charter of the enterprise.

SEC. 506. REQUIRED WIND DOWN OF OPERATIONS AND DIS-
SOLUTION OF ENTERPRISE.

(a) APPLICABILITY.—This section shall apply to an
enterprise—

(1) upon the expiration of the 3-year period re-
ferred to in such section 505(a), to the extent pro-
vided in such section; and
(2) if this section has not previously applied to the enterprise, upon the expiration of the 6-year period that begins upon the expiration of the period referred to in section 503(b).

(b) WIND DOWN.—Upon the applicability of this section to an enterprise, the Director and the Secretary of the Treasury shall jointly take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of an enterprise as an entity chartered by the United States Government over the duration of the 10-year period beginning upon the applicability of this section to the enterprise (pursuant to subsection (a)) in an orderly manner consistent with this title and the ongoing obligations of the enterprise.

(c) DIVISION OF ASSETS AND LIABILITIES; AUTHORITY TO ESTABLISH HOLDING CORPORATION AND DISSOLUTION TRUST FUND.—The action and procedures required under subsection (b)—

(1) shall include the establishment and execution of plans to provide for an equitable division and distribution of assets and liabilities of the enterprise, including any liability of the enterprise to the United States Government or a Federal reserve bank that may continue after the end of the period described in subsection (b); and
(2) may provide for establishment of—

(A) a holding corporation organized under
the laws of any State of the United States or
the District of Columbia for the purposes of the
reorganization and restructuring of the enter-
prise; and

(B) one or more trusts to which to trans-
fer—

(i) remaining debt obligations of the
enterprise, for the benefit of holders of
such remaining obligations; or

(ii) remaining mortgages held for the
purpose of backing mortgage-backed secu-
rities, for the benefit of holders of such re-
main ing securities.

(d) REPEAL OF CHARTER.—Effective upon the expi-
ration of the 10-year period referred to in subsection (b)
for an enterprise, the charter for the enterprise is re-
pealed, except that the provisions of such charter in effect
immediately before such repeal shall continue to apply
with respect to the rights and obligations of any holders
of outstanding debt obligations and mortgage-backed secu-
rities of the enterprise.
TITLE VI—CREDIT RATING
AGENCY REFORM

SEC. 601. CLARIFICATION OF DESIGNATION.

(a) IN GENERAL.—

(1) SINGULAR.—Each applicable law is amended by striking “nationally recognized statistical rating organization” each place it appears and inserting “nationally registered statistical rating organization”.

(2) PLURAL.—Each applicable law is amended by striking “nationally recognized statistical rating organizations” each place it appears and inserting “nationally registered statistical rating organizations”.

(b) APPLICABLE LAWS.—For purposes of this section, the term “applicable laws” means—

(1) the Securities Exchange Act of 1934; and

(2) the Investment Advisers Act of 1940.

SEC. 602. ELIMINATION OF SECURITY CREDIT RATING REQUISITEMS IN FEDERAL LAW.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3(a)(41), by striking “is rated in one of the two highest rating categories by at least
one nationally recognized statistical rating organization, and”;

(2) in section 3(a)(53)(A), by striking “is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization, and”.

(b) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(5)(A)) is amended—

(1) in clause (ii), by adding “and” at the end;

(2) in clause (iii), by striking “; and” and inserting a period; and

(3) by striking clause (iv).

(e) HIGHER EDUCATION ACT OF 1965.—Section 439 of the Higher Education Act of 1965 (20 U.S.C. 1087–2) is amended—

(1) by striking subsection (d)(5); and

(2) in subsection (r), by striking paragraph (11) and inserting the following:

“(11) [Repealed]”.

(d) LAUNCHING OUR COMMUNITIES’ ACCESS TO LOCAL TELEVISION ACT OF 2000.—Section 1004(d)(2)(D) of the Launching Our Communities’ Access to Local Television Act of 2000 (47 U.S.C. 1103(d)(2)(D)) is amended—
(1) in clause (i)(II), by striking ‘‘, if the Board determines that such nonprofit corporation has one or more issues of outstanding long-term debt that is rated within the highest three rating categories of a nationally recognized statistical rating organization’’; and

(2) by striking clause (ii) (and redesignating succeeding clauses accordingly).

(e) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 4041(b)(5)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(b)(5)(B)) is amended to read as follows:

‘‘(B) LIMITATION.—Subparagraph (A) shall not apply to any transaction or series of transactions unless the employer maintaining the plan after the transaction or series of transactions employs at least 20 percent of the employees located in the United States who were employed by such employer immediately before the transaction or series of transactions.’’.

(f) CHAPTER 6 OF TITLE 23.—Chapter 6 of title 23, United States Code, is amended—

(1) in section 601(a), by striking paragraph (3) and paragraph (10) and redesignating succeeding paragraphs accordingly;
(2) in section 602(b)(2), by amending subparagraph (B) to read as follows:

“(B) [Repealed]”; 

(3) in section 603(a)(3)—

(A) by striking “and each rating agency providing a preliminary rating opinion letter under section 602 (b)(2)(B)”; and

(B) by striking “, taking into account such letter”; 

(4) in section 603(a), by striking paragraph (4); 

(5) in section 603(b)(2), by striking “ or, if the secured loan does not receive an investment grade rating, the amount of the senior project obligations”; 

(6) in section 604(a)(3)—

(A) by striking “and each rating agency providing a preliminary rating opinion letter under section 602 (b)(2)(B)”; and

(B) by striking “, taking into account such letter”; 

(7) in section 604(a), by striking paragraph (4); and 

(8) by striking section 604(a)(4). 

(g) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319
of the Federal Housing Enterprises Financial Safety and
Soundness Act of 1992 (12 U.S.C. 4519) is amended by
striking “that is a nationally recognized statistical rating
organization, as such term is defined in section 3(a) of
the Securities Exchange Act of 1934.”.

(h) REVISED STATUTES.—Section 5136A of title
LXII of the Revised Statutes of the United States is
amended—

(1) in subsection (a)(2)(E), by striking “appli-
cable rating or other”;

(2) in the heading for subsection (a)(3) by
striking “Rating or comparable requirement” and
inserting “Requirement”;

(3) by amending subsection (a)(3)(A) to read as
follows:

“(A) IN GENERAL.—A national bank meets
the requirements of this paragraph if the bank
is 1 of the second 50 largest insured banks and
meets such criteria as the Secretary of the
Treasury and the Board of Governors of the
Federal Reserve System may jointly establish
by regulation.”;

(4) in the heading for subsection (f), by striking
“maintain public rating or”; and
(5) in subsection (f)(1), by striking “applicable rating or other”.

(i) Federal Deposit Insurance Act.—Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended by striking subsections (d) and (e) (and redesignating succeeding subsections accordingly).

SEC. 603. ELIMINATION OF SECURITY CREDIT RATING REQUIREMENTS IN REGULATIONS.

Not later than 3 months after the date of the enactment of this Act, each Federal agency and department shall modify any regulation promulgated by such agency or department that requires the use of an assessment of the creditworthiness of a security or money market instrument by removing such requirement from any such regulation.

TITLE VII—ANTI-FRAUD PROVISIONS

SEC. 701. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.

(a) Under the Securities Act of 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

“(g) Authority To Impose Money Penalties.—
“(1) GROUNDS FOR IMPOSING.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if it finds, on the record after notice and opportunity for hearing, that—

“(A) such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

“(B) such penalty is in the public interest.

“(2) MAXIMUM AMOUNT OF PENALTY.—

“(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $6,500 for a natural person or $65,000 for any other person.

“(B) SECOND TIER.—Notwithstanding paragraph (A), the maximum amount of penalty for each such act or omission shall be $65,000 for a natural person or $325,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit,
manipulation, or deliberate or reckless dis-regard of a regulatory requirement.

“(C) THIRD TIER.—Notwithstanding para-
graphs (A) and (B), the maximum amount of
penalty for each such act or omission shall be
$130,000 for a natural person or $650,000 for
any other person if—

“(i) the act or omission described in
paragraph (1) involved fraud, deceit, ma-
pipulation, or deliberate or reckless dis-
regard of a regulatory requirement; and

“(ii) such act or omission directly or
indirectly resulted in substantial losses or
created a significant risk of substantial
losses to other persons or resulted in sub-
stantial pecuniary gain to the person who
committed the act or omission.

“(3) EVIDENCE CONCERNING ABILITY TO
PAY.—In any proceeding in which the Commission
may impose a penalty under this section, a respond-
ent may present evidence of the respondent’s ability
to pay such penalty. The Commission may, in its
discretion, consider such evidence in determining
whether such penalty is in the public interest. Such
evidence may relate to the extent of such person’s
ability to continue in business and the collectability
of a penalty, taking into account any other claims of
the United States or third parties upon such per-
son’s assets and the amount of such person’s as-
sets.”.

(b) **Under the Securities Exchange Act of
1934.**—Subsection (a) of section 21B of the Securities
Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amend-
ed—

(1) by striking “(a) Commission Authority
To Assess Money Penalties.—In any pro-
ceeding” and inserting the following:

“(a) Commission Authority To Assess Money
Penalties.—

“(1) In general.—In any proceeding”;

(2) by redesignating paragraphs (1) through
(4) of such subsection as subparagraphs (A) through
(D), respectively and moving such redesignated sub-
paragraphs and the matter following such subpara-
graphs 2 ems to the right; and

(3) by adding at the end of such subsection the
following new paragraph:

“(2) Cease-and-Desist Proceedings.—In
any proceeding instituted pursuant to section 21C of
this title against any person, the Commission may
impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(A) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(B) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Paragraph (1) of section 9(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) by striking “(1) AUTHORITY OF COMMISSION.—In any proceeding” and inserting the following:

“(1) AUTHORITY OF COMMISSION.—

“(A) IN GENERAL.—In any proceeding”;

(2) by redesignating subparagraphs (A) through (C) of such paragraph as clauses (i) through (iii), respectively and by moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:
“(B) CEASE-AND-DESIST PROCEEDINGS.—

In any proceeding instituted pursuant to sub-
section (f) against any person, the Commission
may impose a civil penalty if it finds, on the
record after notice and opportunity for hearing,
that such person—

“(i) is violating or has violated any
provision of this title, or any rule or regu-
lation thereunder; or

“(ii) is or was a cause of the violation
of any provision of this title, or any rule or
regulation thereunder.”.

(d) UNDER THE INVESTMENT ADVISERS ACT OF
1940.—Paragraph (1) of section 203(i) of the Investment
Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amend-
ed—

(1) by striking “(1) AUTHORITY OF COMMIS-
SION.—In any proceeding” and inserting the fol-
lowing:

“(1) AUTHORITY OF COMMISSION.—

“(A) IN GENERAL.—In any proceeding”;

(2) by redesignating subparagraphs (A) through
(D) of such paragraph as clauses (i) through (iv),
respectively and moving such redesignated clauses
and the matter following such subparagraphs 2 ems
to the right; and

(3) by adding at the end of such paragraph the
following new subparagraph:

“(B) Cease-and-Desist Proceedings.—

In any proceeding instituted pursuant to sub-
section (k) against any person, the Commission
may impose a civil penalty if it finds, on the
record after notice and opportunity for hearing,
that such person—

“(i) is violating or has violated any
provision of this title, or any rule or regu-
lation thereunder; or

“(ii) is or was a cause of the violation
of any provision of this title, or any rule or
regulation thereunder.”.

SEC. 702. FORMERLY ASSOCIATED PERSONS.

(a) Member or Employee of the Municipal Se-
curities Rulemaking Board.—Section 15B(c)(8) of
4(c)(8)) is amended by striking “any member or em-
ployee” and inserting “any person who is, or at the time
of the alleged misconduct was, a member or employee”.

(b) Person Associated With a Government Se-
curities Broker or Dealer.—Section 15C of the Se-

(1) in subsection (c)(1)(C), by striking “or seeking to become associated,” and inserting “seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated”;

(2) in subsection (c)(2)(A), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”; and

(3) in subsection (c)(2)(B), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”.

(e) Person Associated With a Member of a National Securities Exchange or Registered Securities Association.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting “, or, as to any act or practice, or omission to act, while associated with a member, formerly associated” after “member or a person associated”.

(d) Participant of a Registered Clearing Agency.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by insert-
ing “or, as to any act or practice, or omission to act, while a participant, was a participant,” after “in which such person is a participant,”.

(e) Officer or Director of a Self-Regulatory Organization.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking “any officer or director” and inserting “any person who is, or at the time of the alleged misconduct was, an officer or director”; and

(2) by striking “such officer or director” and inserting “such person”.

(f) Officer or Director of an Investment Company.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking “a person serving or acting” and inserting “a person who is, or at the time of the alleged misconduct was, serving or acting”; and

(2) by striking “such person so serves or acts” and inserting “such person so serves or acts, or at the time of the alleged misconduct, so served or acted”.

SEC. 703. COLLATERAL BARS.

amended by striking “12 months, or bar such person from being associated with a broker or dealer,” and inserting “12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent,”.

(b) Section 15B(c)(4) of the Securities Exchange Act of 1934.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking “twelve months or bar any such person from being associated with a municipal securities dealer,” and inserting “twelve months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent,”.

(c) Section 17A(c)(4)(C) of the Securities Exchange Act of 1934.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking “twelve months or bar any such person from being associated with the transfer agent,” and inserting “twelve months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, or municipal securities dealer,”.

(d) Section 203(f) of the Investment Advisers Act of 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking “twelve months or bar any such person from being associ-
ated with an investment adviser,” and inserting “twelve months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent.”

SEC. 704. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(e)(1)(A)) is amended by striking “; and” and inserting “; or”.

SEC. 705. NATIONWIDE SERVICE OF SUBPOENAS.

(a) Securities Act of 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued by or on behalf of such court to compel the attendance of witnesses or the production of documents or tangible things (or both) may be served in any other district. Such subpoenas may be served and enforced without application to the court or a showing of cause, notwithstanding the provisions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of Civil Procedure.”.

(b) Securities Exchange Act of 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the
following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued by or on behalf of such court to compel the attendance of witnesses or the production of documents or tangible things (or both) may be served in any other district. Such subpoenas may be served and enforced without application to the court or a showing of cause, notwithstanding the provisions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of Civil Procedure.”.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued by or on behalf of such court to compel the attendance of witnesses or the production of documents or tangible things (or both) may be served in any other district. Such subpoenas may be served and enforced without application to the court or a showing of cause, notwithstanding the provisions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of Civil Procedure.”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C.
80b–14) is amended by inserting after the third sentence the following: “In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued by or on behalf of such court to compel the attendance of witnesses or the production of documents or tangible things (or both) may be served in any other district. Such subpoenas may be served and enforced without application to the court or a showing of cause, notwithstanding the provisions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of Civil Procedure.”.

SEC. 706. REAUTHORIZATION OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK.

(a) FINDINGS.—

(1) The Congress finds as follows:

(A) The work of the Financial Crimes Enforcement Network (hereinafter in this section referred to as “FinCEN”)) is essential to safeguard the United States financial system and its international affiliates from the abuses of financial crime, including terrorist financing, weapons of mass destruction proliferation, and money laundering.

(B) All avenues of financial intermediation are vulnerable to abuse by illicit actors, and
FinCEN exercises the authorities of the Bank Secrecy Act over a broad range of financial institutions.

(2) The Congress further finds and recognizes the recent establishment by FinCEN of an International Programs Division to expand and enhance global financial intelligence sharing initiatives aimed at combatting transnational crime threats facing United States financial markets, and takes note of FinCEN’s efforts to collaborate with foreign financial intelligence unit partners on analytical projects to identify and address emerging threats and vulnerabilities.

(3) The Congress further finds and recognizes the role of FinCEN in discovering and investigating widespread fraud in the mortgage market and elsewhere in the financial services industry. Alongside an effective licensing and registration system for all mortgage originators, a vigilant FinCEN is critical to the recovery of our housing markets and consumer confidence in both the home buying process and the financial services industry as a whole.

(b) REAUTHORIZATION.—Section 310(d)(1) of title 31, United States Code, is amended by striking “such sums as may be necessary for fiscal years 2002, 2003,
2004, and 2005” and inserting “not more than
$105,500,000 for fiscal year 2010, and such sums as may
be necessary for fiscal years 2011, 2012, 2013, and
2014”.

(c) ADDITIONAL FINANCIAL FRAUD AUTHORIZATION
OF APPROPRIATIONS.—In addition to such other amounts
otherwise made available or appropriated to FinCEN,
there are authorized to be appropriated to FinCEN
$15,000,000 to be used specifically for efforts to detect
financial fraud. Such sums are authorized to remain avail-
able until expended.

SEC. 707. FAIR FUND IMPROVEMENTS.

(a) AMENDMENT.—Subsection (a) of section 308 of
the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is
amended to read as follows:

“(a) CIVIL PENALTIES TO BE USED FOR THE RE-
LIEF OF VICTIMS.—If in any judicial or administrative ac-
tion brought by the Commission under the securities laws
(as such term is defined in section 3(a)(47) of the Securi-
ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the
Commission obtains a civil penalty against any person for
a violation of such laws, the amount of such civil penalty
shall, on the motion or at the direction of the Commission,
be added to and become part of a disgorgement fund or
other fund established for the benefit of the victims of such violation.’’.

(b) CONFORMING AMENDMENTS.—Section 308 of such Act is amended—

(1) in subsection (b)—

(A) by striking “for a disgorgement fund described in subsection (a)” and inserting “for a disgorgement fund or other fund described in subsection (a)”; and

(B) by striking “in the disgorgement fund” and inserting “in such fund”; and

(2) by striking subsection (e).

SEC. 708. AUTHORITY TO CONTRACT FOR COLLECTION OF DELINQUENT JUDGMENTS AND ORDERS.

Subsection (b) of section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d(b)) is amended—

(1) in the heading of such subsection, by striking “AND LEASING AUTHORITY” and inserting “, LEASING AUTHORITY, AND CONTRACTING AUTHORITY”; and

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

“(4) CONTRACTING AUTHORITY.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, the Commission is au-
authorized to enter into contracts to assist in the
collection of any claim of indebtedness resulting
from any judgment or order (either by litigation
or settlement) obtained by the Commission in
any judicial action or administrative proceeding
brought by or on behalf of the Commission.
This authority includes, but is not limited to,
the retention of private legal counsel to furnish
legal services, including representation in litiga-
tion, negotiation, compromise, and settlement.
Private counsel retained under this paragraph
may represent the Commission in such debt col-
lection matters to the same extent as the Com-
mmission may represent itself.
“(B) TERMS AND CONDITIONS OF CON-
TRACT.—Each such contract shall include such
terms and conditions as the Commission con-
siders necessary and appropriate, and shall in-
clude provisions specifying—
“(i) the amount of the fee to be paid
under such contract or the method for cal-
culating that fee;
“(ii) that the Commission retains the
authority to represent itself, resolve a dis-
pute, compromise a claim, end collection
efforts, and refer a matter to other counsel
or to the Attorney General; and

“(iii) that the Commission may termi-
nate either the contract or the private
counsel’s representation of the Commission
in particular cases for any reason, includ-
ing for the convenience of the Commission.

“(C) PAYMENT OF FEES.—Notwith-
standing section 3302(b) of title 31, United
States Code, a contract under this paragraph
may provide that fees and costs incurred by pri-
ivate counsel under such contracts are payable
from the amounts recovered.

“(D) COMPETITION REQUIRED.—Nothing
in this paragraph shall relieve the Commission
of the competition requirements set forth in
title III of the Federal Property and Adminis-
trative Services Act of 1949 (41 U.S.C. 251 et
seq.).

“(E) COUNTERCLAIMS.—In any action to
recover indebtedness which is brought on behalf
of the Commission by private counsel retained
under this paragraph, no counterclaim may be
asserted against the Commission unless the
counterclaim is served directly on the Commis-
sion. Such service shall be made in accordance with the rules of procedure of the court in which the action is brought.”.