

111TH CONGRESS
1ST SESSION

H. R. 3996

To improve financial stability, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2009

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

A BILL

To improve financial stability, and for other purposes.

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

3 **TITLE I—FINANCIAL STABILITY**
4 **IMPROVEMENT**

5 **SEC. 1000. SHORT TITLE; DEFINITIONS; TABLE OF CON-**
6 **TENTS.**

7 (a) **SHORT TITLE.**—This title may be cited as the
8 “Financial Stability Improvement Act of 2009”.

9 (b) **DEFINITIONS.**—For purposes of this Act, the fol-
10 lowing definitions shall apply:

1 (1) The term “Board” means the Board of
2 Governors of the Federal Reserve System.

3 (2) The term “Council” means the Financial
4 Services Oversight Council established under section
5 1001 of this Act.

6 (3) The term “Federal financial regulatory
7 agency” means any agency that has a voting mem-
8 ber of the Council as set forth in section 1001(b)(1).

9 (4) The term “financial company” means a
10 company or other entity—

11 (A) that is—

12 (i) incorporated or organized under
13 the laws of the United States or any State,
14 territory, or possession of the United
15 States, the District of Columbia, Common-
16 wealth of Puerto Rico, Commonwealth of
17 Northern Mariana Islands, Guam, Amer-
18 ican Samoa, or the United States Virgin
19 Islands;

20 (ii) a Federal or State branch or
21 agency of a foreign bank as such terms are
22 defined in the International Banking Act
23 of 1978 (12 U.S.C. 3101(b)); or

24 (iii) a United States affiliate or other
25 United States operating entity of a com-

1 pany that is incorporated or organized in
2 a country other than the United States;
3 and

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

6 (5) The term “identified financial holding com-
7 pany” means a financial company that the Council
8 has identified for heightened prudential standards
9 under subtitle B of this Act, unless such financial
10 company is required to establish an intermediate
11 holding company under section 6 of the Bank Hold-
12 ing Company Act, in which case the “identified fi-
13 nancial holding company” is such section 6 holding
14 company through which the financial company is re-
15 quired to conduct its financial activities.

16 (6) The term “primary financial regulatory
17 agency” means the following:

18 (A) The Comptroller of the Currency, with
19 respect to any national bank, any Federal
20 branch or Federal agency of a foreign bank,
21 and, after the date on which the functions of
22 the Office of Thrift Supervision and the Direc-
23 tor of the Office of Thrift Supervision are
24 transferred under subtitle C, a Federal savings
25 association.

- 1 (B) The Board, with respect to—
- 2 (i) a State member bank;
- 3 (ii) any bank holding company and
4 any subsidiary of such company (as such
5 terms are defined in the Bank Holding
6 Company Act), other than a subsidiary
7 that is described in any other subpara-
8 graph of this paragraph to the extent that
9 the subsidiary is engaged in an activity de-
10 scribed in such subparagraph;
- 11 (iii) any identified financial holding
12 company and any subsidiary (as such term
13 is defined in the Bank Holding Company
14 Act) of such company, other than a sub-
15 sidiary that is described in any other sub-
16 paragraph of this paragraph to the extent
17 that the subsidiary is engaged in an activ-
18 ity described in such subparagraph;
- 19 (iv) after the date on which the func-
20 tions of the Office of Thrift Supervision
21 are transferred under subtitle C, any sav-
22 ings and loan holding company (as defined
23 in section 10(a)(1)(D) of the Home Own-
24 ers' Loan Act) and any subsidiary (as such
25 term is defined in the Bank Holding Com-

1 pany Act) of a such company, other than
2 a subsidiary that is described in any other
3 subparagraph of this paragraph, to the ex-
4 tent that the subsidiary is engaged in an
5 activity described in such subparagraph;

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

10 (vi) any foreign bank or company that
11 is treated as a bank holding company
12 under subsection (a) of section 8 of the
13 International Banking Act of 1978 applies
14 and any subsidiary (other than a bank or
15 other subsidiary that is described in any
16 other subparagraph of this paragraph) of
17 any such foreign bank or company.

18 (C) The Federal Deposit Insurance Cor-
19 poration, with respect to a State nonmember
20 bank, any insured State branch of a foreign
21 bank (as such terms are defined in section 3 of
22 the Federal Deposit Insurance Act), and, after
23 the date on which the functions of the Office of
24 Thrift Supervision are transferred under sub-
25 title C, any State savings association.

1 (D) The National Credit Union Adminis-
2 tration, with respect to any insured credit union
3 under the Federal Credit Union Act (12 U.S.C.
4 1751 et seq.).

5 (E) The Securities and Exchange Commis-
6 sion, with respect to—

7 (i) any broker or dealer registered
8 with the Securities and Exchange Commis-
9 sion under the Securities Exchange Act of
10 1934 (15 U.S.C. 78a et seq.);

11 (ii) any investment company reg-
12 istered with the Securities and Exchange
13 Commission under the Investment Com-
14 pany Act of 1940 (15 U.S.C. 80a–1 et
15 seq.);

16 (iii) any investment adviser registered
17 with the Securities and Exchange Commis-
18 sion under the Investment Advisers Act of
19 1940 (15 U.S.C. 80b–1 et seq.) with re-
20 spect to the investment advisory activities
21 of such company and activities incidental
22 to such advisory activities; and

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

1 sion under the Securities Exchange Act of
2 1934 (15 U.S.C. 78a et seq.).

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

5 (i) any futures commission merchant,
6 any commodity trading adviser, and any
7 commodity pool operator registered with
8 the Commodity Futures Trading Commis-
9 sion under the Commodity Exchange Act
10 (7 U.S.C. 1 et seq.) with respect to the
11 commodities activities of such entity and
12 activities incidental to such commodities
13 activities; and **【Text missing?】**

14 (G) The Federal Housing Finance Agency
15 with respect to the Federal National Mortgage
16 Association or the Federal Home Loan Mort-
17 gage Corporation, and the Federal home loan
18 banks.

19 (H) The State insurance authority of the
20 State in which an insurance company is domi-
21 ciled, with respect to the insurance activities
22 and activities incidental to such insurance ac-
23 tivities of an insurance company that is subject
24 to supervision by the State insurance authority
25 under State insurance law.

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

7 (7) TERMS DEFINED IN OTHER LAWS.—

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

11 (B) STATE MEMBER BANK, STATE NON-
 12 MEMBER BANK.—The terms “State member
 13 bank” and “State nonmember bank” have the
 14 same meanings as in subsections (d)(2) and
 15 (e)(2), respectively, of section 3 of the Federal
 16 Deposit Insurance Act.

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

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

Subtitle A—The Financial Services Oversight Council

Sec. 1001. Financial Services Oversight Council established.

Sec. 1002. Resolution of disputes among Federal financial regulatory agencies.

Sec. 1003. Technical and professional advisory committees.

Sec. 1004. Financial Services Oversight Council meetings and council govern-
 ance.

Sec. 1005. Council staff and funding.

Sec. 1006. Reports to the Congress.

Sec. 1007. Applicability of certain Federal laws.

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

Sec. 1101. Council and Board authority to obtain information.

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

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

- Sec. 1201. Definitions.
- Sec. 1202. Amendments to the Home Owners' Loan Act relating to transfer of functions.
- Sec. 1203. Amendments to the revised statutes.
- Sec. 1204. Power and duties transferred.
- Sec. 1205. Transfer date.
- Sec. 1206. Office of Thrift Supervision abolished.
- Sec. 1207. Savings provisions.
- Sec. 1208. Regulations and orders.
- Sec. 1209. Coordination of transition activities.
- Sec. 1210. Interim responsibilities of office of the comptroller of the currency and office of thrift supervision.
- Sec. 1211. Employees transferred.
- Sec. 1212. Property transferred.
- Sec. 1213. Funds transferred.
- Sec. 1214. Disposition of affairs.
- Sec. 1215. Continuation of services.
- Sec. 1216. Treatment of savings and loan holding companies.
- Sec. 1217. Practices of certain mutual thrift holding companies preserved.
- Sec. 1218. Composition of board of directors of the Federal Deposit Insurance Corporation.
- Sec. 1219. Amendments to section 3.
- Sec. 1220. Amendments to section 7.
- Sec. 1221. Amendments to section 8.
- Sec. 1222. Amendments to section 11.
- Sec. 1223. Amendments to section 13.
- Sec. 1224. Amendments to section 18.
- Sec. 1225. Amendments to section 28.
- Sec. 1226. Amendments to the Alternative Mortgage Transaction Parity Act of 1982.
- Sec. 1227. Amendments to the Bank Holding Company Act of 1956.
- Sec. 1228. Amendments to the Bank Protection Act of 1968.
- Sec. 1229. Amendments to the Bank Service Company Act.
- Sec. 1230. Amendments to the Community Reinvestment Act of 1977.
- Sec. 1231. Amendments to the Depository Institution Management Interlocks Act.

- Sec. 1232. Amendments to the Emergency Homeowner's Relief Act.
- Sec. 1233. Amendments to the Equal Credit Opportunity Act.
- Sec. 1234. Amendments to the Federal Credit Union Act.
- Sec. 1235. Amendments to the Federal Financial Institutions Examination Council Act of 1978.
- Sec. 1236. Amendments to the Federal Home Loan Bank Act.
- Sec. 1237. Amendments to the Federal Reserve Act.
- Sec. 1238. Amendments to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- Sec. 1239. Amendments to the Housing Act of 1948.
- Sec. 1240. Amendments to the Housing and Community Development Act of 1992.
- Sec. 1241. Amendments to the Housing and Urban-Rural Recovery Act of 1983.
- Sec. 1242. Amendments to the National Housing Act.
- Sec. 1243. Amendments to the Right to Financial Privacy Act of 1978.
- Sec. 1244. Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985.
- Sec. 1245. Amendments to the Crime Control Act of 1990.
- Sec. 1246. Amendment to the Flood Disaster Protection Act of 1973.
- Sec. 1247. Amendments to the Investment Company Act of 1940.
- Sec. 1248. Amendments to the Neighborhood Reinvestment Corporation Act.
- Sec. 1249. Amendments to the Securities Exchange Act of 1934.
- Sec. 1250. Amendments to title 18, United States Code.
- Sec. 1251. Amendments to title 31, United States Code.

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

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

Subtitle E—Payment, Clearing, and Settlement Supervision

- Sec. 1401. Short title.
- Sec. 1402. Findings and purposes.
- Sec. 1403. Definitions.

- Sec. 1404. Identification of systemically important financial market utilities and payment, clearing, and settlement activities.
- Sec. 1405. Standards for systemically important financial market utilities and payment, clearing, or settlement activities.
- Sec. 1406. Operations and changes to rules, procedures, or operations of identified financial market utilities.
- Sec. 1407. Examination of and enforcement actions against identified financial market utilities.
- Sec. 1407. Examination of and enforcement actions against identified financial market utilities.
- Sec. 1408. Examination of and enforcement actions against financial institutions subject to standards for identified activities.
- Sec. 1409. Provision of information, reports, or records.
- Sec. 1410. Rulemaking.
- Sec. 1411. Other authority.
- Sec. 1412. Effective date.

Subtitle F—Improvements to the Asset-backed Securitization Process

- Sec. 1501. Short title.
- Sec. 1502. Credit risk retention.
- Sec. 1503. Periodic and other reporting under the Securities Exchange Act of 1934 for asset-backed securities.
- Sec. 1504. Representations and warranties in asset-backed offerings.
- Sec. 1505. Exempted transactions under the Securities Act of 1933.

Subtitle G—Enhanced Resolution Authority

- Sec. 1601. Short title.
- Sec. 1602. Definitions.
- Sec. 1603. Systemic risk determination.
- Sec. 1604. Resolution; stabilization.
- Sec. 1605. Judicial review.
- Sec. 1606. Directors not liable for acquiescing in appointment of receiver or qualified receiver.
- Sec. 1607. Termination and exclusion of other actions.
- Sec. 1608. Rulemaking.
- Sec. 1609. Powers and duties of corporation.
- Sec. 1610. Clarification of prohibition regarding concealment of assets from qualified receiver, receiver, or liquidating agent.
- Sec. 1611. Miscellaneous provisions.

Subtitle H—Additional Improvements for Financial Crisis Management

- Sec. 1701. Additional improvements for financial crisis management.

1 **Subtitle A—The Financial Services**
2 **Oversight Council**

3 **SEC. 1001. FINANCIAL SERVICES OVERSIGHT COUNCIL ES-**
4 **TABLISHED.**

5 (a) ESTABLISHMENT.—Immediately upon enactment
6 of this title, there is established a Financial Services Over-
7 sight Council.

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

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

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

14 (B) The Chairman of the Board of Gov-
15 ernors of the Federal Reserve System.

16 (C) The Comptroller of the Currency.

17 (D) The Director of the Office of Thrift
18 Supervision, until the functions of the Director
19 of the Office of Thrift Supervision are trans-
20 ferred to pursuant to subtitle C of this title.

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

23 (F) The Chairman of the Commodity Fu-
24 tures Trading Commission.

1 (G) The Chairperson of the Federal De-
2 posit Insurance Corporation.

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

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

7 (2) NONVOTING MEMBERS.—Nonvoting mem-
8 bers, who shall serve in an advisory capacity:

9 (A) A State insurance commissioner, to be
10 designated by a selection process determined by
11 the State insurance commissioners, provided
12 that the term for which a State insurance com-
13 missioner may serve shall last no more than the
14 2-year period beginning on the date that the
15 commissioner is selected.

16 (B) A State banking supervisor, to be des-
17 ignated by a selection process determined by
18 the State bank supervisors, provided that the
19 term for which a State banking supervisor may
20 serve shall last no more than the 2-year period
21 beginning on the date that the supervisor is se-
22 lected.

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

1 (1) To advise the Congress on financial regula-
2 tion and make recommendations that will enhance
3 the integrity, efficiency, orderliness, competitiveness,
4 and stability of the United States financial markets.

5 (2) To monitor the financial services market-
6 place to identify potential threats to the stability of
7 the United States financial system.

8 (3) To identify financial companies and finan-
9 cial activities that should be subject to heightened
10 prudential standards in order to promote financial
11 stability and mitigate systemic risk in accordance
12 with sections subtitles B and E of this title.

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

17 (5) To facilitate information sharing and co-
18 ordination among the members of the Council re-
19 garding financial services policy development,
20 rulemakings, examinations, reporting requirements,
21 and enforcement actions.

22 (6) To provide a forum for discussion and anal-
23 ysis of emerging market developments and financial
24 regulatory issues among its members.

1 (7) At the request of an agency that is a Coun-
2 cil member, to resolve a jurisdictional or regulatory
3 dispute between that agency and another agency
4 that is a Council member in accordance with section
5 1002 of this subtitle.

6 **SEC. 1002. RESOLUTION OF DISPUTES AMONG FEDERAL FI-**
7 **NANCIAL REGULATORY AGENCIES.**

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

11 (1) a Federal financial regulatory agency has a
12 dispute with another Federal financial regulatory
13 agency about the agencies' respective jurisdiction
14 over a particular financial company or financial ac-
15 tivity or product (excluding matters for which an-
16 other dispute mechanism specifically has been pro-
17 vided under Federal law);

18 (2) the disputing agencies cannot, after a dem-
19 onstrated good faith effort, resolve the dispute
20 among themselves; and

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

23 (A) provides all other disputants prior no-
24 tice of its intent to request dispute resolution
25 by the Council; and

1 (B) requests in writing, no earlier than 14
2 days after providing the notice described in
3 paragraph (A), that the Council resolve the dis-
4 pute.

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

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

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

11 (3) by agreeing with 1 of the disputants regard-
12 ing the entirety of the matter or by determining a
13 compromise position.

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

18 **SEC. 1003. TECHNICAL AND PROFESSIONAL ADVISORY**
19 **COMMITTEES.**

20 The Council is authorized to appoint—

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

24 (2) such temporary special advisory, technical,
25 or professional committees as may be useful in car-

1 rying out its functions, which may be composed of
2 Council members and their staff, other persons, or
3 a combination.

4 **SEC. 1004. FINANCIAL SERVICES OVERSIGHT COUNCIL**
5 **MEETINGS AND COUNCIL GOVERNANCE.**

6 (a) MEETINGS.—The Council shall meet as fre-
7 quently as the Chairman deems necessary, but not less
8 than quarterly.

9 (b) VOTING.—Unless otherwise provided, the Council
10 shall make all decisions the Council is required or author-
11 ized to make by a majority of the total voting membership
12 of the Council under section 1001(b)(1).

13 **SEC. 1005. COUNCIL STAFF AND FUNDING.**

14 (a) DEPARTMENT OF THE TREASURY.—The Sec-
15 retary of the Treasury shall—

16 (1) detail permanent staff from the Department
17 of the Treasury to provide the Council (and any
18 temporary special advisory, technical, or professional
19 committees appointed by the Council) with profes-
20 sional and expert support; and

21 (2) provide such other services and facilities
22 necessary for the performance of the Council’s func-
23 tions and fulfillment of the duties and mission of the
24 Council.

1 (b) OTHER DEPARTMENTS AND AGENCIES.—In addi-
2 tion to the assistance prescribed in subsection (a), depart-
3 ments and agencies of the United States may, with the
4 approval of the Secretary of the Treasury—

5 (1) detail department or agency staff on a tem-
6 porary basis to provide additional support to the
7 Council (and any special advisory, technical, or pro-
8 fessional committees appointed by the Council); and

9 (2) provide such services, and facilities as the
10 other departments or agencies may determine advis-
11 able.

12 (c) STAFF STATUS; COUNCIL FUNDING.—

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

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

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

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

1 **SEC. 1006. REPORTS TO THE CONGRESS.**

2 (a) IN GENERAL.—The Council shall submit an an-
3 nual report to the Committee on Financial Services of the
4 House of Representatives and the Committee on Banking,
5 Housing, and Urban Affairs of the Senate that—

6 (1) describes significant financial market devel-
7 opments and potential emerging threats to the sta-
8 bility of the financial system;

9 (2) recommends actions that will improve finan-
10 cial stability;

11 (3) describes any company or activity identifica-
12 tions made under subtitles B and E; and

13 (4) describes any dispute resolutions under-
14 taken under section 1002 and the result of such res-
15 olutions.

16 (b) CONFIDENTIALITY.—The Committees of the Con-
17 gress receiving the Council’s report shall maintain the con-
18 fidentiality of the identity of companies described in ac-
19 cordance with subsection (a)(3) and the information relat-
20 ing to dispute resolutions described in accordance with
21 subsection (a)(4).

22 **SEC. 1007. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

23 (a) The Federal Advisory Committee Act shall not
24 apply to the Financial Services Oversight Council, or any
25 special advisory, technical, or professional committees ap-
26 pointed by the Council (except that, if an advisory, tech-

1 nical, or professional committee has one or more members
2 who are not employees of or affiliated with the United
3 States Government, the Council shall publish a list of the
4 names of the members of such committee).

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

7 **Subtitle B—Prudential Regulation**
8 **of Companies and Activities for**
9 **Financial Stability Purposes**

10 **SEC. 1101. COUNCIL AND BOARD AUTHORITY TO OBTAIN**
11 **INFORMATION.**

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

16 (1) to monitor the financial services market-
17 place to identify potential threats to the stability of
18 the United States financial system; or

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

23 (b) SUBMISSION BY COUNCIL MEMBERS.—Notwith-
24 standing any provision of law, any voting or nonvoting
25 member of the Council is authorized to provide informa-

1 tion to the Council, and the members of the Council shall
2 maintain the confidentiality of such information.

3 (c) FINANCIAL DATA COLLECTION.—

4 (1) IN GENERAL.—The Council or the Board
5 may require the submission of periodic and other re-
6 ports from any financial company solely for the pur-
7 pose of assessing the extent to which a financial ac-
8 tivity or financial market in which the financial com-
9 pany participates, or the company itself, poses a
10 threat to financial stability.

11 (2) MITIGATION OF REPORT BURDEN.—Before
12 requiring the submission of reports from financial
13 companies that are regulated by the Federal finan-
14 cial regulatory agencies, the Council or the Board
15 shall coordinate with such agencies and shall, when-
16 ever possible, rely on information already being col-
17 lected by such agencies.

18 (d) CONSULTATION WITH AGENCIES AND ENTI-
19 TIES.—The Council or the Board, as appropriate, may
20 consult with Federal and State agencies and other entities
21 to carry out any of the provisions of this subtitle.

22 **SEC. 1102. COUNCIL PRUDENTIAL REGULATION REC-**
23 **COMMENDATIONS TO PRIMARY REGULATORS.**

24 (a) IN GENERAL.—The Council is authorized to issue
25 formal recommendations, publicly or privately, that a Fed-

1 eral financial regulatory agency adopt heightened pruden-
2 tial standards for firms it regulates to mitigate systemic
3 risk.

4 (b) AGENCY AUTHORITY TO IMPLEMENT STAND-
5 ARDS.—A Federal financial regulatory agency specifically
6 is authorized to impose, require reports regarding, exam-
7 ine for compliance with, and enforce heightened prudential
8 standards and safeguards for the firms it regulates to
9 mitigate systemic risk. This authority is in addition to and
10 does not limit any other authority of the Federal financial
11 regulatory agencies. Compliance by an entity with actions
12 taken by a Federal financial regulatory agency under this
13 section shall be enforceable in accordance with the statutes
14 governing the respective Federal financial regulatory
15 agency’s jurisdiction over the entity as if the agency action
16 were taken under those statutes.

17 (c) AGENCY NOTICE TO COUNCIL.—A Federal finan-
18 cial regulatory agency shall, within 60 days of receiving
19 a Council recommendation under this section, notify the
20 Council in writing regarding—

21 (1) the actions the Federal financial regulatory
22 agency has taken in response to the Council’s rec-
23 ommendation; or

1 (2) the reason the Federal financial regulatory
2 agency has failed to respond to the Council's re-
3 quest.

4 **SEC. 1103. IDENTIFICATION OF FINANCIAL COMPANIES**
5 **FOR HEIGHTENED PRUDENTIAL STANDARDS**
6 **FOR FINANCIAL STABILITY PURPOSES.**

7 (a) IN GENERAL.—The Council may subject a finan-
8 cial company to heightened prudential standards under
9 section 1104 if the Council determines that—

10 (1) material financial distress at the company
11 could pose a threat to financial stability or the econ-
12 omy; or

13 (2) the nature, scope, or mix of the company's
14 activities could pose a threat to financial stability or
15 the economy.

16 (b) CRITERIA.—In making a determination under
17 subsection (a), the Council shall consider the following cri-
18 teria:

19 (1) The amount and nature of the company's fi-
20 nancial assets.

21 (2) The amount and nature of the company's li-
22 abilities, including the degree of reliance on short-
23 term funding.

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

1 (4) The extent and nature of the company's
2 transactions and relationships with other financial
3 companies.

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

8 (6) The nature, scope, and mix of the com-
9 pany's activities.

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

12 (c) PERIODIC REVIEW AND RESCISSION OF FIND-
13 INGS.—

14 (1) SUBMISSION OF ASSESSMENT.—The Board
15 shall periodically submit a report to the Council con-
16 taining an assessment of whether each company sub-
17 jected to heightened prudential standards should
18 continue to be subject to such standards.

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

21 (A) review the assessment submitted pur-
22 suant to paragraph (1) and any information or
23 recommendation submitted by members of the
24 Council regarding whether an identified finan-

1 cial holding company continues to merit height-
2 ened prudential standards; and

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

8 (d) PROCEDURE FOR IDENTIFYING OR RESCINDING
9 IDENTIFICATION OF A COMPANY.—

10 (1) COUNCIL AND BOARD COORDINATION.—The
11 Council shall inform the Board if the Council is con-
12 sidering whether to identify or cease to identify a
13 company under this section.

14 (2) NOTICE AND OPPORTUNITY FOR CONSIDER-
15 ATION OF WRITTEN MATERIALS.—

16 (A) IN GENERAL.—The Board shall, in an
17 executive capacity on behalf of the Council, in-
18 form a financial company that the Council is
19 considering whether to identify or cease to iden-
20 tify such company under this section, including
21 an explanation of the basis of the Council’s con-
22 sideration, and shall provide such financial com-
23 pany 30 days to submit written materials to in-
24 form the Council’s decision. The Council shall
25 make its decision, and the Board shall notify

1 the company of the Council's decision by order,
2 within 60 days of the due date for such written
3 materials

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

17 (3) CONSULTATION.—If a financial company
18 being considered for identification under this section
19 is, or has one or more subsidiaries that are, subject
20 to regulation by a Federal financial regulatory agen-
21 cy, as such subsidiaries are described in [section
22 2(6)] of this subtitle, the Council shall consult with
23 the relevant Federal financial regulatory agency for
24 each such subsidiary before making any decision
25 under this section.

1 (4) EMERGENCY EXCEPTION TO MAJORITY
2 VOTE OF COUNCIL REQUIREMENT.—If each of the
3 Secretary of the Treasury, the Board, and the Fed-
4 eral Deposit Insurance Corporation determines that
5 a financial company must be subjected to heightened
6 prudential standards under this section immediately
7 to prevent destabilization of the financial system or
8 economy, the Secretary, the Board, and the Corpora-
9 tion may identify a financial company under this
10 section upon certification by the President of the
11 United States.

12 (e) EFFECT OF IDENTIFICATION.—

13 (1) APPLICATION OF THE BANK HOLDING COM-
14 PANY ACT.—A financial company that is not a bank
15 holding company as defined in the Bank Holding
16 Company Act at the time of its identification under
17 this section, shall—

18 (A) if such company conducts at the time
19 of its identification only activities that are de-
20 termined to be financial in nature or incidental
21 thereto under section 4(k) of the Bank Holding
22 Company Act, be treated as a bank holding
23 company that has elected to be a financial hold-
24 ing company for purposes of the Bank Holding
25 Company Act of 1956, as amended, the Federal

1 Deposit Insurance Act, as amended, and all
2 other Federal laws and regulations governing
3 bank holding companies and financial holding
4 companies; or

5 (B) if such company conducts at the time
6 of its identification activities other than those
7 that are determined to be financial in nature or
8 incidental thereto under section 4(k) of the
9 Bank Holding Company Act, be required to es-
10 tablish and conduct all its activities that are de-
11 termined to be financial in nature or incidental
12 thereto under section 4(k) of the Bank Holding
13 Company Act in an intermediate holding com-
14 pany established under section 6 of the Bank
15 Holding Company Act, which intermediate hold-
16 ing company shall be the “identified financial
17 holding company” for purposes of this subtitle.

18 (2) EXEMPTIVE AUTHORITY.—Notwithstanding
19 any provision of the Bank Holding Company Act,
20 the Board may, if it determines such action is nec-
21 essary to ensure appropriate heightened prudential
22 supervision, issue such exemptions from that Act as
23 may be necessary with regard to identified financial
24 holding companies that do not control an insured de-
25 pository institution.

1 (3) HEIGHTENED PRUDENTIAL REGULATION.—

2 The Board shall apply heightened prudential stand-
3 ards to each identified financial holding company
4 subject to this title.

5 (f) NO PUBLIC LIST OF IDENTIFIED COMPANIES.—

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

8 **SEC. 1104. REGULATION OF IDENTIFIED FINANCIAL HOLD-**
9 **ING COMPANIES FOR FINANCIAL STABILITY**
10 **PURPOSES.**

11 (a) PRUDENTIAL STANDARDS FOR IDENTIFIED FI-
12 NANCIAL HOLDING COMPANIES.—

13 (1) IN GENERAL.—To mitigate risks to finan-
14 cial stability and the economy posed by an identified
15 financial holding company, the Board shall impose
16 heightened prudential standards on such company.
17 Such standards shall be designed to maximize finan-
18 cial stability taking costs to long-term financial and
19 economic growth into account, be heightened when
20 compared to the standards that otherwise would
21 apply to financial holding companies that are not
22 identified pursuant to this subtitle (including by ad-
23 dressing additional or different types of risks than
24 otherwise applicable standards), and reflect the po-

1 potential risk posed to financial stability by the identi-
2 fied financial holding company.

3 (2) STANDARDS.—

4 (A) REQUIRED STANDARDS.—The height-
5 ened standards imposed by the Board under
6 this section shall include—

7 (i) risk-based capital requirements;

8 (ii) leverage limits;

9 (iii) liquidity requirements;

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

12 (v) prompt corrective action require-
13 ments (as specified in subsection (d));

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

16 (vii) overall risk management require-
17 ments.

18 (B) ADDITIONAL STANDARDS.—The
19 heightened standards imposed by the Board
20 under this section also may include any other
21 prudential standards that the Board deems ad-
22 visable, including taking actions to mitigate sys-
23 temic risk (as specified in paragraph (5)).

24 (3) APPLICATION OF REQUIRED STANDARDS.—

25 In imposing prudential standards under this sub-

1 section, the Board may differentiate among identi-
2 fied financial holding companies on an individual
3 basis or by category, taking into consideration their
4 capital structure, risk, complexity, financial activi-
5 ties, the financial activities of their subsidiaries, and
6 any other factors that the Board deems appropriate.

7 (4) WELL CAPITALIZED AND WELL MAN-
8 AGED.—An identified financial holding company
9 shall at all times after it files its registration state-
10 ment as an identified financial holding company be
11 well capitalized and well managed as defined by the
12 Board.

13 (5) MITIGATION OF SYSTEMIC RISK.—If the
14 Board determines, after notice and an opportunity
15 for hearing, that the size of an identified financial
16 holding company or the scope or nature of activities
17 directly or indirectly conducted by an identified fi-
18 nancial holding company poses a threat to the safety
19 and soundness of such company or to the financial
20 stability of the United States, the Board may re-
21 quire the identified financial holding company to sell
22 or otherwise transfer assets or off-balance sheet
23 items to unaffiliated firms, to terminate one or more
24 activities, or to impose conditions on the manner in

1 which the identified financial holding company con-
2 ducts one or more activities.

3 (6) APPLICATION TO FOREIGN FINANCIAL COM-
4 PANIES.—The Board shall prescribe regulations re-
5 garding the application of heightened prudential
6 standards to financial companies that are organized
7 or incorporated in a country other than the United
8 States, and that own or control a Federal or State
9 branch, subsidiary, or operating entity that is an
10 identified financial holding company, giving due re-
11 gard to the principle of national treatment and
12 equality of competitive opportunity.

13 (b) PRUDENTIAL STANDARDS AT FUNCTIONALLY
14 REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSI-
15 TORY INSTITUTIONS.—

16 (1) BOARD AUTHORITY TO RECOMMEND STAND-
17 ARDS.—With respect to a functionally regulated sub-
18 sidiary (as such term is defined in section 5 of the
19 Bank Holding Company Act) or a subsidiary deposi-
20 tory institution of an identified financial holding
21 company, the Board may recommend that the rel-
22 evant primary financial regulatory agency for such
23 functionally regulated subsidiary or subsidiary de-
24 pository institution prescribe heightened prudential
25 standards on such functionally regulated subsidiary

1 or subsidiary depository institution. Any standards
2 recommended by the Board under this section shall
3 be of the same type as those described in subsection
4 (a)(2) that the Board is required or authorized to
5 impose directly on the identified financial holding
6 company.

7 (2) AGENCY AUTHORITY TO IMPLEMENT
8 HEIGHTENED STANDARDS AND SAFEGUARDS.—Each
9 primary financial regulatory agency that receives a
10 Board recommendation under paragraph (1) is au-
11 thorized to impose, require reports regarding, exam-
12 ine for compliance with, and enforce standards
13 under this subsection with respect to the entities de-
14 scribed in [section 2(6)] for which it is the primary
15 financial regulatory agency. This authority is in ad-
16 dition to and does not limit any other authority of
17 the primary financial regulatory agencies. Compli-
18 ance by an entity with actions taken by a primary
19 financial regulatory agency under this section shall
20 be enforceable in accordance with the statutes gov-
21 erning the respective agency’s jurisdiction over the
22 entity as if the agency action were taken under those
23 statutes.

24 (3) IMPOSITION OF STANDARDS.—Standards
25 imposed by a primary financial regulatory agency

1 under this subsection shall be the standards rec-
2 ommended by the Board or any other similar stand-
3 ards that the Board deems acceptable after consulta-
4 tion between the Board and the primary financial
5 regulatory agency.

6 (4) FAILURE TO ADOPT STANDARDS; NOTICE
7 TO COUNCIL AND BOARD.—If a primary financial
8 regulatory agency fails to implement the prudential
9 standards recommended by the Board or other simi-
10 lar standards that are acceptable to the Board with-
11 in 60 days of the Board’s recommendation, the
12 agency shall justify in writing the failure of such
13 agency to act to the Council and the Board within
14 that same time period.

15 (5) BACKUP AUTHORITY OF THE BOARD.—

16 (A) IN GENERAL.—When notified that a
17 primary financial regulatory agency has failed
18 to impose the heightened prudential standards
19 recommended by the Board for financial sta-
20 bility purposes under this subsection, the Board
21 is authorized to directly impose, require reports
22 regarding, examine for compliance with, and en-
23 force such heightened prudential standards
24 under this subsection with respect to a func-
25 tionally regulated subsidiary for which the pri-

1 mary financial regulatory agency ordinarily is
2 responsible.

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

9 (c) CONCENTRATION LIMITS FOR IDENTIFIED FI-
10 NANCIAL HOLDING COMPANIES.—

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

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

1 to be necessary to mitigate risks to financial sta-
2 bility.

3 (3) CREDIT EXPOSURE.—For purposes of this
4 subsection, an identified financial holding company’s
5 “credit exposure” to a company means—

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

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

10 (C) all securities borrowing and lending
11 transactions with the company to the extent
12 that such transactions create credit exposure of
13 the identified financial holding company to the
14 company;

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

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

20 (F) counterparty credit exposure to the
21 company in connection with a derivative trans-
22 action between the identified financial holding
23 company and the company; and

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

4 (4) **ATTRIBUTION RULE.**—For purposes of this
5 subsection, any transaction by an identified financial
6 holding company with any person is deemed a trans-
7 action with a company to the extent that the pro-
8 ceeds of the transaction are used for the benefit of,
9 or transferred to, that company.

10 (5) **RULEMAKING.**—The Board may issue such
11 regulations and orders, including definitions con-
12 sistent with this subsection, as may be necessary to
13 administer and carry out the purpose of this sub-
14 section.

15 (6) **EXEMPTIONS.**—The Board may, by regula-
16 tion or order, exempt transactions, in whole or in
17 part, from the definition of credit exposure if it finds
18 that the exemption is in the public interest and con-
19 sistent with the purpose of this subsection.

20 (7) **TRANSITION PERIOD.**—This subsection and
21 any regulations and orders of the Board under the
22 authority of this subsection shall not be effective
23 until three years from the effective date of this sub-
24 section. The Board can extend the effective date for

1 up to two additional years to promote financial sta-
2 bility.

3 (d) PROMPT CORRECTIVE ACTION FOR IDENTIFIED
4 FINANCIAL HOLDING COMPANIES.—

5 (1) PROMPT CORRECTIVE ACTION REQUIRED.—

6 The Board shall take prompt corrective action to re-
7 solve the problems of identified financial holding
8 companies.

9 (2) DEFINITIONS.—For purposes of this sec-
10 tion—

11 (A) CAPITAL CATEGORIES.—

12 (i) WELL CAPITALIZED.—An identi-
13 fied financial holding company is “well
14 capitalized” if it exceeds the required min-
15 imum level for each relevant capital meas-
16 ure.

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

22 (iii) SIGNIFICANTLY UNDERCAPITAL-
23 IZED.—An identified financial holding
24 company is “significantly undercapitalized”
25 if it is significantly below the required min-

1 imum level for any relevant capital meas-
2 ure.

3 (iv) CRITICALLY UNDERCAPITAL-
4 IZED.—An identified financial holding
5 company is “critically undercapitalized” if
6 it fails to meet any level specified in para-
7 graph (4)(C)(i).

8 (3) OTHER DEFINITIONS.—

9 (A) AVERAGE.—The “average” of an ac-
10 counting item (such as total assets or tangible
11 equity) during a given period means the sum of
12 that item at the close of business on each busi-
13 ness day during that period divided by the total
14 number of business days in that period.

15 (B) CAPITAL DISTRIBUTION.—The term
16 “capital distribution” means—

17 (i) a distribution of cash or other
18 property by an identified financial holding
19 company to its owners made on account of
20 that ownership, but not including any divi-
21 dend consisting only of shares of the iden-
22 tified financial holding company or rights
23 to purchase such shares;

24 (ii) a payment by an identified finan-
25 cial holding company to repurchase, re-

1 deem, retire, or otherwise acquire any of
2 its shares or other ownership interests, in-
3 cluding any extension of credit to finance
4 any person’s acquisition of those shares or
5 interests; or

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

11 (C) CAPITAL RESTORATION PLAN.—The
12 term “capital restoration plan” means a plan
13 submitted under paragraph (6)(B).

14 (D) COMPENSATION.—The term “com-
15 pensation” includes any payment of money or
16 provision of any other thing of value in consid-
17 eration of employment.

18 (E) RELEVANT CAPITAL MEASURE.—The
19 term “relevant capital measure” means the
20 measures described in paragraph (4).

21 (F) REQUIRED MINIMUM LEVEL.—The
22 term “required minimum level” means, with re-
23 spect to each relevant capital measure, the min-
24 imum acceptable capital level specified by the
25 Board by regulation.

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

6 (4) CAPITAL STANDARDS.—

7 (A) RELEVANT CAPITAL MEASURES.—

8 (i) IN GENERAL.—Except as provided
9 in clause (ii)(II), the capital standards pre-
10 scribed by the Board under subsection 6(c)
11 of the Bank Holding Company Act of 1956
12 (12 U.S.C. 1845(c)) shall include—

13 (I) a leverage limit; and

14 (II) a risk-based capital require-
15 ment.

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

18 (I) establish any additional rel-
19 evant capital measures to carry out
20 this section; or

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

1 (B) CAPITAL CATEGORIES GENERALLY.—

2 The Board shall, by regulation, specify for each
3 relevant capital measure the levels at which an
4 identified financial holding company is well cap-
5 italized, undercapitalized, and significantly
6 undercapitalized.

7 (C) CRITICAL CAPITAL.—

8 (i) BOARD TO SPECIFY LEVEL.—

9 (I) LEVERAGE LIMIT.—The
10 Board shall, by regulation, specify the
11 ratio of tangible equity to total assets
12 at which an identified financial hold-
13 ing company is critically undercapital-
14 ized.

15 (II) OTHER RELEVANT CAPITAL
16 MEASURES.—The Board may, by reg-
17 ulation, specify for 1 or more other
18 relevant capital measures, the level at
19 which an identified financial holding
20 company is critically undercapitalized.

21 (ii) LEVERAGE LIMIT RANGE.—The
22 level specified under clause (i)(I) shall re-
23 quire tangible equity in an amount—

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

1 (II) except as provided in sub-
2 clause (I), not more than 65 percent
3 of the required minimum level of cap-
4 ital under the leverage limit.

5 (5) CAPITAL DISTRIBUTIONS RESTRICTED.—

6 (A) IN GENERAL.—An identified financial
7 holding company shall make no capital distribu-
8 tion if, after making the distribution, the identi-
9 fied financial holding company would be under-
10 capitalized.

11 (B) EXCEPTION.—Notwithstanding sub-
12 paragraph (A), the Board may permit an iden-
13 tified financial holding company to repurchase,
14 redeem, retire, or otherwise acquire shares or
15 ownership interests if the repurchase, redemp-
16 tion, retirement, or other acquisition—

17 (i) is made in connection with the
18 issuance of additional shares or obligations
19 of the identified financial holding company
20 in at least an equivalent amount; and

21 (ii) will reduce the identified financial
22 holding company's financial obligations or
23 otherwise improve the identified financial
24 holding company's financial condition.

1 (6) PROVISIONS APPLICABLE TO UNDER-
2 CAPITALIZED IDENTIFIED FINANCIAL COMPANIES.—

3 (A) MONITORING REQUIRED.—The Board
4 shall—

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

8 (ii) closely monitor compliance by any
9 undercapitalized identified financial hold-
10 ing company with capital restoration plans,
11 restrictions, and requirements imposed
12 under this section; and

13 (iii) periodically review the plan, re-
14 strictions, and requirements applicable to
15 any undercapitalized identified financial
16 holding company to determine whether the
17 plan, restrictions, and requirements are ef-
18 fective.

19 (B) CAPITAL RESTORATION PLAN RE-
20 QUIRED.—

21 (i) IN GENERAL.—Any undercapital-
22 ized identified financial holding company
23 shall submit an acceptable capital restora-
24 tion plan to the Board within the time al-
25 lowed by the Board under clause (iv).

- 1 (ii) CONTENTS OF PLAN.—The capital
2 restoration plan shall—
- 3 (I) specify—
- 4 (aa) the steps the identified
5 financial holding company will
6 take to become well capitalized;
- 7 (bb) the levels of capital to
8 be attained by the identified fi-
9 nancial holding company during
10 each year in which the plan will
11 be in effect;
- 12 (cc) how the identified fi-
13 nancial holding company will
14 comply with the restrictions or
15 requirements then in effect under
16 this section; and
- 17 (dd) the types and levels of
18 activities in which the identified
19 financial holding company will
20 engage; and
- 21 (II) contain such other informa-
22 tion that the Board may require.
- 23 (iii) CRITERIA FOR ACCEPTING
24 PLAN.—The Board shall not accept a cap-

1 ital restoration plan unless it determines
2 that the plan—

3 (I) complies with subparagraph
4 (B);

5 (II) is based on realistic assump-
6 tions, and is likely to succeed in re-
7 storing the identified financial holding
8 company’s capital; and

9 (III) would not appreciably in-
10 crease the risk (including credit risk,
11 interest-rate risk, and other types of
12 risk) to which the identified financial
13 holding company is exposed.

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

17 (I) provide identified financial
18 holding companies with reasonable
19 time to submit capital restoration
20 plans, and generally require an identi-
21 fied financial holding company to sub-
22 mit a plan not later than 45 days
23 after it becomes undercapitalized; and

24 (II) require the Board to act on
25 capital restoration plans expeditiously,

1 and generally not later than 60 days
2 after the plan is submitted.

3 (C) ASSET GROWTH RESTRICTED.—An
4 undercapitalized identified financial holding
5 company shall not permit its average total as-
6 sets during any calendar quarter to exceed its
7 average total assets during the preceding cal-
8 endar quarter unless—

9 (i) the Board has accepted the identi-
10 fied financial holding company’s capital
11 restoration plan;

12 (ii) any increase in total assets is con-
13 sistent with the plan; and

14 (iii) the identified financial holding
15 company’s ratio of tangible equity to total
16 assets increases during the calendar quar-
17 ter at a rate sufficient to enable it to be-
18 come well capitalized within a reasonable
19 time.

20 (D) PRIOR APPROVAL REQUIRED FOR AC-
21 QUISSIONS AND NEW LINES OF BUSINESS.—An
22 undercapitalized identified financial holding
23 company shall not, directly or indirectly, ac-
24 quire any interest in any company or insured

1 depository institution, or engage in any new line
2 of business, unless—

3 (i) the Board has accepted the identi-
4 fied financial holding company's capital
5 restoration plan, the identified financial
6 holding company is implementing the plan,
7 and the Board determines that the pro-
8 posed action is consistent with and will
9 further the achievement of the plan;

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

12 (iii) the Board has exempted the iden-
13 tified financial holding company from the
14 requirements of this paragraph with re-
15 spect to the class of acquisitions that in-
16 cludes the proposed action.

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

23 (7) PROVISIONS APPLICABLE TO SIGNIFICANTLY
24 UNDERCAPITALIZED IDENTIFIED FINANCIAL HOLD-
25 ING COMPANIES AND UNDERCAPITALIZED IDENTI-

1 FIED FINANCIAL HOLDING COMPANIES THAT FAIL
2 TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION
3 PLANS.—

4 (A) IN GENERAL.—This paragraph shall
5 apply with respect to any identified financial
6 holding company that—

7 (i) is significantly undercapitalized; or

8 (ii) is undercapitalized and—

9 (I) fails to submit an acceptable
10 capital restoration plan within the
11 time allowed by the Board under sub-
12 section (e)(2)(D); or

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

16 (B) SPECIFIC ACTIONS AUTHORIZED.—The
17 Board shall carry out this paragraph by taking
18 1 or more of the following actions:

19 (i) REQUIRING RECAPITALIZATION.—

20 Doing one or more of the following—

21 (I) Requiring the identified fi-
22 nancial holding company to sell
23 enough shares or obligations of the
24 identified financial holding company
25 so that the identified financial holding

1 company will be well capitalized after
2 the sale.

3 (II) Further requiring that in-
4 struments sold under clause (I) be
5 voting shares.

6 (III) Requiring the identified fi-
7 nancial holding company to be ac-
8 quired by or combine with another
9 company.

10 (ii) RESTRICTING TRANSACTIONS
11 WITH AFFILIATES.—

12 (I) Requiring the identified fi-
13 nancial holding company to comply
14 with section 23A of the Federal Re-
15 serve Act (12 U.S.C. 371c), as if it
16 were a member bank.

17 (II) Further restricting the iden-
18 tified financial holding company's
19 transactions with affiliates and insid-
20 ers.

21 (iii) RESTRICTING ASSET GROWTH.—
22 Restricting the identified financial holding
23 company's asset growth more stringently
24 than subsection (6)(C), or requiring the

1 identified financial holding company to re-
2 duce its total assets.

3 (iv) RESTRICTING ACTIVITIES.—Re-
4 quiring the identified financial holding
5 company or any of its subsidiaries to alter,
6 reduce, or terminate any activity that the
7 Board determines poses excessive risk to
8 the identified financial holding company.

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

11 (I) NEW ELECTION OF DIREC-
12 TORS.—Ordering a new election for
13 the identified financial holding com-
14 pany’s board of directors.

15 (II) DISMISSING DIRECTORS OR
16 SENIOR EXECUTIVE OFFICERS.—Re-
17 quiring the identified financial holding
18 company to dismiss from office any
19 director or senior executive officer
20 who had held office for more than 180
21 days immediately before the identified
22 financial holding company became
23 undercapitalized. Dismissal under this
24 clause shall not be construed to be a
25 removal under section 8 of the Fed-

1 eral Deposit Insurance Act (12 U.S.C.
2 1818).

3 (III) EMPLOYING QUALIFIED
4 SENIOR EXECUTIVE OFFICERS.—Re-
5 quiring the identified financial holding
6 company to employ qualified senior
7 executive officers (who, if the Board
8 so specifies, shall be subject to ap-
9 proval by the Board).

10 (vi) REQUIRING DIVESTITURE.—Re-
11 quiring the identified financial holding
12 company to divest itself of or liquidate any
13 subsidiary if the Board determines that the
14 subsidiary is in danger of becoming insol-
15 vent, poses a significant risk to the identi-
16 fied financial holding company, or is likely
17 to cause a significant dissipation of the
18 identified financial holding company's as-
19 sets or earnings.

20 (vii) REQUIRING OTHER ACTION.—Re-
21 quiring the Identified financial company to
22 take any other action that the Board de-
23 termines will better carry out the purpose
24 of this section than any of the actions de-
25 scribed in this paragraph.

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

6 (i) The action described in subclause
7 (I) or (II) of subparagraph (B)(i) (relating
8 to requiring the sale of shares or obliga-
9 tions, or requiring the identified financial
10 holding company to be acquired by or com-
11 bine with another company).

12 (ii) The action described in paragraph
13 (B)(ii)(I) (relating to restricting trans-
14 actions with affiliates).

15 (D) SENIOR EXECUTIVE OFFICERS' COM-
16 PENSATION RESTRICTED.—

17 (i) IN GENERAL.—The identified fi-
18 nancial holding company shall not do any
19 of the following without the prior written
20 approval of the Board:

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

23 (II) Provide compensation to any
24 senior executive officer at a rate ex-
25 ceeding that officer's average rate of

1 compensation (excluding bonuses,
2 stock options, and profit-sharing) dur-
3 ing the 12 calendar months preceding
4 the calendar month in which the iden-
5 tified financial holding company be-
6 came undercapitalized.

7 (ii) FAILING TO SUBMIT PLAN.—The
8 Board shall not grant any approval under
9 clause (i) with respect to an identified fi-
10 nancial holding company that has failed to
11 submit an acceptable capital restoration
12 plan.

13 (E) CONSULTATION WITH OTHER REGU-
14 LATORS.—Before the Board makes a deter-
15 mination under subparagraph (B)(vi) with re-
16 spect to a subsidiary that is a broker, dealer,
17 government securities broker, government secu-
18 rities dealer, investment company, or invest-
19 ment adviser, the Board shall consult with the
20 Securities and Exchange Commission and, in
21 the case of any other subsidiary which is sub-
22 ject to any financial responsibility or capital re-
23 quirement, any other appropriate regulator of
24 such subsidiary with respect to the proposed de-

1 termination of the Board and actions pursuant
2 to such determination.

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

5 (A) IN GENERAL.—If the Board deter-
6 mines (after notice and an opportunity for
7 hearing) that an identified financial holding
8 company is in an unsafe or unsound condition
9 or, pursuant to section 8(b)(8) of the Federal
10 Deposit Insurance Act (12 U.S.C. 1818(b)(8)),
11 deems the identified financial holding company
12 to be engaging in an unsafe or unsound prac-
13 tice, the Board may—

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

20 (ii) if the identified financial holding
21 company is undercapitalized, take any one
22 or more actions authorized under para-
23 graph (7)(B) as if the identified financial
24 holding company were significantly under-
25 capitalized.

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

6 (9) MANDATORY BANKRUPTCY PETITION FOR
7 CRITICALLY UNDERCAPITALIZED IDENTIFIED FINAN-
8 CIAL COMPANIES.—The Board shall, not later than
9 90 days after an identified financial holding com-
10 pany becomes critically undercapitalized—

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

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

17 (10) IMPLEMENTATION.—The Board shall pre-
18 scribe such regulations, issue such orders, and take
19 such other actions the Board determines to be nec-
20 essary to carry out this section.

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

1 (12) CONSULTATION.—The Board and the Sec-
2 retary of the Treasury shall consult with their for-
3 eign counterparties and through appropriate multi-
4 lateral organizations to reach agreement to extend
5 comprehensive and robust prudential supervision and
6 regulation to all highly leveraged and substantially
7 interconnected financial companies.

8 (13) ADMINISTRATIVE REVIEW OF DISMISSAL
9 ORDERS.—

10 (A) TIMELY PETITION REQUIRED.—A di-
11 rector or senior executive officer dismissed pur-
12 suant to an order under paragraph
13 (7)(B)(v)(II) may obtain review of that order
14 by filing a written petition for reinstatement
15 with the Board not later than 10 days after re-
16 ceiving notice of the dismissal.

17 (B) PROCEDURE.—

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

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

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

1 members of the Board or designated
2 employees of the Board.

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

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

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

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

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

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

21 (III) notify the petitioner of the
22 order.

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

1 ployment would materially strengthen the iden-
2 tified financial holding company's ability—

3 (i) to become well capitalized, to the
4 extent that the order is based on the iden-
5 tified financial holding company's capital
6 level or failure to submit or implement a
7 capital restoration plan; and

8 (ii) to correct the unsafe or unsound
9 condition or unsafe or unsound practice, to
10 the extent that the order is based on para-
11 graph (8)(A).

12 (e) REPORTS REGARDING RAPID AND ORDERLY RES-
13 OLUTION AND CREDIT EXPOSURE.—

14 (1) IN GENERAL.—The Board shall require
15 each identified financial holding company to report
16 periodically to the Board on—

17 (A) its plan for rapid and orderly resolu-
18 tion in the event of severe financial distress;

19 (B) the nature and extent to which the
20 identified financial holding company has credit
21 exposure to other significant financial compa-
22 nies; and

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

1 posure to the identified financial holding com-
2 pany.

3 (2) NO LIMITING EFFECT ON RECEIVER OR
4 QUALIFIED RECEIVER.—A rapid resolution plan sub-
5 mitted in accordance with this subsection shall not
6 be binding on a receiver or qualified receiver ap-
7 pointed under subtitle G, a bankruptcy court, or any
8 other authority that is authorized or required to re-
9 solve the identified financial holding company or any
10 of its subsidiaries or affiliates.

11 (f) AVOIDING DUPLICATION.—The Board shall take
12 any action the Board deems appropriate to avoid imposing
13 duplicative requirements under this chapter for identified
14 financial holding companies that are also bank holding
15 companies.

16 **SEC. 1105. AUTHORITY TO FILE INVOLUNTARY PETITION**
17 **FOR BANKRUPTCY.**

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

20 **[(1) in subsection (h)—]**

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

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

25 (2) by adding the following new subsection:

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

10 **SEC. 1106. IDENTIFICATION OF ACTIVITIES OR PRACTICES**
11 **FOR HEIGHTENED PRUDENTIAL STANDARDS**
12 **AND SAFEGUARDS FOR FINANCIAL STA-**
13 **BILITY PURPOSES.**

14 (a) IN GENERAL.—The Council may subject a finan-
15 cial activity or practice to heightened prudential standards
16 and safeguards under section 1107 if the Council deter-
17 mines that the conduct of such activity or practice could
18 create or increase the risk of significant liquidity, credit,
19 or other problems spreading among financial institutions
20 or markets and thereby threaten the stability of the finan-
21 cial system.

22 (b) PERIODIC REVIEW OF ACTIVITY IDENTIFICA-
23 TIONS.—

24 (1) SUBMISSION OF ASSESSMENT.—The Board
25 shall periodically submit a report to the Council con-

1 taining an assessment of whether each activity or
2 practice subjected to heightened prudential stand-
3 ards should continue to be subject to such stand-
4 ards.

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

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

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

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

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

23 (2) NOTICE AND OPPORTUNITY FOR CONSIDER-
24 ATION OF WRITTEN MATERIALS.—

1 (A) IN GENERAL.—The Board shall, in an
2 executive capacity on behalf of the Council, pro-
3 vide notice to financial companies that the
4 Council is considering whether to identify an
5 activity or practice for heightened prudential
6 regulation, and shall provide a financial com-
7 pany engaged in such activity or practice 30
8 days to submit written materials to inform the
9 Council’s decision. The Council shall decide,
10 and the Board shall provide notice of the Coun-
11 cil’s decision, within 60 days of the due date for
12 such written materials.

13 (B) EMERGENCY EXCEPTION.—The Coun-
14 cil may waive or modify the requirements of
15 subparagraph (A) if the Council determines
16 that such waiver or modification is necessary or
17 appropriate to prevent or mitigate threats posed
18 by an activity to financial stability. The Board
19 shall, in an executive capacity on behalf of the
20 Council, provide notice of such waiver or modi-
21 fication to financial companies as soon as prac-
22 ticable, which shall be no later than 24 hours
23 after the waiver or modification.

24 (3) FORM OF DECISION.—The Board shall pro-
25 vide all notices required under this subsection by

1 posting a notice on the Board’s Web site and pub-
2 lishing a notice in the Federal Register.

3 (d) EFFECT OF IDENTIFICATION.—The Board shall,
4 in accordance with section 1107, recommend to the appro-
5 priate primary financial regulatory agencies specific
6 heightened prudential standards to be applied to an activ-
7 ity or practice that the Council or the Board identifies
8 under this section.

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

11 (a) LIMITATIONS ON IDENTIFIED FINANCIAL ACTIVI-
12 TIES AND PRACTICES.—

13 (1) RECOMMENDATIONS.—To mitigate the risks
14 to United States financial stability and the United
15 States economy posed by financial activities and
16 practices that the Council or the Board identifies for
17 heightened prudential scrutiny in accordance with
18 section 1103, the Board shall recommend prudential
19 standards to the appropriate primary financial regu-
20 latory agencies to apply to such identified activities
21 and practices.

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

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

4 (B) may include prescribing the conduct of
5 the activity or practice in specific ways (such as
6 by limiting its scope, or applying particular cap-
7 ital or risk-management requirements to the
8 conduct of the activity) or prohibiting the activ-
9 ity or practice altogether.

10 (b) IMPLEMENTATION OF RECOMMENDED STAND-
11 ARDS.—

12 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
13 AGENCY.—Each primary financial regulatory agency
14 is authorized to impose, require reports regarding,
15 examine for compliance with, and enforce standards
16 in accordance with this section with respect to those
17 entities described in **section 2(6)** for which it is
18 the primary financial regulatory agency. This au-
19 thority is in addition to and does not limit any other
20 authority of the primary financial regulatory agen-
21 cies. Compliance by an entity with actions taken by
22 a primary financial regulatory agency under this sec-
23 tion shall be enforceable in accordance with the stat-
24 utes governing the respective primary financial regu-

1 latory agency's jurisdiction over the entity as if the
2 agency action were taken under those statutes.

3 (2) IMPOSITION OF STANDARDS.—Standards
4 imposed under this subsection shall be the standards
5 recommended by the Board in accordance with sub-
6 section (a) or any other similar standards that the
7 Board deems acceptable after consultation between
8 the Board and the primary financial regulatory
9 agency.

10 (3) FAILURE TO ADOPT STANDARDS; NOTICE
11 TO COUNCIL AND BOARD.—If a primary financial
12 regulatory agency fails to implement the prudential
13 standards recommended by the Board or other simi-
14 lar standards that are acceptable to the Board with-
15 in 60 days of the Board's recommendation, the pri-
16 mary financial regulatory agency shall justify the
17 failure of such agency to act in writing to the Coun-
18 cil and the Board within that same time period.

19 (4) BACKUP AUTHORITY OF THE BOARD.—

20 (A) IN GENERAL.—When notified that a
21 primary financial regulatory agency has failed
22 to impose heightened prudential standards rec-
23 ommended by the Board for financial stability
24 purposes under this section, the Board is au-
25 thorized to directly impose, require reports re-

1 garding, examine for compliance with, and en-
2 force such heightened prudential standards
3 under this section with respect to entities de-
4 scribed in section 2(6) for which the primary fi-
5 nancial regulatory agency ordinarily is respon-
6 sible.

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

15 **SEC. 1108. EFFECT OF RESCISSION OF IDENTIFICATION.**

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

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

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

3 **SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.**

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

20 (b) POLICIES AND PROCEDURES.—Prior to exercising
21 any authority under this section, the Corporation shall es-
22 tablish policies and procedures governing the extension of
23 credit and the issuance of guarantees. The terms and con-
24 ditions of any extensions of credit or guarantees issued
25 shall be established by the Corporation with the approval

1 of the Secretary of the Treasury and the Board of Gov-
2 ernors of the Federal Reserve System.

3 (c) FUNDING.—There shall be available to the Cor-
4 poration to carry out this section amounts in the Treasury
5 not otherwise appropriated, including for the payment of
6 reasonable administrative expenses. Notwithstanding sec-
7 tion 7(d) of the Federal Deposit Insurance Act (12 U.S.C.
8 1817(d)), such amounts shall be subject to apportionment
9 for the purposes of chapter 15 of title 31, United States
10 Code. Amounts received by the Corporation from assess-
11 ments imposed under subsection (d), extensions of credit,
12 and guarantees, including payments of principal, interest,
13 and guarantee fees, shall be covered into the Treasury as
14 miscellaneous receipts.

15 (d) RECOUPMENT; ASSESSMENT.—Any losses in-
16 curred by the Corporation pursuant to subsection (a) shall
17 be recovered from Corporation assessments on large finan-
18 cial companies in the manner provided in section 1609(o)
19 of the Resolution Authority for Large, Interconnected Fi-
20 nancial Companies Act of 2009.

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

23 (1) ACTIVITIES THAT ARE FINANCIAL IN NA-
24 TURE.—The term “activities that are financial in
25 nature” means activities that are determined to be

1 financial in nature under section 4(k) of the Bank
2 Holding Company Act of 1956 (12 U.S.C. 1843(k))
3 and activities that are identified for heightened pru-
4 dential standards under section 1106 of this title.

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

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

11 (4) INSURED DEPOSITORY INSTITUTION.—The
12 term “insured depository institution” shall have the
13 same meaning as in section 3 of the Federal Deposit
14 Insurance Act (12 U.S.C. 1813).

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

17 **SEC. 1110. EXAMINATIONS AND ENFORCEMENT ACTIONS**
18 **FOR INSURANCE AND RESOLUTIONS PUR-**
19 **POSES.**

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

1 whenever the Board of Directors determines a special ex-
2 amination of any such depository institution is necessary
3 to determine the condition of such depository institution
4 for insurance or such identified financial holding company
5 for resolution purposes.”.

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

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

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

13 (3) by inserting new subparagraph (D), as fol-
14 lows:

15 “(D) the conduct or threatened conduct
16 (including any acts or omissions) of the deposi-
17 tory institution holding company poses a risk to
18 the Deposit Insurance Fund.”; and

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

21 “(6) For purposes of this subsection:

22 “(A) The Corporation shall have the same
23 powers with respect to a depository institution
24 holding company and its affiliates as the appro-

1 appropriate Federal banking agency has with respect
2 to the holding company and its affiliates; and

3 “(B) the holding company and its affiliates
4 shall have the same duties and obligations with
5 respect to the Corporation as the holding com-
6 pany and its affiliates have with respect to the
7 appropriate Federal banking agency.”

8 **SEC. 1111. RULE OF CONSTRUCTION.**

9 The authorities granted to agencies under this sub-
10 title are in addition to any rulemaking, report-related, ex-
11 amination, enforcement, or other authority that such
12 agencies may have under other law and in no way shall
13 be construed to limit such other authority, except that any
14 standards imposed for financial stability purposes under
15 this subtitle shall supersede any conflicting less stringent
16 requirements of the primary financial regulatory agency
17 but only the extent of the conflict.

18 **Subtitle C—Improvements to Su-**
19 **per vision and Regulation of**
20 **Federal Depository Institutions**

21 **SEC. 1201. DEFINITIONS.**

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

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

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

6 (3) OFFICE OF THE COMPTROLLER OF THE
7 CURRENCY.—The term “Office of the Comptroller of
8 the Currency” means the office established by sec-
9 tion 324 of the Revised Statutes (12 U.S.C. 1).

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

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

16 (6) TRANSFER DATE.—The term “transfer
17 date” has the meaning provided in section 1205.

18 (7) CERTAIN OTHER TERMS.—The terms “affil-
19 iate”, “bank holding company”, “control” (when
20 used with respect to a depository institution), “de-
21 pository institution”, “Federal banking agency”,
22 “Federal savings association”, “including”, “insured
23 branch”, “insured depository institution”, “savings
24 association”, “State savings association”, and “sub-

1 subsidiary” have the same meanings as in section 3 of
2 the Federal Deposit Insurance Act.

3 **SEC. 1202. AMENDMENTS TO THE HOME OWNERS’ LOAN**
4 **ACT RELATING TO TRANSFER OF FUNCTIONS.**

5 (a) AMENDMENTS TO SECTION 2.—Section 2 of the
6 Home Owners’ Loan Act (12 U.S.C. 1462) is amended
7 by amending paragraph (1) to read as follows:

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

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

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

15 “(a) ESTABLISHMENT OF DIVISION OF THRIFT SU-
16 PERVISION.—To carry out the purposes of this Act, there
17 is hereby established the Division of Thrift Supervision,
18 which shall be a division within the Office of the Comp-
19 troller of the Currency.”;

20 (2) in subsection (b)—

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

23 “(1) IN GENERAL.—The Division of Thrift Su-
24 pervision shall be headed by a Deputy Comptroller

1 of the Currency who shall be subject to the general
2 oversight of the Comptroller of the Currency.”;

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

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

7 (3) by striking subsections (c), (d), and (e) and
8 inserting the following new subsection:

9 “(c) POWERS OF THE COMPTROLLER OF THE CUR-
10 RENCY.—The Comptroller of the Currency shall have all
11 the powers, duties, and functions transferred by the Fi-
12 nancial Stability Improvement Act of 2009 to the Comp-
13 troller of the Currency to carry out this Act.”;

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

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

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

20 (7) in subsection (e) (as so redesignated), by
21 striking “compensation of the Director and other
22 employees of the Office and all other expenses there-
23 of” and inserting “expenses incurred by the Comp-
24 troller of the Currency in carrying out this Act”.

1 (c) AMENDMENTS TO SECTION 4.—Section 4 of the
2 Home Owners’ Loan Act (12 U.S.C. 1463) is amended
3 by striking “Director” every time it appears and inserting
4 “Comptroller of the Currency”.

5 (d) AMENDMENTS TO SECTION 5.—

6 (1) UNIVERSAL.—Section 5 of the Home Own-
7 ers’ Loan Act (12 U.S.C. 1464) is amended—

8 (A) by striking “Director” and “Director
9 of the Office of Thrift Supervision” each place
10 such term appears and inserting “Comptroller
11 of the Currency”; and

12 (B) by striking “Director’s” each place
13 such term appears and inserting “Comptroller
14 of the Currency’s”.

15 (2) SPECIFIC PROVISIONS.—

16 (A) Section 5(d)(2)(E) of the Home Own-
17 ers’ Loan Act is amended by striking “or the
18 Resolution Trust Corporation, as appropriate,”
19 each place such term appears.

20 (B) Section 5(d)(3)(B) of the Home Own-
21 ers’ Loan Act is amended by striking “or the
22 Resolution Trust Corporation”.

23 (e) AMENDMENTS TO SECTIONS 8 AND 9.—Sections
24 8 and 9 of the Home Owners’ Loan Act (12 U.S.C.
25 11466a, 1467) are each amended by striking “Director”

1 each place such term appears and inserting “Comptroller
2 of the Currency”.

3 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

10 (2) SECTION 3.—

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

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

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

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

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

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

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

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

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

8 “There shall be in the Department of the Treasury
9 a bureau, the chief officer of which bureau shall be called
10 the Comptroller of the Currency, and shall perform the
11 duties of the Comptroller of the Currency under the gen-
12 eral direction of the Secretary of the Treasury. The Comp-
13 troller of the Currency shall have the same authority over
14 matters as were vested in the Director of the Office of
15 Thrift Supervision or the Office of Thrift Supervision on
16 the day before the date of enactment of the Financial Sta-
17 bility Improvement Act of 2009. The Secretary of the
18 Treasury may not delay or prevent the issuance of any
19 rule or the promulgation of any regulation by the Comp-
20 troller of the Currency.”.

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

1 **“SEC. 327 DEPUTY COMPTROLLERS.**

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

5 “(1) 1 of whom shall be designated First Dep-
6 Comptroller of the Currency; and

7 “(2) 1 of whom shall be designated the Deputy
8 Comptroller of the Division of Thrift Supervision.

9 “(b) PAY.—The Secretary of the Treasury shall fix
10 the compensation of the Deputy Comptrollers of the Cur-
11 rency and provide such other benefits as the Secretary
12 may determine to be appropriate.

13 “(c) OATH OF OFFICE; DUTIES.—Each Deputy
14 Comptroller shall take the oath of office and shall perform
15 such duties as the Comptroller of the Currency shall di-
16 rect.

17 “(d) SERVICE AS ACTING COMPTROLLER.—During a
18 vacancy in the office or during the absence or disability
19 of the Comptroller, each Deputy Comptroller shall possess
20 the power and perform the duties attached by law to the
21 Office of the Comptroller under such order of succession
22 following the First Deputy Comptroller as the Comptroller
23 shall direct.”.

24 (c) AMENDMENT TO SECTION 329.—Section 329 of
25 the Revised Statutes of the United States (12 U.S.C. 11)

1 is amended by inserting “or any Federal savings associa-
2 tion” before the period at the end.

3 (d) AMENDMENT TO SECTION 481.—The fourth sen-
4 tence of the second undesignated paragraph of Section
5 5240 of the Revised Statutes of the United States (12
6 U.S.C. 481) is amended by striking “Secretary of the
7 Treasury;” and all that follows through the end of the sen-
8 tence, and inserting “Secretary of the Treasury; the em-
9 ployment and compensation of examiners, chief examiners,
10 reviewing examiners, assistant examiners, and of the other
11 employees of the office of the Comptroller of the Currency
12 whose compensation is and shall be paid from assessments
13 on banks or affiliates thereof or from other fees or charges
14 imposed pursuant to this subchapter shall be set and ad-
15 justed pursuant to chapter 71 of title five, United States
16 Code and without regard to the provisions of other laws
17 applicable to officers or employees of the United States.”.

18 (e) AMENDMENT TO SECTION 482.—The first sen-
19 tence in the first undesignated paragraph of Section 5240
20 of the Revised Statutes of the United States (12 U.S.C.
21 482) is amended by inserting “pursuant to chapter 71 of
22 title five, United States Code,” after “shall,”.

23 **SEC. 1204. POWER AND DUTIES TRANSFERRED.**

24 (a) DIRECTOR OF THE OFFICE OF THRIFT SUPER-
25 VISION.—

1 (1) TRANSFER OF FUNCTIONS.—Except as oth-
2 erwise provided in this subtitle, all functions of the
3 Director of the Office of Thrift Supervision are
4 transferred to the Office of the Comptroller of the
5 Currency.

6 (2) COMPTROLLER'S AUTHORITY.—Except as
7 otherwise provided in this subtitle, the Comptroller
8 of the Currency shall succeed to all powers, authori-
9 ties, rights, and duties that were vested in the Direc-
10 tor of the Office of Thrift Supervision under Federal
11 law, including the Home Owners' Loan Act, on the
12 day before the transfer date.

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

15 (A) TRANSFER OF FUNCTIONS.—All func-
16 tions of the Director of the Office of Thrift Su-
17 pervision relating to the supervision and regula-
18 tion of State savings associations are trans-
19 ferred to the Corporation.

20 (B) CORPORATION'S AUTHORITY.—The
21 Corporation shall succeed to all powers, au-
22 thorities, rights, and duties that were vested in
23 the Director of the Office of Thrift Supervision
24 under Federal law, including the Home Owners'
25 Loan Act, on the day before the transfer date,

1 relating to the supervision and regulation of
2 State savings associations.

3 (b) APPROPRIATE FEDERAL BANKING AGENCY.—
4 Section 3 of the Federal Deposit Insurance Act (12 U.S.C.
5 1813) is amended in subsection (q)—

6 (1) by amending paragraph (1) to read as fol-
7 lows:

8 “(1) the Comptroller of the Currency in the
9 case of any national bank, Federal savings associa-
10 tion or any Federal branch or agency of a foreign
11 bank;”;

12 (2) by amending paragraph (3) to read as fol-
13 lows:

14 “(3) the Federal Deposit Insurance Corporation
15 in the case of a State nonmember insured bank, a
16 State savings association or a foreign bank having
17 an insured branch.”; and

18 (3) by striking paragraph (4).

19 (c) TRANSFER OF CONSUMER FINANCIAL PROTEC-
20 TION FUNCTIONS.—Nothing in subsection (a) or (b) shall
21 affect any transfer of consumer financial protection func-
22 tions of the Comptroller of the Currency and the Director
23 of the Office of Thrift Supervision to the Consumer Finan-
24 cial Protection Agency as provided in the Consumer Fi-
25 nancial Protection Agency Act of 2009.

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

3 **SEC. 1205. TRANSFER DATE.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b), the date for the transfer of functions to the Office
6 of the Comptroller of the Currency and the Corporation
7 under section 1204 shall be 1 year after the date of enact-
8 ment of this Act.

9 (b) EXTENSION PERMITTED.—

10 (1) NOTICE REQUIRED.—The Secretary, in con-
11 sultation with the Comptroller of the Currency and
12 the Director of the Office of Thrift Supervision, may
13 designate a calendar date for the transfer of func-
14 tions of the Office of Thrift Supervision to the Of-
15 fice of the Comptroller of the Currency, and the Cor-
16 poration under section 1204 that is later than 1
17 year after the date of enactment of this Act if the
18 Secretary—

19 (A) transmits to the Committee on Bank-
20 ing, Housing, and Urban Affairs of the Senate
21 and the Committee on Financial Services of the
22 House of Representatives—

23 (i) a written determination that or-
24 derly implementation of this title is not

1 feasible on the date that is 1 year after the
2 date of enactment of this Act;

3 (ii) an explanation of why an exten-
4 sion is necessary for the orderly implemen-
5 tation of this title; and

6 (iii) a description of the steps that will
7 be taken to effect an orderly and timely
8 implementation of this title within the ex-
9 tended time period; and

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

12 (2) EXTENSION LIMITED.—In no case shall any
13 date designated under paragraph (1) be later than
14 18 months after the date of enactment of this Act.

15 (3) EFFECT ON REFERENCES TO “TRANSFER
16 DATE”.—If the Secretary takes the actions provided
17 in paragraph (1) for designating a date for the
18 transfer of functions to the Office of the Comptroller
19 of the Currency, and the Corporation under section
20 1204, references in this title to “transfer date” shall
21 mean the date designated by the Secretary.

22 **SEC. 1206. OFFICE OF THRIFT SUPERVISION ABOLISHED.**

23 Effective 90 days after the transfer date, the position
24 of Director of the Office of Thrift Supervision and the Of-
25 fice of Thrift Supervision are abolished.

1 **SEC. 1207. SAVINGS PROVISIONS.**

2 (a) OFFICE OF THRIFT SUPERVISION.—

3 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
4 TIONS NOT AFFECTED.—Sections 1204(a)(1) and
5 1206 shall not affect the validity of any right, duty,
6 or obligation of the United States, the Director of
7 the Office of Thrift Supervision, the Office of Thrift
8 Supervision, or any other person, that existed on the
9 day before the transfer date.

10 (2) CONTINUATION OF SUITS.—This Act shall
11 not abate any action or proceeding commenced by or
12 against the Director of the Office of Thrift Super-
13 vision or the Office of Thrift Supervision before the
14 transfer date, except that—

15 (A) for any action or proceeding arising
16 out of a function of the Director of the Office
17 of Thrift Supervision transferred to the Comp-
18 troller of the Currency by this title, the Comp-
19 troller of the Currency or the Office of the
20 Comptroller of the Currency shall be sub-
21 stituted for the Director of the Office of Thrift
22 Supervision or the Office of Thrift Supervision,
23 as the case may be, as a party to the action or
24 proceeding as of the transfer date; or

25 (B) for any action or proceeding arising
26 out of a function of the Director of the Office

1 of Thrift Supervision transferred to the Cor-
2 poration by this title, the Chairman of the Cor-
3 poration shall be substituted for the Director of
4 the Office of Thrift Supervision as a party to
5 the action or proceeding as of the transfer date.

6 (b) CONTINUATION OF EXISTING OTS ORDERS, RES-
7 OLUTIONS, DETERMINATIONS, AGREEMENTS, REGULA-
8 TIONS, ETC.—All orders, resolutions, determinations,
9 agreements, and regulations, interpretative rules, other in-
10 terpretations, guidelines, procedures, and other advisory
11 materials, that have been issued, made, prescribed, or al-
12 lowed to become effective by the Office of Thrift Super-
13 vision, or by a court of competent jurisdiction, in the per-
14 formance of functions that are transferred by this title and
15 that are in effect on the day before the transfer date, shall
16 continue in effect according to the terms of those orders,
17 resolutions, determinations, agreements, and regulations,
18 interpretative rules, other interpretations, guidelines, pro-
19 cedures, and other advisory materials, and shall be en-
20 forceable by or against—

21 (1) the Office of the Comptroller of the Cur-
22 rency, in the case of a function of the Director of
23 the Office of Thrift Supervision transferred to the
24 Comptroller of the Currency, until modified, termi-
25 nated, set aside, or superseded in accordance with

1 applicable law by the Office of the Comptroller of
2 the Currency, by any court of competent jurisdic-
3 tion, or by operation of law; or

4 (2) the Corporation, in the case of a function
5 of the Director of the Office of Thrift Supervision
6 transferred to the Corporation, until modified, termi-
7 nated, set aside, or superseded in accordance with
8 applicable law by the Corporation, by any court of
9 competent jurisdiction, or by operation of law.

10 (c) IDENTIFICATION OF REGULATIONS CONTIN-
11 UED.—

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

15 (A) after consultation with the Chairperson
16 of the Corporation, identify the regulations con-
17 tinued under subsection (c) that will be en-
18 forced by the Office of the Comptroller of the
19 Currency; and

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

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

24 (A) after consultation with the Office of
25 the Comptroller of the Currency, identify the

1 regulations continued under subsection (c) that
2 will be enforced by the Corporation; and

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

5 (d) STATUS OF REGULATIONS PROPOSED OR NOT
6 YET EFFECTIVE.—

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

15 (2) REGULATIONS NOT YET EFFECTIVE.—Any
16 interim or final regulation of the Office of Thrift Su-
17 pervision, which that agency, in performing func-
18 tions transferred by this title, has published before
19 the transfer date but which has not become effective
20 before that date, shall become effective as a regula-
21 tion of the Office of the Comptroller of the Cur-
22 rency, or the Corporation, as appropriate, according
23 to its terms.

1 **SEC. 1208. REGULATIONS AND ORDERS.**

2 In addition to any powers transferred to the Comp-
3 troller of the Currency by this title, the Comptroller of
4 the Currency may prescribe such regulations and issue
5 such orders as the Comptroller of the Currency determines
6 to be appropriate to carry out this title and the powers
7 and duties transferred to the Comptroller of the Currency
8 by this title.

9 **SEC. 1209. COORDINATION OF TRANSITION ACTIVITIES.**

10 Before the transfer date, the Comptroller of the Cur-
11 rency shall—

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

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

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

23 (B) what personnel are appropriate to fa-
24 cilitate the orderly transfer of functions by this
25 title; and

1 (C) what property and administrative serv-
2 ices are necessary to support the Office of the
3 Comptroller of the Currency during the period
4 beginning on the date of enactment of this Act
5 and ending on the transfer date; and

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

8 **SEC. 1210. INTERIM RESPONSIBILITIES OF OFFICE OF THE**
9 **COMPTROLLER OF THE CURRENCY AND OF-**
10 **ICE OF THRIFT SUPERVISION.**

11 (a) IN GENERAL.—When requested by the Comp-
12 troller of the Currency to do so before the transfer date,
13 the Office of Thrift Supervision shall—

14 (1) pay to the Comptroller of the Currency,
15 from funds obtained by the Office of Thrift Super-
16 vision through assessments, fees, or other charges
17 that the Office of Thrift Supervision is authorized
18 by law to impose, such amounts that the Comp-
19 troller of the Currency determines to be necessary
20 under section 1209(2)(A);

21 (2) detail to the Office of the Comptroller of the
22 Currency such personnel as the Comptroller of the
23 Currency determines to be appropriate under section
24 1209(2)(B); and

1 (3) make available to the Office of the Comp-
2 troller of the Currency such property and provide
3 the Office of the Comptroller of the Currency such
4 administrative services as the Comptroller of the
5 Currency determines to be necessary under section
6 1209(2)(C).

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

12 **SEC. 1211. EMPLOYEES TRANSFERRED.**

13 (a) IN GENERAL.—

14 (1) OTS EMPLOYEES.—

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

19 (B) ALLOCATING EMPLOYEES FOR TRANS-
20 FER TO RECEIVING AGENCIES.—The Director of
21 the Office of Thrift Supervision, the Comp-
22 troller of the Currency, and the Chairperson of
23 the Corporation shall—

1 (i) jointly determine the number of
2 employees of the Office of Thrift Super-
3 vision necessary to perform or support—

4 (I) the functions of the Office of
5 Thrift Supervision that are trans-
6 ferred to the Office of the Comptroller
7 of the Currency by this title; and

8 (II) the functions of the Office of
9 Thrift Supervision that are trans-
10 ferred to the Corporation by this title;
11 and

12 (ii) consistent with the numbers deter-
13 mined under clause (ii), jointly identify
14 employees of the Office of Thrift Super-
15 vision for transfer to the Office of the
16 Comptroller of the Currency or the Cor-
17 poration in a manner that the Director of
18 the Office of Thrift Supervision, the Comp-
19 troller of the Currency, and the Chair-
20 person of the Corporation, in their discre-
21 tion, deem equitable.

22 (2) TRANSFER OF EMPLOYEES PERFORMING
23 CONSUMER FINANCIAL PROTECTION FUNCTIONS.—

24 Nothing in paragraph (1) shall affect the transfer of
25 employees performing or supporting consumer finan-

1 cial protection functions of the Comptroller of the
2 Currency and the Director of the Office of Thrift
3 Supervision to the Consumer Financial Protection
4 Agency as provided in the Consumer Financial Pro-
5 tection Agency Act of 2009.

6 (3) APPOINTMENT AUTHORITY FOR EXCEPTED
7 SERVICE TRANSFERRED.—

8 (A) IN GENERAL.—In the case of employ-
9 ees occupying positions in the excepted service,
10 any appointment authority established pursuant
11 to law or regulations of the Office of Personnel
12 Management for filling such positions shall be
13 transferred, subject to subparagraph (B).

14 (B) DECLINING TRANSFERS ALLOWED.—
15 The Office of the Comptroller of the Currency
16 and the Corporation may decline to accept a
17 transfer of authority under subparagraph (A)
18 (and the employees appointed pursuant thereto)
19 to the extent that such authority relates to posi-
20 tions excepted from the competitive service be-
21 cause of their confidential, policy-making, pol-
22 icy-determining, or policy-advocating character.

23 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
24 MENTS.—Each employee to be transferred under this sec-
25 tion shall—

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

3 (2) receive notice of his or her position assign-
4 ment not later than 120 days after the effective date
5 of his or her transfer.

6 (c) TRANSFER OF FUNCTION.—

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

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

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

22 (e) EQUAL STATUS AND TENURE POSITIONS.—Each
23 employee transferred from the Office of Thrift Supervision
24 shall be placed in a position at either the Office of the
25 Comptroller of the Currency or the Corporation with the

1 same status and tenure as he or she held on the day before
2 the transfer date.

3 (f) NO ADDITIONAL CERTIFICATION REQUIRE-
4 MENTS.—Examiners transferred to the Office of the
5 Comptroller of the Currency or the Corporation shall not
6 be subject to any additional certification requirements be-
7 fore being placed in a comparable examiner’s position at
8 the Office of the Comptroller of the Currency or the Cor-
9 poration examining the same types of institutions as they
10 examined before they were transferred.

11 (g) PERSONNEL ACTIONS LIMITED.—

12 (1) 1-YEAR PROTECTION.—Except as provided
13 in paragraph (2), each employee transferred from
14 the Office of Thrift Supervision holding a permanent
15 position on the day before the transfer date shall
16 not, during the 1-year period beginning on the
17 transfer date, be involuntarily separated, or involun-
18 tarily reassigned outside his or her locality pay area
19 as defined by the Office of Personnel Management.

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

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

1 (B) terminate an appointment to a position
2 excepted from the competitive service because of
3 its confidential policy-making, policy-deter-
4 mining, or policy-advocating character.

5 (h) PAY.—

6 (1) 1-YEAR PROTECTION.—Except as provided
7 in paragraph (2), each employee transferred from
8 the Office of Thrift Supervision shall, during the 1-
9 year period beginning on the transfer date, receive
10 pay at a rate not less than the basic rate of pay (in-
11 cluding any geographic differential) that the em-
12 ployee received during the 1-year period immediately
13 before the transfer.

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

18 (A) for cause;

19 (B) for unacceptable performance; or

20 (C) with the employee's consent.

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

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

5 (i) BENEFITS.—

6 (1) RETIREMENT BENEFITS FOR TRANSFERRED
7 EMPLOYEES.—

8 (A) IN GENERAL.—

9 (i) CONTINUATION OF EXISTING RE-
10 TIREMENT PLAN.—Each employee trans-
11 ferred from the Office of Thrift Super-
12 vision may remain enrolled in his or her
13 existing retirement plan or plans as long as
14 he or she remains employed by the Office
15 of the Comptroller of the Currency.

16 (ii) EMPLOYER’S CONTRIBUTION.—
17 The Office of the Comptroller of the Cur-
18 rency or the Corporation shall pay any em-
19 ployer contributions to the existing retire-
20 ment plan of each employee transferred
21 from the Office of Thrift Supervision as
22 required under that plan.

23 (B) DEFINITION.—For purposes of this
24 paragraph, the term “existing retirement plan”
25 means, with respect to any employee trans-

1 ferred under this section, the particular retire-
2 ment plan (including the Financial Institutions
3 Retirement Fund) and any associated thrift
4 savings plan of the agency from which the em-
5 ployee was transferred, which the employee was
6 enrolled in on the day before the transfer date.

7 (2) BENEFITS OTHER THAN RETIREMENT BEN-
8 EFITS.—

9 (A) DURING 1ST YEAR.—

10 (i) EXISTING PLANS CONTINUE.—

11 Each transferred employee may, for 1 year
12 after the transfer date, retain membership
13 in any other employee benefit program of
14 the Office of Thrift Supervision, including
15 a dental, vision, long-term care, or life in-
16 surance program, to which the employee
17 belonged on the day before the transfer
18 date.

19 (ii) EMPLOYER'S CONTRIBUTION.—

20 The Office of the Comptroller of the Cur-
21 rency or the Corporation shall pay any em-
22 ployer cost in continuing to extend cov-
23 erage in the benefit program to the em-
24 ployee as required under that program or
25 negotiated agreements.

1 (B) DENTAL, VISION, OR LIFE INSURANCE
2 AFTER 1ST YEAR.—If, after the 1-year period
3 beginning on the transfer date, the Office of the
4 Comptroller of the Currency or the Corporation
5 decides not to continue participation in any
6 dental, vision, or life insurance program of the
7 Office of Thrift Supervision, an employee trans-
8 ferred from the Office of Thrift Supervision
9 pursuant to this title who is a member of such
10 a program may, before the decision of the Of-
11 fice of the Comptroller of the Currency or the
12 Corporation takes effect, elect to enroll, without
13 regard to any regularly scheduled open season,
14 in—

15 (i) the enhanced dental benefits pro-
16 gram established by chapter 89A of title 5,
17 United States Code;

18 (ii) the enhanced vision benefits estab-
19 lished by chapter 89B of title 5, United
20 States Code; and

21 (iii) the Federal Employees Group
22 Life Insurance Program established by
23 chapter 87 of title 5, United States Code,
24 without regard to any requirement of in-
25 surability.

1 (C) LONG-TERM CARE INSURANCE AFTER
2 1ST YEAR.—If, after the 1-year period begin-
3 ning on the transfer date, the Office of the
4 Comptroller of the Currency or the Corporation
5 decides not to continue participation in any
6 long-term care insurance program of the Office
7 of Thrift Supervision, an employee transferred
8 from the Office of Thrift Supervision pursuant
9 to this title who is a member of such a program
10 may, before the decision of the Office of the
11 Comptroller of the Currency or the Corporation
12 takes effect, elect to apply for coverage under
13 the Federal Long-Term Care Insurance Pro-
14 gram established by chapter 90 of title 5,
15 United States Code, under the underwriting re-
16 quirements applicable to a new active workforce
17 member (as defined in part 875, title 5, Code
18 of Federal Regulations).

19 (D) EMPLOYEE'S CONTRIBUTION.—

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

1 (ii) COST DIFFERENTIAL.—The dif-
2 ference in costs between the benefits that
3 the Office of Thrift Supervision is pro-
4 viding on the date of enactment of this Act
5 and the benefits provided by this section
6 shall be paid by the Comptroller of the
7 Currency or the Corporation.

8 (iii) FUNDS TRANSFER.—The Office
9 of the Comptroller of the Currency or the
10 Corporation shall transfer to the Federal
11 Employees Health Benefits Fund estab-
12 lished under section 8909 of title 5, United
13 States Code, an amount determined by the
14 Director of the Office of Personnel Man-
15 agement, after consultation with the Office
16 of the Comptroller of the Currency or the
17 Corporation and the Office of Management
18 and Budget, to be necessary to reimburse
19 the Fund for the cost to the Fund of pro-
20 viding benefits under this subparagraph
21 not otherwise paid for by the employee
22 under clause (i).

23 (E) SPECIAL PROVISIONS TO ENSURE CON-
24 TINUATION OF LIFE INSURANCE BENEFITS.—

1 (i) IN GENERAL.—An annuitant (as
2 defined in section 8901(3) of title 5,
3 United States Code) who is enrolled in a
4 life insurance plan administered by the Of-
5 fice of Thrift Supervision on the day before
6 the transfer date shall be eligible for cov-
7 erage by a life insurance plan under sec-
8 tions 8706(b), 8714a, 8714b, and 8714c of
9 title 5, United States Code, or in a life in-
10 surance plan established by the Office of
11 the Comptroller of the Currency or the
12 Corporation, without regard to any regu-
13 larly scheduled open season and require-
14 ment of insurability.

15 (ii) EMPLOYEE'S CONTRIBUTION.—

16 (I) IN GENERAL.—Subject to
17 subclause (II), an individual enrolled
18 in a life insurance plan under this
19 clause shall pay any employee con-
20 tribution required by the plan.

21 (II) COST DIFFERENTIAL.—The
22 difference in costs between the bene-
23 fits that the Office of Thrift Super-
24 vision is providing on the date of en-
25 actment of this Act and the benefits

1 provided by this section shall be paid
2 by the Comptroller of the Currency or
3 the Corporation.

4 (III) FUNDS TRANSFER.—The
5 Office of the Comptroller of the Cur-
6 rency or the Corporation shall trans-
7 fer to the Employees' Life Insurance
8 Fund established under section 8714
9 of title 5, United States Code, an
10 amount determined by the Director of
11 the Office of Personnel Management,
12 after consultation with the Office of
13 the Comptroller of the Currency or
14 the Corporation and the Office of
15 Management and Budget, to be nec-
16 essary to reimburse the Fund for the
17 cost to the Fund of providing benefits
18 under this subparagraph not other-
19 wise paid for by the employee under
20 subclause (I).

21 (IV) CREDIT FOR TIME EN-
22 ROLLED IN OTHER PLANS.—For em-
23 ployees transferred under this section,
24 enrollment in a life insurance plan ad-
25 ministered by the Office of the Comp-

1 troller of the Currency, the Office of
2 Thrift Supervision, or the Corporation
3 immediately before enrollment in a life
4 insurance plan under chapter 87 of
5 title 5, United States Code, shall be
6 considered as enrollment in a life in-
7 surance plan under that chapter for
8 purposes of section 8706(b)(1)(A) of
9 title 5, United States Code.

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

13 (1) shall take no action that would unfairly dis-
14 advantage transferred employees relative to other
15 employees of the Office of the Comptroller of the
16 Currency based on their prior employment by the
17 Office of Thrift Supervision;

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

1 **SEC. 1212. PROPERTY TRANSFERRED.**

2 (a) IN GENERAL.—Not later than 90 days after the
3 transfer date, all property of the Office of Thrift Super-
4 vision shall be transferred to the Office of the Comptroller
5 of the Currency or the Corporation, allocated in a manner
6 consistent with section 1211(a).

7 (b) CONTRACTS RELATED TO PROPERTY TRANS-
8 FERRED.—All contracts, agreements, leases, licenses, per-
9 mits, and similar arrangements relating to property trans-
10 ferred to the Office of the Comptroller of the Currency
11 or the Corporation by this section shall be transferred to
12 the Office of the Comptroller of the Currency or the Cor-
13 poration together with that property.

14 (c) PRESERVATION OF PROPERTY.—Property identi-
15 fied for transfer under this section shall not be altered,
16 destroyed, or deleted before transfer under this section.

17 (d) PROPERTY DEFINED.—For purposes of this sec-
18 tion, the term “property” includes all real property (in-
19 cluding leaseholds) and all personal property (including
20 computers, furniture, fixtures, equipment, books, ac-
21 counts, records, reports, files, memoranda, paper, reports
22 of examination, work papers and correspondence related
23 to such reports, and any other information or materials).

24 **SEC. 1213. FUNDS TRANSFERRED.**

25 Except to the extent needed to dispose of affairs
26 under section 1214, all funds that, on the day before the

1 transfer date, are available to the Director of the Office
2 of Thrift Supervision to pay the expenses of the Office
3 of Thrift Supervision shall be transferred to the Office of
4 the Comptroller of the Currency or the Corporation, allo-
5 cated in a manner consistent with section 1211(a), on the
6 transfer date.

7 **SEC. 1214. DISPOSITION OF AFFAIRS.**

8 (a) IN GENERAL.—During the 90-day period begin-
9 ning on the transfer date, the Director of the Office of
10 Thrift Supervision—

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

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

20 (B) manage any property of the Office of
21 Thrift Supervision until the property is trans-
22 ferred under section 1212; and

23 (2) may take any other action necessary to
24 wind up the affairs of the Office of Thrift Super-
25 vision relating to the transferred functions.

1 (b) AUTHORITY AND STATUS OF DIRECTOR.—

2 (1) IN GENERAL.—Notwithstanding the trans-
3 fers of functions under this title, the Director of the
4 Office of Thrift Supervision shall, during the 90-day
5 period beginning on the transfer date, retain and
6 may exercise any authority vested in the Director on
7 the day before the transfer date that is necessary to
8 carry out the requirements of this title during that
9 period.

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

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

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

20 **SEC. 1215. CONTINUATION OF SERVICES.**

21 Any agency, department, or other instrumentality of
22 the United States, and any successor to any such agency,
23 department, or instrumentality, that was, before the trans-
24 fer date, providing support services to the Office of Thrift

1 Supervision in connection with functions to be transferred
2 to the Office of the Comptroller of the Currency, shall—

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

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

8 **SEC. 1216. TREATMENT OF SAVINGS AND LOAN HOLDING**
9 **COMPANIES.**

10 (a) Section 2 of the Home Owners' Loan Act (12
11 U.S.C. 1462) is amended in paragraph (1) by striking
12 "DIRECTOR.—The term 'Director' means the Director of
13 the Office of Thrift Supervision" and inserting "COMP-
14 TROLLER.—The term 'Comptroller' means the Com-
15 troller of the Currency".

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

18 (1) In subsection (a)(1)(A) by striking "Direc-
19 tor" and inserting "Comptroller of the Currency";

20 (2) In subsection (m) as follows:

21 (A) in paragraph (2) by striking "Direc-
22 tor" and inserting "Comptroller";

23 (B) in paragraph (2) by striking "Director
24 may grant" and inserting "Comptroller of the
25 Currency may grant";

1 (C) in paragraph (2) by striking “the Di-
2 rector deems” and inserting “the Comptroller
3 deems”;

4 (D) in paragraph (2)(A) by striking “Di-
5 rector” and inserting “Comptroller”;

6 (E) in paragraph (2)(B) by striking “Di-
7 rector” and inserting “Comptroller”;

8 (F) in paragraph (2)(B)(iii) by striking
9 “Director” and inserting “Comptroller”;

10 (G) in paragraph (4)(D) by striking “Di-
11 rector” and inserting “Comptroller”;

12 (H) in paragraph (4)(E) by striking “Di-
13 rector” and inserting “Comptroller”; and

14 (I) in paragraph (7)(B) by striking “Direc-
15 tor” and inserting “Comptroller”;

16 (3) In subsection (o) as follows:

17 (A) in paragraph (3) in the heading by
18 striking “DIRECTOR” and inserting “BOARD”;

19 (B) in paragraph (3)(A) by striking “Di-
20 rector” and inserting “Board”;

21 (C) in paragraph (3)(B) by striking “Di-
22 rector” and inserting “Board”;

23 (D) in paragraph (3)(C) by striking “Di-
24 rector” and inserting “Board”;

1 (E) in paragraph (3)(D) by striking “Di-
2 rector” and inserting “Comptroller”;

3 (F) in paragraph (7) by striking “char-
4 tered by the Director” and inserting “chartered
5 by the Comptroller”; and

6 (G) in paragraph (7) by striking “regula-
7 tions as the Director may” and inserting “regu-
8 lations as the Board may”; and

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

13 **SEC. 1217. PRACTICES OF CERTAIN MUTUAL THRIFT HOLD-**
14 **ING COMPANIES PRESERVED.**

15 (a) TREATMENT OF DIVIDENDS BY CERTAIN MU-
16 TUAL HOLDING COMPANIES.—Section 3(g) of the Bank
17 Holding Company Act (12 U.S.C. 1842(g)) is amended
18 by inserting new paragraphs (3) through (7) as follows:

19 “(3) DECLARATION OF DIVIDENDS.—Every
20 subsidiary savings association of a mutual holding
21 company shall give the Board not less than 30 days’
22 advance notice of the proposed declaration by its di-
23 rectors of any dividend on its guaranty, permanent,
24 or other nonwithdrawable stock. Such notice period
25 shall commence to run from the date of receipt of

1 such notice by the Board. Any such dividend de-
2 clared within such period, or without the giving of
3 such notice to the Board, shall be invalid and shall
4 confer no rights or benefits upon the holder of any
5 such stock.

6 “(4) WAIVER OF DIVIDENDS.—Any mutual
7 thrift holding company organized under section
8 10(b) of the Home Owners’ Loan Act shall be per-
9 mitted to waive such company’s right to receive any
10 dividend declared by a subsidiary, if—

11 “(A) no insider of the mutual holding com-
12 pany, associate of an insider, or tax-qualified or
13 non-tax-qualified employee stock benefit plan of
14 the mutual holding company holds any share of
15 the stock in the class of stock to which the
16 waiver would apply;

17 “(B) the mutual holding company provides
18 the Board with written notice of its intent to
19 waive its right to receive dividends 30 days
20 prior to the proposed date of payment of the
21 dividend; and

22 “(C) the Board does not object.

23 “(5) STANDARDS FOR WAIVER OF DIVIDEND.—
24 The Board shall not object to a notice of intent to
25 waive dividends under paragraph (4) if—

1 “(A) the waiver would not be detrimental
2 to the safe and sound operation of the savings
3 association; and

4 “(B) the board of directors of the mutual
5 holding company expressly determines that a
6 waiver of the dividend by the mutual holding
7 company is consistent with the directors’ fidu-
8 ciary duties to the mutual members of such
9 company.

10 “(6) RESOLUTION INCLUDED IN WAIVER NO-
11 TICE.—A dividend waiver notice shall include a copy
12 of the resolution of the board of directors of the mu-
13 tual holding company, in form and substance satis-
14 factory to the Board, together with any supporting
15 materials relied upon by the board of directors, con-
16 cluding that the proposed dividend waiver is con-
17 sistent with the board of director’s fiduciary duties
18 to the mutual members of the mutual holding com-
19 pany.

20 “(7) VALUATION.—The Board will not consider
21 waived dividends in determining an appropriate ex-
22 change ratio in the event of a full conversion to
23 stock form.”.

1 **SEC. 1218. COMPOSITION OF BOARD OF DIRECTORS OF THE**
2 **FEDERAL DEPOSIT INSURANCE CORPORA-**
3 **TION.**

4 Section 2 of the Federal Deposit Insurance Act (12
5 U.S.C. 1812) is amended—

6 (1) in subsection (a)(1)—

7 (A) in subparagraph (B), by striking “Di-
8 rector of the Office of Thrift Supervision” and
9 inserting “Chairman of the Board of Governors
10 of the Federal Reserve System, or such other
11 member of the Board of Governors as the
12 Chairman of the Board of Governors shall des-
13 ignate”;

14 (2) by amending subsection (d)(2) to read as
15 follows:

16 “(2) **ACTING OFFICIALS MAY SERVE.**—In the
17 event of a vacancy in the office of the Comptroller
18 of the Currency and pending the appointment of a
19 successor, or during the absence or disability of the
20 Comptroller of the Currency, the acting Comptroller
21 of the Currency shall be a member of the Board of
22 Directors in the place of the Comptroller of the Cur-
23 rency.”; and

24 (3) in subsection (f)(2), by striking “or of the
25 Office of Thrift Supervision”.

1 **SEC. 1219. AMENDMENTS TO SECTION 3.**

2 Section 3 of the Federal Deposit Insurance Act (12
3 U.S.C. 1813) is amended—

4 (1) in subsection (b)(1)(C) (relating to the defi-
5 nition of the term “savings association”), by striking
6 “Director of the Office of Thrift Supervision” and
7 inserting “Comptroller of the Currency”;

8 (2) in subsection (l)(5) (relating to the defini-
9 tion of the term “deposit”), in the introductory text,
10 by striking “, Director of the Office of Thrift Super-
11 vision,” and inserting “, and”;

12 (3) in subsection (q) (relating to the definition
13 of the term “appropriate Federal banking agen-
14 cy”)—

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

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

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

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

25 (D) by amending paragraph (3) to read as
26 follows:

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

5 (E) by striking paragraph (4); and

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

9 **SEC. 1220. AMENDMENTS TO SECTION 7.**

10 Section 7(a) of the Federal Deposit Insurance Act
11 (12 U.S.C. 1817) is amended—

12 (1) in paragraph (2)—

13 (A) in subparagraph (A)—

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

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

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

1 rency and the Board of Governors of the Fed-
2 eral Reserve System,”;

3 (2) in paragraph (3), in the first sentence, by
4 striking “Comptroller of the Currency, the Chairman
5 of the Board of Governors of the Federal Reserve
6 System, and the Director of the Office of Thrift Su-
7 pervision” and inserting “Comptroller of the Cur-
8 rency and the Chairman of the Board of Governors
9 of the Federal Reserve System”; and

10 (3) in paragraph (7), by striking “Director of
11 the Office of Thrift Supervision,”.

12 **SEC. 1221. AMENDMENTS TO SECTION 8.**

13 Section 8 of the Federal Deposit Insurance Act (12
14 U.S.C. 1818) is amended—

15 (1) in subsection (a)(8)(B)(ii), in the last sen-
16 tence—

17 (A) by striking “Director of the Office of
18 Thrift Supervision” each place it appears and
19 inserting “Comptroller of the Currency”; and

20 (B) by inserting “the Office of Thrift Su-
21 pervision, as successor to” after “as a successor
22 to” and before “the Federal Savings and Loan
23 Insurance Corporation”;

24 (2) in subsection (o)—

1 (A) by striking “Director of the Office of
2 Thrift Supervision” and inserting “Comptroller
3 of the Currency”; and

4 (3) in subsection (w)(3)(A), by striking “Office
5 of Thrift Supervision” and inserting “Office of the
6 Comptroller of the Currency”.

7 **SEC. 1222. AMENDMENTS TO SECTION 11.**

8 Section 11 of the Federal Deposit Insurance Act (12
9 U.S.C. 1821) is amended—

10 (1) in subsection (c)(6) —

11 (A) in the heading, by striking “DIRECTOR
12 OF THE OFFICE OF THRIFT SUPERVISION” and
13 inserting “COMPTROLLER OF THE CURRENCY”;

14 (B) in subparagraph (A), by striking “Di-
15 rector of the Office of Thrift Supervision” and
16 inserting “Comptroller of the Currency”; and

17 (C) in subparagraph (B), by striking “Di-
18 rector of the Office of Thrift Supervision” and
19 inserting “Comptroller of the Currency”; and

20 (2) in subsection (d)—

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

24 (B) in paragraph (17)(A)—

- 1 (i) by striking “Comptroller of the
2 Currency”; and
3 (ii) by striking “appropriate”; and
4 (C) in paragraph (18)(B), by striking “or
5 the Director of the Office of Thrift Super-
6 vision”.

7 **SEC. 1223. AMENDMENTS TO SECTION 13.**

8 Section 13(k)(1)(A)(iv) of the Federal Deposit Insur-
9 ance Act (12 U.S.C. 1823(k)(1)(A)(iv)) is amended by
10 striking “Director of the Office of Thrift Supervision” and
11 inserting “Comptroller of the Currency”.

12 **SEC. 1224. AMENDMENTS TO SECTION 18.**

13 Section 18 of the Federal Deposit Insurance Act (12
14 U.S.C. 1828) is amended—

15 (1) in subsection (c)(2)—

16 (A) in subparagraph (A), by striking
17 “bank;” and inserting “bank or a savings asso-
18 ciation;”;

19 (B) in subparagraph (B), by inserting
20 “and” at the end after the semicolon;

21 (C) in subparagraph (C), by striking
22 “bank (except a savings bank supervised by the
23 Director of the Office of Thrift Supervision);
24 and” and inserting “bank or State savings as-
25 sociation.”; and

- 1 (D) by striking subparagraph (D);
- 2 (2) in subsection (g)(1), by striking “Director
3 of the Office of Thrift Supervision” and inserting
4 “Comptroller of the Currency”;
- 5 (3) in subsection (i)(2)—
- 6 (A) by striking subparagraph (B) and in-
7 serting the following new subparagraph:
8 “(B) the Corporation, if the resulting insti-
9 tution is to be a State nonmember insured bank
10 or insured State savings association.”; and
- 11 (B) by striking subparagraph (C);
- 12 (4) in subsection (m)—
- 13 (A) in paragraph (1)—
- 14 (i) in subparagraph (A), by striking
15 “Director of the Office of Thrift Super-
16 vision” and inserting “Comptroller of the
17 Currency”; and
- 18 (ii) in subparagraph (B), by striking
19 “Director of the Office of Thrift Super-
20 vision” and inserting “Comptroller of the
21 Currency”;
- 22 (B) in paragraph (2)—
- 23 (i) in subparagraph (A), by striking
24 “Director of the Office of Thrift Super-

1 vision” and inserting “Comptroller of the
2 Currency”; and

3 (ii) in subparagraph (B), by striking
4 “Director of the Office of Thrift Super-
5 vision” each place it appears and inserting
6 “Comptroller of the Currency”; and

7 (C) in paragraph (3)—

8 (i) in subparagraph (A), by striking
9 “Director of the Office of Thrift Super-
10 vision” and inserting “Comptroller of the
11 Currency”; and

12 (ii) in subparagraph (B), by striking
13 “Office of Thrift Supervision” and insert-
14 ing “Comptroller of the Currency”.

15 **SEC. 1225. AMENDMENTS TO SECTION 28.**

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

18 (1) in subsection (e)—

19 (A) in paragraph (2)—

20 (i) in subparagraph (A)(ii), by strik-
21 ing “Director of the Office of Thrift Su-
22 pervision” and inserting “Comptroller of
23 the Currency”;

24 (ii) in subparagraph (C), by striking
25 “Director of the Office of Thrift Super-

1 vision” and inserting “Comptroller of the
2 Currency”; and

3 (iii) in subparagraph (F), by striking
4 “Director of the Office of Thrift Super-
5 vision” and inserting “Comptroller of the
6 Currency”; and

7 (B) in paragraph (3)—

8 (i) in subparagraph (A), by striking
9 “Director of the Office of Thrift Super-
10 vision” and inserting “Comptroller of the
11 Currency”; and

12 (ii) in subparagraph (B), by striking
13 “Director of the Office of Thrift Super-
14 vision” and inserting “Comptroller of the
15 Currency”; and

16 (2) in subsection (h)(2), by striking “Director
17 of the Office of Thrift Supervision” and inserting
18 “Comptroller of the Currency”.

19 **SEC. 1226. AMENDMENTS TO THE ALTERNATIVE MORT-**
20 **GAGE TRANSACTION PARITY ACT OF 1982.**

21 (a) AMENDMENTS TO SECTION 802.—Section
22 802(a)(3) of the Alternative Mortgage Transaction Parity
23 Act of 1982 (12 U.S.C. 3801) is amended—

1 (1) by striking “Comptroller of the Currency,”
2 and inserting “Comptroller of the Currency and”;
3 and

4 (2) by striking “, and the Director of the Office
5 of Thrift Supervision”.

6 (b) AMENDMENTS TO SECTION 804.—Section 804(a)
7 of the Alternative Mortgage Transaction Parity Act of
8 1982 (12 U.S.C. 3803) is amended—

9 (1) by amending paragraph (1) to read as fol-
10 lows:

11 “(1) with respect to banks, savings associations,
12 mutual savings banks, and savings banks, only to
13 transactions made in accordance with regulations
14 governing alternative mortgage transactions as pre-
15 scribed by the Comptroller of the Currency to the
16 extent that such regulations are authorized by rule-
17 making authority granted to the Comptroller of the
18 Currency under laws other than this section.”; and

19 (2) by striking paragraph (3).

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

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

1 **SEC. 1228. AMENDMENTS TO THE BANK PROTECTION ACT**
2 **OF 1968.**

3 Section 2 of the Bank Protection Act of 1968 (12
4 U.S.C. 1881) is amended—

5 (1) in paragraph (1), by striking “national
6 banks,” and inserting “national banks and federal
7 savings associations.”;

8 (2) in paragraph (2), by inserting “and” at the
9 end;

10 (3) in paragraph (3), by striking “, and” at the
11 end and inserting a period; and

12 (4) by striking paragraph (4).

13 **SEC. 1229. AMENDMENTS TO THE BANK SERVICE COMPANY**
14 **ACT.**

15 Section 1(b) of the Bank Service Company Act (12
16 U.S.C. 1861(b)) is amended—

17 (1) in paragraph (4), by striking “insured
18 bank,” and inserting “insured bank or”;

19 (2) by striking “Office of Thrift Supervision”
20 and inserting “Office of the Comptroller of the Cur-
21 rency”; and

22 (3) by striking “, the Federal Savings and Loan
23 Insurance Corporation,”.

1 **SEC. 1230. AMENDMENTS TO THE COMMUNITY REINVEST-**
2 **MENT ACT OF 1977.**

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

5 (1) in subparagraph (A), by striking “national
6 banks” and inserting “national banks or savings as-
7 sociations (the deposits of which are insured by the
8 Federal Deposit Insurance Corporation)”;

9 (2) in subparagraph (B), by striking “and bank
10 holding companies;” and inserting “, bank holding
11 companies and savings and loan holding compa-
12 nies;”; and

13 (3) by striking subparagraph (D).

14 **SEC. 1231. AMENDMENTS TO THE DEPOSITORY INSTITU-**
15 **TION MANAGEMENT INTERLOCKS ACT.**

16 (a) AMENDMENT TO SECTION 207.—Section 207 of
17 the Depository Institution Management Interlocks Act (12
18 U.S.C. 3206) is amended—

19 (1) in paragraph (1), by striking “national
20 banks,” and inserting “national banks and Federal
21 savings associations (the deposits of which are in-
22 sured by the Federal Deposit Insurance Corpora-
23 tion),”;

24 [(2) in paragraph (2), by striking “and bank
25 holding companies,” and inserting “, bank holding

1 companies, and savings and loan holding compa-
2 nies,”;】

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

4 (4) by redesignating paragraphs (5) and (6) as
5 paragraphs (4) and (5), respectively.

6 (b) AMENDMENT TO SECTION 209.—Section 209 of
7 the Depository Institution Management Interlocks Act (12
8 U.S.C. 3207) is amended—

9 (1) in paragraph (1), by striking “national
10 banks,” and inserting “national banks and Federal
11 savings associations (the deposits of which are in-
12 sured by the Federal Deposit Insurance Corpora-
13 tion),”;

14 (2) in paragraph (2), by striking “and bank
15 holding companies,” and inserting “, bank holding
16 companies, and savings and loan holding compa-
17 nies,”;

18 (3) at the end of paragraph (3), by inserting
19 “and” after the comma;

20 (4) by striking paragraph (4); and

21 (5) by redesignating paragraph (5) as para-
22 graph (4).

23 (c) AMENDMENT TO SECTION 210.—Subsection
24 210(a) of the Depository Institution Management Inter-
25 locks Act (12 U.S.C. 3208(a)) is amended—

1 (1) by striking “his” and inserting “the”; and

2 (2) by inserting “of the attorney General” after
3 “enforcement functions”.

4 **SEC. 1232. AMENDMENTS TO THE EMERGENCY HOME-**
5 **OWNER’S RELIEF ACT.**

6 Section 110 of the Emergency Homeowner’s Relief
7 Act (12 U.S.C. 2709) is amended—

8 (1) by striking the “Federal Home Loan bank
9 Board” and inserting “Federal Housing Finance
10 Agency”; and

11 (2) by striking “the Federal Savings and Loan
12 Insurance Corporation”.

13 **SEC. 1233. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
14 **TUNITY ACT.**

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

17 (1) in paragraph (1)(A), by striking “and Fed-
18 eral branches and Federal agencies of foreign
19 banks,” and inserting “, Federal branches and Fed-
20 eral agencies of foreign banks, or a savings associa-
21 tion the deposits of which are insured by the Federal
22 Deposit Insurance Corporation;”;

23 (2) by striking paragraph (2); and

24 (3) by redesignating paragraphs (3) through
25 (9) as paragraphs (2) through (8).

1 **SEC. 1234. AMENDMENTS TO THE FEDERAL CREDIT UNION**2 **ACT.**

3 (a) AMENDMENTS TO SECTION 206.—Section
4 206(g)(7) of the Federal Credit Union Act (12 U.S.C.
5 1786(g)(7)) is amended—

6 (1) in subparagraph (A)—

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

9 (B) in clause (vi)—

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

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

15 (C) by striking clause (vii);

16 (2) in subparagraph (D)—

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

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

21 (C) striking clause (v).

1 **SEC. 1235. AMENDMENTS TO THE FEDERAL FINANCIAL IN-**
2 **STITUTIONS EXAMINATION COUNCIL ACT OF**
3 **1978.**

4 (a) AMENDMENT TO SECTION 1002.—Section 1002
5 of the Federal Financial Institutions Examination Council
6 Act of 1978 (12 U.S.C. 3301) is amended—

7 (1) by striking “Federal Home Loan Bank
8 Board” and inserting “Federal Housing Finance
9 Agency”.

10 (b) AMENDMENT TO SECTION 1003.—Section
11 1003(1) of the Federal Financial Institutions Examina-
12 tion Council Act of 1978 (12 U.S.C. 3302(1)) is amended
13 by striking “the Office of Thrift Supervision”.

14 (c) AMENDMENTS TO SECTION 1004.—Section
15 1004(a) of the Federal Financial Institutions Examina-
16 tion Council Act of 1978 (12 U.S.C. 3303) is amended—

17 (1) by striking paragraph (4); and

18 (2) by redesignating paragraph (5) as para-
19 graph (4).

20 **SEC. 1236. AMENDMENTS TO THE FEDERAL HOME LOAN**
21 **BANK ACT.**

22 (a) AMENDMENTS TO SECTION 18.—Section 18(c) of
23 the Federal Home Loan Bank Act (12 U.S.C. 1438(c))
24 is amended—

1 (1) by striking “Director of the Office of Thrift
2 Supervision” each place it appears and inserting
3 “Comptroller of the Currency”;

4 (2) in paragraph (1)(B), by striking “and the
5 agencies under its administration or supervision”;
6 and

7 (3) in paragraph (5), by striking “and such
8 agencies”.

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

12 **SEC. 1237. AMENDMENTS TO THE FEDERAL RESERVE ACT.**

13 Section 19 of the Federal Reserve Act (12 U.S.C.
14 461(b)) is amended—

15 (1) in paragraph (1)(F), by striking “the Direc-
16 tor of the Office of Thrift Supervision” and insert-
17 ing “the Comptroller of the Currency”; and

18 (2) in paragraph (4)(B), by striking “the Direc-
19 tor of the Office of Thrift Supervision” and insert-
20 ing “the Comptroller of the Currency”.

21 **SEC. 1238. AMENDMENTS TO THE FINANCIAL INSTITUTIONS**
22 **REFORM, RECOVERY, AND ENFORCEMENT**
23 **ACT OF 1989.**

24 (a) AMENDMENTS TO SECTION 302.—Section 302(1)
25 of the Financial Institutions Reform, Recovery, and En-

1 enforcement Act of 1989 (12 U.S.C. 1467a nt.) is amended
2 by striking “Director of the Office of Thrift Supervision”
3 and inserting “Comptroller of the Currency”.

4 (b) AMENDMENT TO SECTION 305.—Section
5 305(b)(1) of the Financial Institutions Reform, Recovery,
6 and Enforcement Act of 1989 (12 U.S.C. 1464(b)(1) nt.)
7 is amended by striking “Director of the Office of Thrift
8 Supervision” and inserting “Comptroller of the Cur-
9 rency”.

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

15 (d) AMENDMENTS TO SECTION 402.—Section 402 of
16 the Financial Institutions Reform, Recovery, and Enforce-
17 ment Act of 1989 (12 U.S.C. 1437 nt.) is amended—

18 (1) in subsection (a), by striking “Director of
19 the Office of Thrift Supervision” and inserting
20 “Comptroller of the Currency”;

21 (2) in subsection (b), by striking “Director of
22 the Office of Thrift Supervision” and inserting
23 “Comptroller of the Currency”; and

24 (3) in subsection (e)—

1 (A) in paragraph (1), by striking “the Of-
2 fice of Thrift Supervision” and inserting “Of-
3 fice of the Comptroller of the Currency”;

4 (B) in paragraph (2), by striking “Director
5 of the Office of Thrift Supervision” each place
6 it appears and inserting “Comptroller of the
7 Currency”;

8 (C) in paragraph (3), by striking “Director
9 of the Office of Thrift Supervision” and insert-
10 ing “Comptroller of the Currency”; and

11 (D) in paragraph (4), by striking “Direc-
12 tor of the Office of Thrift Supervision” and in-
13 serting “Comptroller of the Currency”.

14 (e) AMENDMENT TO SECTION 1103.—Section
15 1103(a) of the Financial Institutions Reform, Recovery,
16 and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is
17 amended by striking “and the Resolution Trust Corpora-
18 tion”.

19 (f) AMENDMENTS TO SECTION 1205.—Subsection
20 1205(b) of the Financial Institutions Reform, Recovery,
21 and Enforcement Act of 1989 (12 U.S.C. 1818 nt.) is
22 amended—

23 (1) in paragraph (1)—

1 (A) in subparagraph (B), by striking “Di-
2 rector of the Office of Thrift Supervision” and
3 inserting “Comptroller of the Currency”;

4 (B) by striking subparagraph (D); and

5 (C) by redesignating subparagraphs (E)
6 and (F) as paragraphs (D) and (E), respec-
7 tively;

8 (2) in paragraph (2), by striking “paragraph
9 (1)(F)” and inserting “paragraph (1)(E)”; and

10 (3) in paragraph (5), by striking “through (E)”
11 and inserting “through (D)”.

12 (g) AMENDMENTS TO SECTION 1206.—Section 1206
13 of the Financial Institutions Reform, Recovery, and En-
14 forcement Act of 1989 (12 U.S.C. 1833b) is amended—

15 (1) by striking “the Thrift Depositor Protection
16 Oversight Board of the Resolution Trust Corpora-
17 tion”;

18 (2) by inserting “and” after “the Federal
19 Housing Finance Board” and before “the Farm
20 Credit Administration”; and

21 (3) by striking “, and the Office of Thrift Su-
22 pervision”.

23 (h) AMENDMENTS TO SECTION 1216.—Section 1216
24 of the Financial Institutions Reform, Recovery, and En-
25 forcement Act of 1989 (12 U.S.C. 1833e) is amended—

1 (1) in subsection (a)—

2 (A) by striking paragraphs (2), (5), and
3 (6); and

4 (B) by redesignating paragraphs (3), and
5 (4), as paragraphs (2), and (3), respectively;

6 (2) in subsection (c)—

7 (A) by striking “the Director of the Office
8 of Thrift Supervision,” and inserting “, and”;
9 and

10 (B) by striking “the Thrift Depositor pro-
11 tection Oversight Board of the Resolution Trust
12 Corporation, and the Resolution Trust Corpora-
13 tion”; and

14 (3) in subsection (d)—

15 (A) by striking paragraphs (3), (5) and
16 (6); and

17 (B) by redesignating paragraphs (4), (7),
18 and (8) as paragraphs (3), (4), and (5), respec-
19 tively.

20 **SEC. 1239. AMENDMENTS TO THE HOUSING ACT OF 1948.**

21 Section 502(c) of the Housing Act of 1948 (12
22 U.S.C. 1701c(c)) is amended in the introductory text by
23 striking “Director of the Office of Thrift Supervision” and
24 inserting “Comptroller of the Currency”.

1 **SEC. 1240. AMENDMENTS TO THE HOUSING AND COMMU-**
2 **NITY DEVELOPMENT ACT OF 1992.**

3 (a) AMENDMENTS TO SECTION 543.—Section 543 of
4 the Housing and Community Development Act of 1992
5 (12 U.S.C. 1707 nt.) is amended—

6 (1) in subsection (c)(1)—

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

9 “(C) Comptroller of the Currency”;

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

12 (C) by redesignating subparagraphs (G)
13 and (H) as subparagraphs (D) and (E), respec-
14 tively; and

15 (2) in subsection (f)—

16 (A) in paragraph (2)—

17 (i) by striking “the Office of Thrift
18 Supervision,”; and

19 (ii) in subparagraph (D), by striking
20 “Office of Thrift Supervision,” and insert-
21 ing “Comptroller of the Currency,”; and

22 (B) in paragraph (3)—

23 (i) by striking “the Office of Thrift
24 Supervision,” and inserting “Comptroller
25 of the Currency,”; and

1 (ii) in subparagraph (D), by striking
2 “Office of Thrift Supervision,” and insert-
3 ing “Comptroller of the Currency,”.

4 (b) AMENDMENT TO SECTION 1315.—Section
5 1315(b) of the Housing and Community Development Act
6 of 1992 (12 U.S.C. 4515(b)) is amended by striking “the
7 Federal Deposit Insurance Corporation, and the Office of
8 Thrift Supervision.” and inserting “and the Federal De-
9 posit Insurance Corporation.”.

10 (c) AMENDMENT TO SECTION 1317.—Section
11 1317(c) of the Housing and Community Development Act
12 of 1992 (12 U.S.C. 4517(c)) is amended by striking “the
13 Federal Deposit Insurance Corporation, or the Director
14 of the Office of Thrift Supervision” and inserting “or the
15 Federal Deposit Insurance Corporation.”

16 **SEC. 1241. AMENDMENTS TO THE HOUSING AND URBAN-**
17 **RURAL RECOVERY ACT OF 1983.**

18 Section 469 of the Housing and Urban-Rural Recov-
19 ery Act of 1983 (12 U.S.C. 1701p–1) is amended in the
20 first sentence by striking “Federal Home Loan Bank
21 Board” and inserting “Federal Housing Finance Agency”.

22 **SEC. 1242. AMENDMENTS TO THE NATIONAL HOUSING ACT.**

23 Section 203(s) of the National Housing Act (12
24 U.S.C. 1709(s)) is amended—

1 (1) in paragraph (5), by revising the paragraph
2 to read as follows:

3 “if the mortgagee is a national bank, a subsidiary or
4 affiliate of such a bank, a Federal savings associa-
5 tion or a subsidiary or affiliate of a savings associa-
6 tion, the Comptroller of the Currency;”

7 (2) in paragraph (7) by inserting “or State sav-
8 ings association” after “State bank”; and

9 (3) by striking paragraph (8).

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

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

14 (1) by striking subparagraph (B); and

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

17 **SEC. 1244. AMENDMENTS TO THE BALANCED BUDGET AND**
18 **EMERGENCY DEFICIT CONTROL ACT OF 1985.**

19 (a) AMENDMENTS TO SECTION 255.—Section
20 255(g)(1)(A) of the Balanced Budget and Emergency
21 Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is
22 amended by striking “Director of the Office of Thrift Su-
23 pervision”.

1 (b) AMENDMENTS TO SECTION 256.—Section
2 256(h)(4) of the Balanced Budget and Emergency Deficit
3 Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

4 (1) by striking subparagraphs (C) and (G); and

5 (2) by redesignating subparagraphs (D), (E),
6 (F), and (H) as subparagraphs (C) through (G), re-
7 spectively.

8 **SEC. 1245. AMENDMENTS TO THE CRIME CONTROL ACT OF**
9 **1990.**

10 (a) AMENDMENTS TO SECTION 2539.—Section
11 2539(c)(2) of the Crime Control Act of 1990 (Public Law
12 101–647) is amended by striking subparagraph (F) and
13 redesignating subparagraphs (G) and (H) as subpara-
14 graphs (F) through (G), respectively.

15 (b) AMENDMENT TO SECTION 2554.—Section
16 2554(b)(2) of the Crime Control Act of 1990 (Public Law
17 101–647) is amended by striking “Director of the Office
18 of Thrift Supervision” and inserting “Comptroller of the
19 Currency”.

20 **SEC. 1246. AMENDMENT TO THE FLOOD DISASTER PROTEC-**
21 **TION ACT OF 1973.**

22 Section 3(a)(5) of the Flood Disaster Protection Act
23 of 1973, as amended (42 U.S.C. 4003(a)(5)) is amended
24 by striking “the Office of Thrift Supervision”.

1 **SEC. 1247. AMENDMENTS TO THE INVESTMENT COMPANY**

2 **ACT OF 1940.**

3 Section 6(a)(3) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-6(a)(3)) is amended by striking
5 “Federal Savings and Loan Insurance Corporation” and
6 inserting “Comptroller of the Currency”.

7 **SEC. 1248. AMENDMENTS TO THE NEIGHBORHOOD REIN-**

8 **VESTMENT CORPORATION ACT.**

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

13 **SEC. 1249. AMENDMENTS TO THE SECURITIES EXCHANGE**

14 **ACT OF 1934.**

15 (a) AMENDMENTS TO SECTION 3.—Section 3(a)(34)
16 of the Securities Exchange Act of 1934 (15 U.S.C.
17 78c(a)(34)) is amended—

18 (1) in subparagraph (A)—

19 (A) in clause (i), by striking “bank;” and
20 inserting “bank, or a savings association (as de-
21 fined in section 3(b) of the Federal Deposit In-
22 surance Act (12 U.S.C. 1813(b))), the deposits
23 of which are insured by the Federal Deposit In-
24 surance Corporation, a subsidiary or a depart-
25 ment or division of any such savings associa-
26 tion, or a savings and loan holding;”;

1 (B) by striking clause (iv); and

2 (C) by redesignating clause (v) as clause

3 (iv);

4 (2) in subparagraph (B)—

5 (A) in clause (i), by striking “bank;” and

6 inserting “bank, or a savings association (as de-

7 fined in section 3(b) of the Federal Deposit In-

8 surance Act (12 U.S.C. 1813(b))), the deposits

9 of which are insured by the Federal Deposit In-

10 surance Corporation, a subsidiary or a depart-

11 ment or division of any such savings associa-

12 tion, or a savings and loan holding;”;

13 (B) by striking clause (iv); and

14 (C) by redesignating clause (v) as clause

15 (iv);

16 (3) in subparagraph (C)—

17 (A) in clause (i), by striking “bank;” and

18 inserting “bank, or a savings association (as de-

19 fined in section 3(b) of the Federal Deposit In-

20 surance Act (12 U.S.C. 1813(b))), the deposits

21 of which are insured by the Federal Deposit In-

22 surance Corporation, a subsidiary or a depart-

23 ment or division of any such savings associa-

24 tion, or a savings and loan holding;”;

25 (B) by striking clause (iv); and

1 (C) by redesignating clause (v) as clause
2 (iv); and
3 (4) in subparagraph (F)—

4 (A) in clause (i), by striking “bank;” and
5 inserting “or a savings association (as defined
6 in section 3(b) of the Federal Deposit Insur-
7 ance Act (12 U.S.C. 1813(b))), the deposits of
8 which are insured by the Federal Deposit In-
9 surance Corporation;”

10 (B) by striking clause (ii); and

11 (C) redesignating clauses (iii), (iv), and (v)
12 as clauses (ii), (iii) and (iv), respectively.

13 (b) AMENDMENTS TO SECTION 15C.—Section 15C of
14 the Securities Exchange Act of 1934 (15 U.S.C. 78o–5)
15 is amended in subsection (g)(1) by striking “the Director
16 of the Office of Thrift Supervision, the Federal Savings
17 and Loan Insurance Corporation,”.

18 **SEC. 1250. AMENDMENTS TO TITLE 18, UNITED STATES**

19 **CODE.**

20 (a) AMENDMENT TO SECTION 212.—Section
21 212(e)(2) of title 18, United States Code, is amended—

22 (1) by striking subparagraph (C); and

23 (2) by redesignating subparagraphs (D)
24 through (H) as subparagraphs (C) through (G), re-
25 spectively.

1 (b) AMENDMENT TO SECTION 657.—Section 657 of
2 title 18, United States Code, is amended by striking “Of-
3 fice of Thrift Supervision, the Resolution Trust Corpora-
4 tion”.

5 (c) AMENDMENT TO SECTION 981.—Section
6 981(a)(1)(D) of title 18, United States Code, is amend-
7 ed—

8 (1) by striking “Resolution Trust Corporation”;
9 and

10 (2) by striking “or the Office of Thrift Super-
11 vision”.

12 (d) AMENDMENT TO SECTION 982.—Section
13 982(a)(3) of title 18, United States Code, is amended—

14 (1) by striking “Resolution Trust Corporation”;
15 and

16 (2) by striking “or the Office of Thrift Super-
17 vision”.

18 (e) AMENDMENT TO SECTION 1006.—Section 1006
19 of title 18, United States Code, is amended—

20 (1) by striking “Office of Thrift Supervision”;
21 and

22 (2) by striking “the Resolution Trust Corpora-
23 tion”.

24 (f) AMENDMENT TO SECTION 1014.—Section 1014
25 of title 18, United States Code, is amended—

1 (1) by striking “Office of Thrift Supervision”;

2 and

3 (2) by striking “Resolution Trust Corporation”.

4 (g) AMENDMENT TO SECTION 1032.—Section 1032
5 of title 18, United States Code, is amended—

6 (1) by striking “or the Director of the Office of
7 Thrift Supervision”; and

8 (2) by striking “the Resolution Trust Corpora-
9 tion”.

10 **SEC. 1251. AMENDMENTS TO TITLE 31, UNITED STATES**
11 **CODE.**

12 (a) AMENDMENT TO SECTION 309.—Section 309 of
13 title 31, United States Code, is amended to read as fol-
14 lows:

15 **“§ 309. Division of Thrift Supervision**

16 “The Division of Thrift Supervision established
17 under section 3(a) of the Home Owners’ Loan Act shall
18 be a division in the Office of the Comptroller of the Cur-
19 rency.”.

20 (b) AMENDMENTS TO SECTION 321.—Section 321 of
21 title 31, United States Code, is amended—

22 (1) by inserting “and” at the end of subsection

23 (c)(1);

1 (2) in subsection (c)(2) by striking “Comp-
2 troller of the Currency; and” and inserting “Comp-
3 troller of the Currency.”; and

4 (3) by striking subsection (e).

5 (c) AMENDMENTS TO SECTION 714.—Section 714 of
6 title 31, United States Code, is amended in subsection (a)
7 by striking “the Office of the Comptroller of the Currency,
8 and the Office of Thrift Supervision.” and inserting “and
9 the Office of the Comptroller of the Currency.”.

10 **Subtitle D—Further Improvements**
11 **to the Regulation of Bank Hold-**
12 **ing Companies and Depository**
13 **Institutions**

14 **SEC. 1301. TREATMENT OF CREDIT CARD BANKS, INDUS-**
15 **TRIAL LOAN COMPANIES, AND CERTAIN**
16 **OTHER COMPANIES UNDER THE BANK HOLD-**
17 **ING COMPANY ACT.**

18 (a) DEFINITIONS.—Section 2 of the Bank Holding
19 Company Act of 1956 (12 U.S.C. 1841), is amended—

20 (1) in subsection (a)(5), by adding at the end
21 the following new subparagraph:

22 “(G) No company is a bank holding com-
23 pany by virtue of its ownership or control of a
24 section six holding company or any subsidiary
25 of a section six holding company, so long as the

1 requirements of sections 4(p) and 6 of this Act
2 are met, as applicable, by the section six hold-
3 ing company;”

4 (2) in subsection (c)(1)(A), by striking “insured
5 bank” and inserting “insured depository institu-
6 tion”, and by striking “section 3(h) of the Federal
7 Deposit Insurance Act” and inserting “section
8 3(c)(2) of the Federal Deposit Insurance Act.”;

9 (3) in subsection (c)(2)—

10 (A) by striking subparagraph (B);

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

13 (C) by redesignating existing subpara-
14 graphs (C), (D), (E), and (G) as subparagraphs
15 (B), (C), (D), and (E), respectively; and

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

18 “(r) SECTION SIX HOLDING COMPANIES.—A ‘section
19 six holding company’ means a company that is required
20 to be established as an intermediate holding company
21 under section 6 of this Act.”.

22 (b) NONBANKING ACTIVITIES EXCEPTIONS.—Section
23 4 of the Bank Holding Company Act of 1956 (12 U.S.C.
24 1843) is amended—

1 (1) in subsection (f)(1)(B) by striking “for pur-
2 poses of this Act” and inserting “for purposes of
3 section 4(a)”;

4 (2) by adding after subsection (f)(2)(C) the fol-
5 lowing:

6 “(D) such company fails to—

7 “(i) establish and register a section
8 six holding company pursuant to section 6
9 of this Act within 90 days after the date
10 of enactment of the Financial Stability Im-
11 provement Act of 2009, unless the Board
12 grants an extension of such period for
13 compliance which shall not exceed 180 ad-
14 ditional days; and

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

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

24 “(p) CERTAIN COMPANIES NOT SUBJECT TO THIS
25 ACT.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graphs (6) and (7), any company which—

3 “(A)(i) was—

4 “(I) a unitary savings and loan
5 holding company on May 4 1999, or
6 became a unitary savings and loan
7 holding company pursuant to an ap-
8 plication pending before the Office of
9 Thrift Supervision on or before that
10 date, and that—

11 “(aa) on June 30, 2009,
12 continued to control not fewer
13 than one savings association that
14 it controlled on May 4, 1999,
15 which became a bank for pur-
16 poses of the Bank Holding Com-
17 pany Act as a result of the enact-
18 ment of section 1301(a)(2)(A);
19 and

20 “(bb) on June 30, 2009,
21 and the date of enactment of the
22 Financial Stability Improvement
23 Act of 2009, such savings asso-
24 ciation subsidiary was and re-
25 mains a qualified thrift lender

1 (as determined by section 10 of
2 the Home Owners' Loan Act); or

3 “(ii) on June 30, 2009, controlled—

4 “(I) an institution which became a
5 bank as a result of the enactment of sec-
6 tion 1301(a)(2)(B) of the Financial Sta-
7 bility Improvement Act of 2009, or

8 “(II) an institution it has continu-
9 ously controlled since March 5, 1987,
10 which became a bank as a result of the en-
11 actment of the Competitive Equality Bank-
12 ing Act of 1987, pursuant to subsection
13 (f);

14 “(B) was not on June 30, 2009—

15 “(aa) a bank holding company;

16 or

17 “(bb) subject to the Bank Hold-
18 ing Company Act by reason of section
19 8(a) of the International Banking Act
20 of 1978 (12 U.S.C. 3106(a)); and

21 “(C) on June 30, 2009, directly or indi-
22 rectly controlled shares or engaged in activities
23 that did not, on the day before the date of en-
24 actment of the Financial Stability Act of 2009
25 comply with the activity or investment restric-

1 tions on financial holding companies in section
2 4 in accordance with regulations prescribed by
3 the Board, that did not, on the day before the
4 date of enactment of the Financial Stability Act
5 of 2009 comply with the activity or investment
6 restrictions on financial holding companies in
7 section 4 in accordance with regulations pre-
8 scribed by the Board, shall not be treated as a
9 bank holding company for purposes of this Act
10 solely by virtue of such company's control of
11 such institution and control of a section six
12 holding company established pursuant to sec-
13 tion 6.

14 “(2) LOSS OF EXEMPTION.—A company de-
15 scribed in paragraph (1) shall no longer qualify for
16 the exemption provided under that paragraph if—

17 “(A) such company fails to—

18 “(i) establish and register a section
19 six holding company pursuant to section 6
20 of this Act within 90 days after the date
21 of enactment of the Financial Stability Im-
22 provement Act of 2009, unless the Board
23 grants an extension of such period for
24 compliance which shall not exceed 180 ad-
25 ditional days; and

1 “(ii) maintain a section six holding
2 company in compliance with all the re-
3 quirements for a section six holding com-
4 pany under section 6 of this Act;

5 “(B) such company directly or indirectly
6 (including through the section six holding com-
7 pany it must form pursuant to this subsection
8 and section 6 of this Act) acquires ownership or
9 control of more than 5 percent of the shares or
10 assets of an additional bank or insured deposi-
11 tory institution after June 30, 2009, other
12 than—

13 “(i) shares held as a bona fide fidu-
14 ciary (whether with or without the sole dis-
15 cretion to vote such shares);

16 “(ii) shares held by any person as a
17 bona fide fiduciary solely for the benefit of
18 employees of either the company described
19 in paragraph (1) or any subsidiary of that
20 company and the beneficiaries of those em-
21 ployees;

22 “(iii) shares held temporarily pursu-
23 ant to an underwriting commitment in the
24 normal course of an underwriting business;

1 “(iv) shares held in an account solely
2 for trading purposes;

3 “(v) shares over which no control is
4 held other than control of voting rights ac-
5 quired in the normal course of a proxy so-
6 licitation;

7 “(vi) loans or other accounts receiv-
8 able acquired from an insured depository
9 institution in the normal course of busi-
10 ness; and

11 “(vii) shares or assets acquired in se-
12 curing or collecting a debt previously con-
13 tracted in good faith, during the 2-year pe-
14 riod beginning on the date of such acquisi-
15 tion or for such additional time (not ex-
16 ceeding 3 years) as the Board may permit
17 if the Board determines that such an ex-
18 tension will not be detrimental to the pub-
19 lic interest;

20 “(C)(i) the section six holding company re-
21 quired to be established by such company, or
22 any subsidiary bank of such company undergoes
23 a change in control after the date of enactment
24 of the Financial Stability Improvement Act of
25 2009, other than—

1 “(I) the merger or whole acquisition
2 of such parent company in a bona fide
3 merger or acquisition (as shall be deter-
4 mined by the Board, which is authorized to
5 find that a transaction is not a bona fide
6 merger or acquisition and thus results in
7 the loss of exemption), with a company
8 that is predominantly engaged in activities
9 not permissible for a financial holding com-
10 pany pursuant to section 4(k), or

11 “(II) the acquisition of additional
12 shares by a company that owned or con-
13 trolled 7.5 percent or more of any class of
14 such parent company’s outstanding voting
15 stock on or before June 30, 2009, and con-
16 tinuously owned or controlled at least such
17 7.5 percent since June 30, 2009;

18 “(ii) nothing in this subparagraph shall be
19 construed as preventing the Board from requir-
20 ing compliance with this subsection, section 6
21 or the requirements of the Change in Bank
22 Control Act (12 U.S.C. 1817(j)), as applicable
23 to a company that is permitted to acquire con-
24 trol without loss of the exemption in this sub-
25 section 4(p)(2); or

1 “(D) any subsidiary bank of such company
2 engages in any activity after the date of enact-
3 ment of the Financial Stability Improvement
4 Act of 2009 which would have caused such in-
5 stitution to be a bank (as defined in section
6 2(c) of this Act, as in effect before such date)
7 if such activities had been engaged in before
8 such date.

9 “(3) DIVESTITURE IN CASE OF LOSS OF EX-
10 EMPTION.—If any company described in paragraph
11 (1) fails to qualify for the exemption provided under
12 paragraph (1) by operation of paragraph (2), such
13 exemption shall cease to apply to such company and
14 such company shall divest control of each bank it
15 controls before the end of the 180-day period begin-
16 ning on the date on which the company receives no-
17 tice from the Board that the company has failed to
18 continue to qualify for such exemption, unless, be-
19 fore the end of such 180-day period, the company
20 has—

21 “(A) either—

22 “(i) corrected the condition or ceased
23 the activity that caused the company to
24 fail to continue to qualify for the exemp-
25 tion; or

1 “(ii) submitted a plan to the Board
2 for approval to cease the activity or correct
3 the condition in a timely manner (which
4 shall not exceed 1 year); and

5 “(B) implemented procedures that are rea-
6 sonably adapted to avoid the reoccurrence of
7 such condition or activity.

8 “(4) SUBSECTION CEASES TO APPLY UNDER
9 CERTAIN CIRCUMSTANCES.—This subsection shall
10 cease to apply to any company described in para-
11 graph (1) if such company—

12 “(A) registers as a bank holding company
13 under section 2(a) of this Act;

14 “(B) immediately upon such registration,
15 complies with all of the requirements of this
16 chapter, and regulations prescribed by the
17 Board pursuant to this chapter, including the
18 nonbanking restrictions of this section; and

19 “(C) does not, at the time of such registra-
20 tion, control banks in more than one State, the
21 acquisition of which would be prohibited by sec-
22 tion 3(d) of this Act if an application for such
23 acquisition by such company were filed under
24 section 3(a) of this Act.

1 “(5) INFORMATION REQUIREMENT.—Each com-
2 pany described in paragraph (1) shall, within 60
3 days after the date of enactment of the Financial
4 Stability Improvement Act of 2009, provide the
5 Board with the name and address of such company,
6 the name and address of each bank such company
7 controls, and a description of each such bank’s ac-
8 tivities.

9 “(6) EXAMINATIONS AND REPORTS.—The
10 Board may, from time to time, examine a company
11 described in paragraph (1) or a bank controlled by
12 such a company, and may require reports under
13 oath from a company described in paragraph (1),
14 and appropriate officers or directors of such com-
15 pany, in each case solely for purposes of assuring
16 compliance with the provisions of this subsection and
17 enforcing such compliance.

18 “(7) LIMITED ENFORCEMENT.—

19 “(A) IN GENERAL.—In addition to any
20 other power of the Board, the Board may en-
21 force compliance with the provisions of this sub-
22 section which are applicable to any company de-
23 scribed in paragraph (1), and any bank con-
24 trolled by such company, under section 8 of the
25 Federal Deposit Insurance Act, and such com-

1 pany or bank shall be subject to such section
2 (for such purposes) in the same manner and to
3 the same extent as if such company were a
4 bank holding company.

5 “(B) APPLICATION OF OTHER ACT.—Any
6 violation of this subsection by any company de-
7 scribed in paragraph (1) or any bank controlled
8 by such a company, may also be treated as a
9 violation of the Federal Deposit Insurance Act
10 for purposes of subparagraph (A).

11 “(C) NO EFFECT ON OTHER AUTHOR-
12 ITY.—No provision of this paragraph shall be
13 construed as limiting any authority of the
14 Board or any other Federal agency under any
15 other provision of law.”.

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

19 **“SEC. 6. SPECIAL-PURPOSE HOLDING COMPANIES.**

20 “(a) ESTABLISHMENT, PURPOSE AND REQUIRE-
21 MENTS OF SPECIAL PURPOSE HOLDING COMPANIES.—

22 “(1) REQUIREMENT.—A special purpose hold-
23 ing company (hereafter in this section referred to as
24 a ‘section 6 holding company’) shall be established
25 and maintained by a company—

1 “(A) described in section 4(f)(1) as re-
2 quired by section 4(f)(2)(D) of this Act;

3 “(B) described in section 4(p)(1) as re-
4 quired by section 4(p)(2)(A) of this Act; or

5 “(C) that—

6 “(i) is subject to heightened pruden-
7 tial standards under Subtitle B of the Fi-
8 nancial Stability Improvement Act of
9 2009;

10 “(ii) is not—

11 “(I) a bank holding company, or

12 “(II) subject to the Bank Hold-
13 ing Company Act by reason of section
14 8(a) of the International Banking Act
15 of 1978 (12 U.S.C. 3106(a)); and

16 “(iii) directly or indirectly controlled
17 shares or engaged in activities that did
18 not, on the date the company is first sub-
19 ject to heightened prudential standards
20 pursuant to subtitle B of the Financial
21 Stability Improvement Act of 2009, comply
22 with the activity or investment restrictions
23 on financial holding companies in section 4
24 in accordance with regulations prescribed
25 by the Board.

1 “(2) PURPOSE.—

2 “(A) A company that is required to form
3 a section 6 holding company shall conduct all of
4 its activities that are determined to be financial
5 in nature or incidental thereto under section
6 4(k) and shall hold any shares of a bank or in-
7 sured depository institution controlled by such
8 company, through the section 6 holding com-
9 pany, unless the Board specifically determines
10 otherwise in accordance with paragraph (6).

11 “(B) A section 6 holding company shall be
12 prohibited from conducting any activities or in-
13 vesting in any companies other than those per-
14 missible for a financial holding company under
15 section 4, unless the Board specifically deter-
16 mines otherwise in accordance with paragraph
17 (6).

18 “(3) REGISTRATION.—

19 “(A) A section 6 holding company required
20 to be established by a company described in
21 subparagraph (1)(A) shall be established, and
22 such company shall register with the Board as
23 a bank holding company, pursuant to the re-
24 quirements in section 4(f).

1 “(B) A section 6 holding company required
2 to be established by a company described in
3 subparagraph (1)(B) shall be established, and
4 such company shall register with the Board as
5 a bank holding company, pursuant to the re-
6 quirements in section 4(p).

7 “(C) A section 6 holding company required
8 to be established by a company described in
9 paragraph (1)(C) shall be—

10 “(i) established, and such company
11 shall register with the Board, as a bank
12 holding company within 90 days after such
13 company or such company’s parent holding
14 company has been notified by the Board
15 that such company is subject to heightened
16 prudential standards under Subtitle B of
17 the Financial Stability Improvement Act of
18 2009, unless the Board grants an exten-
19 sion of such period for compliance which
20 shall not exceed 180 additional days;

21 “(ii) treated as a financial holding
22 company under this Act; and

23 “(iii) subject to the authority of the
24 Board to enforce compliance with the pro-
25 visions of this section under section 8 of

1 the Federal Deposit Insurance Act in the
2 same manner and to the same extent as if
3 such company were a bank holding com-
4 pany.

5 “(4) RULE OF CONSTRUCTION.—For purposes
6 of this section, designation of an already established
7 intermediate holding company that will serve as the
8 section 6 holding company shall satisfy the require-
9 ment to establish a section 6 holding company, pro-
10 vided that such existing intermediate holding com-
11 pany complies with all other provisions applicable to
12 a section 6 holding company.

13 “(5) LIMITATIONS ON AUTHORITY OF COMMERCIAL PARENT.—A company that is not a bank hold-
14 ing company or treated as a bank holding company
15 pursuant to section 8(a) of the International Bank
16 Act of 1978 that has been notified that it is an iden-
17 tified financial holding company, pursuant to sub-
18 title A of the Financial Stability Improvement Act of
19 2009, shall—

21 “(A) not be deemed to be, or treated as, a
22 bank holding company, solely because of its
23 ownership or control of a section 6 holding com-
24 pany; and

1 “(B) not be subject to this Act, except for
2 such provisions as are explicitly made applicable
3 in this section.

4 “(6) BOARD AUTHORITY.—

5 “(A) RULES AND EXEMPTIONS.—In addi-
6 tion to any other authority of the Board, the
7 Board may, at its discretion, prescribe rules
8 and regulations or issue orders regarding:

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

11 “(ii) exemptions from the requirement
12 to conduct all activities that are financial
13 or incidental thereto, as defined in section
14 4(k), through the section 6 holding com-
15 pany if such exemption—

16 “(I) would not threaten the safe-
17 ty and soundness of the section 6
18 holding company or any subsidiary of
19 the section 6 holding company;

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

23 “(III) would not result in unfair
24 competitive advantage to the parent

1 company of such section 6 holding
2 company; and

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

6 “(I) is consistent with the pur-
7 poses of this section, and section 23A
8 and section 23B of the Federal Re-
9 serve Act;

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

14 “(III) would not increase sys-
15 temic risk or threaten the stability of
16 the overall financial system; and

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

21 “(B) PARENT COMPANY REPORTS.—The
22 Board may, from time to time, require reports
23 under oath from a company that controls a sec-
24 tion 6 holding company, and appropriate offi-
25 cers or directors of such company, solely for

1 purposes of ensuring compliance with the provi-
2 sions of this section (including assessing the
3 company's ability to serve as a source of finan-
4 cial strength pursuant to subsection (g)) and
5 enforcing such compliance.

6 “(C) LIMITED PARENT COMPANY EN-
7 FORCEMENT.—

8 “(i) IN GENERAL.—In addition to any
9 other power of the Board, the Board may
10 enforce compliance with the provisions of
11 this subsection which are applicable to any
12 company described in paragraph (1), and
13 any bank controlled by such company,
14 under section 8 of the Federal Deposit In-
15 surance Act and such company or bank
16 shall be subject to such section (for such
17 purposes) in the same manner and to the
18 same extent as if such company were a
19 bank holding company.

20 “(ii) APPLICATION OF OTHER ACT.—
21 Any violation of this subsection by any
22 company that controls a section 6 holding
23 company or any bank controlled by such a
24 company, may also be treated as a viola-

1 tion of the Federal Deposit Insurance Act
2 for purposes of clause (i).

3 “(iii) NO EFFECT ON OTHER AUTHOR-
4 ITY.—No provision of this subparagraph
5 shall be construed as limiting any author-
6 ity of the Board or any other Federal
7 agency under any other provision of law.

8 “(b) RESTRICTIONS ON AFFILIATE TRANS-
9 ACTIONS.—

10 “(1) SECTION 23A AND 23B APPLICABILITY.—

11 “(A) IN GENERAL.—Transactions between
12 a section 6 holding company established under
13 this section (including any subsidiary of such
14 company) and any affiliate of such company
15 that is not a subsidiary of the section 6 holding
16 company shall be subject to the restrictions and
17 limitations contained in section 23A and section
18 23B of the Federal Reserve Act as if the sec-
19 tion 6 holding company were a member bank.

20 “(B) COVERED TRANSACTIONS.—

21 “(i) A depository institution controlled
22 by a section 6 holding company may not
23 engage in a covered transaction (as defined
24 in section 23A(b)(7) of the Federal Re-
25 serve Act) with any affiliate that is not the

1 section 6 holding company or a subsidiary
2 of the section 6 holding company.

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

13 “(2) RULE OF CONSTRUCTION.—No provision
14 of this subsection shall be construed as exempting
15 any subsidiary insured depository institution of a
16 section 6 holding company from compliance with sec-
17 tion 23A or 23B of the Federal Reserve Act with re-
18 spect to each affiliate of such institution (as defined
19 in section 23A or 23B of the Federal Reserve Act),
20 including any affiliate that is the section 6 holding
21 company or subsidiary of the section 6 holding com-
22 pany.

23 “(c) TYING PROVISIONS.—A company that directly or
24 indirectly controls a section 6 holding company shall be—

1 “(1) treated as a bank holding company for
2 purposes of section 106 of the Bank Holding Com-
3 pany Act Amendments of 1970 and section 22(h) of
4 the Federal Reserve Act and any regulation pre-
5 scribed under any such section; and

6 “(2) subject to the restrictions of section 106 of
7 the Bank Holding Company Act Amendments of
8 1970, in connection with any transaction involving
9 the products or services of such company or affiliate
10 and those of a bank affiliate, as if such company or
11 affiliate were a bank and such bank were a sub-
12 sidiary of a bank holding company.

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

15 “(1) IN GENERAL.—A section 6 holding com-
16 pany shall not—

17 “(A) offer or market, directly or through
18 any arrangement, any product or service of an
19 affiliate that is not a subsidiary of the section
20 6 holding company; or

21 “(B) permit any of the products or services
22 of the section 6 holding company or any sub-
23 sidiary thereof to be offered or marketed, di-
24 rectly or through any arrangement, by or

1 through any affiliate that is not a subsidiary of
2 the section 6 holding company.

3 “(2) BOARD AUTHORITY TO GRANT EXEMP-
4 TIONS.—The Board may grant exemptions from the
5 restrictions in this subsection if—

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

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

14 “(e) FINANCIAL HOLDING COMPANY REQUIRE-
15 MENTS.—A section 6 holding company shall be subject
16 to—

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

19 “(2) the provisions applicable to financial hold-
20 ing companies that fail to meet certain requirements
21 in section 4(m).

22 “(f) INDEPENDENCE OF SECTION 6 HOLDING COM-
23 PANY.—

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

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

11 “(2) No executive officer of a section 6 holding
12 company or any subsidiary of a section 6 holding
13 company may serve as a director, officer, or em-
14 ployee of an affiliate of the section 6 holding com-
15 pany that is not a subsidiary of the section 6 holding
16 company.

17 “(3) The Board shall issue regulations that re-
18 quire effective legal and operational separation of
19 the functions of a section 6 holding company from
20 its affiliates that are not subsidiaries of such section
21 6 holding company.

22 “(g) SOURCE OF STRENGTH.—A company that di-
23 rectly or indirectly controls a section 6 holding company
24 shall serve as a source of financial strength to its sub-
25 sidiary section 6 holding company.”.

1 (d) CONFORMING CHANGES.—Section 4(h) of the
2 Bank Holding Company Act of 1956 (12 U.S.C. 1843(h)),
3 is amended—

4 (1) in paragraph (1), by striking “subpara-
5 graph (D), (F), (G), or (H)” and inserting “sub-
6 paragraph (C) or (D)”; and

7 (2) in paragraph (2), by striking “subpara-
8 graph (D), (F), (G), or (H)” and inserting “sub-
9 paragraph (C) or (D)”.

10 **SEC. 1302. REGISTRATION OF CERTAIN COMPANIES AS**
11 **BANK HOLDING COMPANIES.**

12 Section 5 of the Bank Holding Company Act of 1956
13 (12 U.S.C. 1844) is amended by inserting at the end the
14 following new subsection:

15 “(h) CONVERSION TO BANK HOLDING COMPANY BY
16 OPERATION OF LAW.—

17 “(1) CONVERSION BY OPERATION OF LAW.—A
18 company that, on the day before the date of enact-
19 ment of the Financial Stability Improvement Act of
20 2009, was not a bank holding company but which,
21 by reason of sections 4(p) and 6 becomes a bank
22 holding company by operation of law, shall register
23 as a bank holding company with the Board in ac-
24 cordance with section 5(a) within 90 days of the
25 date of enactment of that Act.

1 “(2) COMPLIANCE WITH BANK HOLDING COM-
2 PANY ACT.—With respect to any company described
3 in paragraph (1), the Board may grant temporary
4 exemptions or provide other appropriate temporary
5 relief to permit such company to implement meas-
6 ures necessary to comply with the requirements
7 under the Bank Holding Company Act.”.

8 **SEC. 1303. REPORTS AND EXAMINATIONS OF BANK HOLD-**
9 **ING COMPANIES; REGULATION OF FUNCTION-**
10 **ALLY REGULATED SUBSIDIARIES.**

11 (a) REPORTS OF BANK HOLDING COMPANIES.—Sec-
12 tions 5(c)(1) (A) and (B) of the Bank Holding Company
13 Act of 1956 (12 U.S.C. 1844(c)(1) (A) and (B)) are
14 amended to read as follows:

15 “(A) IN GENERAL.—The Board, from time
16 to time, may require a bank holding company
17 and any subsidiary of such company to submit
18 reports under oath that the Board determines
19 are necessary or appropriate for the Board to
20 carry out the purposes of this chapter, prevent
21 evasions thereof, and monitor compliance by the
22 company or subsidiary with the applicable pro-
23 visions of law.

24 “(B) USE OF EXISTING REPORTS.—

1 “(i) IN GENERAL.—The Board shall,
2 to the fullest extent possible, use:

3 “(I) reports that a bank holding
4 company or any subsidiary of such
5 company has been required to provide
6 to other Federal or State regulatory
7 agencies;

8 “(II) information that is other-
9 wise required to be reported publicly;
10 and

11 “(III) externally audited financial
12 statements.

13 “(ii) AVAILABILITY.—A bank holding
14 company or a subsidiary of such company
15 shall promptly provide to the Board, at the
16 request of the Board, a report referred to
17 in clause (i)(I).”.

18 (b) FUNCTIONALLY REGULATED SUBSIDIARY.—Sec-
19 tion 5(c)(1) of the Bank Holding Company Act of 1956
20 (12 U.S.C. 1844(c)(1)) is amended by inserting at the end
21 the following new subparagraph:

22 “(C) DEFINITION.—For purposes of this
23 subsection and section 6, the term ‘functionally
24 regulated subsidiary’ means any subsidiary

1 (other than a depository institution) of a bank
2 holding company that is—

3 “(i) a broker or dealer registered with
4 the Securities and Exchange Commission
5 under the Securities Exchange Act of
6 1934, for which the Securities and Ex-
7 change Commission is the Federal regu-
8 latory agency;

9 “(ii) an investment company reg-
10 istered with the Securities and Exchange
11 Commission under the Investment Com-
12 pany Act of 1940, for which the Securities
13 and Exchange Commission is the Federal
14 regulatory agency;

15 “(iii) an investment adviser registered
16 with the Securities and Exchange Commis-
17 sion under the Investment Advisers Act of
18 1940, for which the Securities and Ex-
19 change Commission is the Federal regu-
20 latory agency, with respect to the invest-
21 ment advisory activities of such investment
22 adviser and activities incidental to such in-
23 vestment advisory activities; and

24 “(iv) a futures commission merchant,
25 commodity trading advisor, and commodity

1 pool operator registered with the Com-
2 modity Futures Trading Commission
3 under the Commodity Exchange Act, for
4 which the Commodity Futures Trading
5 Commission is the Federal regulatory
6 agency, with respect to the commodities
7 activities of such entity and activities inci-
8 dental to such commodities activities.”.

9 (c) EXAMINATIONS OF BANK HOLDING COMPA-
10 NIES.—Sections 5(c)(2) (A) and (B) of the Bank Holding
11 Company Act of 1956 (12 U.S.C. 1844(c)(2) (A) and (B))
12 are amended to read as follows:

13 “(A) IN GENERAL.—The Board may make
14 examinations of a bank holding company and
15 any subsidiary of such a company to carry out
16 the purposes of this chapter, prevent evasions
17 thereof, and monitor compliance by the com-
18 pany or subsidiary with applicable provisions of
19 law.

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

1 tions made by other Federal or State regulatory
2 authorities.”.

3 (d) REGULATION OF FINANCIAL HOLDING COMPA-
4 NIES.—Section 5(c)(2) of the Bank Holding Company Act
5 of 1956 (12 U.S.C. 1844(c)) is amended by striking sub-
6 paragraphs (C), (D), and (E).

7 (e) AUTHORITY TO REGULATE FUNCTIONALLY REG-
8 ULATED SUBSIDIARIES OF BANK HOLDING COMPA-
9 NIES.—The Bank Holding Company Act of 1956 (12
10 U.S.C. 1841 et seq.) is amended by striking section 10A
11 (12 U.S.C. 1848a).

12 **SEC. 1304. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
13 **PANIES TO REMAIN WELL CAPITALIZED AND**
14 **WELL MANAGED.**

15 Section 4(l)(1) of the Bank Holding Company Act of
16 1956 (12 U.S.C. 1843(l)(1)) is amended—

17 (1) in subparagraph (B), by striking “and”;

18 (2) by redesignating subparagraph (C) as sub-
19 paragraph (D);

20 (3) by inserting after subparagraph (B) the fol-
21 lowing new subparagraph:

22 “(C) the bank holding company is well
23 capitalized and well managed; and”;

1 (4) in subparagraph (D) (as so redesignated)
2 by striking clause (ii) and inserting the following
3 new clause:

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

7 **SEC. 1305. STANDARDS FOR INTERSTATE ACQUISITIONS.**

8 (a) **BANK HOLDING COMPANY ACT OF 1956 AMEND-**
9 **MENT.**—Section 3(d)(1)(A) of the Bank Holding Company
10 Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended—

11 (1) by striking “adequately capitalized” and in-
12 serting “well capitalized”; and

13 (2) by striking “adequately managed” and in-
14 serting “well managed”.

15 (b) **FEDERAL DEPOSIT INSURANCE ACT AMEND-**
16 **MENT.**—Section 44(b)(4)(B) of the Federal Deposit In-
17 surance Act (12 U.S.C. 1831u(b)(4)(B)) is amended to
18 read as follows:

19 “(B) the responsible agency determines
20 that the resulting bank will be well capitalized
21 and well managed upon the consummation of
22 the transaction.”.

1 **SEC. 1306. ENHANCING EXISTING RESTRICTIONS ON BANK**
2 **TRANSACTIONS WITH AFFILIATES.**

3 (a) Section 23A of the Federal Reserve Act (12
4 U.S.C. 371c) is amended—

5 (1) in subsection (b)(1), by striking subpara-
6 graph (D) and inserting the following new subpara-
7 graph:

8 “(D) any investment fund with respect to
9 which a member bank or affiliate thereof is an
10 investment adviser; and”;

11 (2) in subsection (b)(7)(A), by inserting “(in-
12 cluding a purchase of assets subject to an agreement
13 to repurchase)” after “affiliate”;

14 (3) in subsection (b)(7)(C), by striking “, in-
15 cluding assets subject to an agreement to repur-
16 chase,”;

17 (4) in subsection (b)(7)(D)—

18 (A) by inserting “or other debt obliga-
19 tions” after “acceptance of securities”, and

20 (B) by striking “or” after the semicolon;

21 (5) in subsection (b)(7), by inserting at the end
22 the following new subparagraphs:

23 “(F) any securities borrowing and lending
24 transactions with an affiliate to the extent that
25 the transactions create credit exposure of the
26 member bank to the affiliate; or

1 “(G) current and potential future credit
2 exposure to the affiliate on derivative trans-
3 actions with the affiliate;”;

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

7 (7) in subsection (c)—

8 (A) by striking paragraph (2);

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

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

15 (9) in subsection (f)(2), by inserting at the end
16 the following: “The Board may not, by regulation or
17 order, grant an exemption under this section unless
18 the Board obtains the concurrence of the Chairman
19 of the Federal Deposit Insurance Corporation.”; and

20 (10) in subsection (f)—

21 (A) by redesignating paragraph (3) as
22 paragraph (4); and

23 (B) and inserting after paragraph (2) the
24 following new paragraph:

1 “(3) CONCURRENCE OF THE COMPTROLLER OF
2 THE CURRENCY.—With respect to a transaction or
3 relationship involving a national bank or Federal
4 savings association, the Board may not grant an ex-
5 emption under this section unless the Board obtains
6 the concurrence of the Comptroller of the Currency
7 (in addition to obtaining the concurrence of the
8 Chairman of the Federal Deposit Insurance Cor-
9 poration under paragraph (2)).”.

10 (b) TECHNICAL AND CONFORMING AMENDMENT.—
11 Section 23B(e) of the Federal Reserve Act (12 U.S.C.
12 371–1(e)), is amended by inserting at the end the fol-
13 lowing new paragraph:

14 “(3) The Board may not grant an exemption or
15 exclusion under this section unless the Board ob-
16 tains the concurrence of the Chairman of the Fed-
17 eral Deposit Insurance Corporation.”.

18 **SEC. 1307. ELIMINATING EXCEPTIONS FOR TRANSACTIONS**
19 **WITH FINANCIAL SUBSIDIARIES.**

20 Section 23A(e) of the Federal Reserve Act (12 U.S.C.
21 371e(e)) is amended—

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

23 (2) by redesignating paragraph (4) as para-
24 graph (3).

1 **SEC. 1308. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
2 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
3 **PURCHASE AGREEMENTS, REVERSE REPUR-**
4 **CHASE AGREEMENTS, AND SECURITIES**
5 **LENDING AND BORROWING TRANSACTIONS.**

6 Section 5200 of the Revised Statutes of the United
7 States (12 U.S.C. 84) is amended—

8 (1) in subsection (b)(1), by striking “shall in-
9 clude all direct or indirect” and all that follows in
10 that paragraph through “commitment;” and insert-
11 ing: “shall include—

12 “(A) all direct or indirect advances of
13 funds to a person made on the basis of any ob-
14 ligation of that person to repay the funds or re-
15 payable from specific property pledged by or on
16 behalf of the person;

17 “(B) to the extent specified by the Comp-
18 troller of the Currency, such term shall also in-
19 clude any liability of a national banking associa-
20 tion to advance funds to or on behalf of a per-
21 son pursuant to a contractual commitment; and

22 “(C) credit exposure to a person arising
23 from a derivative transaction, repurchase agree-
24 ment, reverse repurchase agreement, securities
25 lending transaction, or securities borrowing

1 transaction between the national banking asso-
2 ciation and the person;”;

3 (2) in subsection (b)(2) by striking the period
4 at the end and inserting “; and”;

5 (3) in subsection (b), by inserting after para-
6 graph (2) the following new paragraph:

7 “(3) the term ‘derivative transaction’ means
8 any transaction that is a contract, agreement, swap,
9 warrant, note, or option that is based, in whole or
10 in part, on the value of, any interest in, or any
11 quantitative measure or the occurrence of any event
12 relating to, one or more commodities, securities, cur-
13 rencies, interest or other rates, indices, or other as-
14 sets.”; and

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

17 “(3) The Comptroller of the Currency shall pre-
18 scribe rules to administer and carry out the pur-
19 poses of this section with respect to credit exposures
20 arising from any derivative transaction, repurchase
21 agreement, reverse repurchase agreement, securities
22 lending transaction, or securities borrowing trans-
23 action. Rules required to be prescribed under this
24 paragraph (3) shall take effect, in final form, not

1 later than 180 days after the date of enactment of
2 the Financial Stability Improvement Act of 2009.”.

3 **SEC. 1309. APPLICATION OF NATIONAL BANK LENDING LIM-**
4 **ITS TO INSURED STATE BANKS.**

5 Section 18 of the Federal Deposit Insurance Act (12
6 U.S.C. 1828) is amended by adding at the end a new sub-
7 section:

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

13 **SEC. 1310. RESTRICTION ON CONVERSIONS OF TROUBLED**
14 **BANKS.**

15 (a) CONVERSION OF A NATIONAL BANKING ASSOCIA-
16 TION TO A STATE BANK.—The National Bank Consolida-
17 tion and Merger Act (12 U.S.C. 215 et seq.) is amended
18 by redesignating section 7 as section 8 and by inserting
19 after section 6 the following:

20 **“SEC. 7. PROHIBITION ON CERTAIN CONVERSIONS.**

21 “A national bank may not convert to a State bank
22 during any period of time in which it is subject to a Cease
23 and Desist order, memorandum of understanding, or other
24 enforcement action entered into with or issued by the
25 Comptroller of the Currency.”

1 (b) CONVERSION OF A STATE BANK TO A NATIONAL
2 BANK.—Section 5154 of the Revised Statutes (12 U.S.C.
3 35) is amended by adding at the end the following new
4 sentence: “The Comptroller of the Currency shall not ap-
5 prove the conversion of a State bank to a national bank
6 during any period of time in which the State bank is sub-
7 ject to a Cease and Desist order, memorandum of under-
8 standing, or other enforcement action entered into or
9 issued by a State bank supervisor, the Federal Deposit
10 Insurance Corporation, the Board of Governors of the
11 Federal Reserve System or a Federal Reserve Bank.”.

12 **SEC. 1311. LENDING LIMITS TO INSIDERS.**

13 Section 22(h)(9)(D)(ii) of the Federal Reserve Act
14 (12 U.S.C. 375b(h)(9)(D)(ii)) is amended by inserting “,
15 except that a member bank shall be deemed to have ex-
16 tended credit to a person if the member bank has credit
17 exposure to the person arising from a derivative trans-
18 action, repurchase agreement, reverse repurchase agree-
19 ment, securities lending transaction, or securities bor-
20 rowing transaction between the member bank and the per-
21 son.” before the period at the end.

22 **SEC. 1312. LIMITATIONS ON PURCHASES OF ASSETS FROM**
23 **INSIDERS.**

24 (a) Section 18 of the Federal Deposit Insurance Act
25 (12 U.S.C. 1828) is amended by inserting after subsection

1 (y) (as added by section 1408) the following new sub-
2 section:

3 “(z) GENERAL PROHIBITION.—An insured depository
4 institution shall not purchase an asset from, or sell an
5 asset to, one of its executive officers, directors, or principal
6 shareholders or any related interest of such person (as
7 such terms are defined in 22(h) of Federal Reserve Act)
8 unless the transaction is on market terms and, if the
9 transaction represents more than 10 percent of the insti-
10 tution’s capital stock and surplus, the transaction has
11 been approved in advance by a majority of the institution’s
12 board of directors (with interested directors of the insured
13 depository institution not participating in the approval of
14 the transaction).”.

15 (b) FDIC RULEMAKING AUTHORITY.—The Federal
16 Deposit Insurance Corporation may prescribe rules to im-
17 plement the requirements of section (a).

18 (c) AMENDMENTS TO THE FEDERAL RESERVE
19 ACT.—Section 22 of the Federal Reserve Act (12 U.S.C.
20 375) is amended by striking subsection (d).

21 **SEC. 1313. RULES REGARDING CAPITAL LEVELS OF BANK**
22 **HOLDING COMPANIES.**

23 Section 5(b) of the Bank Holding Company Act of
24 1956 (12 U.S.C. 1844(b)) is amended by inserting “, in-

1 cluding regulations relating to the capital levels of bank
2 holding companies” before the period at the end.

3 **SEC. 1314. ENHANCEMENTS TO FACTORS TO BE CONSID-**
4 **ERED IN CERTAIN ACQUISITIONS.**

5 (a) **BANK ACQUISITIONS.**—Section 3(c) of the Bank
6 Holding Company Act of 1956 (12 U.S.C. 1842(c)) is
7 amended by inserting at the end the following new para-
8 graph:

9 “(7) **FINANCIAL STABILITY.**—In every case, the
10 Board shall take into consideration the extent to
11 which the proposed acquisition, merger, or consolida-
12 tion may pose risk to the stability of the United
13 States financial system or the economy of the
14 United States.”.

15 (b) **NONBANK ACQUISITIONS.**—

16 (1) Section 4(j)(2)(A) of the Bank Holding
17 Company is amended by—

18 (A) striking “or” before “unsound banking
19 practices”; and

20 (B) inserting before the period at the end
21 “, or risk to the stability of the United States
22 financial system or the economy of the United
23 States”.

1 (2) Section 4(k)(6) of the Bank Holding Com-
2 pany Act is amended by striking subparagraph (B)
3 and inserting the following new subparagraph:

4 “(B) A financial holding company may
5 commence any activity or acquire any company,
6 pursuant to paragraph (4) or any regulation
7 prescribed or order issued under paragraph (5),
8 without prior approval of the Board, except—

9 “(i) for a transaction in which the
10 total assets to be acquired by the financial
11 holding company exceed \$25 billion; and

12 “(ii) as provided in subsection (j) with
13 regard to the acquisition of a savings asso-
14 ciation.”.

15 (c) BANK MERGER ACT TRANSACTIONS.—Section
16 8(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.
17 1828(c)(5)) is amended by—

18 (1) striking “and” before “the convenience and
19 needs of the community to be served”; and

20 (2) inserting before the period at the end “, and
21 the risk to the stability of the United States finan-
22 cial system and the economy of the United States”.

1 **SEC. 1315. ELIMINATION OF ELECTIVE INVESTMENT BANK**
2 **HOLDING COMPANY FRAMEWORK.**

3 Section 17 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78q) is amended by striking subsection (i) and
5 redesignating the following subsections accordingly.

6 **SEC. 1316. EXAMINATION FEES FOR LARGE BANK HOLDING**
7 **COMPANIES.**

8 The Bank Holding Company Act is amended by add-
9 ing a new section 5A:

10 **“SEC. 5A. EXAMINATION FEES.**

11 “The Board of Governors of the Federal Reserve Sys-
12 tem or the Federal Reserve Banks shall assess fees on
13 bank holding companies with total consolidated assets of
14 \$10 billion or more. Such fees shall be sufficient to defray
15 the cost of the examination of such bank holding compa-
16 nies.”.

17 **Subtitle E—Payment, Clearing, and**
18 **Settlement Supervision**

19 **SEC. 1401. SHORT TITLE.**

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

22 **SEC. 1402. FINDINGS AND PURPOSES.**

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

24 (1) The proper functioning of the financial mar-
25 kets is dependent upon safe and efficient arrange-

1 ments for the clearing and settlement of payment,
2 securities and other financial transactions.

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

10 (3) Payment, clearing and settlement activities
11 conducted by financial institutions also present im-
12 portant risks to the participating financial institu-
13 tions and to the financial system.

14 (4) Enhancements to the regulation and super-
15 vision of systemically important financial market
16 utilities and the conduct of systemically important
17 payment, clearing, and settlement activities by finan-
18 cial institutions are necessary to provide consistency,
19 to promote robust risk management and safety and
20 soundness, to reduce systemic risks, and to support
21 the stability of the broader financial system.

22 (b) PURPOSES.—The purposes of this subtitle are to
23 mitigate systemic risk in the financial system and promote
24 financial stability by—

1 (1) authorizing the Board of Governors of the
2 Federal Reserve System to prescribe uniform stand-
3 ards for the management of risks by systemically
4 important financial market utilities and for the con-
5 duct of systemically important payment, clearing
6 and settlement activities by financial institutions;

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

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

13 **SEC. 1403. DEFINITIONS.**

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

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

19 (2) **APPROPRIATE FINANCIAL REGULATOR.**—
20 The term “appropriate financial regulator” means
21 the following:

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

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

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

8 (B) the Board of Directors of the Corpora-
9 tion, with respect to—

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

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

17 (C) The Director of the Office of Thrift
18 Supervision, with respect to any savings asso-
19 ciation and any savings and loan holding com-
20 pany, until the functions of the Director of the
21 Office of Thrift Supervision are transferred
22 under subtitle C.

23 (D) The Board, with respect to—

24 (i) any State member bank;

1 (ii) any branch or agency of a foreign
2 bank (other than any Federal branch, Fed-
3 eral agency, or insured State branch of a
4 foreign bank);

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

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

10 (v) any bank holding company and
11 any nondepository subsidiary of a bank
12 holding company (other than any broker,
13 dealer, investment company, or investment
14 adviser registered with the Securities and
15 Exchange Commission, or any futures
16 commission merchant, commodity trading
17 advisor, or commodity pool operator reg-
18 istered with the Commodity Futures Trad-
19 ing Commission); and

20 (vi) after the functions of the Director
21 of Thrift Supervision are transferred under
22 subtitle C, any savings and loan holding
23 company and any non-depository sub-
24 sidiary of a savings and loan holding com-
25 pany (other than any broker, dealer, in-

1 investment company, or investment adviser
2 registered with the Securities and Ex-
3 change Commission, or any futures com-
4 mission merchant, commodity trading advi-
5 sor, or commodity pool operator registered
6 with the Commodity Futures Trading
7 Commission).

8 (E) The National Credit Union Adminis-
9 tration Board, with respect to any insured cred-
10 it union under the Federal Credit Union Act
11 (12 U.S.C. 1751 et seq.).

12 (F) The Securities and Exchange Commis-
13 sion, with respect to—

14 (i) any broker or dealer registered
15 with the Securities and Exchange Commis-
16 sion under the Securities Exchange Act of
17 1934 (15 U.S.C. 78a et seq.);

18 (ii) any investment company reg-
19 istered with the Securities and Exchange
20 Commission under the Investment Com-
21 pany Act of 1940 (15 U.S.C. 80a-1 et
22 seq.); and

23 (iii) any investment adviser registered
24 with the Securities and Exchange Commis-

1 sion under the Investment Advisers Act of
2 1940 (15 U.S.C. 80b–1 et seq.).

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

10 (H) The State insurance authority of the
11 State in which an insurance company is domi-
12 ciled, with respect to any financial institution
13 engaged in providing insurance under State in-
14 surance law.

15 (I) The Board, with respect to any other
16 financial institution engaged in an identified ac-
17 tivity.

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

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

22 (5) FINANCIAL INSTITUTION.—The term “fi-
23 nancial institution” means an entity other than a fi-
24 nancial market utility that is—

1 (A) a depository institution (as defined in
2 section 3 of the Federal Deposit Insurance Act)
3 (12 U.S.C. 1813);

4 (B) a branch or agency of a foreign bank
5 (as defined in section 1(b) of the International
6 Banking Act of 1978) (12 U.S.C. 3101);

7 (C) an organization operating under sec-
8 tion 25 or 25A of the Federal Reserve Act (12
9 U.S.C. 601 et seq. and 611 et seq.);

10 (D) a credit union (as defined in section
11 101 of the Federal Credit Union Act) (12
12 U.S.C. 1752);

13 (E) a broker or dealer (as defined in sec-
14 tion 3 of the Securities Exchange Act of 1934)
15 (15 U.S.C. 78c);

16 (F) an investment company (as defined in
17 section 3 of the Investment Company Act of
18 1940) (15 U.S.C. 80a-3);

19 (G) an insurance company (as defined in
20 section 2 of the Investment Company Act of
21 1940) (15 U.S.C. 80a-2);

22 (H) an investment adviser (as defined in
23 section 202 of the Investment Advisers Act of
24 1940) (15 U.S.C. 80b-2);

1 (I) a futures commission merchant, com-
2 modity trading advisor, or commodity pool oper-
3 ator (as defined in section 1a of the Commodity
4 Exchange Act) (7 U.S.C. 1a); and

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

10 (6) FINANCIAL MARKET UTILITY.—The term
11 “financial market utility” means any person that
12 manages or operates a multilateral system for the
13 purpose of transferring, clearing, or settling pay-
14 ments, securities, or other financial transactions
15 among financial institutions or between financial in-
16 stitutions and the person.

17 (7) IDENTIFIED ACTIVITY.—The term “identi-
18 fied activity” means a payment, clearing, or settle-
19 ment activity that the Council has identified as sys-
20 temically important under section 1404.

21 (8) IDENTIFIED FINANCIAL MARKET UTILITY.—
22 The term “identified financial market utility” means
23 a financial market utility that the Council has iden-
24 tified as systemically important under section 1404.

1 (9) PAYMENT, CLEARING, OR SETTLEMENT AC-
2 TIVITY.—

3 (A) IN GENERAL.—The term “payment,
4 clearing, or settlement activity” means one of
5 the following activities carried out by one or
6 more financial institutions after the parties to
7 a financial transaction agree to the transaction
8 to facilitate the completion of the financial
9 transaction: the calculation and communication
10 of unsettled financial transactions between fi-
11 nancial institutions; netting or aggregating of
12 financial transactions; provision and mainte-
13 nance of trade, contract, or instrument infor-
14 mation; the management of risks associated
15 with unsettled financial transactions; trans-
16 mittal and storage of payment instructions;
17 movement of funds; final settlement of financial
18 transactions; and other similar activities that
19 the Board may determine by rule or order.
20 “Payment, clearing, or settlement activity” does
21 not include, among other things, activities in-
22 clusive of or prior to trade execution.

23 (B) FINANCIAL TRANSACTION.—For pur-
24 poses of subparagraph (A), the term “financial
25 transaction” means a funds transfer, securities

1 contract, contract of sale of a commodity for fu-
2 ture delivery, forward contract, repurchase
3 agreement, swap agreement, foreign exchange
4 contract, financial derivatives contract, and any
5 similar transaction that the Board determines,
6 by rule or order, to be a financial transaction
7 for purposes of this subtitle.

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

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

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

20 (13) SUPERVISORY AGENCY.—The term “Su-
21 pervisory Agency” means the Federal agency that
22 has primary jurisdiction over an identified financial
23 market utility under Federal banking, securities, or
24 commodity futures laws, including—

1 (A) the Securities and Exchange Commis-
2 sion, with respect to an identified financial mar-
3 ket utility that is a clearing agency registered
4 with the Securities and Exchange Commission;

5 (B) the Commodity Futures Trading Com-
6 mission, with respect to an identified financial
7 market utility that is a derivatives clearing or-
8 ganization registered with the Commodity Fu-
9 tures Trading Commission;

10 (C) the Board of Directors of the Corpora-
11 tion, with respect to an identified financial mar-
12 ket utility that is—

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

16 (ii) after the functions of the Director
17 of the Office of Thrift Supervision are
18 transferred under subtitle C, a State sav-
19 ings association;

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

23 (i) a national bank or a Federal
24 branch (other than an insured branch) or
25 a Federal agency of a foreign bank; and

1 (ii) after the functions of the Director
2 of the Office of Thrift Supervision are
3 transferred under subtitle C, a Federal
4 savings association;

5 (E) the Board, with respect to an identi-
6 fied financial market utility that is—

7 (i) a State member bank;

8 (ii) a branch or agency of a foreign
9 bank (other than any Federal branch, Fed-
10 eral agency, or insured State branch of a
11 foreign bank);

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

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

17 (v) a bank holding company and any
18 non-depository subsidiary of a bank hold-
19 ing company (other than any broker, deal-
20 er, investment company, or investment ad-
21 viser registered with the Securities and Ex-
22 change Commission, or any futures com-
23 mission merchant, commodity trading advi-
24 sor, or commodity pool operator registered

1 with the Commodity Futures Trading
2 Commission); and

3 (vi) after the functions of the Director
4 of the Office of Thrift Supervision are
5 transferred under subtitle C, any savings
6 and loan holding company and any non-de-
7 pository subsidiary of a savings and loan
8 holding company (other than any broker,
9 dealer, investment company, or investment
10 adviser registered with the Securities and
11 Exchange Commission, or any futures
12 commission merchant, commodity trading
13 advisor, or commodity pool operator reg-
14 istered with the Commodity Futures Trad-
15 ing Commission); and

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

22 If a financial market utility is subject to supervision
23 by more than one agency listed in paragraphs (A)
24 through (F), and those agencies cannot agree which
25 has primary jurisdiction, the Council shall decide

1 which agency is the Supervisory Agency for purposes
2 of this subtitle.

3 (14) SYSTEMICALLY IMPORTANT AND SYSTEMIC
4 IMPORTANCE.—The terms “systemically important”
5 and “systemic importance” mean a situation in
6 which the failure of or a disruption to the func-
7 tioning of a financial market utility or the conduct
8 of a payment, clearing, or settlement activity could
9 create, or increase, the risk of significant liquidity,
10 credit, or other problems spreading among financial
11 institutions or markets and thereby threaten the sta-
12 bility of the financial system.

13 **SEC. 1404. IDENTIFICATION OF SYSTEMICALLY IMPORTANT**
14 **FINANCIAL MARKET UTILITIES AND PAY-**
15 **MENT, CLEARING, AND SETTLEMENT ACTIVI-**
16 **TIES.**

17 (a) IN GENERAL.—The Council shall, at its own ini-
18 tiative or at the request of the Board, consider whether
19 to identify a financial market utility or a payment, clear-
20 ing, or settlement activity as systemically important.

21 (b) CRITERIA FOR IDENTIFICATION.—The Council
22 shall identify a financial market utility or payment, clear-
23 ing, or settlement activity if the Council determines that
24 such financial market utility or activity is, or is likely to

1 become, systemically important, based on consideration of
2 the following:

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

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

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

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

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

21 (c) PERIODIC REVIEW AND RESCISSION OF IDENTI-
22 FICATIONS.—The Council shall, at its own initiative or at
23 the request of the Board—

1 (1) review periodically whether a financial mar-
2 ket utility or a payment, clearing, or settlement ac-
3 tivity continues to be systemically important; and

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

7 (d) PROCEDURE FOR IDENTIFYING OR RESCINDING
8 A SYSTEMICALLY IMPORTANT IDENTIFICATION.—

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

15 (2) NOTICE AND OPPORTUNITY FOR CONSIDER-
16 ATION OF WRITTEN MATERIALS.—

17 (A) IN GENERAL.—The Board shall, in an
18 executive capacity on behalf of the Council, pro-
19 vide notice to a financial market utility or, in
20 the case of a payment, clearing, or settlement
21 activity, financial institutions, that the Council
22 is considering whether to identify or cease to
23 identify such financial market utility or such
24 payment, clearing, or settlement activity, in-
25 cluding an explanation of the basis of the Coun-

1 cil’s consideration, and provide such financial
2 market utilities or financial institutions 30 days
3 to submit written materials to inform the Coun-
4 cil’s decision. The Council shall make its deci-
5 sion, and the Board shall notify the financial
6 market utility or financial institutions of the
7 Council’s decision, within 60 days of the due
8 date for such written materials.

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

24 (3) FORM OF NOTIFICATION.—The Board shall,
25 in an executive capacity on behalf of the Council,

1 provide notice of a decision under this section re-
2 garding—

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

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

9 **SEC. 1405. STANDARDS FOR SYSTEMICALLY IMPORTANT FI-**
10 **NANCIAL MARKET UTILITIES AND PAYMENT,**
11 **CLEARING, OR SETTLEMENT ACTIVITIES.**

12 (a) BOARD REQUIREMENT TO PRESCRIBE STAND-
13 ARDS.—The Board shall, by regulation or order and in
14 consultation with the Council and relevant supervisory
15 agencies, prescribe or issue risk management standards
16 governing the operations of identified financial market
17 utilities and the conduct of identified activities by financial
18 institutions, taking into consideration relevant inter-
19 national standards and existing prudential requirements
20 applicable to such financial market utilities and payment,
21 clearing, or settlement activities.

22 (b) OBJECTIVES AND PRINCIPLES.—The objectives
23 and principles for the risk management standards pre-
24 scribed under subsection (a) shall be to—

25 (1) promote robust risk management;

- 1 (2) promote safety and soundness;
- 2 (3) reduce systemic risks; and
- 3 (4) support the stability of the broader financial
- 4 system.

5 (c) SCOPE.—

6 (1) IN GENERAL.—The standards prescribed
7 under subsection (a) may address areas such as risk
8 management policies and procedures; margin and
9 collateral requirements; participant or counterparty
10 default policies and procedures; the ability to com-
11 plete timely clearing and settlement of financial
12 transactions; capital and financial resource require-
13 ments for identified financial market utilities; and
14 other areas that the Board determines, by rule or
15 order, are necessary to achieve the objectives and
16 principles in subsection (b).

17 (2) INTERACTION WITH EXISTING STAND-
18 ARDS.—The standards prescribed under this section
19 may—

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

23 (B) may address subject areas that are not
24 covered by existing regulations.

1 (3) THRESHOLD LEVEL.—The standards pre-
2 scribed under subsection (a) governing the conduct
3 of identified activities shall, where appropriate, es-
4 tablish a threshold as to the level or significance of
5 engagement in the activity at which a financial insti-
6 tution will become subject to the standards with re-
7 spect to that activity.

8 (4) CATEGORIZATION AND TIERING.—In pre-
9 scribing or issuing standards under subsection (a)
10 governing the conduct of identified activities and the
11 operations of identified financial market utilities, the
12 Board shall, where appropriate, differentiate among
13 identified financial market utilities and identified ac-
14 tivities by taking into consideration their risk, com-
15 plexity, leverage, frequency and dollar amount, inter-
16 connectedness to the financial system, and any other
17 factors the Board deems appropriate.

18 (d) COMPLIANCE REQUIRED.—Identified financial
19 market utilities and financial institutions engaged in iden-
20 tified activities shall conduct their operations in compli-
21 ance with the applicable risk management standards pre-
22 scribed by the Board.

1 **SEC. 1406. OPERATIONS AND CHANGES TO RULES, PROCE-**
2 **DURES, OR OPERATIONS OF IDENTIFIED FI-**
3 **NANCIAL MARKET UTILITIES.**

4 (a) REFERENCE.—For purposes of paragraphs (b)
5 and (c), all references to the phrase “Supervisory Agency
6 or the Board” mean “Supervisory Agency or, in the ab-
7 sence of a Supervisory Agency, the Board”.

8 (b) ADVANCE NOTICE OF PROPOSED CHANGES.—

9 (1) ADVANCE NOTICE REQUIRED.—Subject to
10 subsection (c), an identified financial market utility
11 shall provide at least 60 days advance notice to the
12 Supervisory Agency or the Board of any proposed
13 change to its rules, procedures, or operations that
14 could, as defined in rules of the Board, materially
15 affect the nature or level of risks presented by the
16 identified financial market utility.

17 (2) TERMS AND STANDARDS PRESCRIBED BY
18 THE BOARD.—The Board shall prescribe regulations
19 that define and describe the standards for deter-
20 mining when notice is required to be provided under
21 paragraph (1).

22 (3) CONSULTATION AND AVOIDANCE OF DUPLI-
23 CATION.—In prescribing regulations under para-
24 graph (2), the Board shall—

25 (A) consult with the Commodity Futures
26 Trading Commission and the Securities and

1 Exchange Commission regarding the extent to
2 which the regulations of those agencies already
3 require advance notice of rule, procedural, or
4 operational changes; and

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

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

10 (A) the nature of the change;

11 (B) any expected effects on risks to the
12 identified financial market utility, its partici-
13 pants, or the market; and

14 (C) the manner in which the identified fi-
15 nancial market utility plans to manage any
16 identified risks.

17 (5) ADDITIONAL INFORMATION.—The Super-
18 visory Agency or the Board may require an identi-
19 fied financial market utility to provide any informa-
20 tion necessary to assess—

21 (A) the effect the proposed change would
22 have on the nature or level of risks associated
23 with the identified financial market utility's
24 payment, clearing, or settlement activities; and

1 (B) the sufficiency of any proposed risk
2 management techniques.

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

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

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

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

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

22 (A) the date that the Supervisory Agency
23 or the Board receives the notice of proposed
24 change; or

1 (B) the date the Supervisory Agency or the
2 Board receives any further information that the
3 Supervisory Agency or the Board requests for
4 consideration of the notice.

5 (9) REVIEW EXTENSION FOR NOVEL OR COM-
6 PLEX ISSUES.—

7 (A) IN GENERAL.—The Supervisory Agen-
8 cy or the Board may, during the 60-day review
9 period, extend the review period for an addi-
10 tional 60 days for proposed changes that raise
11 novel or complex issues, subject to the Super-
12 visory Agency or the Board providing the iden-
13 tified financial market utility with prompt writ-
14 ten notice of the extension.

15 (B) EXTENSION OF OTHER TIME PERI-
16 ODS.—Any time period referred to under para-
17 graphs (6) and (8) shall be extended by the
18 amount of any extension of time under clause
19 (A).

20 (10) CHANGE ALLOWED EARLIER IF NOTIFIED
21 OF NO OBJECTION.—An identified financial market
22 utility may implement a change in less than 60 days
23 from the date of receipt of the notice of proposed
24 change by the Supervisory Agency or the Board, or

1 the date the Supervisory Agency or the Board re-
2 ceives any further information it requested, if—

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

7 (B) authorizes the identified financial mar-
8 ket utility to implement the change on an ear-
9 lier date, subject to any conditions imposed by
10 the Supervisory Agency or the Board.

11 (c) EMERGENCY CHANGES.—

12 (1) IN GENERAL.—An identified financial mar-
13 ket utility may implement a change that would oth-
14 erwise require advance notice under this subsection
15 if it determines that—

16 (A) an emergency exists; and

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

21 (2) NOTICE REQUIRED WITHIN 24 HOURS.—Any
22 identified financial market utility that implements a
23 change pursuant to a determination under para-
24 graph (1) shall provide notice of such an emergency
25 change to its Supervisory Agency or the Board as

1 soon as practicable, which shall be no later than 24
2 hours after implementation of the change.

3 (3) CONTENTS OF EMERGENCY NOTICE.—In
4 addition to the information required under sub-
5 section (b) for any change requiring an advance no-
6 tice, the notice under paragraph (2) of an emergency
7 change must describe—

8 (A) the nature of the emergency; and

9 (B) the reason the change was necessary
10 for the identified financial market utility to con-
11 tinue to provide its services in a safe and sound
12 manner.

13 (4) MODIFICATION OR RESCISSION OF CHANGE
14 MAY BE REQUIRED.—The Supervisory Agency or the
15 Board may require a modification or a rescission of
16 any change of which the Supervisory Agency or the
17 Board receives notice under this subsection if the
18 Supervisory Agency or the Board finds that the
19 change is not consistent with the purposes of this
20 subtitle or any regulations, orders, or standards pre-
21 scribed, issued, or established by the Board here-
22 under.

23 (d) COORDINATION BETWEEN AGENCIES AND THE
24 BOARD.—In the case of an identified financial market

1 utility that has a Supervisory Agency other than the
2 Board, the Supervisory Agency shall—

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

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

10 **SEC. 1407. EXAMINATION OF AND ENFORCEMENT ACTIONS**

11 **AGAINST IDENTIFIED FINANCIAL MARKET**

12 **UTILITIES.**

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

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

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

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

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

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

9 (b) SERVICE PROVIDERS.—

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

21 (c) ENFORCEMENT.—Except as provided in sub-
22 sections (e) and (g), an identified financial market utility
23 shall be subject to the provisions of subsections (b)
24 through (n) of section 8 of the Federal Deposit Insurance
25 Act (12 U.S.C. 1818) in the same manner and to the same

1 extent as if the identified financial market utility were an
2 insured depository institution for which the Supervisory
3 Agency is the appropriate Federal banking agency as de-
4 fined in section 3 of the Federal Deposit Insurance Act
5 (12 U.S.C. 1813).

6 (d) BOARD INVOLVEMENT IN EXAMINATIONS.—

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

12 (2) BOARD PARTICIPATION IN EXAMINATION.—

13 The Board may, in its discretion, participate in any
14 examination led by a Supervisory Agency and con-
15 ducted under subsections (a) and (b).

16 (e) BOARD ENFORCEMENT RECOMMENDATIONS.—

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

23 (2) CONSIDERATION.—The Supervisory Agency
24 shall consider the Board's recommendation and sub-
25 mit a response to the Board within 30 days.

1 (3) MEDIATION.—If the Supervisory Agency re-
2 jects, in whole or in the part, the Board’s rec-
3 ommendation, then the Council shall mediate be-
4 tween the parties and encourage them to reach
5 agreement on whether an enforcement action should
6 be brought, and if so by which agency.

7 (4) ENFORCEMENT ACTION.—If the Super-
8 visory Agency fails to respond to the Board’s rec-
9 ommendation in accordance with paragraph (2), if
10 the Supervisory Agency reaches agreement with the
11 Board that the Board should take an enforcement
12 action, or if the Supervisory Agency rejects the
13 Board’s recommendation and the Council is unable
14 to resolve the dispute under paragraph (3), then the
15 Board may exercise the enforcement authority ref-
16 erenced in subsection (c) as if it were the Super-
17 visory Agency and take enforcement action against
18 the identified financial market utility.

19 (f) IDENTIFIED FINANCIAL MARKET UTILITIES
20 WITHOUT A SUPERVISORY AGENCY.—In the case of an
21 identified financial market utility that is not under the pri-
22 mary jurisdiction of a Supervisory Agency, the Board shall
23 have examination and enforcement authority under sub-
24 sections (a) through (e) with respect to the identified fi-
25 nancial market utility and any service providers in the

1 same manner and to the same extent as if the Board were
2 the Supervisory Agency.

3 (g) EMERGENCY ENFORCEMENT ACTIONS BY THE
4 BOARD.—

5 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—

6 The Board may, after consulting with the Super-
7 visory Agency, take enforcement action against an
8 identified financial market utility if the Board has
9 reasonable cause to believe that—

10 (A) either—

11 (i) an action engaged in, or con-
12 templated by, an identified financial mar-
13 ket utility (including any change proposed
14 by the identified financial market utility to
15 its rules, procedures, or operations that
16 would otherwise be subject to section
17 1406(b) or (c)); or

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

23 (B) the imminent risk of substantial harm
24 precludes the Board's use of the procedures in
25 subsection (e).

1 (2) ENFORCEMENT AUTHORITY.—The Board is
2 authorized to take action under paragraph (1)
3 against an identified financial market utility as if
4 the identified financial market utility were an in-
5 sured depository institution for which the Board is
6 the appropriate Federal banking agency as defined
7 in section 3 of the Federal Deposit Insurance Act
8 (12 U.S.C. 1813).

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

16 **SEC. 1407. EXAMINATION OF AND ENFORCEMENT ACTIONS**
17 **AGAINST IDENTIFIED FINANCIAL MARKET**
18 **UTILITIES.**

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

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

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

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

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

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

16 (b) SERVICE PROVIDERS.—Whenever a service inte-
17 gral to the operation of an identified financial market util-
18 ity is performed for the identified financial market utility
19 by another entity, whether an affiliate or nonaffiliate and
20 whether on or off the premises of the identified financial
21 market utility, the Supervisory Agency may examine
22 whether the provision of that service is in compliance with
23 applicable law, rules, orders, and standards to the same
24 extent as if the identified financial market utility were per-
25 forming the service on its own premises.

1 (c) ENFORCEMENT.—Except as provided in sub-
2 sections (e) and (g), an identified financial market utility
3 shall be subject to the provisions of subsections (b)
4 through (n) of section 8 of the Federal Deposit Insurance
5 Act (12 U.S.C. 1818) in the same manner and to the same
6 extent as if the identified financial market utility were an
7 insured depository institution for which the Supervisory
8 Agency is the appropriate Federal banking agency as de-
9 fined in section 3 of the Federal Deposit Insurance Act
10 (12 U.S.C. 1813).

11 (d) BOARD INVOLVEMENT IN EXAMINATIONS.—

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

17 (2) BOARD PARTICIPATION IN EXAMINATION.—

18 The Board may, in its discretion, participate in any
19 examination led by a Supervisory Agency and con-
20 ducted under subsections (a) and (b).

21 (e) BOARD ENFORCEMENT RECOMMENDATIONS.—

22 (1) RECOMMENDATION.—The Board may at
23 any time recommend to the Supervisory Agency that
24 it take enforcement action against an identified fi-
25 nancial market utility. The recommendation shall be

1 in writing and shall provide a detailed analysis sup-
2 porting the Board's recommendation.

3 (2) CONSIDERATION.—The Supervisory Agency
4 shall consider the Board's recommendation and sub-
5 mit a response to the Board within 30 days.

6 (3) MEDIATION.—If the Supervisory Agency re-
7 jects, in whole or in the part, the Board's rec-
8 ommendation, then the Council shall mediate be-
9 tween the parties and encourage them to reach
10 agreement on whether an enforcement action should
11 be brought, and if so by which agency.

12 (4) ENFORCEMENT ACTION.—If the Super-
13 visory Agency fails to respond to the Board's rec-
14 ommendation in accordance with paragraph (2), if
15 the Supervisory Agency reaches agreement with the
16 Board that the Board should take an enforcement
17 action, or if the Supervisory Agency rejects the
18 Board's recommendation and the Council is unable
19 to resolve the dispute under paragraph (3), then the
20 Board may exercise the enforcement authority ref-
21 erenced in subsection (c) as if it were the Super-
22 visory Agency and take enforcement action against
23 the identified financial market utility.

24 (f) IDENTIFIED FINANCIAL MARKET UTILITIES
25 WITHOUT A SUPERVISORY AGENCY.—In the case of an

1 identified financial market utility that is not under the pri-
2 mary jurisdiction of a Supervisory Agency, the Board shall
3 have examination and enforcement authority under sub-
4 sections (a) through (c) with respect to the identified fi-
5 nancial market utility and any service providers in the
6 same manner and to the same extent as if the Board were
7 the Supervisory Agency.

8 (g) EMERGENCY ENFORCEMENT ACTIONS BY THE
9 BOARD.—

10 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—

11 The Board may, after consulting with the Super-
12 visory Agency, take enforcement action against an
13 identified financial market utility if the Board has
14 reasonable cause to believe that—

15 (A) either—

16 (i) an action engaged in, or con-
17 templated by, an identified financial mar-
18 ket utility (including any change proposed
19 by the identified financial market utility to
20 its rules, procedures, or operations that
21 would otherwise be subject to section
22 1406(b) or (c)); or

23 (ii) the condition of an identified fi-
24 nancial market utility, poses an imminent
25 risk of substantial harm to financial insti-

1 tutions, critical markets, or the broader fi-
2 nancial system; and

3 (B) the imminent risk of substantial harm
4 precludes the Board's use of the procedures in
5 subsection (e).

6 (2) ENFORCEMENT AUTHORITY.—The Board is
7 authorized to take action under paragraph (1)
8 against an identified financial market utility as if
9 the identified financial market utility were an in-
10 sured depository institution for which the Board is
11 the appropriate Federal banking agency as defined
12 in section 3 of the Federal Deposit Insurance Act
13 (12 U.S.C. 1813).

14 (3) PROMPT NOTICE TO SUPERVISORY AGENCY
15 OF ENFORCEMENT ACTION.—Within 24 hours of
16 taking an enforcement action under this subsection,
17 the Board shall provide written notice to the identi-
18 fied financial market utility's Supervisory Agency
19 containing a detailed analysis of the Board's action,
20 with supporting documentation included.

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

24 (a) EXAMINATION.—The appropriate financial regu-
25 lator shall periodically conduct examinations of a financial

1 institution that is subject to the standards prescribed by
2 the Board for an identified activity in order to inform the
3 appropriate financial regulator of the following:

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

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

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

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

18 (5) the financial institution's compliance with
19 this subtitle and the rules and orders prescribed by
20 the Board under this subtitle.

21 (b) ENFORCEMENT.—The appropriate financial regu-
22 lator shall take such actions that it deems necessary to
23 ensure that a financial institution that is subject to the
24 standards prescribed by the Board for an identified activ-

1 ity complies with this subtitle and the rules and orders
2 prescribed by the Board under this subtitle.

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

9 (d) DELEGATION.—

10 (1) EXAMINATION.—

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

20 (B) EXAMINATION BY BOARD.—Upon re-
21 ceipt of an appropriate written request, the
22 Board will conduct the examination under such
23 terms and conditions to which the Board and
24 the appropriate financial regulator mutually
25 agree.

1 (2) ENFORCEMENT.—

2 (A) REQUEST TO BOARD.—An appropriate
3 financial regulator may request the Board to
4 enforce this subtitle or the rules or orders pre-
5 scribed by the Board under this subtitle against
6 a financial institution subject to the standards
7 prescribed by the Board for an identified activ-
8 ity.

9 (B) ENFORCEMENT BY BOARD.—Upon re-
10 ceipt of an appropriate written request, the
11 Board shall—

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

14 (ii) if so, it shall enforce compliance
15 with this subtitle or the rules or orders
16 prescribed by the Board under this sub-
17 title.

18 (C) ENFORCEMENT AUTHORITY.—For pur-
19 poses of carrying out subparagraph (B), the
20 Board shall have authority under subsections
21 (b) through (n) of section 8 of the Federal De-
22 posit Insurance Act with respect to a financial
23 institution in the same manner and to the same
24 extent as if the financial institution were an in-
25 sured depository institution for which the Board

1 is the appropriate Federal banking agency (as
2 defined in section 3 of such Act).

3 (e) BACK-UP AUTHORITY OF THE BOARD.—

4 (1) EXAMINATION AND ENFORCEMENT.—Not-
5 withstanding any other provision of law, the Board
6 may—

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

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

16 (2) LIMITATIONS.—

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

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

1 (ii) notified, in writing, the appro-
2 priate financial regulator of its belief under
3 clause (i) with supporting documentation
4 included;

5 (iii) requested the appropriate finan-
6 cial regulator to conduct a prompt exam-
7 ination of the financial institution; and

8 (iv) either—

9 (I) not been afforded a reason-
10 able opportunity to participate in an
11 examination of the financial institu-
12 tion by the appropriate financial regu-
13 lator within 30 days after the date of
14 the Board’s notification under clause
15 (ii); or

16 (II) reasonable cause to believe
17 that the financial institution’s non-
18 compliance with this subtitle or the
19 rules or orders prescribed by the
20 Board under this subtitle poses a sub-
21 stantial risk to other financial institu-
22 tions, critical markets, or the broader
23 financial system, subject to the Board
24 affording the appropriate financial

1 regulator a reasonable opportunity to
2 participate in the examination.

3 (B) ENFORCEMENT.—The Board may ex-
4 ercise the authority described in paragraph
5 (1)(B) only if the Board has—

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

11 (ii) notified, in writing, the appro-
12 priate financial regulator of its belief under
13 clause (i) with supporting documentation
14 included and with a recommendation that
15 the appropriate financial regulator take
16 one or more specific enforcement actions
17 against the financial institution; and

18 (iii) either—

19 (I) not been notified, in writing,
20 by the appropriate financial regulator
21 of the commencement of an enforce-
22 ment action recommended by the
23 Board against the financial institution
24 within 30 days from the date of the
25 notification under clause (ii); or

1 (II) reasonable cause to believe
2 that the financial institution's non-
3 compliance with this subtitle or the
4 rules or orders prescribed by the
5 Board under this subtitle poses a sub-
6 stantial risk to other financial institu-
7 tions, critical markets, or the broader
8 financial system, subject to the Board
9 notifying the appropriate financial
10 regulator of the Board's enforcement
11 action.

12 (3) ENFORCEMENT PROVISIONS.—The Board
13 shall have authority under subsections (b) through
14 (n) of section 8 of the Federal Deposit Insurance
15 Act (12 U.S.C. 1818) with respect to a financial in-
16 stitution subject to the standards prescribed by the
17 Board for an identified activity in the same manner
18 and to the same extent as if the financial institution
19 were an insured depository institution for which the
20 Board is the appropriate Federal banking agency (as
21 defined in section 3 of such Act).

22 **SEC. 1409. PROVISION OF INFORMATION, REPORTS, OR**
23 **RECORDS.**

24 (a) INFORMATION TO ASSESS SYSTEMIC IMPOR-
25 TANCE.—

1 (1) FINANCIAL MARKET UTILITIES.—The Coun-
2 cil is authorized to require any financial market util-
3 ity to submit such information as the Council may
4 require for the purpose of assessing whether that fi-
5 nancial market utility is systemically important if
6 the Council has reasonable cause to believe that the
7 financial market utility meets the standards for sys-
8 temic importance set out in section 1404 of this sub-
9 title.

10 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAY-
11 MENT, CLEARING, OR SETTLEMENT ACTIVITIES.—
12 The Council is authorized to require any financial
13 institution to submit such information as the Coun-
14 cil may require for the purpose of assessing whether
15 any payment, clearing, or settlement activity en-
16 gaged in or supported by a financial institution is
17 systemically important if the Council has reasonable
18 cause to believe that the activity meets the standards
19 for systemic importance set out in section 1404 of
20 this subtitle.

21 (b) REPORTING AFTER IDENTIFICATION.—

22 (1) IDENTIFIED FINANCIAL MARKET UTILI-
23 TIES.—The Board may require an identified finan-
24 cial market utility to submit reports or data to the
25 Board in such frequency and form as deemed nec-

1 essary by the Board in order to assess the safety
2 and soundness of the utility and the systemic risk
3 that the utility's operations pose to the financial sys-
4 tem.

5 (2) FINANCIAL INSTITUTIONS SUBJECT TO THE
6 STANDARDS PRESCRIBED BY THE BOARD.—The
7 Board may require 1 or more financial institutions
8 subject to the standards prescribed by the Board for
9 an identified activity to submit, in such frequency
10 and form as deemed necessary by the Board, reports
11 and data to the Board solely with respect to the con-
12 duct of the identified activity and solely to assess
13 whether—

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

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

23 (c) COORDINATION WITH APPROPRIATE FEDERAL
24 SUPERVISORY AGENCY.—

1 (1) ADVANCE COORDINATION.—Before directly
2 requesting any material information from, or impos-
3 ing reporting or recordkeeping requirements on, any
4 financial market utility or any financial institution
5 engaged in a payment, clearing, or settlement activ-
6 ity, the Council and the Board shall coordinate with
7 the Supervisory Agency for a financial market utility
8 or the appropriate financial regulator for a financial
9 institution to determine if the information is avail-
10 able from or may be obtained by the agency in the
11 form, format, or detail required by the Council or
12 the Board.

13 (2) SUPERVISORY REPORTS.—Notwithstanding
14 any other provision of law, the Supervisory Agencies,
15 the appropriate financial regulators, the Council,
16 and the Board are authorized to disclose to each
17 other a copy of the relevant portion of any examina-
18 tion report or similar report regarding any financial
19 market utility or any financial institution engaged in
20 payment, clearing, or settlement activities.

21 (d) TIMING OF RESPONSE FROM APPROPRIATE FED-
22 ERAL SUPERVISORY AGENCY.—If the information, report,
23 records, or data requested by the Council or the Board
24 under subsection (c)(1) are not provided in full by the Su-
25 pervisory Agency or the appropriate financial regulator

1 within 30 days after the date on which the material is
2 requested, the Council or the Board may request the infor-
3 mation or impose recordkeeping or reporting requirements
4 directly on such persons as provided in subsections (a) and
5 (b) with notice to the Supervisory Agency or the appro-
6 priate financial regulator.

7 (e) SHARING OF INFORMATION.—

8 (1) MATERIAL CONCERNS.—Notwithstanding
9 any other provision of law, the Council, the Board,
10 the appropriate financial regulator, and any Super-
11 visory Agency are authorized to—

12 (A) promptly notify each other of material
13 concerns about an identified financial market
14 utility or any financial institution subject to the
15 standards prescribed by the Board for an iden-
16 tified activity; and

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

19 (2) OTHER.—Notwithstanding any other provi-
20 sion of law, the Council or the Board may, under
21 such terms and conditions it deems appropriate and
22 subject to reasonable assurances of confidentiality,
23 provide confidential supervisory information and
24 other information obtained under this subtitle to
25 other persons it deems appropriate, including the

1 Secretary, State financial institution supervisory
2 agencies, foreign financial supervisors, foreign cen-
3 tral banks, and foreign finance ministries.

4 (f) PRIVILEGE MAINTAINED.—The Council, the
5 Board, the appropriate financial regulator, the Super-
6 visory Agency, and any financial market utility or finan-
7 cial institution providing reports or data under this section
8 shall not be deemed to have waived any privilege applicable
9 to those reports or data, or any portion thereof, by pro-
10 viding the reports or data to the other party or by permit-
11 ting the reports or data, or any copies thereof, to be used
12 by the other party.

13 (g) DISCLOSURE EXEMPTION.—

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

21 (2) For purposes of section 552 of title 5,
22 United States Code, this subsection shall be consid-
23 ered a statute described in subsection (b)(3) of sec-
24 tion 552.

1 **SEC. 1410. RULEMAKING.**

2 The Board is authorized to prescribe such rules and
3 issue such orders as may be necessary to administer and
4 carry out the purposes of this subtitle and prevent eva-
5 sions thereof.

6 **SEC. 1411. OTHER AUTHORITY.**

7 The authorities granted to agencies under this sub-
8 title are in addition to any rulemaking, examination, en-
9 forcement, or other authorities that those agencies may
10 have under other law and in no way shall be construed
11 to limit such other authority, except that any standards
12 imposed by the Board under section 1405 shall supersede
13 any less stringent requirements established under other
14 authority to the extent of any conflict.

15 **SEC. 1412. EFFECTIVE DATE.**

16 This subtitle is effective as of the date of enactment.

17 **Subtitle F—Improvements to the**
18 **Asset-backed Securitization**
19 **Process**

20 **SEC. 1501. SHORT TITLE.**

21 This subtitle may be cited as the “Credit Risk Reten-
22 tion Act of 2009”.

23 **SEC. 1502. CREDIT RISK RETENTION.**

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

1 **“SEC. 29. CREDIT RISK RETENTION.**

2 “(a) IN GENERAL.—

3 “(1) INTEREST IN LOANS MADE BY CREDI-
4 TORS.—Within 180 days of the date of the enact-
5 ment of this section, the Federal banking agencies
6 and the Commission shall jointly prescribe regula-
7 tions to require any creditor that makes a loan to
8 retain an economic interest in a material portion of
9 the credit risk of any such loan that the creditor
10 transfers, sells, or conveys to a third party, including
11 for the purpose of including such loan in a pool of
12 loans backing an issuance of asset-backed securities.

13 “(2) INTEREST IN ASSETS BACKING
14 ASSETBACKED SECURITIES.—The Federal banking
15 agencies and the Commission shall prescribe regula-
16 tions to require any securitizer of asset-backed secu-
17 rities that are backed by assets not described in
18 paragraph (1) to retain an economic interest in a
19 material portion of any such asset used to back an
20 issuance of securities.

21 “(b) ALTERNATIVE RISK RETENTION FOR CREDIT
22 SECURITIZERS.—The Federal banking agencies and the
23 Commission may jointly apply the risk retention require-
24 ments of this section to securitizers of loans or particular
25 types of loans in addition to or in substitution for any
26 or all of the requirements that apply to creditors that

1 make such loans or types of loans, if the agencies jointly
2 determine that applying the requirements to such
3 securitizers would—

4 “(1) be consistent with helping to ensure high
5 quality underwriting standards for creditors, taking
6 into account other applicable laws, regulations, and
7 standards; and

8 “(2) facilitate appropriate risk management
9 practices by such creditors, improve access of con-
10 sumers to credit on reasonable terms, or otherwise
11 serve the public interest.

12 “(c) STANDARDS FOR REGULATION.—Regulations
13 prescribed under subsections (a) and (b) shall—

14 “(1) prohibit a creditor or securitizer from di-
15 rectly or indirectly hedging or otherwise transferring
16 the credit risk such creditor or securitizer is required
17 to retain under the regulations;

18 “(2) require a creditor or securitizer to retain
19 10 percent of the credit risk on any loan that is
20 transferred, sold, or conveyed by such creditor or
21 securitized by such securitizer except—

22 “(A) if the Federal banking agencies and
23 the Commission determine the credit under-
24 writing by the creditor or the due diligence by
25 the securitizer meets such standards as the

1 Federal banking agencies and the Commission
2 shall specify, the percentage of risk retention
3 may be less than 10 percent of the credit risk,
4 but in no case less than 5 percent of credit risk;
5 and

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

11 “(3) specify that the credit risk retained must
12 be no less at risk for loss than the average of the
13 credit risk not so retained; and

14 “(4) set the minimum duration of the required
15 risk retention.

16 “(d) EXEMPTIONS AND ADJUSTMENTS.—

17 “(1) IN GENERAL.—The Federal banking agen-
18 cies and the Commission shall have authority to
19 jointly provide exemptions or adjustments to the re-
20 quirements of this section, including exemptions or
21 adjustments relating to the 10 percent risk retention
22 threshold and the hedging prohibition.

23 “(2) APPLICABLE STANDARDS.—Any exemp-
24 tions or adjustments provided under paragraph (1)
25 shall—

1 “(A) be consistent with the purpose of en-
2 suring high quality underwriting standards for
3 creditors, taking into account other applicable
4 laws, regulations, or standards; and

5 “(B) facilitate appropriate risk manage-
6 ment practices by such creditors, improve ac-
7 cess for consumers to credit on reasonable
8 terms, or otherwise serve the public interest.

9 “(e) ENFORCEMENT.—

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

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

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

18 “(ii) member banks of the Federal
19 Reserve System (other than national
20 banks), branches and agencies of foreign
21 banks (other than Federal branches, Fed-
22 eral agencies, and insured State branches
23 of foreign banks), commercial lending com-
24 panies owned or controlled by foreign
25 banks, and organizations operating under

1 section 25 or 25(a) of the Federal Reserve
2 Act (12 U.S.C. 601 et seq., 611 et seq.),
3 bank holding companies, and subsidiaries
4 of bank holding companies (other than in-
5 sured depository institutions), by the
6 Board; and

7 “(iii) banks insured by the Federal
8 Deposit Insurance Corporation (other than
9 members of the Federal Reserve System)
10 and insured State branches of foreign
11 banks, by the Board of Directors of the
12 Federal Deposit Insurance Corporation;

13 “(B) section 8 of the Federal Deposit In-
14 surance Act (12 U.S.C. 1818), by the Director
15 of the Office of Thrift Supervision, in the case
16 of a savings association the deposits of which
17 are insured by the Federal Deposit Insurance
18 Corporation and a savings and loan holding
19 company and to any subsidiary (other than a
20 bank or subsidiary of that bank); and

21 “(C) the Federal Credit Union Act (12
22 U.S.C. 1751 et seq.), by the National Credit
23 Union Administration Board with respect to
24 any Federal credit union.

1 “(2) Except to the extent that enforcement of
2 the requirements imposed under this subchapter is
3 specifically committed to some other Government
4 agency under subparagraph (1), the Commission
5 shall enforce such requirements.

6 “(3) The authority of the Commission under
7 this section shall be in addition to its existing au-
8 thority to enforce the securities laws.

9 “(f) DEFINITIONS.—For purposes of this section:

10 “(1) The term ‘asset-backed security’ has the
11 meaning given such term in section 229.1101(e) of
12 title 17, Code of Federal Regulations, or any suc-
13 cessor thereto.

14 “(2) The term ‘Federal banking agencies’
15 means the Board of Governors of the Federal Re-
16 serve System, the Office of the Comptroller of the
17 Currency, the Office of Thrift Supervision, and the
18 Federal Deposit Insurance Corporation.

19 “(3) The term ‘insured depository institution’
20 has the meaning given such term in section 3(e) of
21 the Federal Deposit Insurance Act (12 U.S.C.
22 1813(e)).

23 “(4) The term ‘securitization vehicle’ means a
24 trust, corporation, partnership, limited liability enti-
25 ty, special purpose entity, or other structure that—

1 “(A) is the issuer, or is created by the
2 issuer, of pass-through certificates, participa-
3 tion certificates, asset-backed securities, or
4 other similar securities backed by a pool of as-
5 sets that includes loans; and

6 “(B) holds such loans.

7 “(5) The term ‘securitizer’ means the person
8 that transfers, conveys, or assigns, or causes the
9 transfer, conveyance, or assignment of, loans, includ-
10 ing through a special purpose vehicle, to any
11 securitization vehicle, excluding any trustee that
12 holds such loans for the benefit of the securitization
13 vehicle.”.

14 **SEC. 1503. PERIODIC AND OTHER REPORTING UNDER THE**
15 **SECURITIES EXCHANGE ACT OF 1934 FOR**
16 **ASSET-BACKED SECURITIES.**

17 Section 15(d) of Securities Exchange Act of 1934 (15
18 U.S.C. 78o(d)) is amended—

19 (1) by inserting “, other than securities of any
20 class of asset-backed security (as defined in section
21 229.1101(e) of title 17, Code of Federal Regula-
22 tions, or any successor thereto),” after “securities of
23 each class”;

24 (2) by inserting at the end the following: “The
25 Commission may by rules and regulations provide

1 for the suspension or termination of the duty to file
2 under this subsection for any class of issuer of asset-
3 backed security upon such terms and conditions and
4 for such period or periods as it deems necessary or
5 appropriate in the public interest or for the protec-
6 tion of investors. The Commission may, for the pur-
7 poses of this subsection, classify issuers and pre-
8 scribe requirements appropriate for each class of
9 issuer of asset-backed security.”; and

10 (3) by inserting after the fifth sentence the fol-
11 lowing: “The Commission shall adopt regulations
12 under this subsection requiring each issuer of an
13 asset-backed security to disclose, for each tranche or
14 class of security, information regarding the assets
15 backing that security. In adopting regulations under
16 this subsection, the Commission shall set standards
17 for the format of the data provided by issuers of an
18 asset-backed security, which shall, to the extent fea-
19 sible, facilitate comparison of such data across secu-
20 rities in similar types of asset classes. The Commis-
21 sion shall require issuers of asset-backed securities
22 at a minimum to disclose asset-level or loan-level
23 data necessary for investors to independently per-
24 form due diligence. Asset-level or loan-level data
25 shall include data with unique identifiers relating to

1 loan brokers or originators, the nature and extent of
2 the compensation of the broker or originator of the
3 assets backing the security, and the amount of risk
4 retention of the originator or the securitizer of such
5 assets.”.

6 **SEC. 1504. REPRESENTATIONS AND WARRANTIES IN ASSET-**
7 **BACKED OFFERINGS.**

8 The Commission shall prescribe regulations on the
9 use of representations and warranties in the asset-backed
10 securities market that—

11 (1) require credit rating agencies to include in
12 reports accompanying credit ratings a description of
13 the representations, warranties, and enforcement
14 mechanisms available to investors and how they dif-
15 fer from representations, warranties, and enforce-
16 ment mechanisms in similar issuances; and

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

21 **SEC. 1505. EXEMPTED TRANSACTIONS UNDER THE SECURI-**
22 **TIES ACT OF 1933.**

23 (a) IN GENERAL.—Section 4 of the Securities Act of
24 1933 (15 U.S.C. 77d) is amended—

25 (1) by striking paragraph (5); and

1 ties Exchange Act of 1934 (15 U.S.C.
2 78o(b) (other than an insured depository
3 institution)).

4 (B) RULES OF CONSTRUCTION.—More
5 than 1 agency may be an appropriate Federal
6 regulatory agency with respect to any given fi-
7 nancial company. In such instances, the Com-
8 mission shall be the appropriate Federal regu-
9 latory agency for purposes of section 1603 if
10 the largest subsidiary of the financial company
11 is a broker or dealer as measured by total as-
12 sets as of the end of the previous calendar
13 quarter, and otherwise the Corporation shall be
14 the appropriate Federal regulatory agency for
15 purposes of section 1603.

16 (2) BRIDGE FINANCIAL COMPANY.—The term
17 “bridge financial company” means a new financial
18 company organized in accordance with section
19 1609(h) by the Corporation.

20 (3) COMMISSION.—The term “Commission”
21 means the Securities and Exchange Commission.

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

24 (5) COVERED FINANCIAL COMPANY.—The term
25 “covered financial company” means a financial com-

1 pany for which a determination has been made pur-
2 suant to and in accordance with section 1603(b).

3 (6) COVERED SUBSIDIARY.—The term “covered
4 subsidiary” means a subsidiary covered in paragraph
5 (9)(B)(iv) of this section.

6 (7) CUSTOMER PROPERTY.—The term “cus-
7 tomer property” has the meaning ascribed to it in
8 the Securities Investor Protection Act of 1970.

9 (8) FEDERAL RESERVE BOARD.—The term
10 “Federal Reserve Board” means the Board of Gov-
11 ernors of the Federal Reserve System.

12 (9) FINANCIAL COMPANY.—The term “financial
13 company” means any company that—

14 (A) is incorporated or organized under
15 Federal law or the laws of any State; and

16 (B) is—

17 (i) a bank holding company as defined
18 in section 2(a) of the Bank Holding Com-
19 pany Act of 1956 (12 U.S.C. 1841(a));

20 (ii) any identified financial holding
21 company, as defined in section 1000(b)(5),
22 that has been subjected to heightened pru-
23 dential regulation;

24 (iii) any company predominantly en-
25 gaged in activities that are financial in na-

1 ture or incidental thereto for purposes of
2 section 4(k) of the Bank Holding Company
3 Act of 1956 (12 U.S.C. 1843(k)) or that
4 have been identified for heightened pruden-
5 tial standards under section 1106 of this
6 title; or

7 (iv) any subsidiary of companies de-
8 scribed in clauses (i) through (iii) (other
9 than an insured depository institution, any
10 broker or dealer registered with the Com-
11 mission under section 15(b) of the Securi-
12 ties Exchange Act of 1934 (15 U.S.C.
13 78o(b)) that is a member of the Securities
14 Investor Protection Corporation, or an in-
15 surance company).

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

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

24 (12) INSURANCE COMPANY.—The term “insur-
25 ance company” means a domestic insurance com-

1 pany, as that term is defined for purposes of title 11
2 of the United States Code.

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

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

11 (15) CERTAIN OTHER TERMS.—The terms “af-
12 filiate”, “company”, “control”, “deposit”, “deposi-
13 tory institution”, “foreign bank”, “insured deposi-
14 tory institution”, and “subsidiary” have the same
15 meanings as in section 3 of the Federal Deposit In-
16 surance Act (12 U.S.C. 1813).

17 **SEC. 1603. SYSTEMIC RISK DETERMINATION.**

18 (a) WRITTEN RECOMMENDATION OF THE FEDERAL
19 RESERVE BOARD AND THE APPROPRIATE FEDERAL REG-
20 ULATORY AGENCY.—

21 (1) VOTE REQUIRED.—At the request of the
22 Secretary or the Chairman of the Federal Reserve
23 Board or, in cases where an financial company has
24 a broker or dealer as its largest subsidiary as meas-
25 ured by total assets as of the end of the previous

1 calendar quarter, the Commission, the Federal Re-
2 serve Board and the appropriate Federal regulatory
3 agency shall, or on their own initiative the Federal
4 Reserve Board and the appropriate Federal regu-
5 latory agency may, consider whether to make the
6 written recommendation provided for in paragraph
7 (2) with respect to a financial company that is an
8 identified financial holding company, which rec-
9 ommendation shall be made upon a vote of not less
10 than two-thirds of the members of the Federal Re-
11 serve Board then serving and two-thirds of the mem-
12 bers of the board or of the commission then serving
13 of the appropriate Federal regulatory agency, as ap-
14 plicable.

15 (2) RECOMMENDATION REQUIRED.—Any writ-
16 ten recommendations made by the Federal Reserve
17 Board and the appropriate Federal regulatory agen-
18 cy under paragraph (1) shall contain the following:

19 (A) A description of the effect that the de-
20 fault of the identified financial holding company
21 would have on economic conditions or financial
22 stability in the United States.

23 (B) A recommendation regarding the na-
24 ture and the extent of actions that the Board
25 and the appropriate Federal regulatory agency

1 recommend be taken under section 1604 re-
2 garding the identified financial holding com-
3 pany.

4 (b) DETERMINATION BY THE SECRETARY.—Notwith-
5 standing any other provision of Federal law or the law
6 of any State, if, upon the written recommendation of the
7 Federal Reserve Board and the board of directors or com-
8 mission of the appropriate Federal regulatory agency as
9 provided for in subsection (a)(1), the Secretary (in con-
10 sultation with the President) determines that—

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

13 (2) the failure of the identified financial holding
14 company and its resolution under otherwise applica-
15 ble Federal or State law would have serious adverse
16 effects on financial stability or economic conditions
17 in the United States; and

18 (3) any action under section 1604 would avoid
19 or mitigate such adverse effects, taking into consid-
20 eration the effectiveness of the action in mitigating
21 potential adverse effects on the financial system or
22 economic conditions, the cost to the general fund of
23 the Treasury, and the potential to increase moral
24 hazard on the part of creditors, counterparties, and

1 shareholders in the identified financial holding com-
2 pany,
3 then the Secretary must take action under section
4 1604(a), the Corporation must act in accordance with sec-
5 tion 1604(b), and the Corporation may take one or more
6 actions specified in section 1604(c) in accordance with the
7 requirements of that subsection.

8 (c) DOCUMENTATION AND REVIEW.—

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

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

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

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

18 (A) the basis for the determination;

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

21 (C) the likely effect of the determination
22 and such action on the incentives and conduct
23 of identified financial holding companies and
24 their creditors, counterparties, and share-
25 holders.

1 (3) REPORT TO CONGRESS.—Within 30 days
2 after a determination is made under subsection (b),
3 the Secretary shall provide written notice of the de-
4 termination to the Committee on Banking, Housing,
5 and Urban Affairs of the Senate and the Committee
6 on Financial Services of the House of Representa-
7 tives. The notice shall include a description of the
8 basis for the determination.

9 (d) DEFAULT OR IN DANGER OF DEFAULT.—For
10 purposes of subsection (b), an identified financial holding
11 company shall be considered to be in default or in danger
12 of default if any of the following conditions exist, as deter-
13 mined in accordance with that subsection:

14 (1) A case has been, or likely will promptly be,
15 commenced with respect to the identified financial
16 holding company under title 11, United States Code.

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

20 (3) The identified financial holding company
21 has incurred, or is likely to incur, losses that will de-
22 plete all or substantially all of its capital, and there
23 is no reasonable prospect for the company to avoid
24 such depletion without assistance under section
25 1604.

1 (4) The identified financial holding company's
2 assets are, or are likely to be, less than its obliga-
3 tions to creditors and others.

4 (5) The identified financial holding company is,
5 or is likely to be, unable to pay its obligations (other
6 than those subject to a bona fide dispute) in the nor-
7 mal course of business.

8 **SEC. 1604. RESOLUTION; STABILIZATION.**

9 (a) APPOINTMENT OF RECEIVER.—Upon the Sec-
10 retary making a determination in accordance with section
11 1603(b), the Secretary shall appoint the Corporation as
12 receiver or qualified receiver for the covered financial com-
13 pany. There shall be a strong presumption that the Sec-
14 retary will appoint the Corporation as receiver. The pre-
15 sumption may be overcome only if the Secretary, the Fed-
16 eral Reserve Board, and the Corporation agree that the
17 appointment of a qualified receiver is necessary to avoid
18 or mitigate serious adverse effects on financial stability.

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

21 (1) shall consult with the regulators of the cov-
22 ered financial company and its covered subsidiaries
23 for purposes of ensuring an orderly resolution of the
24 covered financial company;

1 (2) may consult with, or under section
2 1609(a)(1)(B)(v) or section 1609(a)(1)(K) acquire
3 services of, any outside experts as appropriate to in-
4 form and aid the Corporation in the resolution proc-
5 ess; and

6 (3) shall consult with the primary regulators of
7 any subsidiaries of the covered financial company
8 that are not covered subsidiaries as described in sec-
9 tion 1602(9)(B)(iv) and coordinate with such regu-
10 lators regarding the treatment of such solvent sub-
11 sidiaries and the separate resolution of any such in-
12 solvent subsidiaries under other governmental au-
13 thority, as appropriate.

14 (c) EMERGENCY STABILIZATION AFTER APPOINT-
15 MENT OF RECEIVER OR QUALIFIED RECEIVER.—Upon
16 the Secretary appointing the Corporation as receiver or
17 qualified receiver under subsection (a), the Corporation
18 may, in its corporate capacity and as an agency of the
19 United States, with the approval of the Secretary and sub-
20 ject to the conditions in subsections (d) through (e), take
21 the following actions under such terms and conditions that
22 the Corporation and the Secretary jointly deem appro-
23 priate:

1 (1) Making loans to, or purchasing any debt ob-
2 ligation of, the covered financial company or any
3 covered subsidiary.

4 (2) Purchasing assets of the covered financial
5 company or any covered subsidiary directly or
6 through an entity established by the Corporation for
7 such purpose.

8 (3) Assuming or guaranteeing the obligations of
9 the covered financial company or any covered sub-
10 sidiary to one or more third parties.

11 (4) Acquiring any type of equity interest or se-
12 curity of the covered financial company or any cov-
13 ered subsidiary.

14 (5) Taking a lien on any or all assets of the
15 covered financial company or any covered subsidiary,
16 including a first priority lien on all unencumbered
17 assets of the company or any covered subsidiary to
18 secure repayment of any transactions conducted
19 under this subsection.

20 (6) Selling or transferring all, or any part
21 thereof, of such acquired assets, liabilities, obliga-
22 tions, equity interests or securities of the covered fi-
23 nancial company or any covered subsidiary.

24 (d) MANDATORY TERMS AND CONDITIONS FOR ALL
25 STABILIZATION ACTIONS.—The Corporation as receiver or

1 qualified receiver is authorized to take the stabilization ac-
2 tions listed in subsection (c) only if—

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

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

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

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

19 (e) RECOUPMENT OF FUNDS EXPENDED FOR SYS-
20 TEMIC STABILIZATION PURPOSES.—Amounts expended
21 from the Fund by the Corporation under this section shall
22 be repaid in full to the Fund from the following sources:

23 (1) RESOLUTION PROCESS.—Amounts attrib-
24 utable to—

1 (A) the proceeds of the sale of, or income
2 from, the assets of the covered financial com-
3 pany; and

4 (B) the proceeds of the transfer of any se-
5 curities obtained under subsection (c).

6 (2) **INDUSTRY ASSESSMENTS.**—If the sources
7 described in paragraph (1) are insufficient to repay
8 the amount of the stabilization action in full, the dif-
9 ference shall be recouped through assessments on fi-
10 nancial companies in accordance with section
11 1609(o).

12 **SEC. 1605. JUDICIAL REVIEW.**

13 If a receiver or qualified receiver is appointed, the
14 covered financial company may, not later than 30 days
15 thereafter, bring an action in the United States district
16 court for the judicial district in which the home office of
17 such covered financial company is located, or in the United
18 States District Court for the District of Columbia, for an
19 order requiring that the receiver or qualified receiver be
20 removed, and the court shall, upon the merits, dismiss
21 such action or direct the receiver or qualified receiver to
22 be removed. Review of such an action shall be limited to
23 the appointment of a receiver or qualified receiver under
24 section 1604.

1 **SEC. 1606. DIRECTORS NOT LIABLE FOR ACQUIESCING IN**
2 **APPOINTMENT OF RECEIVER OR QUALIFIED**
3 **RECEIVER.**

4 The members of the board of directors (or body per-
5 forming similar functions) of a covered financial company
6 shall not be liable to the covered financial company's
7 shareholders or creditors for acquiescing in or consenting
8 in good faith to—

9 (1) the Secretary's appointment of the Corpora-
10 tion as receiver or qualified receiver for the covered
11 financial company under section 1604; or

12 (2) an acquisition, combination, or transfer of
13 assets or liabilities under section 1609.

14 **SEC. 1607. TERMINATION AND EXCLUSION OF OTHER AC-**
15 **TIONS.**

16 The Corporation's acting as receiver or qualified re-
17 ceiver for a covered financial company under this title
18 shall immediately, and by operation of law, terminate any
19 case commenced with respect to the covered financial com-
20 pany under title 11, United States Code, or any pro-
21 ceeding under any State insolvency law with respect to the
22 covered financial company, and no such case or proceeding
23 may be commenced with respect to the covered financial
24 company at any time while the Corporation acts as re-
25 ceiver or qualified receiver for the covered financial com-
26 pany.

1 **SEC. 1608. RULEMAKING.**

2 The Corporation may prescribe such rules or regula-
3 tions it considers necessary or appropriate to implement
4 the provisions of this title.

5 **SEC. 1609 POWERS AND DUTIES OF CORPORATION.**

6 (a) POWERS AND AUTHORITIES.—

7 (1) GENERAL POWERS.—

8 (A) SUCCESSOR TO COVERED FINANCIAL
9 COMPANY.—The Corporation shall, upon ap-
10 pointment as receiver or qualified receiver for a
11 covered financial company under section 1604,
12 and by operation of law, succeed to—

13 (i) all rights, titles, powers, and privi-
14 leges of the covered financial company, and
15 of any stockholder, member, officer, or di-
16 rector of such institution with respect to
17 the covered financial company and the as-
18 sets of the covered financial company; and

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

23 (B) OPERATE THE COVERED FINANCIAL
24 COMPANY.—The Corporation as receiver or
25 qualified receiver for a covered financial com-
26 pany may—

1 (i) take over the assets of and operate
2 the covered financial company with all the
3 powers of the members or shareholders,
4 the directors, and the officers of the cov-
5 ered financial company and conduct all
6 business of the covered financial company;

7 (ii) collect all obligations and money
8 due the covered financial company;

9 (iii) perform all functions of the cov-
10 ered financial company in the name of the
11 covered financial company;

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

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

19 (C) FUNCTIONS OF COVERED FINANCIAL
20 COMPANY'S OFFICERS, DIRECTORS, AND SHARE-
21 HOLDERS.—

22 (i) IN GENERAL.—The Corporation
23 may provide for the exercise of any func-
24 tion by any member or stockholder, direc-
25 tor, or officer of any covered financial com-

1 pany for which the Corporation has been
2 appointed as receiver or qualified receiver
3 under this section.

4 (ii) PRESUMPTION.—There shall be a
5 strong presumption that the Corporation,
6 as receive or qualified receiver, will remove
7 management responsible for the failed con-
8 dition of the covered financial company (if
9 such management has not already been re-
10 moved at the time the Corporation is ap-
11 pointed as receiver or qualified receiver).

12 (D) POWERS OF AND DURATION AS QUALI-
13 FIED RECEIVER.—

14 (i) IN GENERAL.—The Corporation
15 may, as qualified receiver, and subject to
16 all legally enforceable and perfected secu-
17 rity interests in the assets of the covered
18 financial company, take such action as
19 may be—

20 (I) necessary to put the covered
21 financial company in a sound and sol-
22 vent condition; and

23 (II) appropriate to carry on the
24 business of the covered financial com-
25 pany and preserve and conserve the

1 assets and property of the covered fi-
2 nancial company.

3 (ii) DURATION.—The status of the
4 Corporation as qualified receiver shall ter-
5 minate at the end of the 2-year period fol-
6 lowing the date of its appointment as
7 qualified receiver, unless the Corporation,
8 with the approval of the Secretary and the
9 Federal Reserve Board, terminates the
10 qualified receivership before the end of the
11 2-year period. At the end of the two-year
12 period, the qualified receivership shall be-
13 come a receivership with the Corporation
14 as receiver.

15 (iii) EXTENSION OF QUALIFIED RE-
16 CEIVERSHIP.—The Corporation may, with
17 the approval of the Secretary and the Fed-
18 eral Reserve Board, extend the qualified
19 receivership for 3 additional 1-year periods
20 beyond the initial two-year period if nec-
21 essary to promote financial stability.

22 (E) ADDITIONAL POWERS AS RECEIVER.—
23 The Corporation may, as receiver, and subject
24 to all legally enforceable and perfected security
25 interests, place the covered financial company

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

9 (F) ORGANIZATION OF NEW COMPANIES.—

10 The Corporation as receiver may organize a
11 bridge financial company under subsection (h).

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

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

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

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

1 (ii) FEDERAL AGENCY APPROVAL;
2 ANTITRUST REVIEW.—

3 (I) IN GENERAL.—If a trans-
4 action described in clause (i) requires
5 approval by a Federal agency, the
6 transaction may not be consummated
7 before the 5th calendar day after the
8 date of approval by the Federal agen-
9 cy responsible for such approval with
10 respect thereto. If, in connection with
11 any such approval, a report on com-
12 petitive factors is required, the Fed-
13 eral agency responsible for such ap-
14 proval shall promptly notify the Attor-
15 ney General of the proposed trans-
16 action and the Attorney General shall
17 provide the required report within 10
18 days of the request. If a filing is re-
19 quired under the Hart Scott-Rodino
20 Antitrust Improvements Act of 1976
21 with the Department of Justice or the
22 Federal Trade Commission, the wait-
23 ing period shall expire not later than
24 the 30th day following such filing not-
25 withstanding any other provision of

1 Federal law or any attempt by any
2 Federal agency to extend such waiting
3 period, and no further request for in-
4 formation by any Federal agency shall
5 be permitted.

6 (II) EMERGENCY.—If the Sec-
7 retary in consultation with the Chair-
8 man of the Federal Reserve Board
9 has found that the Corporation must
10 act immediately to prevent the prob-
11 able failure of 1 or more of the cov-
12 ered financial companies involved, the
13 approvals and filings referred to in
14 subclause (I) shall not be required
15 and the transactions may be con-
16 summated immediately by the Cor-
17 poration.

18 (H) PAYMENT OF VALID OBLIGATIONS.—

19 The Corporation, as receiver or qualified re-
20 ceiver, shall, to the extent funds are available,
21 pay all valid obligations of the covered financial
22 company that are due and payable at the time
23 of the appointment of the Corporation as re-
24 ceiver or qualified receiver in accordance with
25 the prescriptions and limitations of this title.

1 (I) SUBPOENA AUTHORITY.—

2 (i) IN GENERAL.—The Corporation
3 may, for purposes of carrying out any
4 power, authority, or duty with respect to a
5 covered financial company (including deter-
6 mining any claim against the covered fi-
7 nancial company and determining and real-
8 izing upon any asset of any person in the
9 course of collecting money due the covered
10 financial company), exercise any power es-
11 tablished under section 8(n) of the Federal
12 Deposit Insurance Act as if the covered fi-
13 nancial company were an insured deposi-
14 tory institution.

15 (ii) RULE OF CONSTRUCTION.—This
16 section shall not be construed as limiting
17 any rights that the Corporation, in any ca-
18 pacity, might otherwise have to exercise
19 any powers described in clause (i) under
20 any other provision of law.

21 (J) INCIDENTAL POWERS.—The Corpora-
22 tion, as receiver or qualified receiver, may—

23 (i) exercise all powers and authorities
24 specifically granted to receivers or qualified
25 receivers under this section and such inci-

1 dental powers as shall be necessary to
2 carry out such powers; and

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

9 (K) UTILIZATION OF PRIVATE SECTOR.—

10 In carrying out its responsibilities in the man-
11 agement and disposition of assets from a cov-
12 ered financial company, the Corporation, as re-
13 ceiver or qualified receiver, may utilize the serv-
14 ices of private persons, including real estate and
15 loan portfolio asset management, property man-
16 agement, auction marketing, legal, and broker-
17 age services, if such services are available in the
18 private sector and the Corporation determines
19 utilization of such services is practicable, effi-
20 cient, and cost effective.

21 (L) SHAREHOLDERS AND CREDITORS OF
22 COVERED FINANCIAL COMPANY.—Notwith-
23 standing any other provision of law, the Cor-
24 poration as receiver or qualified receiver for a
25 covered financial company pursuant to this sec-

1 tion and its succession, by operation of law, to
2 the rights, titles, powers, and privileges de-
3 scribed in subparagraph (A) shall terminate all
4 rights and claims that the stockholders and
5 creditors of the covered financial company may
6 have against the assets of the covered financial
7 company or the Corporation arising out of their
8 status as stockholders or creditors, except for
9 their right to payment, resolution, or other sat-
10 isfaction of their claims, as permitted under
11 this section. The Corporation shall ensure that
12 shareholders and unsecured creditors bear
13 losses, consistent with the priority of claims
14 provisions in section 1609(b).

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

23 (2) AUTHORITY OF CORPORATION TO DETER-
24 MINE CLAIMS.—

1 (A) IN GENERAL.—The Corporation may,
2 as receiver, determine claims in accordance with
3 the requirements of this subsection and regula-
4 tions prescribed under paragraph (3).

5 (B) NOTICE REQUIREMENTS.—The re-
6 ceiver, in any case involving the liquidation or
7 winding up of the affairs of a covered financial
8 company, shall—

9 (i) promptly publish a notice to the
10 covered financial company’s creditors to
11 present their claims, together with proof,
12 to the receiver by a date specified in the
13 notice which shall be not less than 90 days
14 after the publication of such notice; and

15 (ii) republish such notice approxi-
16 mately 1 month and 2 months, respec-
17 tively, after the publication under clause
18 (i).

19 (C) MAILING REQUIRED.—The receiver
20 shall mail a notice similar to the notice pub-
21 lished under subparagraph (B)(i) at the time of
22 such publication to any creditor shown on the
23 covered financial company’s books—

24 (i) at the creditor’s last address ap-
25 pearing in such books; or

1 (ii) upon discovery of the name and
2 address of a claimant not appearing on the
3 covered financial company's books, within
4 30 days after the discovery of such name
5 and address.

6 (3) RULEMAKING AUTHORITY RELATING TO DE-
7 TERMINATION OF CLAIMS.—

8 (A) IN GENERAL.—Subject to subsection
9 (b), the Corporation shall prescribe rules and
10 regulations regarding the allowance or disallow-
11 ance of claims by the Corporation and providing
12 for administrative determination of claims and
13 review of such determination.

14 (B) EXISTING RULES.—The Corporation
15 may elect to use the regulations adopted pursu-
16 ant to the provisions of section 11 of the Fed-
17 eral Deposit Insurance Act with respect to the
18 determination of claims for a covered financial
19 company as if the covered financial company
20 were an insured depository institution.

21 (4) PROCEDURES FOR DETERMINATION OF
22 CLAIMS.—

23 (A) DETERMINATION PERIOD.—

24 (i) IN GENERAL.—Before the end of
25 the 180-day period beginning on the date

1 any claim against a covered financial com-
2 pany is filed with the Corporation as re-
3 ceiver, the Corporation shall determine
4 whether to allow or disallow the claim and
5 shall notify the claimant of any determina-
6 tion with respect to such claim.

7 (ii) EXTENSION OF TIME.—The period
8 described in clause (i) may be extended by
9 a written agreement between the claimant
10 and the Corporation.

11 (iii) MAILING OF NOTICE SUFFI-
12 CIENT.—The requirements of clause (i)
13 shall be deemed to be satisfied if the notice
14 of any determination with respect to any
15 claim is mailed to the last address of the
16 claimant which appears—

17 (I) on the covered financial com-
18 pany's books;

19 (II) in the claim filed by the
20 claimant; or

21 (III) in documents submitted in
22 proof of the claim.

23 (iv) CONTENTS OF NOTICE OF DIS-
24 ALLOWANCE.—If any claim filed under

1 clause (i) is disallowed, the notice to the
2 claimant shall contain—

3 (I) a statement of each reason
4 for the disallowance; and

5 (II) the procedures available for
6 obtaining agency review of the deter-
7 mination to disallow the claim or judi-
8 cial determination of the claim.

9 (B) ALLOWANCE OF PROVEN CLAIM.—The
10 Corporation shall allow any claim received on or
11 before the date specified in the notice published
12 under paragraph (2)(B)(i) by the Corporation
13 from any claimant which is proved to the satis-
14 faction of the Corporation.

15 (C) DISALLOWANCE OF CLAIMS FILED
16 AFTER END OF FILING PERIOD.—

17 (i) IN GENERAL.—Except as provided
18 in clause (ii), claims filed after the date
19 specified in the notice published under
20 paragraph (2)(B)(i) shall be disallowed
21 and such disallowance shall be final.

22 (ii) CERTAIN EXCEPTIONS.—Clause
23 (i) shall not apply with respect to any
24 claim filed by any claimant after the date
25 specified in the notice published under

1 paragraph (2)(B)(i) and such claim may
2 be considered by the receiver if—

3 (I) the claimant did not receive
4 notice of the appointment of the re-
5 ceiver in time to file such claim before
6 such date; and

7 (II) such claim is filed in time to
8 permit payment of such claim.

9 (D) AUTHORITY TO DISALLOW CLAIMS.—

10 (i) IN GENERAL.—The Corporation
11 may disallow any portion of any claim by
12 a creditor or claim of security, preference,
13 or priority which is not proved to the satis-
14 faction of the Corporation.

15 (ii) PAYMENTS TO LESS THAN FULLY
16 SECURED CREDITORS.—In the case of a
17 claim of a creditor against a covered finan-
18 cial company which is secured by any prop-
19 erty or other asset of such covered finan-
20 cial company, the receiver—

21 (I) may treat the portion of such
22 claim which exceeds an amount equal
23 to the fair market value of such prop-
24 erty or other asset as an unsecured

1 claim against the covered financial
2 company; and

3 (II) may not make any payment
4 with respect to such unsecured por-
5 tion of the claim other than in connec-
6 tion with the disposition of all claims
7 of unsecured creditors of the covered
8 financial company.

9 (iii) EXCEPTIONS.—No provision of
10 this paragraph shall apply with respect
11 to—

12 (I) any extension of credit from
13 any Federal Reserve bank, or the Cor-
14 poration, to any covered financial
15 company; or

16 (II) subject to clause (ii), any le-
17 gally enforceable or perfected security
18 interest in the assets of the covered fi-
19 nancial company securing any such
20 extension of credit.

21 (E) NO JUDICIAL REVIEW OF DETERMINA-
22 TION PURSUANT TO SUBPARAGRAPH (D).—No
23 court may review the Corporation determination
24 pursuant to subparagraph (D) to disallow a
25 claim.

1 (F) LEGAL EFFECT OF FILING.—

2 (i) STATUTE OF LIMITATION
3 TOLLED.—For purposes of any applicable
4 statute of limitations, the filing of a claim
5 with the Corporation shall constitute a
6 commencement of an action.

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

14 (5) PROVISION FOR JUDICIAL DETERMINATION
15 OF CLAIMS.—

16 (A) IN GENERAL.—Before the end of the
17 60-day period beginning on the earlier of—

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

1 (ii) the date of any notice of disallow-
2 ance of such claim pursuant to paragraph
3 (4)(A)(i),
4 the claimant may file suit on a claim (or con-
5 tinue an action commenced before the appoint-
6 ment of the receiver) in the district or terri-
7 torial court of the United States for the district
8 within which the covered financial company's
9 principal place of business is located or the
10 United States District Court for the District of
11 Columbia (and such court shall have jurisdic-
12 tion to hear such claim).

13 (B) STATUTE OF LIMITATIONS.—If any
14 claimant fails to file suit on such claim (or con-
15 tinue an action commenced before the appoint-
16 ment of the receiver) before the end of the 60-
17 day period described in subparagraph (A), the
18 claim shall be deemed to be disallowed (other
19 than any portion of such claim which was al-
20 lowed by the receiver) as of the end of such pe-
21 riod, such disallowance shall be final, and the
22 claimant shall have no further rights or rem-
23 edies with respect to such claim.

24 (6) EXPEDITED DETERMINATION OF CLAIMS.—

1 (A) ESTABLISHMENT REQUIRED.—The
2 Corporation shall establish a procedure for ex-
3 pedited relief outside of the routine claims proc-
4 ess established under paragraph (4) for claim-
5 ants who—

6 (i) allege the existence of legally valid
7 and enforceable or perfected security inter-
8 ests in assets of any covered financial com-
9 pany for which the Corporation has been
10 appointed as receiver; and

11 (ii) allege that irreparable injury will
12 occur if the routine claims procedure is fol-
13 lowed.

14 (B) DETERMINATION PERIOD.—Before the
15 end of the 90-day period beginning on the date
16 any claim is filed in accordance with the proce-
17 dures established pursuant to subparagraph
18 (A), the Corporation shall—

19 (i) determine—

20 (I) whether to allow or disallow
21 such claim; or

22 (II) whether such claim should be
23 determined pursuant to the proce-
24 dures established pursuant to para-
25 graph (4); and

1 (ii) notify the claimant of the deter-
2 mination, and if the claim is disallowed,
3 provide a statement of each reason for the
4 disallowance and the procedure for obtain-
5 ing judicial determination.

6 (C) PERIOD FOR FILING OR RENEWING
7 SUIT.—Any claimant who files a request for ex-
8 pedited relief shall be permitted to file a suit,
9 or to continue such a suit filed before the ap-
10 pointment of the Corporation as receiver, seek-
11 ing a determination of the claimant's rights
12 with respect to such security interest after the
13 earlier of—

14 (i) the end of the 90-day period begin-
15 ning on the date of the filing of a request
16 for expedited relief; or

17 (ii) the date the Corporation denies
18 the claim.

19 (D) STATUTE OF LIMITATIONS.—If an ac-
20 tion described in subparagraph (C) is not filed,
21 or the motion to renew a previously filed suit is
22 not made, before the end of the 30-day period
23 beginning on the date on which such action or
24 motion may be filed in accordance with sub-
25 paragraph (B), the claim shall be deemed to be

1 disallowed as of the end of such period (other
2 than any portion of such claim which was al-
3 lowed by the receiver), such disallowance shall
4 be final, and the claimant shall have no further
5 rights or remedies with respect to such claim.

6 (E) LEGAL EFFECT OF FILING.—

7 (i) STATUTE OF LIMITATION
8 TOLLED.—For purposes of any applicable
9 statute of limitations, the filing of a claim
10 with the receiver shall constitute a com-
11 mencement of an action.

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

19 (7) AGREEMENTS AGAINST INTEREST OF THE
20 RECEIVER.—No agreement that tends to diminish or
21 defeat the interest of the Corporation as receiver in
22 any asset acquired by the receiver under this section
23 shall be valid against the receiver unless such agree-
24 ment is in writing and executed by an authorized of-

1 ficer or representative of the covered financial com-
2 pany.

3 (8) PAYMENT OF CLAIMS.—

4 (A) IN GENERAL.—The Corporation as re-
5 ceiver may, in its discretion and to the extent
6 funds are available, pay creditor claims, in such
7 manner and amounts as are authorized under
8 this section, which are—

9 (i) allowed by the receiver;

10 (ii) approved by the Corporation pur-
11 suant to a final determination pursuant to
12 paragraph (6); or

13 (iii) determined by the final judgment
14 of any court of competent jurisdiction.

15 (B) PAYMENT OF DIVIDENDS ON
16 CLAIMS.—The receiver may, in the receiver's
17 sole discretion and to the extent otherwise per-
18 mitted by this section, pay dividends on proven
19 claims at any time, and no liability shall attach
20 to the Corporation (in the Corporation's capac-
21 ity as receiver), by reason of any such payment,
22 for failure to pay dividends to a claimant whose
23 claim is not proved at the time of any such pay-
24 ment.

1 (C) RULEMAKING AUTHORITY OF COR-
2 PORATION.—The Corporation may prescribe
3 such rules, including definitions of terms, as it
4 deems appropriate to establish a single uniform
5 interest rate for, or to make payments of post
6 insolvency interest to creditors holding proven
7 claims against the receivership estates of a cov-
8 ered financial company following satisfaction by
9 the receiver of the principal amount of all cred-
10 itor claims.

11 (9) SUSPENSION OF LEGAL ACTIONS.—

12 (A) IN GENERAL.—After the appointment
13 of the Corporation as receiver or qualified re-
14 ceiver for a covered financial company, the Cor-
15 poration may request a stay for a period not to
16 exceed—

17 (i) 45 days, in the case of any quali-
18 fied receiver; and

19 (ii) 90 days, in the case of any re-
20 ceiver,

21 in any noncriminal judicial action or proceeding
22 to which such covered financial company is or
23 becomes a party.

24 (B) GRANT OF STAY BY ALL COURTS RE-
25 QUIRED.—Upon receipt of a request by the Cor-

1 poration pursuant to subparagraph (A) for a
2 stay of any non-criminal judicial action or pro-
3 ceeding in any court with jurisdiction of such
4 action or proceeding, the court shall grant such
5 stay as to all parties.

6 (10) ADDITIONAL RIGHTS AND DUTIES.—

7 (A) PRIOR FINAL ADJUDICATION.—The
8 Corporation shall abide by any final
9 unappealable judgment of any court of com-
10 petent jurisdiction which was rendered before
11 the appointment of the Corporation as receiver
12 or qualified receiver.

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

17 (i) have all the rights and remedies
18 available to the covered financial company
19 (before the appointment of the receiver or
20 qualified receiver under section 1604) and
21 the Corporation, including but not limited
22 to removal to Federal court and all appel-
23 late rights; and

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

1 (C) NO ATTACHMENT OR EXECUTION.—No
2 attachment or execution may issue by any court
3 upon assets in the possession of the receiver.

4 (D) LIMITATION ON JUDICIAL REVIEW.—
5 Except as otherwise provided in this subsection,
6 no court shall have jurisdiction over—

7 (i) any claim or action for payment
8 from, or any action seeking a determina-
9 tion of rights with respect to, the assets of
10 any covered financial company for which
11 the Corporation has been appointed re-
12 ceiver, including any assets which the Cor-
13 poration may acquire from itself as such
14 receiver; or

15 (ii) any claim relating to any act or
16 omission of such covered financial company
17 or the Corporation as receiver.

18 (E) DISPOSITION OF ASSETS.—In exer-
19 cising any right, power, privilege, or authority
20 as receiver or qualified receiver in connection
21 with any covered financial company for which
22 the Corporation is acting as receiver or quali-
23 fied receiver under this section, the Corporation
24 shall, to the greatest extent practicable, conduct
25 its operations in a manner which—

- 1 (i) maximizes the net present value
2 return from the sale or disposition of such
3 assets;
- 4 (ii) minimizes the amount of any loss
5 realized in the resolution of cases;
- 6 (iii) minimizes the cost to the general
7 fund of the Treasury;
- 8 (iv) mitigates the potential for serious
9 adverse effects to the financial system and
10 the U.S. economy;
- 11 (v) ensures timely and adequate com-
12 petition and fair and consistent treatment
13 of offerors; and
- 14 (vi) prohibits discrimination on the
15 basis of race, sex, or ethnic groups in the
16 solicitation and consideration of offers.

17 (11) STATUTE OF LIMITATIONS FOR ACTIONS
18 BROUGHT BY RECEIVER.—

19 (A) IN GENERAL.—Notwithstanding any
20 provision of any contract, the applicable statute
21 of limitations with regard to any action brought
22 by the Corporation as receiver or qualified re-
23 ceiver shall be—

- 24 (i) in the case of any contract claim,
25 the longer of—

1 (I) the 6-year period beginning
2 on the date the claim accrues; or

3 (II) the period applicable under
4 State law; and

5 (ii) in the case of any tort claim, the
6 longer of—

7 (I) the 3-year period beginning
8 on the date the claim accrues; or

9 (II) the period applicable under
10 State law.

11 (B) DETERMINATION OF THE DATE ON
12 WHICH A CLAIM ACCRUES.—For purposes of
13 subparagraph (A), the date on which the stat-
14 ute of limitations begins to run on any claim
15 described in such subparagraph shall be the
16 later of—

17 (i) the date of the appointment of the
18 Corporation as receiver or qualified re-
19 ceiver under this title; or

20 (ii) the date on which the cause of ac-
21 tion accrues.

22 (C) REVIVAL OF EXPIRED STATE CAUSES
23 OF ACTION.—

24 (i) IN GENERAL.—In the case of any
25 tort claim described in clause (ii) for which

1 the statute of limitation applicable under
2 State law with respect to such claim has
3 expired not more than 5 years before the
4 appointment of the Corporation as receiver
5 or qualified receiver, the Corporation may
6 bring an action as receiver or qualified re-
7 ceiver on such claim without regard to the
8 expiration of the statute of limitation ap-
9 plicable under State law.

10 (ii) CLAIMS DESCRIBED.—A tort
11 claim referred to in clause (i) is a claim
12 arising from fraud, intentional misconduct
13 resulting in unjust enrichment, or inten-
14 tional misconduct resulting in substantial
15 loss to the covered financial company.

16 (12) FRAUDULENT TRANSFERS.—

17 (A) IN GENERAL.—The Corporation, as re-
18 ceiver or qualified receiver for any covered fi-
19 nancial company, may avoid a transfer of any
20 interest of an institution affiliated party, or any
21 person who the Corporation determines is a
22 debtor of the covered financial company, in
23 property, or any obligation incurred by such
24 party or person, that was made within 5 years
25 of the date on which the Corporation was ap-

1 pointed receiver or qualified receiver if such
2 party or person voluntarily or involuntarily
3 made such transfer or incurred such liability
4 with the intent to hinder, delay, or defraud the
5 covered financial company or the Corporation.

6 (B) RIGHT OF RECOVERY.—To the extent
7 a transfer is avoided under subparagraph (A),
8 the Corporation may recover, for the benefit of
9 the covered financial company, the property
10 transferred or, if a court so orders, the value of
11 such property (at the time of such transfer)
12 from—

13 (i) the initial transferee of such trans-
14 fer or the institution-affiliated party or
15 person for whose benefit such transfer was
16 made; or

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

19 (C) RIGHTS OF TRANSFEREE OR OBLI-
20 GEE.—The Corporation may not recover under
21 subparagraph (B)—

22 (i) any transfer that takes for value,
23 including satisfaction or securing of a
24 present or antecedent debt, in good faith,
25 or

1 (ii) any immediate or mediate good
2 faith transferee of such transferee.

3 (D) RIGHTS UNDER THIS SUBSECTION.—

4 The rights of the Corporation as receiver or
5 qualified receiver of a covered financial com-
6 pany under this subsection shall be superior to
7 any rights of a trustee or any other party
8 (other than any party which is a Federal agen-
9 cy) under title 11, United States Code.

10 (E) DEFINITION.—For purposes of this
11 subsection, the term “institution affiliated
12 party” means—

13 (i) any director, officer, employee, or
14 controlling stockholder of, or agent for, a
15 covered financial company;

16 (ii) any shareholder, consultant, joint
17 venture partner, and any other person as
18 determined by the Corporation (by regula-
19 tion or otherwise) who participates in the
20 conduct of the affairs of a covered finan-
21 cial company; and

22 (iii) any independent contractor (in-
23 cluding any attorney, appraiser, or ac-
24 countant) who knowingly or recklessly par-
25 ticipates in—

1 (I) any violation of any law or
2 regulation;
3 (II) any breach of fiduciary duty;
4 or
5 (III) any unsafe or unsound
6 practice,
7 which caused or is likely to cause more
8 than a minimal financial loss to, or a sig-
9 nificant adverse effect on, the covered fi-
10 nancial company.

11 (13) ATTACHMENT OF ASSETS AND OTHER IN-
12 JUNCTIVE RELIEF.—Subject to paragraph (14), any
13 court of competent jurisdiction may, at the request
14 of the Corporation, issue an order in accordance
15 with rule 65 of the Federal Rules of Civil Procedure,
16 including an order placing the assets of any person
17 designated by the Corporation under the control of
18 the court and appointing a trustee to hold such as-
19 sets.

20 (14) STANDARDS.—

21 (A) SHOWING.—Rule 65 of the Federal
22 Rules of Civil Procedure shall apply with re-
23 spect to any proceeding under paragraph (13)
24 without regard to the requirement of such rule

1 that the applicant show that the injury, loss, or
2 damage is irreparable and immediate.

3 (B) STATE PROCEEDING.—If, in the case
4 of any proceeding in a State court, the court
5 determines that rules of civil procedure avail-
6 able under the laws of such State provide sub-
7 stantially similar protections to such party’s
8 right to due process as rule 65 (as modified
9 with respect to such proceeding by subpara-
10 graph (A)), the relief sought by the Corporation
11 pursuant to paragraph (14) may be requested
12 under the laws of such State.

13 (15) TREATMENT OF CLAIMS ARISING FROM
14 BREACH OF CONTRACTS EXECUTED BY THE COR-
15 PORATION AS RECEIVER OR QUALIFIED RECEIVER.—

16 Notwithstanding any other provision of this sub-
17 section, any final and unappealable judgment for
18 monetary damages entered against the Corporation
19 as receiver or qualified receiver for a covered finan-
20 cial company for the breach of an agreement exe-
21 cuted or approved by the Corporation after the date
22 of its appointment shall be paid as an administrative
23 expense of the receiver or the qualified receiver.
24 Nothing in this paragraph shall be construed to limit
25 the power of a receiver or qualified receiver to exer-

1 cise any rights under contract or law, including to
2 terminate, breach, cancel, or otherwise discontinue
3 such agreement.

4 (16) ACCOUNTING AND RECORDKEEPING RE-
5 QUIREMENTS.—

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

13 (B) ANNUAL ACCOUNTING OR REPORT.—
14 With respect to each receivership or qualified
15 receivership to which the Corporation was ap-
16 pointed, the Corporation shall make an annual
17 accounting or report, as appropriate, available
18 to the Secretary and the Comptroller General of
19 the United States.

20 (C) AVAILABILITY OF REPORTS.—Any re-
21 port prepared pursuant to subparagraph (B)
22 shall be made available by the Corporation upon
23 request to any member of the public.

24 (D) RECORDKEEPING REQUIREMENT.—

1 (i) IN GENERAL.—Except as provided
2 in clause (ii), after the end of the 6-year
3 period beginning on the date the Corpora-
4 tion is appointed as receiver of a covered
5 financial company the Corporation may de-
6 stroy any records of such covered financial
7 company which the Corporation, in the
8 Corporation’s discretion, determines to be
9 unnecessary unless directed not to do so by
10 a court of competent jurisdiction or gov-
11 ernmental agency, or prohibited by law.

12 (ii) OLD RECORDS.—Notwithstanding
13 clause (i), the Corporation may destroy
14 records of a covered financial company
15 which are at least 10 years old as of the
16 date on which the Corporation is appointed
17 as the receiver of such company in accord-
18 ance with clause (i) at any time after such
19 appointment is final, without regard to the
20 6-year period of limitation contained in
21 clause (i).

22 (b) PRIORITY OF EXPENSES AND UNSECURED
23 CLAIMS.—

24 (1) IN GENERAL.—Unsecured claims against a
25 covered financial company, or the receiver for such

1 covered financial company under this section, that
2 are proven to the satisfaction of the receiver shall
3 have priority in the following order:

4 (A) Administrative expenses of the re-
5 ceiver.

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

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

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

16 (E) Any obligation to shareholders, mem-
17 bers, general partners, limited partners or other
18 persons with interests in the equity of the cov-
19 ered financial company arising as a result of
20 their status as shareholders, members, general
21 partners, limited partners or other persons with
22 interests in the equity of the covered financial
23 company.

24 (2) POST-RECEIVERSHIP FINANCING PRI-
25 ORITY.—In the event that the Corporation as re-

1 receiver is unable to obtain unsecured credit for the
2 covered financial company from commercial sources,
3 the Corporation as receiver may obtain credit or
4 incur debt on the part of the covered financial com-
5 pany which shall have priority over any or all admin-
6 istrative expenses of the receiver under paragraph
7 (1)(A).

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

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

19 (A) the Corporation determines that such
20 action is necessary to maximize the value of the
21 assets of the covered financial company, to
22 maximize the present value return from the sale
23 or other disposition of the assets of the covered
24 financial company, to minimize the amount of
25 any loss realized upon the sale or other disposi-

1 tion of the assets of the covered financial com-
2 pany, or to contain or address serious adverse
3 effects on financial stability or the U.S. econ-
4 omy; and

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

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

14 (6) DEFINITIONS.—As used in this subsection,
15 the term “administrative expenses of the receiver”
16 includes—

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

23 (B) any obligations that the receiver deter-
24 mines are necessary and appropriate to facili-

1 tate the smooth and orderly liquidation or other
2 resolution of the covered financial company.

3 (c) PROVISIONS RELATING TO CONTRACTS ENTERED
4 INTO BEFORE APPOINTMENT OF RECEIVER OR QUALI-
5 FIED RECEIVER.—

6 (1) AUTHORITY TO REPUDIATE CONTRACTS.—

7 In addition to any other rights a receiver or quali-
8 fied receiver may have, the Corporation as receiver
9 or qualified receiver for any covered financial com-
10 pany may disaffirm or repudiate any contract or
11 lease—

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

14 (B) the performance of which the receiver
15 or qualified receiver, in the receiver's or quali-
16 fied receiver's discretion, determines to be bur-
17 densome; and

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

23 (2) TIMING OF REPUDIATION.—The receiver or
24 qualified receiver appointed for any covered financial
25 company under section 1604 shall determine wheth-

1 er or not to exercise the rights of repudiation under
2 this subsection within a reasonable period following
3 such appointment.

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

6 (A) IN GENERAL.—Except as otherwise
7 provided in subparagraph (C) and paragraphs
8 (4), (5), and (6), the liability of the receiver or
9 qualified receiver for the disaffirmance or repu-
10 diation of any contract pursuant to paragraph
11 (1) shall be—

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

14 (ii) determined as of—

15 (I) the date of the appointment
16 of the receiver or qualified receiver; or

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

22 (B) NO LIABILITY FOR OTHER DAM-
23 AGES.—For purposes of subparagraph (A), the
24 term “actual direct compensatory damages”
25 does not include—

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

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

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

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

21 (A) IN GENERAL.—If the receiver or quali-
22 fied receiver disaffirms or repudiates a lease
23 under which the covered financial company was
24 the lessee, the receiver or qualified receiver
25 shall not be liable for any damages (other than

1 damages determined pursuant to subparagraph
2 (B)) for the disaffirmance or repudiation of
3 such lease.

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

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

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

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

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

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

24 (5) LEASES UNDER WHICH THE COVERED FI-
25 NANCIAL COMPANY IS THE LESSOR.—

1 (A) IN GENERAL.—If the receiver or quali-
2 fied receiver repudiates an unexpired written
3 lease of real property of the covered financial
4 company under which the covered financial
5 company is the lessor and the lessee is not, as
6 of the date of such repudiation, in default, the
7 lessee under such lease may either—

8 (i) treat the lease as terminated by
9 such repudiation; or

10 (ii) remain in possession of the lease-
11 hold interest for the balance of the term of
12 the lease unless the lessee defaults under
13 the terms of the lease after the date of
14 such repudiation.

15 (B) PROVISIONS APPLICABLE TO LESSEE
16 REMAINING IN POSSESSION.—If any lessee
17 under a lease described in subparagraph (A) re-
18 mains in possession of a leasehold interest pur-
19 suant to clause (ii) of such subparagraph—

20 (i) the lessee—

21 (I) shall continue to pay the con-
22 tractual rent pursuant to the terms of
23 the lease after the date of the repudi-
24 ation of such lease; and

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

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

14 (6) CONTRACTS FOR THE SALE OF REAL PROP-
15 ERTY.—

16 (A) IN GENERAL.—If the receiver or quali-
17 fied receiver repudiates any contract (which
18 meets the requirements of subsection (a)(7)) for
19 the sale of real property and the purchaser of
20 such real property under such contract is in
21 possession and is not, as of the date of such re-
22 pudiation, in default, such purchaser may ei-
23 ther—

24 (i) treat the contract as terminated by
25 such repudiation; or

1 (ii) remain in possession of such real
2 property.

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

9 (i) the purchaser—

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

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

20 (ii) the receiver or qualified receiver
21 shall—

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

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

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

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

9 (C) ASSIGNMENT AND SALE ALLOWED.—

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

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

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

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

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

13 (ii) deemed to have arisen as of the
14 date the receiver or qualified receiver was
15 appointed.

16 (B) SERVICES PERFORMED AFTER AP-
17 POINTMENT AND PRIOR TO REPUDIATION.—If,
18 in the case of any contract for services de-
19 scribed in subparagraph (A), the receiver or
20 qualified receiver accepts performance by the
21 other person before the receiver or qualified re-
22 ceiver makes any determination to exercise the
23 right of repudiation of such contract under this
24 section—

1 (i) the other party shall be paid under
2 the terms of the contract for the services
3 performed; and

4 (ii) the amount of such payment shall
5 be treated as an administrative expense of
6 the receivership or qualified receivership.

7 (C) ACCEPTANCE OF PERFORMANCE NO
8 BAR TO SUBSEQUENT REPUDIATION.—The ac-
9 ceptance by any receiver or qualified receiver of
10 services referred to in subparagraph (B) in con-
11 nection with a contract described in such sub-
12 paragraph shall not affect the right of the re-
13 ceiver or qualified receiver to repudiate such
14 contract under this section at any time after
15 such performance.

16 (8) CERTAIN QUALIFIED FINANCIAL CON-
17 TRACTS.—

18 (A) RIGHTS OF PARTIES TO CONTRACTS.—
19 Subject to paragraphs (9) and (10) of this sub-
20 section and notwithstanding any other provision
21 of this section (other than subsection (a)(7)),
22 any other Federal law, or the law of any State,
23 no person shall be stayed or prohibited from ex-
24 exercising—

1 (i) any right such person has to cause
2 the termination, liquidation, or acceleration
3 of any qualified financial contract with a
4 covered financial company which arises
5 upon the appointment of the Corporation
6 as receiver for such covered financial com-
7 pany at any time after such appointment;

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

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

20 (B) APPLICABILITY OF OTHER PROVI-
21 SIONS.—Subsection (a)(9) shall apply in the
22 case of any judicial action or proceeding
23 brought against any receiver referred to in sub-
24 paragraph (A), or the covered financial com-
25 pany for which such receiver was appointed, by

1 any party to a contract or agreement described
2 in subparagraph (A)(i) with such company.

3 (C) CERTAIN TRANSFERS NOT AVOID-
4 ABLE.—

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

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

1 such company, or any receiver or qualified
2 receiver appointed for such company.

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

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

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

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

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

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

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

24 (IV) means the guarantee (in-
25 cluding by novation) by or to any se-

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

18 (V) means any margin loan;

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

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

1 transaction coupled with a securities
2 sale transaction;

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

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

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

13 (XI) means a master agreement
14 that provides for an agreement or
15 transaction referred to in subclause
16 (I), (III), (IV), (V), (VI), (VII),
17 (VIII), (IX), or (X), together with all
18 supplements to any such master
19 agreement, without regard to whether
20 the master agreement provides for an
21 agreement or transaction that is not a
22 securities contract under this clause,
23 except that the master agreement
24 shall be considered to be a securities
25 contract under this clause only with

1 respect to each agreement or trans-
2 action under the master agreement
3 that is referred to in subclause (I),
4 (III), (IV), (V), (VI), (VII), (VIII),
5 (IX), or (X); and

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

14 (iii) COMMODITY CONTRACT.—The
15 term “commodity contract” means—

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

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

1 (III) with respect to a leverage
2 transaction merchant, a leverage
3 transaction;

4 (IV) with respect to a clearing
5 organization, a contract for the pur-
6 chase or sale of a commodity for fu-
7 ture delivery on, or subject to the
8 rules of, a contract market or board
9 of trade that is cleared by such clear-
10 ing organization, or commodity option
11 traded on, or subject to the rules of,
12 a contract market or board of trade
13 that is cleared by such clearing orga-
14 nization;

15 (V) with respect to a commodity
16 options dealer, a commodity option;

17 (VI) any other agreement or
18 transaction that is similar to any
19 agreement or transaction referred to
20 in this clause;

21 (VII) any combination of the
22 agreements or transactions referred to
23 in this clause;

1 (VIII) any option to enter into
2 any agreement or transaction referred
3 to in this clause;

4 (IX) a master agreement that
5 provides for an agreement or trans-
6 action referred to in subclause (I),
7 (II), (III), (IV), (V), (VI), (VII), or
8 (VIII), together with all supplements
9 to any such master agreement, with-
10 out regard to whether the master
11 agreement provides for an agreement
12 or transaction that is not a com-
13 modity contract under this clause, ex-
14 cept that the master agreement shall
15 be considered to be a commodity con-
16 tract under this clause only with re-
17 spect to each agreement or trans-
18 action under the master agreement
19 that is referred to in subclause (I),
20 (II), (III), (IV), (V), (VI), (VII), or
21 (VIII); or

22 (X) any security agreement or
23 arrangement or other credit enhance-
24 ment related to any agreement or
25 transaction referred to in this clause,

1 including any guarantee or reimburse-
2 ment obligation in connection with
3 any agreement or transaction referred
4 to in this clause.

5 (iv) FORWARD CONTRACT.—The term
6 “forward contract” means—

7 (I) a contract (other than a com-
8 modity contract) for the purchase,
9 sale, or transfer of a commodity or
10 any similar good, article, service,
11 right, or interest which is presently or
12 in the future becomes the subject of
13 dealing in the forward contract trade,
14 or product or byproduct thereof, with
15 a maturity date more than 2 days
16 after the date the contract is entered
17 into, including a repurchase or reverse
18 repurchase transaction (whether or
19 not such repurchase or reverse repur-
20 chase transaction is a “repurchase
21 agreement”, as defined in clause (v)),
22 consignment, lease, swap, hedge
23 transaction, deposit, loan, option, allo-
24 cated transaction, unallocated trans-

1 action, or any other similar agree-
2 ment;

3 (II) any combination of agree-
4 ments or transactions referred to in
5 subclauses (I) and (III);

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

9 (IV) a master agreement that
10 provides for an agreement or trans-
11 action referred to in subclauses (I),
12 (II), or (III), together with all supple-
13 ments to any such master agreement,
14 without regard to whether the master
15 agreement provides for an agreement
16 or transaction that is not a forward
17 contract under this clause, except that
18 the master agreement shall be consid-
19 ered to be a forward contract under
20 this clause only with respect to each
21 agreement or transaction under the
22 master agreement that is referred to
23 in subclause (I), (II), or (III); or

24 (V) any security agreement or ar-
25 rangement or other credit enhance-

1 ment related to any agreement or
2 transaction referred to in subclause
3 (I), (II), (III), or (IV), including any
4 guarantee or reimbursement obliga-
5 tion in connection with any agreement
6 or transaction referred to in any such
7 subclause.

8 (v) REPURCHASE AGREEMENT.—The
9 term “repurchase agreement” (which defi-
10 nition also applies to a reverse repurchase
11 agreement)—

12 (I) means an agreement, includ-
13 ing related terms, which provides for
14 the transfer of one or more certifi-
15 cates of deposit, mortgage-related se-
16 curities (as such term is defined in
17 the Securities Exchange Act of 1934),
18 mortgage loans, interests in mortgage-
19 related securities or mortgage loans,
20 eligible bankers’ acceptances, qualified
21 foreign government securities (which
22 for purposes of this clause shall mean
23 a security that is a direct obligation
24 of, or that is fully guaranteed by, the
25 central government of a member of

1 the Organization for Economic Co-
2 operation and Development as deter-
3 mined by regulation or order adopted
4 by the Federal Reserve Board) or se-
5 curities that are direct obligations of,
6 or that are fully guaranteed by, the
7 United States or any agency of the
8 United States against the transfer of
9 funds by the transferee of such certifi-
10 cates of deposit, eligible bankers' ac-
11 ceptances, securities, mortgage loans,
12 or interests with a simultaneous
13 agreement by such transferee to
14 transfer to the transferor thereof cer-
15 tificates of deposit, eligible bankers'
16 acceptances, securities, mortgage
17 loans, or interests as described above,
18 at a date certain not later than 1 year
19 after such transfers or on demand,
20 against the transfer of funds, or any
21 other similar agreement;

22 (II) does not include any repur-
23 chase obligation under a participation
24 in a commercial mortgage loan unless
25 the Corporation determines by regula-

1 tion, resolution, or order to include
2 any such participation within the
3 meaning of such term;

4 (III) means any combination of
5 agreements or transactions referred to
6 in subclauses (I) and (IV);

7 (IV) means any option to enter
8 into any agreement or transaction re-
9 ferred to in subclause (I) or (III);

10 (V) means a master agreement
11 that provides for an agreement or
12 transaction referred to in subclause
13 (I), (III), or (IV), together with all
14 supplements to any such master
15 agreement, without regard to whether
16 the master agreement provides for an
17 agreement or transaction that is not a
18 repurchase agreement under this
19 clause, except that the master agree-
20 ment shall be considered to be a re-
21 purchase agreement under this sub-
22 clause only with respect to each agree-
23 ment or transaction under the master
24 agreement that is referred to in sub-
25 clause (I), (III), or (IV); and

1 (VI) means any security agree-
2 ment or arrangement or other credit
3 enhancement related to any agree-
4 ment or transaction referred to in
5 subclause (I), (III), (IV), or (V), in-
6 cluding any guarantee or reimburse-
7 ment obligation in connection with
8 any agreement or transaction referred
9 to in any such subclause.

10 (vi) SWAP AGREEMENT.—The term
11 “swap agreement” means—

12 (I) any agreement, including the
13 terms and conditions incorporated by
14 reference in any such agreement,
15 which is an interest rate swap, option,
16 future, or forward agreement, includ-
17 ing a rate floor, rate cap, rate collar,
18 cross-currency rate swap, and basis
19 swap; a spot, same day-tomorrow, to-
20 morrow-next, forward, or other for-
21 eign exchange, precious metals, or
22 other commodity agreement; a cur-
23 rency swap, option, future, or forward
24 agreement; an equity index or equity
25 swap, option, future, or forward

1 agreement; a debt index or debt swap,
2 option, future, or forward agreement;
3 a total return, credit spread or credit
4 swap, option, future, or forward
5 agreement; a commodity index or
6 commodity swap, option, future, or
7 forward agreement; weather swap, op-
8 tion, future, or forward agreement; an
9 emissions swap, option, future, or for-
10 ward agreement; or an inflation swap,
11 option, future, or forward agreement;

12 (II) any agreement or transaction
13 that is similar to any other agreement
14 or transaction referred to in this
15 clause and that is of a type that has
16 been, is presently, or in the future be-
17 comes, the subject of recurrent deal-
18 ings in the swap or other derivatives
19 markets (including terms and condi-
20 tions incorporated by reference in
21 such agreement) and that is a for-
22 ward, swap, future, option or spot
23 transaction on one or more rates, cur-
24 rencies, commodities, equity securities
25 or other equity instruments, debt se-

1 curities or other debt instruments,
2 quantitative measures associated with
3 an occurrence, extent of an occur-
4 rence, or contingency associated with
5 a financial, commercial, or economic
6 consequence, or economic or financial
7 indices or measures of economic or fi-
8 nancial risk or value;

9 (III) any combination of agree-
10 ments or transactions referred to in
11 this clause;

12 (IV) any option to enter into any
13 agreement or transaction referred to
14 in this clause;

15 (V) a master agreement that pro-
16 vides for an agreement or transaction
17 referred to in subclause (I), (II), (III),
18 or (IV), together with all supplements
19 to any such master agreement, with-
20 out regard to whether the master
21 agreement contains an agreement or
22 transaction that is not a swap agree-
23 ment under this clause, except that
24 the master agreement shall be consid-
25 ered to be a swap agreement under

1 this clause only with respect to each
2 agreement or transaction under the
3 master agreement that is referred to
4 in subclause (I), (II), (III), or (IV);
5 and

6 (VI) any security agreement or
7 arrangement or other credit enhance-
8 ment related to any agreements or
9 transactions referred to in subclause
10 (I), (II), (III), (IV), or (V), including
11 any guarantee or reimbursement obli-
12 gation in connection with any agree-
13 ment or transaction referred to in any
14 such subclause.

15 (vii) DEFINITIONS RELATING TO DE-
16 FAULT.—When used in this paragraph and
17 paragraph (10)—

18 (I) The term “default” shall
19 mean, with respect to a covered finan-
20 cial company, any adjudication or
21 other official determination by any
22 court of competent jurisdiction, or
23 other public authority pursuant to
24 which a conservator, receiver, or other
25 legal custodian is appointed; and

1 (II) The term “in danger of de-
2 fault” shall mean a covered financial
3 company with respect to which the
4 Corporation or appropriate State au-
5 thority has determined that—

6 (aa) in the opinion of the
7 Corporation or such authority—

8 (AA) the covered finan-
9 cial company is not likely to
10 be able to pay its obligations
11 in the normal course of busi-
12 ness; and

13 (BB) there is no rea-
14 sonable prospect that the
15 covered financial company
16 will be able to pay such obli-
17 gations without Federal as-
18 sistance; or

19 (CC) in the opinion of
20 the Corporation or such au-
21 thority—

22 (bb) the covered financial
23 company has incurred or is likely
24 to incur losses that will deplete

1 all or substantially all of its cap-
2 ital; and

3 (cc) there is no reasonable
4 prospect that the capital will be
5 replenished without Federal as-
6 sistance.

7 (viii) TREATMENT OF MASTER AGREE-
8 MENT AS ONE AGREEMENT.—Any master
9 agreement for any contract or agreement
10 described in any preceding clause of this
11 subparagraph (or any master agreement
12 for such master agreement or agreements),
13 together with all supplements to such mas-
14 ter agreement, shall be treated as a single
15 agreement and a single qualified financial
16 contact. If a master agreement contains
17 provisions relating to agreements or trans-
18 actions that are not themselves qualified fi-
19 nancial contracts, the master agreement
20 shall be deemed to be a qualified financial
21 contract only with respect to those trans-
22 actions that are themselves qualified finan-
23 cial contracts.

24 (ix) TRANSFER.—The term “transfer”
25 means every mode, direct or indirect, abso-

1 lute or conditional, voluntary or involun-
2 tary, of disposing of or parting with prop-
3 erty or with an interest in property, includ-
4 ing retention of title as a security interest
5 and foreclosure of the covered financial
6 company's equity of redemption.

7 (x) PERSON.—The term “person” in-
8 cludes any governmental entity in addition
9 to any entity included in the definition of
10 such term in section 1, title 1, United
11 States Code.

12 (E) CERTAIN PROTECTIONS IN EVENT OF
13 APPOINTMENT OF QUALIFIED RECEIVER.—Not-
14 withstanding any other provision of this section
15 (other than paragraph (10) of this subsection
16 and subsection (a)(7) of this section), any other
17 Federal law, or the law of any State, no person
18 shall be stayed or prohibited from exercising—

19 (i) any right such person has to cause
20 the termination, liquidation, or acceleration
21 of any qualified financial contract with a
22 covered financial company in a qualified
23 receivership based upon a default under
24 such financial contract which is enforceable
25 under applicable noninsolvency law;

1 (ii) any right under any security
2 agreement or arrangement or other credit
3 enhancement related to one or more quali-
4 fied financial contracts described in clause
5 (i); or

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

11 (F) CLARIFICATION.—No provision of law
12 shall be construed as limiting the right or
13 power of the Corporation, or authorizing any
14 court or agency to limit or delay, in any man-
15 ner, the right or power of the Corporation to
16 transfer any qualified financial contract in ac-
17 cordance with paragraphs (9) and (10) of this
18 subsection or to disaffirm or repudiate any such
19 contract in accordance with subsection (c)(1) of
20 this section.

21 (G) WALKAWAY CLAUSES NOT EFFEC-
22 TIVE.—

23 (i) IN GENERAL.—Notwithstanding
24 the provisions of subparagraphs (A) and
25 (E) and sections 403 and 404 of the Fed-

1 eral Deposit Insurance Corporation Im-
2 provement Act of 1991, no walkaway
3 clause shall be enforceable in a qualified fi-
4 nancial contract of a covered financial
5 company in default.

6 (ii) LIMITED SUSPENSION OF CERTAIN
7 OBLIGATIONS.—In the case of a qualified
8 financial contract referred to in clause (i),
9 any payment or delivery obligations other-
10 wise due from a party pursuant to the
11 qualified financial contract shall be sus-
12 pended from the time the receiver is ap-
13 pointed until the earlier of—

14 (I) the time such party receives
15 notice that such contract has been
16 transferred pursuant to paragraph
17 (10)(A); or

18 (II) 5:00 p.m. (eastern time) on
19 the business day following the date of
20 the appointment of the receiver.

21 (iii) WALKAWAY CLAUSE DEFINED.—
22 For purposes of this subparagraph, the
23 term “walkaway clause” means any provi-
24 sion in a qualified financial contract that
25 suspends, conditions, or extinguishes a

1 payment obligation of a party, in whole or
2 in part, or does not create a payment obli-
3 gation of a party that would otherwise
4 exist, solely because of such party's status
5 as a nondefaulting party in connection
6 with the insolvency of a covered financial
7 company that is a party to the contract or
8 the appointment of or the exercise of rights
9 or powers by a receiver or qualified re-
10 ceiver of such covered financial company,
11 and not as a result of a party's exercise of
12 any right to offset, setoff, or net obliga-
13 tions that exist under the contract, any
14 other contract between those parties, or
15 applicable law.

16 (H) RECORDKEEPING.—The Corporation,
17 in consultation with the Federal Reserve Board,
18 may prescribe regulations requiring that the
19 covered financial company maintain such
20 records with respect to qualified financial con-
21 tracts (including market valuations) as the Cor-
22 poration determines to be necessary or appro-
23 priate in order to assist the receiver or qualified
24 receiver of the covered financial company in
25 being able to exercise its rights and fulfill its

1 obligations under this paragraph or paragraph
2 (9) or (10).

3 (9) TRANSFER OF QUALIFIED FINANCIAL CON-
4 TRACTS.—

5 (A) IN GENERAL.—In making any transfer
6 of assets or liabilities of a covered financial
7 company in default which includes any qualified
8 financial contract, the receiver or qualified re-
9 ceiver for such covered financial company shall
10 either—

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

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

22 (II) all claims of such person or
23 any affiliate of such person against
24 such covered financial company under
25 any such contract (other than any

1 claim which, under the terms of any
2 such contract, is subordinated to the
3 claims of general unsecured creditors
4 of such company);

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

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

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

19 (B) TRANSFER TO FOREIGN BANK, FINAN-
20 CIAL INSTITUTION, OR BRANCH OR AGENCY
21 THEREOF.—In transferring any qualified finan-
22 cial contracts and related claims and property
23 under subparagraph (A)(i), the receiver or
24 qualified receiver for the covered financial com-
25 pany shall not make such transfer to a foreign

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

15 (C) TRANSFER OF CONTRACTS SUBJECT
16 TO THE RULES OF A CLEARING ORGANIZA-
17 TION.—In the event that a receiver or qualified
18 receiver transfers any qualified financial con-
19 tract and related claims, property, and credit
20 enhancements pursuant to subparagraph (A)(i)
21 and such contract is cleared by or subject to the
22 rules of a clearing organization, the clearing or-
23 ganization shall not be required to accept the
24 transferee as a member by virtue of the trans-
25 fer.

1 (D) DEFINITIONS.—For purposes of this
2 paragraph, the term “financial institution”
3 means a broker or dealer, a depository institu-
4 tion, a futures commission merchant, a bridge
5 financial company, or any other institution de-
6 termined by the Corporation by regulation to be
7 a financial institution, and the term “clearing
8 organization” has the same meaning as in sec-
9 tion 402 of the Federal Deposit Insurance Cor-
10 poration Improvement Act of 1991.

11 (10) NOTIFICATION OF TRANSFER.—

12 (A) IN GENERAL.—If—

13 (i) the receiver or qualified receiver
14 for a covered financial company in default
15 or in danger of default transfers any assets
16 and liabilities of the covered financial com-
17 pany; and

18 (ii) the transfer includes any qualified
19 financial contract,

20 the receiver or qualified receiver shall notify any
21 person who is a party to any such contract of
22 such transfer by 5:00 p.m. (eastern time) on
23 the business day following the date of the ap-
24 pointment of the receiver in the case of a re-

1 ceivership, or the business day following such
2 transfer in the case of a qualified receivership.

3 (B) CERTAIN RIGHTS NOT ENFORCE-
4 ABLE.—

5 (i) RECEIVERSHIP.—A person who is
6 a party to a qualified financial contract
7 with a covered financial company may not
8 exercise any right that such person has to
9 terminate, liquidate, or net such contract
10 under paragraph (8)(A) of this subsection
11 solely by reason of or incidental to the ap-
12 pointment under this section of a receiver
13 for the covered financial company (or the
14 insolvency or financial condition of the cov-
15 ered financial company for which the re-
16 ceiver has been appointed)—

17 (I) until 5:00 p.m. (eastern time)
18 on the business day following the date
19 of the appointment of the receiver; or

20 (II) after the person has received
21 notice that the contract has been
22 transferred pursuant to paragraph
23 (9)(A).

24 (ii) QUALIFIED RECEIVERSHIP.—A
25 person who is a party to a qualified finan-

1 cial contract with a covered financial com-
2 pany may not exercise any right such per-
3 son has to terminate, liquidate, or net such
4 contract under paragraph (8)(E) of this
5 subsection or section 403 of Federal De-
6 posit Insurance Corporation Improvement
7 Act of 1991 solely by reason of or inci-
8 dental to the appointment under this sec-
9 tion of a qualified receiver for the covered
10 financial company (or the insolvency or fi-
11 nancial condition of the covered financial
12 company for which the qualified receiver
13 has been appointed).

14 (iii) NOTICE.—For purposes of this
15 paragraph, the receiver or qualified re-
16 ceiver for a covered financial company
17 shall be deemed to have notified a person
18 who is a party to a qualified financial con-
19 tract with such covered financial company
20 if the receiver or qualified receiver has
21 taken steps reasonably calculated to pro-
22 vide notice to such person by the time
23 specified in subparagraph (A).

24 (C) TREATMENT OF BRIDGE FINANCIAL
25 COMPANY.—For purposes of paragraph (9), a

1 bridge financial company shall not be consid-
2 ered to be a financial institution for which a
3 conservator, receiver, trustee in bankruptcy, or
4 other legal custodian has been appointed or
5 which is otherwise the subject of a bankruptcy
6 or insolvency proceeding.

7 (D) BUSINESS DAY DEFINED.—For pur-
8 poses of this paragraph, the term “business
9 day” means any day other than any Saturday,
10 Sunday, or any day on which either the New
11 York Stock Exchange or the Federal Reserve
12 Bank of New York is closed.

13 (11) DISAFFIRMANCE OR REPUDIATION OF
14 QUALIFIED FINANCIAL CONTRACTS.—In exercising
15 the rights of disaffirmance or repudiation of a re-
16 ceiver or qualified receiver with respect to any quali-
17 fied financial contract to which a covered financial
18 company is a party, the receiver or qualified receiver
19 for such covered financial shall either—

20 (A) disaffirm or repudiate all qualified fi-
21 nancial contracts between—

22 (i) any person or any affiliate of such
23 person; and

24 (ii) the covered financial company in
25 default; or

1 (B) disaffirm or repudiate none of the
2 qualified financial contracts referred to in sub-
3 paragraph (A) (with respect to such person or
4 any affiliate of such person).

5 (12) CERTAIN SECURITY AND CUSTOMER IN-
6 TERESTS NOT AVOIDABLE.—No provision of this
7 subsection shall be construed as permitting the
8 avoidance of any—

9 (A) legally enforceable or perfected secu-
10 rity interest in any of the assets of any covered
11 financial company except where such an inter-
12 est is taken in contemplation of the company's
13 insolvency or with the intent to hinder, delay, or
14 defraud the company or the creditors of such
15 company; or

16 (B) legally enforceable interest in customer
17 property.

18 (13) AUTHORITY TO ENFORCE CONTRACTS.—

19 (A) IN GENERAL.—The receiver or quali-
20 fied receiver may enforce any contract, other
21 than a director's or officer's liability insurance
22 contract or a financial institution bond, entered
23 into by the covered financial company notwith-
24 standing any provision of the contract providing
25 for termination, default, acceleration, or exer-

1 eise of rights upon, or solely by reason of, insol-
2 vency or the appointment of or the exercise of
3 rights or powers by a receiver or qualified re-
4 ceiver.

5 (B) CERTAIN RIGHTS NOT AFFECTED.—

6 No provision of this paragraph may be con-
7 strued as impairing or affecting any right of the
8 receiver or qualified receiver to enforce or re-
9 cover under a director's or officer's liability in-
10 surance contract or financial institution bond
11 under other applicable law.

12 (C) CONSENT REQUIREMENT.—

13 (i) IN GENERAL.—Except as otherwise
14 provided by this section, no person may ex-
15 ercise any right or power to terminate, ac-
16 celerate, or declare a default under any
17 contract to which the covered financial
18 company is a party, or to obtain possession
19 of or exercise control over any property of
20 the covered financial company or affect
21 any contractual rights of the covered finan-
22 cial company, without the consent of the
23 receiver or qualified receiver, as appro-
24 priate, of the covered financial company
25 during the 45-day period beginning on the

1 date of the appointment of the qualified re-
2 ceiver, or during the 90-day period begin-
3 ning on the date of the appointment of the
4 receiver, as applicable.

5 (ii) CERTAIN EXCEPTIONS.—No provi-
6 sion of this subparagraph shall apply to a
7 director or officer liability insurance con-
8 tract or a financial institution bond, to the
9 rights of parties to certain qualified finan-
10 cial contracts pursuant to paragraph (8),
11 or to the rights of parties to netting con-
12 tracts pursuant to subtitle A of title IV of
13 the Federal Deposit Insurance Corporation
14 Improvement Act of 1991 (12 U.S.C. 4401
15 et seq.), or shall be construed as permit-
16 ting the receiver or qualified receiver to fail
17 to comply with otherwise enforceable provi-
18 sions of such contract.

19 (14) EXCEPTION FOR FEDERAL RESERVE
20 BANKS AND CORPORATION SECURITY INTEREST.—

21 No provision of this subsection shall apply with re-
22 spect to—

23 (A) any extension of credit from any Fed-
24 eral Reserve bank or the Corporation to any
25 covered financial company; or

1 (B) any security interest in the assets of
2 the covered financial company securing any
3 such extension of credit.

4 (15) SAVINGS CLAUSE.—The meanings of terms
5 used in this subsection are applicable for purposes of
6 this subsection only, and shall not be construed or
7 applied so as to challenge or affect the characteriza-
8 tion, definition, or treatment of any similar terms
9 under any other statute, regulation, or rule, includ-
10 ing, but not limited, to the Gramm Leach Bliley Act,
11 the Legal Certainty for Bank Products Act of 2000,
12 the securities laws (as that term is defined in section
13 3(a)(47) of the Securities Exchange Act of 1934),
14 and the Commodity Exchange Act.

15 (d) VALUATION OF CLAIMS IN DEFAULT.—

16 (1) IN GENERAL.—Notwithstanding any other
17 provision of Federal law or the law of any State, and
18 regardless of the method which the Corporation de-
19 termines to utilize with respect to a covered financial
20 company, including transactions authorized under
21 subsection (h), this subsection shall govern the
22 rights of the creditors of such covered financial com-
23 pany.

24 (2) MAXIMUM LIABILITY.—The maximum li-
25 ability of the Corporation, acting as receiver or in

1 any other capacity, to any person having a claim
2 against the receiver or the covered financial com-
3 pany for which such receiver is appointed shall equal
4 the amount such claimant would have received if—

5 (A) a determination had not been made
6 under section 1603(b) with respect to the cov-
7 ered financial company; and

8 (B) the covered financial company had
9 been liquidated under title 11, United States
10 Code, or any case related to title 11, United
11 States Code (including but not limited to a case
12 initiated by the Securities Investor Protection
13 Corporation with respect to a financial company
14 subject to the Securities Investor Protection Act
15 of 1970), or any State insolvency law.

16 (3) ADDITIONAL PAYMENTS AUTHORIZED.—

17 (A) IN GENERAL.—The Corporation may,
18 as receiver and with the approval of the Sec-
19 retary, make additional payments or credit ad-
20 ditional amounts to or with respect to or for the
21 account of any claimant or category of claim-
22 ants of a covered financial company if the Cor-
23 poration determines that such payments or
24 credits are necessary or appropriate to—

1 (i) minimize losses to the receiver
2 from the resolution of the covered financial
3 company under this section; or

4 (ii) prevent or mitigate serious ad-
5 verse effects to financial stability or the
6 United States economy.

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

16 (e) LIMITATION ON COURT ACTION.—Except as pro-
17 vided in this section or at the request of the receiver or
18 qualified receiver appointed for a covered financial com-
19 pany, no court may take any action to restrain or affect
20 the exercise of powers or functions of the receiver or quali-
21 fied receiver hereunder.

22 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

23 (1) IN GENERAL.—A director or officer of a
24 covered financial company may be held personally
25 liable for monetary damages in any civil action de-

1 scribed in paragraph (2) by, on behalf of, or at the
2 request or direction of the Corporation, which action
3 is prosecuted wholly or partially for the benefit of
4 the Corporation—

5 (A) acting as receiver or qualified receiver
6 of such covered financial company;

7 (B) acting based upon a suit, claim, or
8 cause of action purchased from, assigned by, or
9 otherwise conveyed by such receiver or qualified
10 receiver; or

11 (C) acting based upon a suit, claim, or
12 cause of action purchased from, assigned by, or
13 otherwise conveyed in whole or in part by a cov-
14 ered financial company or its affiliate in con-
15 nection with assistance provided under section
16 1604.

17 (2) ACTIONS COVERED.—Paragraph (1) shall
18 apply with respect to actions for gross negligence,
19 including any similar conduct or conduct that dem-
20 onstrates a greater disregard of a duty of care (than
21 gross negligence) including intentional tortious con-
22 duct, as such terms are defined and determined
23 under applicable State law.

1 (3) SAVINGS CLAUSE.—Nothing in this sub-
2 section shall impair or affect any right of the Cor-
3 poration under other applicable law.

4 (g) DAMAGES.—In any proceeding related to any
5 claim against a covered financial company’s director, offi-
6 cer, employee, agent, attorney, accountant, appraiser, or
7 any other party employed by or providing services to a
8 covered financial company, recoverable damages deter-
9 mined to result from the improvident or otherwise im-
10 proper use or investment of any covered financial com-
11 pany’s assets shall include principal losses and appropriate
12 interest.

13 (h) BRIDGE FINANCIAL COMPANIES.—

14 (1) ORGANIZATION.—

15 (A) PURPOSE.—The Corporation, as re-
16 ceiver of one or more covered financial compa-
17 nies may organize one or more bridge financial
18 companies in accordance with this subsection.

19 (B) AUTHORITIES.—Upon the creation of
20 a bridge financial company under subparagraph
21 (A) with respect to a covered financial com-
22 pany, such bridge financial company may—

23 (i) assume such liabilities (including
24 liabilities associated with any trust or cus-
25 tody business but excluding any liabilities

1 that count as regulatory capital) of such
2 covered financial company as the Corpora-
3 tion may, in its discretion, determine to be
4 appropriate;

5 (ii) purchase such assets (including
6 assets associated with any trust or custody
7 business) of such covered financial com-
8 pany as the Corporation may, in its discre-
9 tion, determine to be appropriate; and

10 (iii) perform any other temporary
11 function which the Corporation may, in its
12 discretion, prescribe in accordance with
13 this section.

14 (2) CHARTER AND ESTABLISHMENT.—

15 (A) ESTABLISHMENT.—If the Corporation
16 is appointed as receiver for a covered financial
17 company, the Corporation may grant a Federal
18 charter to and approve articles of association
19 for one or more bridge financial company or
20 companies with respect to such covered finan-
21 cial company which shall, by operation of law
22 and immediately upon issuance of its charter
23 and approval of its articles of association, be es-
24 tablished and operate in accordance with, and

1 subject to, such charter, articles, and this sec-
2 tion.

3 (B) MANAGEMENT.—Upon its establish-
4 ment, a bridge financial company shall be under
5 the management of a board of directors ap-
6 pointed by the Corporation.

7 (C) ARTICLES OF ASSOCIATION.—The arti-
8 cles of association and organization certificate
9 of a bridge financial shall have such terms as
10 the Corporation may provide, and shall be exe-
11 cuted by such representatives as the Corpora-
12 tion may designate.

13 (D) TERMS OF CHARTER; RIGHTS AND
14 PRIVILEGES.—Subject to and in accordance
15 with the provisions of this subsection, the Cor-
16 poration shall—

17 (i) establish the terms of the charter
18 of a bridge financial company and the
19 rights, powers, authorities and privileges of
20 a bridge financial company granted by the
21 charter or as an incident thereto; and

22 (ii) provide for, and establish the
23 terms and conditions governing, the man-
24 agement (including, but not limited to, the
25 bylaws and the number of directors of the

1 board of directors) and operations of the
2 bridge financial company.

3 (E) TRANSFER OF RIGHTS AND PRIVI-
4 LEGES OF COVERED FINANCIAL COMPANY.—

5 (i) IN GENERAL.—Notwithstanding
6 any other provision of Federal law or the
7 law of any State, the Corporation may pro-
8 vide for a bridge financial company to suc-
9 ceed to and assume any rights, powers, au-
10 thorities or privileges of the covered finan-
11 cial company with respect to which the
12 bridge financial company was established
13 and, upon such determination by the Cor-
14 poration, the bridge financial company
15 shall immediately and by operation of law
16 succeed to and assume such rights, powers,
17 authorities and privileges.

18 (ii) EFFECTIVE WITHOUT AP-
19 PROVAL.—Any succession to or assumption
20 by a bridge financial company of rights,
21 powers, authorities or privileges of a cov-
22 ered financial company under clause (i) or
23 otherwise shall be effective without any
24 further approval under Federal or State

1 law, assignment, or consent with respect
2 thereto.

3 (F) CORPORATE GOVERNANCE AND ELEC-
4 TION AND DESIGNATION OF BODY OF LAW.—To
5 the extent permitted by the Corporation and
6 consistent with this section and any rules, regu-
7 lations or directives issued by the Corporation
8 under this section, a bridge financial company
9 may elect to follow the corporate governance
10 practices and procedures as are applicable to a
11 corporation incorporated under the general cor-
12 poration law of the State of Delaware, or the
13 State of incorporation or organization of the
14 covered financial company with respect to which
15 the bridge financial company was established,
16 as such law may be amended from time to time.

17 (G) CAPITAL.—

18 (i) CAPITAL NOT REQUIRED.—Not-
19 withstanding any other provision of Fed-
20 eral or State law, a bridge financial com-
21 pany may, if permitted by the Corporation,
22 operate without any capital or surplus, or
23 with such capital or surplus as the Cor-
24 poration may in its discretion determine to
25 be appropriate.

1 (ii) NO CONTRIBUTION BY THE COR-
2 PORATION REQUIRED.—The Corporation is
3 not required to pay capital into a bridge fi-
4 nancial company or to issue any capital
5 stock on behalf of a bridge financial com-
6 pany established under this subsection.

7 (iii) AUTHORITY.—If the Corporation
8 determines that such action is advisable,
9 the Corporation may cause capital stock or
10 other securities of a bridge financial com-
11 pany established with respect to a covered
12 financial company to be issued and offered
13 for sale in such amounts and on such
14 terms and conditions as the Corporation
15 may, in its discretion, determine.

16 (3) INTERESTS IN AND ASSETS AND OBLIGA-
17 TIONS OF COVERED FINANCIAL COMPANY.—Notwith-
18 standing paragraphs (1) or (2) or any other provi-
19 sion of law—

20 (A) a bridge financial company shall as-
21 sume, acquire, or succeed to the assets or liabil-
22 ities of a covered financial company (including
23 the assets or liabilities associated with any trust
24 or custody business) only to the extent that
25 such assets or liabilities are transferred by the

1 Corporation to the bridge financial company in
2 accordance with, and subject to the restrictions
3 set forth in, paragraph (1)(B); and

4 (B) a bridge financial company shall not
5 assume, acquire, or succeed to any obligation
6 that a covered financial company for which a
7 receiver has been appointed may have to any
8 shareholder, member, general partner, limited
9 partner, or other person with an interest in the
10 equity of the covered financial company that
11 arises as a result of the status of that person
12 having an equity claim in the covered financial
13 company.

14 (4) BRIDGE FINANCIAL COMPANY TREATED AS
15 BEING IN DEFAULT FOR CERTAIN PURPOSES.—A
16 bridge financial company shall be treated as a cov-
17 ered financial company in default at such times and
18 for such purposes as the Corporation may, in its dis-
19 cretion, determine.

20 (5) TRANSFER OF ASSETS AND LIABILITIES.—

21 (A) TRANSFER OF ASSETS AND LIABIL-
22 ITIES.—The Corporation, as receiver, may
23 transfer any assets and liabilities of a covered
24 financial company (including any assets or li-
25 abilities associated with any trust or custody

1 business) to one or more bridge financial com-
2 panies in accordance with and subject to the re-
3 strictions of paragraph (1)(B).

4 (B) SUBSEQUENT TRANSFERS.—At any
5 time after the establishment of a bridge finan-
6 cial company with respect to a covered financial
7 company, the Corporation, as receiver, may
8 transfer any assets and liabilities of such cov-
9 ered financial company as the Corporation may,
10 in its discretion, determine to be appropriate in
11 accordance with and subject to the restrictions
12 of paragraph (1)(B).

13 (C) TREATMENT OF TRUST OR CUSTODY
14 BUSINESS.—For purposes of this paragraph,
15 the trust or custody business, including fidu-
16 ciary appointments, held by any covered finan-
17 cial company is included among its assets and
18 liabilities.

19 (D) EFFECTIVE WITHOUT APPROVAL.—
20 The transfer of any assets or liabilities, includ-
21 ing those associated with any trust or custody
22 business of a covered financial company to a
23 bridge financial company shall be effective with-
24 out any further approval under Federal or

1 State law, assignment, or consent with respect
2 thereto.

3 (E) EQUITABLE TREATMENT OF SIMI-
4 LARLY SITUATED CREDITORS.—The Corpora-
5 tion shall treat all creditors of a covered finan-
6 cial company that are similarly situated under
7 subsection (b)(1) in a similar manner in exer-
8 cising the authority of the Corporation under
9 this subsection to transfer any assets or liabil-
10 ities of the covered financial company to one or
11 more bridge financial companies established
12 with respect to such covered financial company,
13 except that the Corporation may take actions
14 (including making payments) that do not com-
15 ply with this subparagraph, if—

16 (i) the Corporation determines that
17 such actions are necessary to maximize the
18 value of the assets of the covered financial
19 company, to maximize the present value
20 return from the sale or other disposition of
21 the assets of the covered financial com-
22 pany, to minimize the amount of any loss
23 realized upon the sale or other disposition
24 of the assets of the covered financial com-
25 pany, or to contain or address serious ad-

1 verse effects to financial stability or the
2 U.S. economy; and

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

7 (F) LIMITATION ON TRANSFER OF LIABIL-
8 ITIES.—Notwithstanding any other provision of
9 law, the aggregate amount of liabilities of a cov-
10 ered financial company that are transferred to,
11 or assumed by, a bridge financial company from
12 a covered financial company may not exceed the
13 aggregate amount of the assets of the covered
14 financial company that are transferred to, or
15 purchased by, the bridge financial company
16 from the covered financial company.

17 (6) STAY OF JUDICIAL ACTION.—Any judicial
18 action to which a bridge financial company becomes
19 a party by virtue of its acquisition of any assets or
20 assumption of any liabilities of a covered financial
21 company shall be stayed from further proceedings
22 for a period of up to 45 days (or such longer period
23 as may be agreed to upon the consent of all parties)
24 at the request of the bridge financial company.

1 (7) AGREEMENTS AGAINST INTEREST OF THE
2 BRIDGE FINANCIAL COMPANY.—No agreement that
3 tends to diminish or defeat the interest of the bridge
4 financial company in any asset of a covered financial
5 company acquired by the bridge financial company
6 shall be valid against the bridge financial company
7 unless such agreement is in writing and executed by
8 an authorized officer or representative of the covered
9 financial company.

10 (8) NO FEDERAL STATUS.—

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

14 (B) EMPLOYEE STATUS.—Representatives
15 for purposes of paragraph (1)(B), directors, of-
16 ficers, employees, or agents of a bridge financial
17 company are not, solely by virtue of service in
18 any such capacity, officers or employees of the
19 United States. Any employee of the Corporation
20 or of any Federal instrumentality who serves at
21 the request of the Corporation as a representa-
22 tive for purposes of paragraph (1)(B), director,
23 officer, employee, or agent of a bridge financial
24 company shall not—

1 (i) solely by virtue of service in any
2 such capacity lose any existing status as
3 an officer or employee of the United States
4 for purposes of title 5, United States Code,
5 or any other provision of law; or

6 (ii) receive any salary or benefits for
7 service in any such capacity with respect to
8 a bridge financial company in addition to
9 such salary or benefits as are obtained
10 through employment with the Corporation
11 or such Federal instrumentality.

12 (9) EXEMPT TAX STATUS.—Notwithstanding
13 any other provision of Federal or State law, a bridge
14 financial company, its franchise, property, and in-
15 come shall be exempt from all taxation now or here-
16 after imposed by the United States, by any territory,
17 dependency, or possession thereof, or by any State,
18 county, municipality, or local taxing authority.

19 (10) FEDERAL AGENCY APPROVAL; ANTITRUST
20 REVIEW.—

21 (A) IN GENERAL.—If a transaction involv-
22 ing the merger or sale of a bridge financial
23 company requires approval by a Federal agency,
24 the transaction may not be consummated before
25 the 5th calendar day after the date of approval

1 by the Federal agency responsible for such ap-
2 proval with respect thereto. If, in connection
3 with any such approval a report on competitive
4 factors from the Attorney General is required,
5 the Federal agency responsible for such ap-
6 proval shall promptly notify the Attorney Gen-
7 eral of the proposed transaction and the Attor-
8 ney General shall provide the required report
9 within 10 days of the request. If a filing is re-
10 quired under the Hart-Scott-Rodino Antitrust
11 Improvements Act of 1976 with the Depart-
12 ment of Justice or the Federal Trade Commis-
13 sion, the waiting period shall expire not later
14 than the 30th day following such filing notwith-
15 standing any other provision of Federal law or
16 any attempt by any Federal agency to extend
17 such waiting period, and no further request for
18 information by any Federal agency shall be per-
19 mitted.

20 (B) EMERGENCY.—If the Secretary, in
21 consultation with the Chairman of the Federal
22 Reserve Board, has found that the Corporation
23 must act immediately to prevent the probable
24 failure of the covered financial company in-
25 volved, the approvals and filings referred to in

1 subparagraph (A) shall not be required and the
2 transaction may be consummated immediately
3 by the Corporation.

4 (11) DURATION OF BRIDGE FINANCIAL COM-
5 PANY.—Subject to paragraphs (12), (13), and (14),
6 the status of a bridge financial company as such
7 shall terminate at the end of the 2-year period fol-
8 lowing the date it was granted a charter. The Cor-
9 poration may, in its discretion, extend the status of
10 the bridge financial company as such for 3 addi-
11 tional 1-year periods.

12 (12) TERMINATION OF BRIDGE FINANCIAL COM-
13 PANY STATUS.—The status of any bridge financial
14 company as such shall terminate upon the earliest
15 of—

16 (A) the merger or consolidation of the
17 bridge financial company with a company that
18 is not a bridge financial company;

19 (B) at the election of the Corporation, the
20 sale of a majority of the capital stock of the
21 bridge financial company to a company other
22 than the Corporation and other than another
23 bridge financial company;

24 (C) the sale of 80 percent, or more, of the
25 capital stock of the bridge financial company to

1 a person other than the Corporation and other
2 than another bridge financial company;

3 (D) at the election of the Corporation, ei-
4 ther the assumption of all or substantially all of
5 the liabilities of the bridge financial company by
6 a company that is not a bridge financial com-
7 pany, or the acquisition of all or substantially
8 all of the assets of the bridge financial company
9 by a company that is not a bridge financial
10 company, or other entity as permitted under
11 applicable law; and

12 (E) the expiration of the period provided in
13 paragraph (11), or the earlier dissolution of the
14 bridge financial company as provided in para-
15 graph (14).

16 (13) EFFECT OF TERMINATION EVENTS.—

17 (A) MERGER OR CONSOLIDATION.—A
18 merger or consolidation as provided in para-
19 graph (12)(A) shall be conducted in accordance
20 with, and shall have the effect provided in, the
21 provisions of applicable law. For the purpose of
22 effecting such a merger or consolidation, the
23 bridge financial company shall be treated as a
24 corporation organized under the laws of the
25 State of Delaware (unless the law of another

1 State has been selected by the bridge financial
2 company in accordance with paragraph (2)(F)),
3 and the Corporation shall be treated as the sole
4 shareholder thereof, notwithstanding any other
5 provision of State or Federal law.

6 (B) CHARTER CONVERSION.—Following
7 the sale of a majority of the capital stock of the
8 bridge financial company as provided in para-
9 graph (12)(B), the Corporation may amend the
10 charter of the bridge financial company to re-
11 flect the termination of the status of the bridge
12 financial company as such, whereupon the com-
13 pany shall have all of the rights, powers, and
14 privileges under its constituent documents and
15 applicable State or Federal law. In connection
16 therewith, the Corporation may take such steps
17 as may be necessary or convenient to reincor-
18 porate the bridge financial company under the
19 laws of a State and, notwithstanding any provi-
20 sions of State or Federal law, such State-char-
21 tered corporation shall be deemed to succeed by
22 operation of law to such rights, titles, powers
23 and interests of the bridge financial company as
24 the Corporation may provide, with the same ef-
25 fect as if the bridge financial company had

1 merged with the State-chartered corporation
2 under provisions of the corporate laws of such
3 State.

4 (C) SALE OF STOCK.—Following the sale
5 of 80 percent or more of the capital stock of a
6 bridge financial company as provided in para-
7 graph (12)(C), the company shall have all of
8 the rights, powers, and privileges under its con-
9 stituent documents and applicable State or Fed-
10 eral law. In connection therewith, the Corpora-
11 tion may take such steps as may be necessary
12 or convenient to reincorporate the bridge finan-
13 cial company under the laws of a State and,
14 notwithstanding any provisions of State or Fed-
15 eral law, the State-chartered corporation shall
16 be deemed to succeed by operation of law to
17 such rights, titles, powers and interests of the
18 bridge financial company as the Corporation
19 may provide, with the same effect as if the
20 bridge financial company had merged with the
21 State-chartered corporation under provisions of
22 the corporate laws of such State.

23 (D) ASSUMPTION OF LIABILITIES AND
24 SALE OF ASSETS.—Following the assumption of
25 all or substantially all of the liabilities of the

1 bridge financial company, or the sale of all or
2 substantially all of the assets of the bridge fi-
3 nancial company, as provided in paragraph
4 (12)(D), at the election of the Corporation the
5 bridge financial company may retain its status
6 as such for the period provided in paragraph
7 (11) or may be dissolved at the election of the
8 Corporation.

9 (E) AMENDMENTS TO CHARTER.—Fol-
10 lowing the consummation of a transaction de-
11 scribed in subparagraph (A), (B), (C), or (D)
12 of paragraph (12), the charter of the resulting
13 company shall be amended to reflect the termi-
14 nation of bridge financial company status, if ap-
15 propriate.

16 (14) DISSOLUTION OF BRIDGE FINANCIAL COM-
17 PANY.—

18 (A) IN GENERAL.—Notwithstanding any
19 other provision of State or Federal law, if a
20 bridge financial company's status as such has
21 not previously been terminated by the occur-
22 rence of an event specified in subparagraph (A),
23 (B), (C), or (D) of paragraph (12)—

24 (i) the Corporation may, in its discre-
25 tion, dissolve the bridge financial company

1 in accordance with this paragraph at any
2 time; and

3 (ii) the Corporation shall promptly
4 commence dissolution proceedings in ac-
5 cordance with this paragraph upon the ex-
6 piration of the 2-year period following the
7 date the bridge financial company was
8 chartered, or any extension thereof, as pro-
9 vided in paragraph (11).

10 (B) PROCEDURES.—The Corporation shall
11 remain the receiver of a bridge financial com-
12 pany for the purpose of dissolving the bridge fi-
13 nancial company. The Corporation as such re-
14 ceiver shall wind up the affairs of the bridge fi-
15 nancial company in conformity with the provi-
16 sions of law relating to the liquidation of cov-
17 ered financial companies. With respect to any
18 such bridge financial company, the Corporation
19 as receiver shall have all the rights, powers, and
20 privileges and shall perform the duties related
21 to the exercise of such rights, powers, or privi-
22 leges granted by law to a receiver of a covered
23 financial company and, notwithstanding any
24 other provision of law, in the exercise of such
25 rights, powers, and privileges the Corporation

1 shall not be subject to the direction or super-
2 vision of any State agency or other Federal
3 agency.

4 (15) AUTHORITY TO OBTAIN CREDIT.—

5 (A) IN GENERAL.—A bridge financial com-
6 pany may obtain unsecured credit and issue un-
7 secured debt.

8 (B) INABILITY TO OBTAIN CREDIT.—If a
9 bridge financial company is unable to obtain
10 unsecured credit or issue unsecured debt, the
11 Corporation may authorize the obtaining of
12 credit or the issuance of debt by the bridge fi-
13 nancial company—

14 (i) with priority over any or all of the
15 obligations of the bridge financial com-
16 pany;

17 (ii) secured by a lien on property of
18 the bridge financial company that is not
19 otherwise subject to a lien; or

20 (iii) secured by a junior lien on prop-
21 erty of the bridge financial company that
22 is subject to a lien.

23 (C) LIMITATIONS.—

24 (i) IN GENERAL.—The Corporation,
25 after notice and a hearing, may authorize

1 the obtaining of credit or the issuance of
2 debt by a bridge financial company that is
3 secured by a senior or equal lien on prop-
4 erty of the bridge financial company that
5 is subject to a lien only if—

6 (I) the bridge financial company
7 is unable to otherwise obtain such
8 credit or issue such debt; and

9 (II) there is adequate protection
10 of the interest of the holder of the lien
11 on the property with respect to which
12 such senior or equal lien is proposed
13 to be granted.

14 (D) BURDEN OF PROOF.—In any hearing
15 under this subsection, the Corporation has the
16 burden of proof on the issue of adequate protec-
17 tion.

18 (16) EFFECT ON DEBTS AND LIENS.—The re-
19 versal or modification on appeal of an authorization
20 under this subsection to obtain credit or issue debt,
21 or of a grant under this section of a priority or a
22 lien, does not affect the validity of any debt so
23 issued, or any priority or lien so granted, to an enti-
24 ty that extended such credit in good faith, whether
25 or not such entity knew of the pendency of the ap-

1 peal, unless such authorization and the issuance of
2 such debt, or the granting of such priority or lien,
3 were stayed pending appeal.

4 (i) SHARING RECORDS.—Whenever the Corporation
5 has been appointed as receiver or qualified receiver for a
6 covered financial company, the Federal Reserve Board and
7 the company’s primary Federal regulatory agency, if any,
8 shall each make all records relating to the company avail-
9 able to the receiver or qualified receiver which may be used
10 by the receiver or qualified receiver in any manner the re-
11 ceiver or qualified receiver determines to be appropriate.

12 (j) EXPEDITED PROCEDURES FOR CERTAIN
13 CLAIMS.—

14 (1) TIME FOR FILING NOTICE OF APPEAL.—

15 The notice of appeal of any order, whether interlocu-
16 tory or final, entered in any case brought by the
17 Corporation against a covered financial company’s
18 director, officer, employee, agent, attorney, account-
19 ant, or appraiser or any other person employed by
20 or providing services to a covered financial company
21 shall be filed not later than 30 days after the date
22 of entry of the order. The hearing of the appeal shall
23 be held not later than 120 days after the date of the
24 notice of appeal. The appeal shall be decided not

1 later than 180 days after the date of the notice of
2 appeal.

3 (2) SCHEDULING.—A court of the United
4 States shall expedite the consideration of any case
5 brought by the Corporation against a covered finan-
6 cial company’s director, officer, employee, agent, at-
7 torney, accountant, or appraiser or any other person
8 employed by or providing services to a covered finan-
9 cial company. As far as practicable, the court shall
10 give such case priority on its docket.

11 (3) JUDICIAL DISCRETION.—The court may
12 modify the schedule and limitations stated in para-
13 graphs (1) and (2) in a particular case, based on a
14 specific finding that the ends of justice that would
15 be served by making such a modification would out-
16 weigh the best interest of the public in having the
17 case resolved expeditiously.

18 (k) FOREIGN INVESTIGATIONS.—The Corporation, as
19 receiver or qualified receiver of any covered financial com-
20 pany and for purposes of carrying out any power, author-
21 ity, or duty with respect to a covered financial company—

22 (1) may request the assistance of any foreign fi-
23 nancial authority and provide assistance to any for-
24 eign financial authority in accordance with section
25 8(v) of the Federal Deposit Insurance Act as if the

1 covered financial company were an insured depository
2 tory institution, the Corporation were the appropriate
3 Federal banking agency for the company and
4 any foreign financial authority were the foreign
5 banking authority; and

6 (2) may maintain an office to coordinate foreign
7 investigations or investigations on behalf of foreign
8 financial authorities.

9 (l) PROHIBITION ON ENTERING SECRECY AGREEMENTS
10 AND PROTECTIVE ORDERS.—The Corporation
11 may not enter into any agreement or approve any protective
12 order which prohibits the Corporation from disclosing
13 the terms of any settlement of an administrative or other
14 action for damages or restitution brought by the Corporation
15 in its capacity as receiver or qualified receiver for a
16 covered financial company.

17 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL
18 COMPANIES OR BRIDGE FINANCIAL COMPANIES.—Notwithstanding
19 any other provision of law (other than a conflicting
20 provision of this section), the Corporation, in connection
21 with the liquidation of any covered financial company
22 or bridge financial company with respect to which
23 the Corporation has been appointed as receiver, shall—

24 (1) in the case of any covered financial company
25 or bridge financial company that is or has a

1 subsidiary that is a stockbroker (as that term is de-
2 fined in section 101 of title 11 of the United States
3 Code) but is not a member of the Securities Investor
4 Protection Corporation, apply the provisions of sub-
5 chapter III of chapter 7 of title 11 of the United
6 States Code in respect of the distribution to any
7 “customer” of all “customer name securities” and
8 “customer property” (as such terms are defined in
9 section 741 of such title 11) as if such covered fi-
10 nancial company or bridge financial company were a
11 debtor for purposes of such subchapter; or

12 (2) in the case of any covered financial com-
13 pany or bridge financial company that is a com-
14 modity broker (as that term is defined in section
15 101 of title 11 of the United States Code), apply the
16 provisions of subchapter IV of chapter 7 of title 11
17 of the United States Code in respect of the distribu-
18 tion to any “customer” of all “customer property”
19 (as such terms are defined in section 761 of such
20 title 11) as if such covered financial company or
21 bridge financial company were a debtor for purposes
22 of such subchapter.

23 (n) SYSTEMIC RESOLUTION FUND.—

24 (1) ESTABLISHMENT.—There is established in
25 the Treasury a separate fund called the Systemic

1 Resolution Fund, which shall be available without
2 further appropriation for the cost of actions author-
3 ized by this title upon a determination made under
4 section 1603(b) to the Corporation to carry out the
5 authorities contained in this title, including the pay-
6 ment of administrative expenses, the Corporation's
7 payment of principal and interest on obligations
8 issued under paragraph (3), and the exercise of au-
9 thorities under section 1604.

10 (2) PROCEEDS.—Amounts received by the Cor-
11 poration (including amounts borrowed under para-
12 graph (3) and assessments received under subsection
13 (o), but excluding amounts received by any covered
14 financial company when the Corporation is acting in
15 its capacity as receiver or qualified receiver for such
16 company, and excluding amounts credited to the ap-
17 propriate financing account as a means of financing
18 credit activity, as applicable) shall be deposited into
19 the Fund, subject to apportionment.

20 (3) CAPITALIZATION OF FUND.—

21 (A) CORPORATION AUTHORIZED TO ISSUE
22 OBLIGATIONS.—In order to capitalize the Fund
23 upon the Secretary making the determination
24 provided for in section 1603(b), the Corporation

1 is authorized to issue obligations to the Sec-
2 retary.

3 (B) SECRETARY AUTHORIZED TO PUR-
4 CHASE OBLIGATIONS.—The Secretary may, in
5 the Secretary's discretion and under such terms
6 and conditions that the Secretary may require,
7 purchase or agree to purchase any obligations
8 issued under subparagraph (A), and for such
9 purpose the Secretary is authorized to use as a
10 public debt transaction the proceeds of the sale
11 of any securities hereafter issued under chapter
12 31 of title 31, United States Code, and the pur-
13 poses for which securities may be issued under
14 chapter 31 of title 31, United States Code, are
15 extended to include such purchases.

16 (C) INTEREST RATE.—Each purchase of
17 obligations by the Secretary under this para-
18 graph shall be upon such terms and conditions
19 as to yield a return at a rate not less than a
20 rate determined by the Secretary, taking into
21 consideration the current average yield on out-
22 standing marketable obligations of the United
23 States of comparable maturity.

24 (D) SECRETARY AUTHORIZED TO SELL OB-
25 LIGATIONS.—The Secretary may sell, upon such

1 terms and conditions and at such price or
2 prices as the Secretary shall determine, any of
3 the obligations acquired under this paragraph.

4 (E) PUBLIC DEBT TRANSACTIONS.—All
5 purchases and sales by the Secretary of such
6 obligations under this paragraph shall be treat-
7 ed as public debt transactions of the United
8 States, and the proceeds from the sale of any
9 obligations acquired by the Secretary under this
10 paragraph shall be covered into the Treasury as
11 miscellaneous receipts.

12 (o) RECOVERY OF EXPENDED FUNDS FROM FINAN-
13 CIAL COMPANIES.—

14 (1) RISK-BASED ASSESSMENTS.—The Corpora-
15 tion shall recover the amount of funds expended out
16 of the Fund under subsection (n) and which have
17 not otherwise been recouped. Steps to recover such
18 amounts shall include one or more risk-based assess-
19 ments on financial companies in such amount and
20 manner, and subject to such terms and conditions
21 that the Corporation determines, with the concur-
22 rence of the Secretary and the Federal Reserve
23 Board, are necessary to pay in full the obligations
24 issued by Corporation to the Secretary, within 60
25 months from the date of the Secretary's determina-

1 tion under section 1603(b). The Corporation may,
2 with the approval of the Secretary and the Federal
3 Reserve Board, extend this time period if the Cor-
4 poration determines that an extension is necessary
5 to avoid having a serious adverse effect on the finan-
6 cial system or economic conditions in the United
7 States.

8 (2) ASSESSMENT THRESHOLD AND GRADUATED
9 ASSESSMENT RATE.—The Corporation shall not as-
10 sess any financial company whose total assets on a
11 consolidated basis are less than \$10 billion. The
12 Corporation shall assess any financial company with
13 \$10 billion or more in total consolidated assets on a
14 graduated basis that assesses financial companies
15 with greater assets at a higher rate.

16 (3) RISK-BASED ASSESSMENT CONSIDER-
17 ATIONS.—In imposing assessments under para-
18 graphs (1) and (2), the Corporation shall—

19 (A) take into account economic conditions
20 generally affecting financial companies so as to
21 allow assessments to be lower during less favor-
22 able economic conditions;

23 (B) take into account any assessments im-
24 posed on a subsidiary of a financial company
25 that is—

1 (i) an insured depository institution
2 pursuant to section 7 or section
3 13(c)(4)(G) of the Federal Deposit Insur-
4 ance Act (12 U.S.C. §1817 and
5 1823(c)(4)(G));

6 (ii) a member of the Securities Inves-
7 tor Protection Corporation pursuant to
8 section 4 of the Securities Investor Protec-
9 tion Act of 1970 (15 U.S.C. 78ddd); or

10 (iii) an insurance company pursuant
11 to applicable State law to cover (or reim-
12 burse payments made to cover) the costs of
13 rehabilitation, liquidation, or other State
14 insolvency proceeding with respect to one
15 or more insurance companies;

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

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

24 (E) distinguish among different classes of
25 assets or different types of financial companies

1 in order to establish comparable assessment
2 bases among financial companies subject to this
3 subsection; and

4 (F) establish the parameters for the grad-
5 uated assessment regime described in para-
6 graph (2).

7 (4) COLLECTION OF INFORMATION.—The Cor-
8 poration may impose on financial companies such
9 collection of information requirements that the Cor-
10 poration deems necessary to carry out this sub-
11 section after a determination under section 1603(b).

12 (5) RULEMAKING.—The Corporation shall, in
13 consultation with the Secretary and the Federal Re-
14 serve Board, prescribe regulations to carry out this
15 subsection.

16 (p) NO FEDERAL STATUS.—

17 (1) AGENCY STATUS.—A covered financial com-
18 pany (or any covered subsidiary thereof) that is
19 placed into receivership or qualified receivership is
20 not a department, agency, or instrumentality of the
21 United States for purposes of statutes that confer
22 powers on or impose obligations on government enti-
23 ties.

24 (2) EMPLOYEE STATUS.—Interim directors, di-
25 rectors, officers, employees, or agents of a covered

1 financial company that is placed into receivership or
2 qualified receivership are not, solely by virtue of
3 service in any such capacity, officers or employees of
4 the United States. Any employee of the Corporation,
5 acting as receiver or qualified receiver, or of any
6 Federal agency who serves at the request of the re-
7 ceiver or qualified receiver as an interim director, di-
8 rector, officer, employee, or agent of a covered finan-
9 cial company that is placed into receivership or
10 qualified receivership shall not—

11 (A) solely by virtue of service in any such
12 capacity lose any existing status as an officer or
13 employee of the United States for purposes of
14 title 5, United States Code, or any other provi-
15 sion of law, or

16 (B) receive any salary or benefits for serv-
17 ice in any such capacity with respect to a cov-
18 ered financial company that is placed into re-
19 ceivership or qualified receivership in addition
20 to such salary or benefits as are obtained
21 through employment with the Corporation or
22 other Federal agency.

1 **SEC. 1610. CLARIFICATION OF PROHIBITION REGARDING**
2 **CONCEALMENT OF ASSETS FROM QUALIFIED**
3 **RECEIVER, RECEIVER, OR LIQUIDATING**
4 **AGENT.**

5 (a) IN GENERAL.—Section 1032 of title 18, United
6 States Code, is amended in paragraph (1) by deleting “or”
7 before “the National Credit Union Administration
8 Board,” and by inserting immediately thereafter “or the
9 Corporation, as defined in section 1602 of the Resolution
10 Authority for Large, Interconnected Financial Companies
11 Act of 2009,”.

12 (b) CONFORMING CHANGE.—The heading of section
13 1032 of title 18, United States Code, is amended by strik-
14 ing “**of financial institution**”.

15 **SEC. 1611. MISCELLANEOUS PROVISIONS.**

16 (a) BANKRUPTCY CODE AMENDMENTS.—Section
17 109(b)(2) of title 11 of the United States Code is amended
18 by inserting “covered financial company (as that term is
19 defined in section 1602(5) of the Resolution Authority for
20 Large, Interconnected Financial Companies Act of
21 2009),” after “a domestic insurance company,”.

22 (b) FEDERAL DEPOSIT INSURANCE ACT AND FED-
23 ERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT
24 ACT OF 1991.—

25 (1) Section 18(c)(4)(G)(i) of the Federal De-
26 posit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) is

1 amended by inserting at the end the following new
2 sentence: “The determination with regard to the
3 Corporation’s exercise of authority under this sub-
4 paragraph shall apply to only an insured depository
5 institution except when severe financial conditions
6 exist which threaten the stability of a significant
7 number of insured depository institutions.”.

8 (2) Section 403(a) of the Federal Deposit In-
9 surance Corporation Improvement Act of 1991 (12
10 U.S.C. 4403(a)) is amended by inserting “section
11 1609(e) of the Resolution Authority for Large,
12 Interconnected Financial Companies Act of 2009,
13 section 1367 of the Federal Housing Enterprises Fi-
14 nancial Safety and Soundness Act of 1992 (12
15 U.S.C. 4617(d)),” after “section 11(e) of the Fed-
16 eral Deposit Insurance Act,”.

17 **Subtitle H—Additional Improve-**
18 **ments for Financial Crisis Man-**
19 **agement**

20 **SEC. 1701. ADDITIONAL IMPROVEMENTS FOR FINANCIAL**
21 **CRISIS MANAGEMENT.**

22 Section 13 of the Federal Reserve Act is amended
23 in the 3rd undesignated paragraph (12 U.S.C. 343) to
24 read as follows:

1 “In unusual and exigent circumstances, the Board of
2 Governors of the Federal Reserve System, by the affirma-
3 tive vote of not less than five members and with the writ-
4 ten concurrence of the Secretary of the Treasury, may au-
5 thorize any Federal reserve bank, during such periods as
6 the said board may determine, at rates established in ac-
7 cordance with the provisions of section 14, subdivision (d)
8 of this Act (12 U.S.C. 357), to discount for an individual,
9 partnership, or corporation, notes, drafts, and bills of ex-
10 change when such notes, drafts, and bills of exchange are
11 indorsed or otherwise secured to the satisfaction of the
12 Federal reserve bank: *Provided*, That the Board of Gov-
13 ernors of the Federal Reserve System may authorize a
14 Federal reserve bank to discount notes, drafts, or bills of
15 exchange under this section only as part of a broadly avail-
16 able credit or other facility and may not authorize a Fed-
17 eral Reserve bank to discount notes, drafts, or bills of ex-
18 change for only a single and specific individual, partner-
19 ship, or corporation: And provided further that before dis-
20 counting any such note, draft, or bill of exchange for an
21 individual, a partnership or corporation the Federal re-
22 serve bank shall obtain evidence that such individual, part-
23 nership, or corporation is unable to secure adequate credit
24 accommodations from other banking institutions. All dis-
25 counts under this paragraph for individuals, partnerships,

1 or corporations shall be subject to such limitations, restric-
2 tions, and regulations as the Board of Governors of the
3 Federal Reserve System may prescribe.”.

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