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115TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 115–153
Part 1

FINANCIAL CHOICE ACT OF 2010

R E P O R T

OF THE

COMMITTEE ON FINANCIAL SERVICES

TOGETHER WITH

MINORITY VIEWS

[TO ACCOMPANY H.R. 10]

BOOK 1 OF 2

MAY 25, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

FINANCIAL CHOICE ACT OF 2010
(Book 1 of 2)

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115TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPT. 115–153 Part 1

FINANCIAL CHOICE ACT OF 2010

MAY 25, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 10]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Service, to whom was referred the bill (H.R. 10) to create hope and opportunity for investors, consumers, and entrepreneurs by ending bailouts and Too Big to Fail, holding Washington and Wall Street accountable, eliminating red tape to increase access to capital and credit, and repealing the provisions of the Dodd-Frank Act that make America less prosperous, less stable, and less free, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial CHOICE Act of 2017".

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

Sec. 1. Short title; table of contents.

TITLE I—ENDING "TOO BIG TO FAIL" AND BANK BAILOUTS

Subtitle A—Repeal of the Orderly Liquidation Authority

Sec. 111. Repeal of the orderly liquidation authority.

Subtitle B—Financial Institution Bankruptcy

Sec. 121. General provisions relating to covered financial corporations.
Sec. 122. Liquidation, reorganization, or recapitalization of a covered financial corporation.
Sec. 123. Amendments to title 28, United States Code.

Subtitle C—Ending Government Guarantees

Sec. 131. Repeal of obligation guarantee program.
Sec. 132. Repeal of systemic risk determination in resolutions.
Sec. 133. Restrictions on use of the Exchange Stabilization Fund.

Subtitle D—Eliminating Financial Market Utility Designations

Sec. 141. Repeal of title VIII.

Subtitle E—Reform of the Financial Stability Act of 2010

Sec. 151. Repeal and modification of provisions of the Financial Stability Act of 2010.
Sec. 152. Operational risk capital requirements for banking organizations.

TITLE II—DEMANDING ACCOUNTABILITY FROM WALL STREET

Subtitle A—SEC Penalties Modernization

Sec. 211. Enhancement of civil penalties for securities laws violations.
Sec. 212. Updated civil money penalties of Public Company Accounting Oversight Board.
Sec. 213. Updated civil money penalty for controlling persons in connection with insider trading.
Sec. 214. Update of certain other penalties.
Sec. 215. Monetary sanctions to be used for the relief of victims.
Sec. 216. GAO report on use of civil money penalty authority by Commission.

Subtitle B—FIRREA Penalties Modernization

Sec. 221. Increase of civil and criminal penalties originally established in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

TITLE III—DEMANDING ACCOUNTABILITY FROM FINANCIAL REGULATORS AND DEVOLVING POWER AWAY FROM WASHINGTON

Subtitle A—Cost-Benefit Analyses

Sec. 311. Definitions.
Sec. 312. Required regulatory analysis.
Sec. 313. Rule of construction.
Sec. 314. Public availability of data and regulatory analysis.
Sec. 315. Five-year regulatory impact analysis.
Sec. 316. Retrospective review of existing rules.
Sec. 317. Judicial review.
Sec. 318. Chief Economists Council.
Sec. 319. Conforming amendments.
Sec. 320. Other regulatory entities.
Sec. 321. Avoidance of duplicative or unnecessary analyses.

Subtitle B—Congressional Review of Federal Financial Agency Rulemaking

Sec. 331. Congressional review.
Sec. 332. Congressional approval procedure for major rules.
Sec. 333. Congressional disapproval procedure for nonmajor rules.
Sec. 334. Definitions.
Sec. 335. Judicial review.
Sec. 336. Effective date of certain rules.
Sec. 337. Budgetary effects of rules subject to section 332 of the Financial CHOICE Act of 2017.

Subtitle C—Judicial Review of Agency Actions

Sec. 341. Scope of judicial review of agency actions.

Subtitle D—Leadership of Financial Regulators

Sec. 351. Federal Deposit Insurance Corporation.
Sec. 352. Federal Housing Finance Agency.

Subtitle E—Congressional Oversight of Appropriations

Sec. 361. Bringing the Federal Deposit Insurance Corporation into the appropriations process.
Sec. 362. Bringing the Federal Housing Finance Agency into the appropriations process.
Sec. 363. Bringing the National Credit Union Administration into the appropriations process.
Sec. 364. Bringing the Office of the Comptroller of the Currency into the appropriations process.
Sec. 365. Bringing the non-monetary policy related functions of the Board of Governors of the Federal Reserve System into the appropriations process.

Subtitle F—International Processes

Sec. 371. Requirements for international processes.

Subtitle G—Unfunded Mandates Reform

Sec. 381. Definitions.
Sec. 382. Statements to accompany significant regulatory actions.
Sec. 383. Small government agency plan.
Sec. 384. State, local, and tribal government and private sector input.
Sec. 385. Least burdensome option or explanation required.
Sec. 386. Assistance to the Office of Information and Regulatory Affairs.
Sec. 387. Office of Information and Regulatory Affairs responsibilities.
Sec. 388. Judicial review.

Subtitle H—Enforcement Coordination

Sec. 391. Policies to minimize duplication of enforcement efforts.

Subtitle I—Penalties for Unauthorized Disclosures

Sec. 392. Criminal penalty for unauthorized disclosures.

Subtitle II—Stop Settlement Slush Funds

Sec. 393. Limitation on donations made pursuant to settlement agreements to which certain departments or agencies are a party.

TITLE IV—UNLEASHING OPPORTUNITIES FOR SMALL BUSINESSES, INNOVATORS, AND JOB CREATORS BY FACILITATING CAPITAL FORMATION

Subtitle A—Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification

Sec. 401. Registration exemption for merger and acquisition brokers.
Sec. 402. Effective date.

Subtitle B—Encouraging Employee Ownership

Sec. 406. Increased threshold for disclosures relating to compensatory benefit plans.

Subtitle C—Small Company Disclosure Simplification

Sec. 411. Exemption from XBRL requirements for emerging growth companies and other smaller companies.
Sec. 412. Analysis by the SEC.
Sec. 413. Report to Congress.
Sec. 414. Definitions.

Subtitle D—Securities and Exchange Commission Overpayment Credit

Sec. 416. Refunding or crediting overpayment of section 31 fees.

Subtitle E—Fair Access to Investment Research

Sec. 421. Safe harbor for investment fund research.

Subtitle F—Accelerating Access to Capital

Sec. 426. Expanded eligibility for use of Form S–3.

Subtitle G—Enhancing the RAISE Act

Sec. 431. Certain accredited investor transactions.

Subtitle H—Small Business Credit Availability

Sec. 436. Business development company ownership of securities of investment advisers and certain financial companies.
Sec. 437. Expanding access to capital for business development companies.
Sec. 438. Parity for business development companies regarding offering and proxy rules.

Subtitle I—Fostering Innovation

Sec. 441. Temporary exemption for low-revenue issuers.

Subtitle J—Small Business Capital Formation Enhancement

Sec. 446. Annual review of government-business forum on capital formation.

Subtitle K—Helping Angels Lead Our Startups

Sec. 451. Definition of angel investor group.
Sec. 452. Clarification of general solicitation.

Subtitle L—Main Street Growth

Sec. 456. Venture exchanges.

Subtitle M—Micro Offering Safe Harbor

Sec. 461. Exemptions for micro-offerings.

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Subtitle O—Supporting America's Innovators

Sec. 471. Investor limitation for qualifying venture capital funds.

Subtitle P—Fix Crowdfunding

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Sec. 477. Exclusion of crowdfunding investors from shareholder cap.
Sec. 478. Preemption of State law.
Sec. 479. Treatment of funding portals.

Subtitle Q—Corporate Governance Reform and Transparency

Sec. 481. Definitions.
Sec. 482. Registration of proxy advisory firms.
Sec. 483. Commission annual report.

Subtitle R—Senior Safe

Sec. 491. Immunity.
Sec. 492. Training required.
Sec. 493. Relationship to State law.

Subtitle S—National Securities Exchange Regulatory Parity

Sec. 496. Application of exemption.

Subtitle T—Private Company Flexibility and Growth

Sec. 497. Shareholder threshold for registration.

Subtitle U—Small Company Capital Formation Enhancements

Sec. 498. JOBS Act-related exemption.

Subtitle V—Encouraging Public Offerings

Sec. 499. Expanding testing the waters and confidential submissions.

TITLE V—REGULATORY RELIEF FOR MAIN STREET AND COMMUNITY FINANCIAL INSTITUTIONS

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Sec. 501. Mortgage originator definition.
Sec. 502. High-Cost mortgage definition.

Subtitle B—Mortgage Choice

Sec. 506. Definition of points and fees.

Subtitle C—Financial Institution Customer Protection

Sec. 511. Requirements for deposit account termination requests and orders.
Sec. 512. Amendments to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Subtitle D—Portfolio Lending and Mortgage Access

Sec. 516. Safe harbor for certain loans held on portfolio.

Subtitle E—Application of the Expedited Funds Availability Act

Sec. 521. Application of the Expedited Funds Availability Act.

Subtitle F—Small Bank Holding Company Policy Statement

Sec. 526. Changes required to small bank holding company policy statement on assessment of financial and managerial factors.

Subtitle G—Community Institution Mortgage Relief

Sec. 531. Community financial institution mortgage relief.

Subtitle H—Financial Institutions Examination Fairness and Reform

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TITLE VI—REGULATORY RELIEF FOR STRONGLY CAPITALIZED, WELL MANAGED BANKING ORGANIZATIONS

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Sec. 737. Preservation of UDAP authority for Federal banking regulators.
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Sec. 1001. Requirements for policy rules of the Federal Open Market Committee.
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Sec. 1007. Salaries, financial disclosures, and office staff of the Board of Governors of the Federal Reserve System.
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TITLE I—ENDING "TOO BIG TO FAIL" AND BANK BAILOUTS

Subtitle A—Repeal of the Orderly Liquidation Authority

SEC. 111. REPEAL OF THE ORDERLY LIQUIDATION AUTHORITY.

(a) IN GENERAL.—Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act is hereby repealed and any Federal law amended by such title shall, on and after the effective date of this Act, be effective as if title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act had not been enacted.

(b) CONFORMING AMENDMENTS.—

(1) DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.—The Dodd-Frank Wall Street Reform and Consumer Protection Act is amended—

(A) in the table of contents for such Act, by striking all items relating to title II;

(B) in section 165(d)—

(i) in paragraph (1), by striking ", the Council, and the Corporation" and inserting "and the Council";

(ii) in paragraph (2), by striking ", the Council, and the Corporation" and inserting "and the Council";

(iii) in paragraph (3), by striking "and the Corporation";

(iv) in paragraph (4)—

(I) by striking "and the Corporation jointly determine" and inserting "determines";

(II) by striking "their" and inserting "its";

(III) in subparagraph (A), by striking "and the Corporation"; and

(IV) in subparagraph (B), by striking "and the Corporation";

(v) in paragraph (5)—

(I) in subparagraph (A), by striking "and the Corporation may jointly" and inserting "may"; and

(II) in subparagraph (B)—

(aa) by striking "and the Corporation" each place such term appears;

(bb) by striking "may jointly" and inserting "may";

(cc) by striking "have jointly" and inserting "has";

(vi) in paragraph (6), by striking ", a receiver appointed under title II,"; and

(vii) by amending paragraph (8) to read as follows:

"(8) RULES.—Not later than 12 months after enactment of this paragraph, the Board of Governors shall issue final rules implementing this section."; and

(C) in section 716(g), by striking "or a covered financial company under title II".

(2) FEDERAL DEPOSIT INSURANCE ACT.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking ", or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010, for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act".

(3) FEDERAL RESERVE ACT.—Section 13(3) of the Federal Reserve Act is amended—

(A) in subparagraph (B)—

(i) in clause (ii), by striking ", resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or" and inserting "or is subject to resolution under"; and

(ii) in clause (iii), by striking ", resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or" and inserting "or resolution under"; and

(B) by striking subparagraph (E).

Subtitle B—Financial Institution Bankruptcy

SEC. 121. GENERAL PROVISIONS RELATING TO COVERED FINANCIAL CORPORATIONS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting the following after paragraph (9):

"(9A) The term 'covered financial corporation' means any corporation incorporated or organized under any Federal or State law, other than a stockbroker, a commodity broker, or an entity of the kind specified in paragraph (2) or (3) of section 109(b), that is—

"(A) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956; or

"(B) a corporation that exists for the primary purpose of owning, controlling and financing its subsidiaries, that has total consolidated assets of $50,000,000,000 or greater, and for which, in its most recently completed fiscal year—

"(i) annual gross revenues derived by the corporation and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the corporation; or

"(ii) the consolidated assets of the corporation and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the corporation.".

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended by adding at the end the following:

"(l) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 concerning a covered financial corporation.".

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

(1) in subsection (b)—

(A) in paragraph (2), by striking "or" at the end;

(B) in paragraph (3)(B), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(4) a covered financial corporation."; and

(2) in subsection (d)—

(A) by striking "and" before "an uninsured State member bank";

(B) by striking "or" before "a corporation"; and

(C) by inserting ", or a covered financial corporation" after "Federal Deposit Insurance Corporation Improvement Act of 1991".

(d) CONVERSION TO CHAPTER 7.—Section 1112 of title 11, United States Code, is amended by adding at the end the following:

"(g) Notwithstanding section 109(b), the court may convert a case under subchapter V to a case under chapter 7 if—

"(1) a transfer approved under section 1185 has been consummated;

"(2) the court has ordered the appointment of a special trustee under section 1186; and

"(3) the court finds, after notice and a hearing, that conversion is in the best interest of the creditors and the estate.".

(e)(1) Section 726(a)(1) of title 11, United States Code, is amended by inserting after "first," the following: "in payment of any unpaid fees, costs, and expenses of a special trustee appointed under section 1186, and then".

(2) Section 1129(a) of title 11, United States Code, is amended by inserting after paragraph (16) the following:

"(17) In a case under subchapter V, all payable fees, costs, and expenses of the special trustee have been paid or the plan provides for the payment of all such fees, costs, and expenses on the effective date of the plan.

"(18) In a case under subchapter V, confirmation of the plan is not likely to cause serious adverse effects on financial stability in the United States.".

(f) Section 322(b)(2) of title 11, United States Code, is amended by striking "The" and inserting "In cases under subchapter V, the United States trustee shall recommend to the court, and in all other cases, the".

SEC. 122. LIQUIDATION, REORGANIZATION, OR RECAPITALIZATION OF A COVERED FINANCIAL CORPORATION.

Chapter 11 of title 11, United States Code, is amended by adding at the end the following (and conforming the table of contents for such chapter accordingly):

"SUBCHAPTER V—LIQUIDATION, REORGANIZATION, OR RECAPITALIZATION OF A COVERED FINANCIAL CORPORATION

"§ 1181. Inapplicability of other sections

"Sections 303 and 321(c) do not apply in a case under this subchapter concerning a covered financial corporation. Section 365 does not apply to a transfer under section 1185, 1187, or 1188.

"§ 1182. Definitions for this subchapter

"In this subchapter, the following definitions shall apply:

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

"(2) The term 'bridge company' means a newly formed corporation to which property of the estate may be transferred under section 1185(a) and the equity securities of which may be transferred to a special trustee under section 1186(a).

"(3) The term 'capital structure debt' means all unsecured debt of the debtor for borrowed money for which the debtor is the primary obligor, other than a qualified financial contract and other than debt secured by a lien on property of the estate that is to be transferred to a bridge company pursuant to an order of the court under section 1185(a).

"(4) The term 'contractual right' means a contractual right of a kind defined in section 555, 556, 559, 560, or 561.

"(5) The term 'qualified financial contract' means any contract of a kind defined in paragraph (25), (38A), (47), or (53B) of section 101, section 741(7), or paragraph (4), (5), (11), or (13) of section 761.

"(6) The term 'special trustee' means the trustee of a trust formed under section 1186(a)(1).

"§ 1183. Commencement of a case concerning a covered financial corporation

"(a) A case under this subchapter concerning a covered financial corporation may be commenced by the filing of a petition with the court by the debtor under section 301 only if the debtor states to the best of its knowledge under penalty of perjury in the petition that it is a covered financial corporation.

"(b) The commencement of a case under subsection (a) constitutes an order for relief under this subchapter.

"(c) The members of the board of directors (or body performing similar functions) of a covered financial company shall have no liability to shareholders, creditors, or other parties in interest for a good faith filing of a petition to commence a case under this subchapter, or for any reasonable action taken in good faith in contemplation of such a petition or a transfer under section 1185 or section 1186, whether prior to or after commencement of the case.

"(d) Counsel to the debtor shall provide, to the greatest extent practicable without disclosing the identity of the potential debtor, sufficient confidential notice to the chief judge of the court of appeals for the circuit embracing the district in which such counsel intends to file a petition to commence a case under this subchapter regarding the potential commencement of such case. The chief judge of such court shall randomly assign to preside over such case a bankruptcy judge selected from among the bankruptcy judges designated by the Chief Justice of the United States under section 298 of title 28.

"§ 1184. Regulators

"The Board, the Securities Exchange Commission, the Office of the Comptroller of the Currency of the Department of the Treasury, the Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation may raise and may appear and be heard on any issue in any case or proceeding under this subchapter.

"§ 1185. Special transfer of property of the estate

"(a) On request of the trustee, and after notice and a hearing that shall occur not less than 24 hours after the order for relief, the court may order a transfer under this section of property of the estate, and the assignment of executory contracts, unexpired leases, and qualified financial contracts of the debtor, to a bridge company. Upon the entry of an order approving such transfer, any property transferred, and any executory contracts, unexpired leases, and qualified financial contracts assigned under such order shall no longer be property of the estate. Except as provided under this section, the provisions of section 363 shall apply to a transfer and assignment under this section.

"(b) Unless the court orders otherwise, notice of a request for an order under subsection (a) shall consist of electronic or telephonic notice of not less than 24 hours to—

"(1) the debtor;

"(2) the holders of the 20 largest secured claims against the debtor;

"(3) the holders of the 20 largest unsecured claims against the debtor;

"(4) counterparties to any debt, executory contract, unexpired lease, and qualified financial contract requested to be transferred under this section;

"(5) the Board;

"(6) the Federal Deposit Insurance Corporation;

"(7) the Secretary of the Treasury and the Office of the Comptroller of the Currency of the Treasury;

"(8) the Commodity Futures Trading Commission;

"(9) the Securities and Exchange Commission;

"(10) the United States trustee or bankruptcy administrator; and

"(11) each primary financial regulatory agency, as defined in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, with respect to any affiliate the equity securities of which are proposed to be transferred under this section.

"(c) The court may not order a transfer under this section unless the court determines, based upon a preponderance of the evidence, that—

"(1) the transfer under this section is necessary to prevent serious adverse effects on financial stability in the United States;

"(2) the transfer does not provide for the assumption of any capital structure debt by the bridge company;

"(3) the transfer does not provide for the transfer to the bridge company of any property of the estate that is subject to a lien securing a debt, executory contract, unexpired lease or agreement (including a qualified financial contract) of the debtor unless—

"(A)(i) the bridge company assumes such debt, executory contract, unexpired lease or agreement (including a qualified financial contract), including any claims arising in respect thereof that would not be allowed secured claims under section 506(a)(1) and after giving effect to such transfer, such property remains subject to the lien securing such debt, executory contract, unexpired lease or agreement (including a qualified financial contract); and

"(ii) the court has determined that assumption of such debt, executory contract, unexpired lease or agreement (including a qualified financial contract) by the bridge company is in the best interests of the estate; or

"(B) such property is being transferred to the bridge company in accordance with the provisions of section 363;

"(4) the transfer does not provide for the assumption by the bridge company of any debt, executory contract, unexpired lease or agreement (including a qualified financial contract) of the debtor secured by a lien on property of the estate unless the transfer provides for such property to be transferred to the bridge company in accordance with paragraph (3)(A) of this subsection;

"(5) the transfer does not provide for the transfer of the equity of the debtor;

"(6) the trustee has demonstrated that the bridge company is not likely to fail to meet the obligations of any debt, executory contract, qualified financial contract, or unexpired lease assumed and assigned to the bridge company;

"(7) the transfer provides for the transfer to a special trustee all of the equity securities in the bridge company and appointment of a special trustee in accordance with section 1186;

"(8) after giving effect to the transfer, adequate provision has been made for the fees, costs, and expenses of the estate and special trustee; and

"(9) the bridge company will have governing documents, and initial directors and senior officers, that are in the best interest of creditors and the estate.

"(d) Immediately before a transfer under this section, the bridge company that is the recipient of the transfer shall—

"(1) not have any property, executory contracts, unexpired leases, qualified financial contracts, or debts, other than any property acquired or executory contracts, unexpired leases, or debts assumed when acting as a transferee of a transfer under this section; and

"(2) have equity securities that are property of the estate, which may be sold or distributed in accordance with this title.

"§ 1186. Special trustee

"(a)(1) An order approving a transfer under section 1185 shall require the trustee to transfer to a qualified and independent special trustee, who is appointed by the court, all of the equity securities in the bridge company that is the recipient of a transfer under section 1185 to hold in trust for the sole benefit of the estate, subject to satisfaction of the special trustee's fees, costs, and expenses. The trust of which the special trustee is the trustee shall be a newly formed trust governed by a trust agreement approved by the court as in the best interests of the estate, and shall exist for the sole purpose of holding and administering, and shall be permitted to dispose of, the equity securities of the bridge company in accordance with the trust agreement.

"(2) In connection with the hearing to approve a transfer under section 1185, the trustee shall confirm to the court that the Board has been consulted regarding the identity of the proposed special trustee and advise the court of the results of such consultation.

"(b) The trust agreement governing the trust shall provide—

"(1) for the payment of the fees, costs, expenses, and indemnities of the special trustee from the assets of the debtor's estate;

"(2) that the special trustee provide—

"(A) quarterly reporting to the estate, which shall be filed with the court; and

"(B) information about the bridge company reasonably requested by a party in interest to prepare a disclosure statement for a plan providing for distribution of any securities of the bridge company if such information is necessary to prepare such disclosure statement;

"(3) that for as long as the equity securities of the bridge company are held by the trust, the special trustee shall file a notice with the court in connection with—

"(A) any change in a director or senior officer of the bridge company;

"(B) any modification to the governing documents of the bridge company; and

"(C) any material corporate action of the bridge company, including—

"(i) recapitalization;

"(ii) a material borrowing;

"(iii) termination of an intercompany debt or guarantee;

"(iv) a transfer of a substantial portion of the assets of the bridge company; or

"(v) the issuance or sale of any securities of the bridge company;

"(4) that any sale of any equity securities of the bridge company shall not be consummated until the special trustee consults with the Federal Deposit Insurance Corporation and the Board regarding such sale and discloses the results of such consultation with the court;

"(5) that, subject to reserves for payments permitted under paragraph (1) provided for in the trust agreement, the proceeds of the sale of any equity securities of the bridge company by the special trustee be held in trust for the benefit of or transferred to the estate;

"(6) the process and guidelines for the replacement of the special trustee; and

"(7) that the property held in trust by the special trustee is subject to distribution in accordance with subsection (c).

"(c)(1) The special trustee shall distribute the assets held in trust—

"(A) if the court confirms a plan in the case, in accordance with the plan on the effective date of the plan; or

"(B) if the case is converted to a case under chapter 7, as ordered by the court.

"(2) As soon as practicable after a final distribution under paragraph (1), the office of the special trustee shall terminate, except as may be necessary to wind up and conclude the business and financial affairs of the trust.

"(d) After a transfer to the special trustee under this section, the special trustee shall be subject only to applicable nonbankruptcy law, and the actions and conduct of the special trustee shall no longer be subject to approval by the court in the case under this subchapter.

"§ 1187. Temporary and supplemental automatic stay; assumed debt

"(a)(1) A petition filed under section 1183 operates as a stay, applicable to all entities, of the termination, acceleration, or modification of any debt, contract, lease, or agreement of the kind described in paragraph (2), or of any right or obligation under any such debt, contract, lease, or agreement, solely because of—

"(A) a default by the debtor under any such debt, contract, lease, or agreement; or

"(B) a provision in such debt, contract, lease, or agreement, or in applicable nonbankruptcy law, that is conditioned on—

"(i) the insolvency or financial condition of the debtor at any time before the closing of the case;

"(ii) the commencement of a case under this title concerning the debtor;

"(iii) the appointment of or taking possession by a trustee in a case under this title concerning the debtor or by a custodian before the commencement of the case; or

"(iv) a credit rating agency rating, or absence or withdrawal of a credit rating agency rating—

"(I) of the debtor at any time after the commencement of the case;

"(II) of an affiliate during the period from the commencement of the case until 48 hours after such order is entered;

"(III) of the bridge company while the trustee or the special trustee is a direct or indirect beneficial holder of more than 50 percent of the equity securities of—

"(aa) the bridge company; or

"(bb) the affiliate, if all of the direct or indirect interests in the affiliate that are property of the estate are transferred under section 1185; or

"(IV) of an affiliate while the trustee or the special trustee is a direct or indirect beneficial holder of more than 50 percent of the equity securities of—

"(aa) the bridge company; or

"(bb) the affiliate, if all of the direct or indirect interests in the affiliate that are property of the estate are transferred under section 1185.

"(2) A debt, contract, lease, or agreement described in this paragraph is—

"(A) any debt (other than capital structure debt), executory contract, or unexpired lease of the debtor (other than a qualified financial contract);

"(B) any agreement under which the debtor issued or is obligated for debt (other than capital structure debt);

"(C) any debt, executory contract, or unexpired lease of an affiliate (other than a qualified financial contract); or

"(D) any agreement under which an affiliate issued or is obligated for debt.

"(3) The stay under this subsection terminates—

"(A) for the benefit of the debtor, upon the earliest of—

"(i) 48 hours after the commencement of the case;

"(ii) assumption of the debt, contract, lease, or agreement by the bridge company under an order authorizing a transfer under section 1185;

"(iii) a final order of the court denying the request for a transfer under section 1185; or

"(iv) the time the case is dismissed; and

"(B) for the benefit of an affiliate, upon the earliest of—

"(i) the entry of an order authorizing a transfer under section 1185 in which the direct or indirect interests in the affiliate that are property of the estate are not transferred under section 1185;

"(ii) a final order by the court denying the request for a transfer under section 1185;

"(iii) 48 hours after the commencement of the case if the court has not ordered a transfer under section 1185; or

"(iv) the time the case is dismissed.

"(4) Subsections (d), (e), (f), and (g) of section 362 apply to a stay under this subsection.

"(b) A debt, executory contract (other than a qualified financial contract), or unexpired lease of the debtor, or an agreement under which the debtor has issued or is obligated for any debt, may be assumed by a bridge company in a transfer under section 1185 notwithstanding any provision in an agreement or in applicable nonbankruptcy law that—

"(1) prohibits, restricts, or conditions the assignment of the debt, contract, lease, or agreement; or

"(2) accelerates, terminates, or modifies, or permits a party other than the debtor to terminate or modify, the debt, contract, lease, or agreement on account of—

"(A) the assignment of the debt, contract, lease, or agreement; or

"(B) a change in control of any party to the debt, contract, lease, or agreement.

"(c)(1) A debt, contract, lease, or agreement of the kind described in subparagraph (A) or (B) of subsection (a)(2) may not be accelerated, terminated, or modified, and any right or obligation under such debt, contract, lease, or agreement may not be accelerated, terminated, or modified, as to the bridge company solely because of a provision in the debt, contract, lease, or agreement or in applicable nonbankruptcy law—

"(A) of the kind described in subsection (a)(1)(B) as applied to the debtor;

"(B) that prohibits, restricts, or conditions the assignment of the debt, contract, lease, or agreement; or

"(C) that accelerates, terminates, or modifies, or permits a party other than the debtor to terminate or modify, the debt, contract, lease or agreement on account of—

"(i) the assignment of the debt, contract, lease, or agreement; or

"(ii) a change in control of any party to the debt, contract, lease, or agreement.

"(2) If there is a default by the debtor under a provision other than the kind described in paragraph (1) in a debt, contract, lease or agreement of the kind described in subparagraph (A) or (B) of subsection (a)(2), the bridge company may assume such debt, contract, lease, or agreement only if the bridge company—

"(A) shall cure the default;

"(B) compensates, or provides adequate assurance in connection with a transfer under section 1185 that the bridge company will promptly compensate, a party other than the debtor to the debt, contract, lease, or agreement, for any actual pecuniary loss to the party resulting from the default; and

"(C) provides adequate assurance in connection with a transfer under section 1185 of future performance under the debt, contract, lease, or agreement, as determined by the court under section 1185(c)(4).

"§ 1188. Treatment of qualified financial contracts and affiliate contracts

"(a) Notwithstanding sections 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 362(o), 555, 556, 559, 560, and 561, a petition filed under section 1183 operates as a stay, during the period specified in section 1187(a)(3)(A), applicable to all entities, of the exercise of a contractual right—

"(1) to cause the modification, liquidation, termination, or acceleration of a qualified financial contract of the debtor or an affiliate;

"(2) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a qualified financial contract of the debtor or an affiliate; or

"(3) under any security agreement or arrangement or other credit enhancement forming a part of or related to a qualified financial contract of the debtor or an affiliate.

"(b)(1) During the period specified in section 1187(a)(3)(A), the trustee or the affiliate shall perform all payment and delivery obligations under such qualified financial contract of the debtor or the affiliate, as the case may be, that become due after the commencement of the case. The stay provided under subsection (a) terminates as to a qualified financial contract of the debtor or an affiliate immediately upon the failure of the trustee or the affiliate, as the case may be, to perform any such obligation during such period.

"(2) Any failure by a counterparty to any qualified financial contract of the debtor or any affiliate to perform any payment or delivery obligation under such qualified financial contract, including during the pendency of the stay provided under subsection (a), shall constitute a breach of such qualified financial contract by the counterparty.

"(c) Subject to the court's approval, a qualified financial contract between an entity and the debtor may be assigned to or assumed by the bridge company in a transfer under, and in accordance with, section 1185 if and only if—

"(1) all qualified financial contracts between the entity and the debtor are assigned to and assumed by the bridge company in the transfer under section 1185;

"(2) all claims of the entity against the debtor in respect of any qualified financial contract between the entity and the debtor (other than any claim that, under the terms of the qualified financial contract, is subordinated to the claims of general unsecured creditors) are assigned to and assumed by the bridge company;

"(3) all claims of the debtor against the entity under any qualified financial contract between the entity and the debtor are assigned to and assumed by the bridge company; and

"(4) all property securing or any other credit enhancement furnished by the debtor for any qualified financial contract described in paragraph (1) or any claim described in paragraph (2) or (3) under any qualified financial contract between the entity and the debtor is assigned to and assumed by the bridge company.

"(d) Notwithstanding any provision of a qualified financial contract or of applicable nonbankruptcy law, a qualified financial contract of the debtor that is assumed or assigned in a transfer under section 1185 may not be accelerated, terminated, or modified, after the entry of the order approving a transfer under section 1185, and any right or obligation under the qualified financial contract may not be accelerated, terminated, or modified, after the entry of the order approving a transfer under section 1185 solely because of a condition described in section 1187(c)(1), other than a condition of the kind specified in section 1187(b) that occurs after property of the estate no longer includes a direct beneficial interest or an indirect beneficial interest through the special trustee, in more than 50 percent of the equity securities of the bridge company.

"(e) Notwithstanding any provision of any agreement or in applicable nonbankruptcy law, an agreement of an affiliate (including an executory contract, an unexpired lease, qualified financial contract, or an agreement under which the affiliate issued or is obligated for debt) and any right or obligation under such agreement may not be accelerated, terminated, or modified, solely because of a condition described in section 1187(c)(1), other than a condition of the kind specified in section 1187(b) that occurs after the bridge company is no longer a direct or indirect beneficial holder of more than 50 percent of the equity securities of the affiliate, at any time after the commencement of the case if—

"(1) all direct or indirect interests in the affiliate that are property of the estate are transferred under section 1185 to the bridge company within the period specified in subsection (a);

"(2) the bridge company assumes—

"(A) any guarantee or other credit enhancement issued by the debtor relating to the agreement of the affiliate; and

"(B) any obligations in respect of rights of setoff, netting arrangement, or debt of the debtor that directly arises out of or directly relates to the guarantee or credit enhancement; and

"(3) any property of the estate that directly serves as collateral for the guarantee or credit enhancement is transferred to the bridge company.

"§ 1189. Licenses, permits, and registrations

"(a) Notwithstanding any otherwise applicable nonbankruptcy law, if a request is made under section 1185 for a transfer of property of the estate, any Federal, State, or local license, permit, or registration that the debtor or an affiliate had immediately before the commencement of the case and that is proposed to be transferred under section 1185 may not be accelerated, terminated, or modified at any time after the request solely on account of—

"(1) the insolvency or financial condition of the debtor at any time before the closing of the case;

"(2) the commencement of a case under this title concerning the debtor;

"(3) the appointment of or taking possession by a trustee in a case under this title concerning the debtor or by a custodian before the commencement of the case; or

"(4) a transfer under section 1185.

"(b) Notwithstanding any otherwise applicable nonbankruptcy law, any Federal, State, or local license, permit, or registration that the debtor had immediately before the commencement of the case that is included in a transfer under section 1185 shall be valid and all rights and obligations thereunder shall vest in the bridge company.

"§ 1190. Exemption from securities laws

"For purposes of section 1145, a security of the bridge company shall be deemed to be a security of a successor to the debtor under a plan if the court approves the disclosure statement for the plan as providing adequate information (as defined in section 1125(a)) about the bridge company and the security.

"§ 1191. Inapplicability of certain avoiding powers

"A transfer made or an obligation incurred by the debtor to an affiliate prior to or after the commencement of the case, including any obligation released by the debtor or the estate to or for the benefit of an affiliate, in contemplation of or in connection with a transfer under section 1185 is not avoidable under section 544, 547, 548(a)(1)(B), or 549, or under any similar nonbankruptcy law.

"§ 1192. Consideration of financial stability

"The court may consider the effect that any decision in connection with this subchapter may have on financial stability in the United States.".

SEC. 123. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) AMENDMENT TO CHAPTER 13.—Chapter 13 of title 28, United States Code, is amended by adding at the end the following:

"§ 298. Judge for a case under subchapter V of chapter 11 of title 11

"(a)(1) Notwithstanding section 295, the Chief Justice of the United States shall designate not fewer than 10 bankruptcy judges to be available to hear a case under subchapter V of chapter 11 of title 11. Bankruptcy judges may request to be considered by the Chief Justice of the United States for such designation.

"(2) Notwithstanding section 155, a case under subchapter V of chapter 11 of title 11 shall be heard under section 157 by a bankruptcy judge designated under paragraph (1), who shall be randomly assigned to hear such case by the chief judge of the court of appeals for the circuit embracing the district in which the case is pending. To the greatest extent practicable, the approvals required under section 155 should be obtained.

"(3) If the bankruptcy judge assigned to hear a case under paragraph (2) is not assigned to the district in which the case is pending, the bankruptcy judge shall be temporarily assigned to the district.

"(b) A case under subchapter V of chapter 11 of title 11, and all proceedings in the case, shall take place in the district in which the case is pending.

"(c) In this section, the term 'covered financial corporation' has the meaning given that term in section 101(9A) of title 11.".

(b) AMENDMENT TO SECTION 1334 OF TITLE 28.—Section 1334 of title 28, United States Code, is amended by adding at the end the following:

"(f) This section does not grant jurisdiction to the district court after a transfer pursuant to an order under section 1185 of title 11 of any proceeding related to a special trustee appointed, or to a bridge company formed, in connection with a case under subchapter V of chapter 11 of title 11.".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 13 of title 28, United States Code, is amended by adding at the end the following:

"298. Judge for a case under subchapter V of chapter 11 of title 11.".

Subtitle C—Ending Government Guarantees

SEC. 131. REPEAL OF OBLIGATION GUARANTEE PROGRAM.

(a) IN GENERAL.—The following sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) are repealed:

(1) Section 1104.
(2) Section 1105.
(3) Section 1106.

(b) CLERICAL AMENDMENT.—The table of contents under section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the items relating to sections 1104, 1105, and 1106.

SEC. 132. REPEAL OF SYSTEMIC RISK DETERMINATION IN RESOLUTIONS.

Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is hereby repealed.

SEC. 133. RESTRICTIONS ON USE OF THE EXCHANGE STABILIZATION FUND.

(a) IN GENERAL.—Section 5302 of title 31, United States Code, is amended by adding at the end the following:

"(e) Amounts in the fund may not be used for the establishment of a guaranty program for any nongovernmental entity.".

(b) CONFORMING AMENDMENT.—Section 131(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5236(b)) is amended by inserting ", or for the purposes of preventing the liquidation or insolvency of any entity" before the period.

Subtitle D—Eliminating Financial Market Utility Designations

SEC. 141. REPEAL OF TITLE VIII.

(a) REPEAL.—Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5461 et seq.) is repealed, and provisions of law amended by such title are restored and revived as if such title had never been enacted.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the items relating to title VIII.

Subtitle E—Reform of the Financial Stability Act of 2010

SEC. 151. REPEAL AND MODIFICATION OF PROVISIONS OF THE FINANCIAL STABILITY ACT OF 2010.

(a) REPEALS.—The following provisions of the Financial Stability Act of 2010 are repealed, and the provisions of law amended or repealed by such provisions are restored or revived as if such provisions had not been enacted:

(1) Subtitle B.
(2) Section 113.
(3) Section 114.
(4) Section 115.
(5) Section 116.
(6) Section 117.
(7) Section 119.
(8) Section 120.
(9) Section 121.
(10) Section 161.
(11) Section 162.
(12) Section 164.
(13) Section 166.
(14) Section 167.
(15) Section 168.
(16) Section 170.

(17) Section 172.
(18) Section 174.
(19) Section 175.

(b) ADDITIONAL MODIFICATIONS.—The Financial Stability Act of 2010 (12 U.S.C. 5311 et seq.) is amended—

(1) in section 102(a), by striking paragraph (5);

(2) in section 111—

(A) in subsection (b)—

(i) in paragraph (1)—

(I) by striking "who shall each" and inserting "who shall, except as provided below, each"; and

(II) by striking subparagraphs (B) through (J) and inserting the following:

"(B) each member of the Board of Governors, who shall collectively have 1 vote on the Council;

"(C) the Comptroller of the Currency;

"(D) the Director of the Consumer Law Enforcement Agency;

"(E) each member of the Commission, who shall collectively have 1 vote on the Council;

"(F) each member of the Corporation, who shall collectively have 1 vote on the Council;

"(G) each member of the Commodity Futures Trading Commission, who shall collectively have 1 vote on the Council;

"(H) the Director of the Federal Housing Finance Agency;

"(I) each member of the National Credit Union Administration Board, who shall collectively have 1 vote on the Council; and

"(J) the Independent Insurance Advocate.";

(ii) in paragraph (2)—

(I) by striking subparagraphs (A) and (B); and

(II) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (A), (B), and (C), respectively; and

(iii) by adding at the end the following:

"(4) VOTING BY MULTI-PERSON ENTITY.—

"(A) VOTING WITHIN THE ENTITY.—An entity described under subparagraph (B), (E), (F), (G), or (I) of paragraph (1) shall determine the entity's Council vote by using the voting process normally applicable to votes by the entity's members.

"(B) CASTING OF ENTITY VOTE.—The 1 collective Council vote of an entity described under subparagraph (A) shall be cast by the head of such agency or, in the event such head is unable to cast such vote, the next most senior member of the entity available.";

(B) in subsection (c), by striking "subparagraphs (C), (D), and (E)" and inserting "subparagraphs (B), (C), and (D)";

(C) in subsection (e), by adding at the end the following:

"(3) STAFF ACCESS.—Any member of the Council may select to have one or more individuals on the member's staff attend a meeting of the Council, including any meeting of representatives of the member agencies other than the members themselves.

"(4) CONGRESSIONAL OVERSIGHT.—All meetings of the Council, whether or not open to the public, shall be open to the attendance by members of the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(5) MEMBER AGENCY MEETINGS.—Any meeting of representatives of the member agencies other than the members themselves shall be open to attendance by staff of the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.";

(D) by striking subsection (g) (relating to the nonapplicability of FACA);

(E) by inserting after subsection (f) the following:

"(g) OPEN MEETING REQUIREMENT.—The Council shall be an agency for purposes of section 552b of title 5, United States Code (commonly referred to as the 'Government in the Sunshine Act').

"(h) CONFIDENTIAL CONGRESSIONAL BRIEFINGS.—At the request of the Chairman of the Committee on Financial Services of the House of Representatives or the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate, the Chairperson shall appear before Congress to provide a confidential briefing."; and

(F) by redesignating subsections (h) through (j) as subsections (i) through (k), respectively;

(3) in section 112—

(A) in subsection (a)(2)—

(i) in subparagraph (A), by striking "the Federal Insurance Office and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to" and inserting "and, if necessary to assess risks to the United States financial system,";

(ii) by striking subparagraphs (B), (H), (I), and (J);

(iii) by redesignating subparagraphs (C), (D), (E), (F), (G), (K), (L), (M), and (N) as subparagraphs (B), (C), (D), (E), (F), (G), (H), (I), and (J), respectively;

(iv) in subparagraph (J), as so redesignated—

(I) in clause (iii), by adding "and" at the end;

(II) by striking clauses (iv) and (v); and

(III) by redesignating clause (vi) as clause (iv); and

(B) in subsection (d)—

(i) in paragraph (1), by striking "the Office of Financial Research, member agencies, and the Federal Insurance Office" and inserting "member agencies";

(ii) in paragraph (2), by striking "the Office of Financial Research, any member agency, and the Federal Insurance Office," and inserting "member agencies";

(iii) in paragraph (3)—

(I) by striking ", acting through the Office of Financial Research," each place it appears; and

(II) in subparagraph (B), by striking "the Office of Financial Research or"; and

(iv) in paragraph (5)(A), by striking ", the Office of Financial Research,";

(4) by amending section 118 to read as follows:

"SEC. 118. COUNCIL FUNDING.

"There is authorized to be appropriated to the Council $4,000,000 for fiscal year 2017 and each fiscal year thereafter to carry out the duties of the Council.";

(5) in section 163—

(A) by striking subsection (a);

(B) by redesignating subsection (b) as subsection (a); and

(C) in subsection (a), as so redesignated—

(i) by striking "or a nonbank financial company supervised by the Board of Governors" each place such term appears;

(ii) in paragraph (4), by striking "In addition" and inserting the following:

"(A) IN GENERAL.—In addition"; and

(iii) by adding at the end the following:

"(B) EXCEPTION FOR QUALIFYING BANKING ORGANIZATION.—Subparagraph (A) shall not apply to a proposed acquisition by a qualifying banking organization, as defined under section 605 of the Financial CHOICE Act of 2017."; and

(6) in section 165—

(A) by striking "nonbank financial companies supervised by the Board of Governors and" each place such term appears;

(B) by striking "nonbank financial company supervised by the Board of Governors and" each place such term appears;

(C) in subsection (a), by amending paragraph (2) to read as follows:

"(2) TAILORED APPLICATION.—In prescribing more stringent prudential standards under this section, the Board of Governors may differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.";

(D) in subsection (b)—

(i) in paragraph (1)(B)(iv), by striking ", on its own or pursuant to a recommendation made by the Council in accordance with section 115,";

(ii) in paragraph (2)—

(I) by striking "foreign nonbank financial company supervised by the Board of Governors or";

(II) by striking "shall—" and all that follows through "give due" and inserting "shall give due";

(III) in subparagraph (A), by striking "; and" and inserting a period; and

(IV) by striking subparagraph (B);

(iii) in paragraph (3)—

(I) in subparagraph (A)—

(aa) by striking clause (i);

(bb) by redesignating clauses (ii), (iii), and (iv) as clauses (i), (ii), and (iii), respectively; and

(cc) in clause (iii), as so redesignated, by adding "and" at the end;

(II) by striking subparagraphs (B) and (C); and

(III) by redesignating subparagraph (D) as subparagraph (B); and

(iv) in paragraph (4), by striking "a nonbank financial company supervised by the Board of Governors or";

(E) in subsection (c)—

(i) in paragraph (1), by striking "under section 115(c)"; and

(ii) in paragraph (2)—

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

"(A) any recommendations of the Council;"; and

(II) in subparagraph (D), by striking "nonbank financial company supervised by the Board of Governors or";

(F) in subsection (d)—

(i) by striking "a nonbank financial company supervised by the Board of Governors or" each place such term appears;

(ii) in paragraph (1), by striking "periodically" and inserting "not more often than every 2 years";

(iii) in paragraph (3)—

(I) by striking "The Board" and inserting the following:

"(A) IN GENERAL.—The Board";

(II) by striking "shall review" and inserting the following: "shall—

"(i) review";

(III) by striking the period and inserting "; and"; and

(IV) by adding at the end the following:

"(ii) not later than the end of the 6-month period beginning on the date the bank holding company submits the resolution plan, provide feedback to the bank holding company on such plan.

"(B) DISCLOSURE OF ASSESSMENT FRAMEWORK.—The Board of Governors shall publicly disclose the assessment framework that is used to review information under this paragraph and shall provide the public with a notice and comment period before finalizing such assessment framework.".

(iv) in paragraph (6), by striking "nonbank financial company supervised by the Board, any bank holding company," and inserting "bank holding company";

(G) in subsection (e)—

(i) in paragraph (1), by striking "a nonbank financial company supervised by the Board of Governors or";

(ii) in paragraph (3), by striking "the nonbank financial company supervised by the Board of Governors or" each place such term appears; and

(iii) in paragraph (4), by striking "a nonbank financial company supervised by the Board of Governors or";

(H) in subsection (g)(1), by striking "and any nonbank financial company supervised by the Board of Governors";

(I) in subsection (h)—

(i) by striking paragraph (1);

(ii) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively;

(iii) in paragraph (1), as so redesignated, by striking "paragraph (3)" each place such term appears and inserting "paragraph (2)"; and

(iv) in paragraph (2), as so redesignated—

(I) in subparagraph (A), by striking "the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable" and inserting "a bank holding company described in subsection (a)"; and

(II) in subparagraph (B), by striking "the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable" and inserting "a bank holding company described in subsection (a)";

(J) in subsection (i)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking ", in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office,";

(II) in subparagraph (B)—

(aa) by amending clause (i) to read as follows:

"(i) shall—

"(I) issue regulations, after providing for public notice and comment, that provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse, and methodologies, including models used to estimate losses on certain assets, and the Board of Governors shall not carry out any such evaluation until 60 days after such regulations are issued; and

"(II) provide copies of such regulations to the Comptroller General of the United States and the Panel of Economic Advisors of the Congressional Budget Office before publishing such regulations;";

(bb) in clause (ii), by striking "and nonbank financial companies";

(cc) in clause (iv), by striking "and" at the end;

(dd) in clause (v), by striking the period and inserting the following: ", including any results of a resubmitted test;"; and

(ee) by adding at the end the following:

"(vi) shall, in establishing the severely adverse condition under clause (i), provide detailed consideration of the model's effects on financial stability and the cost and availability of credit;

"(vii) shall, in developing the models and methodologies and providing them for notice and comment under this subparagraph, publish a process to test the models and methodologies for their potential to magnify systemic and institutional risks instead of facilitating increased resiliency;

"(viii) shall design and publish a process to test and document the sensitivity and uncertainty associated with the model system's data quality, specifications, and assumptions; and

"(ix) shall communicate the range and sources of uncertainty surrounding the models and methodologies."; and

(III) by adding at the end the following:

"(C) CCAR REQUIREMENTS.—

"(i) PARAMETERS AND CONSEQUENCES APPLICABLE TO CCAR.—The requirements of subparagraph (B) shall apply to CCAR.

"(ii) TWO-YEAR LIMITATION.—The Board of Governors may not subject a company to CCAR more than once every two years.

"(iii) MID-CYCLE RESUBMISSION.—If a company receives a quantitative objection to, or otherwise desires to amend the company's capital plan, the company may file a new streamlined plan at any time after a capital planning exercise has been completed and before a subsequent capital planning exercise.

"(iv) LIMITATION ON QUALITATIVE CAPITAL PLANNING OBJECTIONS.—In carrying out CCAR, the Board of Governors may not object to a company's capital plan on the basis of qualitative deficiencies in the company's capital planning process.

"(v) COMPANY INQUIRIES.—The Board of Governors shall establish and publish procedures for responding to inquiries from companies subject to CCAR, including establishing the time frame in which such responses will be made, and make such procedures publicly available.

"(vi) CCAR DEFINED.—For purposes of this subparagraph and subparagraph (E), the term 'CCAR' means the Comprehensive Capital Analysis and Review established by the Board of Governors."; and

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) by striking "a bank holding company" and inserting "bank holding company";

(bb) by striking "semiannual" and inserting "annual";

(cc) by striking "All other financial companies" and inserting "All other bank holding companies"; and

(dd) by striking "and are regulated by a primary Federal financial regulatory agency";

(II) in subparagraph (B)—

(aa) by striking "and to its primary financial regulatory agency"; and

(bb) by striking "primary financial regulatory agency" the second time it appears and inserting "Board of Governors"; and

(III) in subparagraph (C)—

(aa) by striking "Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office," and inserting "The Board of Governors"; and

(bb) by striking "consistent and comparable".

(K) in subsection (j)—

(i) in paragraph (1), by striking "or a nonbank financial company supervised by the Board of Governors"; and

(ii) in paragraph (2), by striking "the factors described in subsections (a) and (b) of section 113 and any other" and inserting "any";

(L) in subsection (k)(1), by striking "or nonbank financial company supervised by the Board of Governors"; and

(M) by adding at the end the following:

"(l) EXEMPTION FOR QUALIFYING BANKING ORGANIZATIONS.—This section shall not apply to a proposed acquisition by a qualifying banking organization, as defined under section 605 of the Financial CHOICE Act of 2017.".

(c) TREATMENT OF OTHER RESOLUTION PLAN REQUIREMENTS.—

(1) IN GENERAL.—With respect to an appropriate Federal banking agency that requires a banking organization to submit to the agency a resolution plan not described under section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act—

(A) the agency shall comply with the requirements of paragraphs (3) and (4) of such section 165(d);

(B) the agency may not require the submission of such a resolution plan more often than every 2 years; and

(C) paragraphs (6) and (7) of such section 165(d) shall apply to such a resolution plan.

(2) DEFINITIONS.—For purposes of this subsection, the terms "appropriate Federal banking agency" and "banking organization" have the meaning given those terms, respectively, under section 105.

(d) ACTIONS TO CREATE A BANK HOLDING COMPANY.—Section 3(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(b)(1)) is amended—

(1) by striking "Upon receiving" and inserting the following:

"(A) IN GENERAL.—Upon receiving";

(2) by striking "Notwithstanding any other provision" and inserting the following:

"(B) IMMEDIATE ACTION.—

"(i) IN GENERAL.—Notwithstanding any other provision"; and

(3) by adding at the end the following:

"(ii) EXCEPTION.—The Board may not take any action pursuant to clause (i) on an application that would cause any company to become a bank holding company unless such application involves the company acquiring a bank that is critically undercapitalized (as such term is defined under section 38(b) of the Federal Deposit Insurance Act).".

(e) CONCENTRATION LIMITS APPLIED ONLY TO BANKING ORGANIZATIONS.—Section 14 of the Bank Holding Company Act of 1956 (12 U.S.C. 1852) is amended—

(1) by striking "financial company" each place such term appears and inserting "banking organization";

(2) in subsection (a)—

(A) by amending paragraph (2) to read as follows:

"(2) the term 'banking organization' means—

"(A) an insured depository institution;

"(B) a bank holding company;

"(C) a savings and loan holding company;

"(D) a company that controls an insured depository institution; and

"(E) a foreign bank or company that is treated as a bank holding company for purposes of this Act; and";

(B) in paragraph (3)—

(i) in subparagraph (A)(ii), by adding "and" at the end;

(ii) in subparagraph (B)(ii), by striking "; and" and inserting a period; and

(iii) by striking subparagraph (C); and

(3) in subsection (b), by striking "financial companies" and inserting "banking organizations".

(f) CONFORMING AMENDMENT.—Section 3502(5) of title 44, United States Code, is amended by striking "the Office of Financial Research,".

(g) CLERICAL AMENDMENT.—The table of contents under section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the items relating to subtitle B of title I and 113, 114, 115, 116, 117, 119, 120, 121, 161, 162, 164, 166, 167, 168, 170, 172, 174, and 175.

SEC. 152. OPERATIONAL RISK CAPITAL REQUIREMENTS FOR BANKING ORGANIZATIONS.

(a) IN GENERAL.—An appropriate Federal banking agency may not establish an operational risk capital requirement for banking organizations, unless such requirement—

(1) is based on the risks posed by a banking organization's current activities and businesses;

(2) is appropriately sensitive to the risks posed by such current activities and businesses;

(3) is determined under a forward-looking assessment of potential losses that may arise out of a banking organization's current activities and businesses, which is not solely based on a banking organization's historical losses; and

(4) permits adjustments based on qualifying operational risk mitigants.

(b) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal banking agency" and "banking organization" have the meaning given those terms, respectively, under section 605.

TITLE II—DEMANDING ACCOUNTABILITY FROM WALL STREET

Subtitle A—SEC Penalties Modernization

SEC. 211. ENHANCEMENT OF CIVIL PENALTIES FOR SECURITIES LAWS VIOLATIONS.

(a) UPDATED CIVIL MONEY PENALTIES.—

(1) SECURITIES ACT OF 1933.—

(A) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 8A(g)(2) of the Securities Act of 1933 (15 U.S.C. 77h–1(g)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking "$7,500" and inserting "$10,000"; and

(II) by striking "$75,000" and inserting "$100,000";

(ii) in subparagraph (B)—

(I) by striking "$75,000" and inserting "$100,000"; and

(II) by striking "$375,000" and inserting "$500,000"; and

(iii) by striking subparagraph (C) and inserting the following:

"(C) THIRD TIER.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such act or omission shall not exceed the amount specified in clause (ii) if—

"(I) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(II) such act or omission directly or indirectly resulted in—

"(aa) substantial losses or created a significant risk of substantial losses to other persons; or

"(bb) substantial pecuniary gain to the person who committed the act or omission.

"(ii) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in clause (i) is the greatest of—

"(I) $300,000 for a natural person or $1,450,000 for any other person;

"(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

"(III) the amount of losses incurred by victims as a result of the act or omission.".

(B) MONEY PENALTIES IN CIVIL ACTIONS.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking "$5,000" and inserting "$10,000"; and

(II) by striking "$50,000" and inserting "$100,000";

(ii) in subparagraph (B)—

(I) by striking "$50,000" and inserting "$100,000"; and

(II) by striking "$250,000" and inserting "$500,000"; and

(iii) by striking subparagraph (C) and inserting the following:

"(C) THIRD TIER.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the amount specified in clause (ii) if—

"(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

"(ii) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in clause (i) is the greatest of—

"(I) $300,000 for a natural person or $1,450,000 for any other person;

"(II) 3 times the gross amount of pecuniary gain to such defendant as a result of the violation; or

"(III) the amount of losses incurred by victims as a result of the violation.".

(2) SECURITIES EXCHANGE ACT OF 1934.—

(A) MONEY PENALTIES IN CIVIL ACTIONS.—Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

(i) in clause (i)—

(I) by striking "$5,000" and inserting "$10,000"; and

(II) by striking "$50,000" and inserting "$100,000";

(ii) in clause (ii)—

(I) by striking "$50,000" and inserting "$100,000"; and

(II) by striking "$250,000" and inserting "$500,000"; and

(iii) by striking clause (iii) and inserting the following:

"(iii) THIRD TIER.—

"(I) IN GENERAL.—Notwithstanding clauses (i) and (ii), the amount of penalty for each such violation shall not exceed the amount specified in subclause (II) if—

"(aa) the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(bb) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

"(II) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in subclause (I) is the greatest of—

"(aa) $300,000 for a natural person or $1,450,000 for any other person;

"(bb) 3 times the gross amount of pecuniary gain to such defendant as a result of the violation; or

"(cc) the amount of losses incurred by victims as a result of the violation.".

(B) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(b)) is amended—

(i) in paragraph (1)—

(I) by striking "$5,000" and inserting "$10,000"; and

(II) by striking "$50,000" and inserting "$100,000";

(ii) in paragraph (2)—

(I) by striking "$50,000" and inserting "$100,000"; and

(II) by striking "$250,000" and inserting "$500,000"; and

(iii) by striking paragraph (3) and inserting the following:

"(3) THIRD TIER.—

"(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), the amount of penalty for each such act or omission shall not exceed the amount specified in subparagraph (B) if—

"(i) the act or omission described in subsection (a) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

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

"(B) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in subparagraph (A) is the greatest of—

"(i) $300,000 for a natural person or $1,450,000 for any other person;

"(ii) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

"(iii) the amount of losses incurred by victims as a result of the act or omission.".

(3) INVESTMENT COMPANY ACT OF 1940.—

(A) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking "$5,000" and inserting "$10,000"; and

(II) by striking "$50,000" and inserting "$100,000";

(ii) in subparagraph (B)—

(I) by striking "$50,000" and inserting "$100,000"; and

(II) by striking "$250,000" and inserting "$500,000"; and

(iii) by striking subparagraph (C) and inserting the following:

"(C) THIRD TIER.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such act or omission shall not exceed the amount specified in clause (ii) if—

"(I) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(II) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

"(ii) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in clause (i) is the greatest of—

"(I) $300,000 for a natural person or $1,450,000 for any other person;

"(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

"(III) the amount of losses incurred by victims as a result of the act or omission.".

(B) MONEY PENALTIES IN CIVIL ACTIONS.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking "$5,000" and inserting "$10,000"; and

(II) by striking "$50,000" and inserting "$100,000";

(ii) in subparagraph (B)—

(I) by striking "$50,000" and inserting "$100,000"; and

(II) by striking "$250,000" and inserting "$500,000"; and

(iii) by striking subparagraph (C) and inserting the following:

"(C) THIRD TIER.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the amount specified in clause (ii) if—

"(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

"(ii) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in clause (i) is the greatest of—

"(I) $300,000 for a natural person or $1,450,000 for any other person;

"(II) 3 times the gross amount of pecuniary gain to such defendant as a result of the violation; or

"(III) the amount of losses incurred by victims as a result of the violation.".

(4) INVESTMENT ADVISERS ACT OF 1940.—

(A) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 203(i)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking "$5,000" and inserting "$10,000"; and

(II) by striking "$50,000" and inserting "$100,000";

(ii) in subparagraph (B)—

(I) by striking "$50,000" and inserting "$100,000"; and

(II) by striking "$250,000" and inserting "$500,000"; and

(iii) by striking subparagraph (C) and inserting the following:

"(C) THIRD TIER.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such act or omission shall not exceed the amount specified in clause (ii) if—

"(I) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(II) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

"(ii) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in clause (i) is the greatest of—

"(I) $300,000 for a natural person or $1,450,000 for any other person;

"(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

"(III) the amount of losses incurred by victims as a result of the act or omission.".

(B) MONEY PENALTIES IN CIVIL ACTIONS.—Section 209(e)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking "$5,000" and inserting "$10,000"; and

(II) by striking "$50,000" and inserting "$100,000";

(ii) in subparagraph (B)—

(I) by striking "$50,000" and inserting "$100,000"; and

(II) by striking "$250,000" and inserting "$500,000"; and

(iii) by striking subparagraph (C) and inserting the following:

"(C) THIRD TIER.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the amount specified in clause (ii) if—

"(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

"(ii) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in clause (i) is the greatest of—

"(I) $300,000 for a natural person or $1,450,000 for any other person;

"(II) 3 times the gross amount of pecuniary gain to such defendant as a result of the violation; or

"(III) the amount of losses incurred by victims as a result of the violation.".

(b) PENALTIES FOR RECIDIVISTS.—

(1) SECURITIES ACT OF 1933.—

(A) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 8A(g)(2) of the Securities Act of 1933 (15 U.S.C. 77h–1(g)(2)) is amended by adding at the end the following:

"(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such act or omission shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such act or omission, the person who committed the act or omission was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that person.".

(B) MONEY PENALTIES IN CIVIL ACTIONS.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended by adding at the end the following:

"(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such violation, the defendant was criminally convicted for

securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.".

(2) SECURITIES EXCHANGE ACT OF 1934.—

(A) MONEY PENALTIES IN CIVIL ACTIONS.—Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended by adding at the end the following:

"(iv) FOURTH TIER.—Notwithstanding clauses (i), (ii), and (iii), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such clauses if, within the 5-year period preceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.".

(B) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(b)) is amended by adding at the end the following:

"(4) FOURTH TIER.—Notwithstanding paragraphs (1), (2), and (3), the maximum amount of penalty for each such act or omission shall be 3 times the otherwise applicable amount in such paragraphs if, within the 5-year period preceding such act or omission, the person who committed the act or omission was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that person.".

(3) INVESTMENT COMPANY ACT OF 1940.—

(A) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended by adding at the end the following:

"(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such act or omission shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such act or omission, the person who committed the act or omission was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that person.".

(B) MONEY PENALTIES IN CIVIL ACTIONS.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended by adding at the end the following:

"(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.".

(4) INVESTMENT ADVISERS ACT OF 1940.—

(A) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 203(i)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended by adding at the end the following:

"(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such act or omission shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such act or omission, the person who committed the act or omission was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that person.".

(B) MONEY PENALTIES IN CIVIL ACTIONS.—Section 209(e)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(2)) is amended by adding at the end the following:

"(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.".

(c) VIOLATIONS OF INJUNCTIONS AND BARS.—

(1) SECURITIES ACT OF 1933.—Section 20(d) of the Securities Act of 1933 (15 U.S.C. 77t(d)) is amended—

(A) in paragraph (1), by inserting after "the rules or regulations thereunder," the following: "a Federal court injunction or a bar obtained or entered by the Commission under this title,"; and

(B) by striking paragraph (4) and inserting the following:

"(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

"(A) IN GENERAL.—Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

"(B) INJUNCTIONS AND ORDERS.—Subparagraph (A) shall apply with respect to any action to enforce—

"(i) a Federal court injunction obtained pursuant to this title;

"(ii) an order entered or obtained by the Commission pursuant to this title that bars, suspends, places limitations on the activities or functions of, or prohibits the activities of, a person; or

"(iii) a cease-and-desist order entered by the Commission pursuant to section 8A.".

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)) is amended—

(A) in subparagraph (A), by inserting after "the rules or regulations thereunder," the following: "a Federal court injunction or a bar obtained or entered by the Commission under this title,"; and

(B) by striking subparagraph (D) and inserting the following:

"(D) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

"(i) IN GENERAL.—Each separate violation of an injunction or order described in clause (ii) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

"(ii) INJUNCTIONS AND ORDERS.—Clause (i) shall apply with respect to an action to enforce—

"(I) a Federal court injunction obtained pursuant to this title;

"(II) an order entered or obtained by the Commission pursuant to this title that bars, suspends, places limitations on the activities or functions of, or prohibits the activities of, a person; or

"(III) a cease-and-desist order entered by the Commission pursuant to section 21C.".

(3) INVESTMENT COMPANY ACT OF 1940.—Section 42(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)) is amended—

(A) in paragraph (1), by inserting after "the rules or regulations thereunder," the following: "a Federal court injunction or a bar obtained or entered by the Commission under this title,"; and

(B) by striking paragraph (4) and inserting the following:

"(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

"(A) IN GENERAL.—Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

"(B) INJUNCTIONS AND ORDERS.—Subparagraph (A) shall apply with respect to any action to enforce—

"(i) a Federal court injunction obtained pursuant to this title;

"(ii) an order entered or obtained by the Commission pursuant to this title that bars, suspends, places limitations on the activities or functions of, or prohibits the activities of, a person; or

"(iii) a cease-and-desist order entered by the Commission pursuant to section 9(f).".

(4) INVESTMENT ADVISERS ACT OF 1940.—Section 209(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)) is amended—

(A) in paragraph (1), by inserting after "the rules or regulations thereunder," the following: "a Federal court injunction or a bar obtained or entered by the Commission under this title,"; and

(B) by striking paragraph (4) and inserting the following:

"(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

"(A) IN GENERAL.—Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

"(B) INJUNCTIONS AND ORDERS.—Subparagraph (A) shall apply with respect to any action to enforce—

"(i) a Federal court injunction obtained pursuant to this title;

"(ii) an order entered or obtained by the Commission pursuant to this title that bars, suspends, places limitations on the activities or functions of, or prohibits the activities of, a person; or

"(iii) a cease-and-desist order entered by the Commission pursuant to section 203(k).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to conduct that occurs after the date of the enactment of this Act.

SEC. 212. UPDATED CIVIL MONEY PENALTIES OF PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.

(a) IN GENERAL.—Section 105(c)(4)(D) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(4)(D)) is amended—

(1) in clause (i)—

(A) by striking "$100,000" and inserting "$200,000"; and

(B) by striking "$2,000,000" and inserting "$4,000,000"; and

(2) in clause (ii)—

(A) by striking "$750,000" and inserting "$1,500,000"; and

(B) by striking "$15,000,000" and inserting "$22,000,000".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to conduct that occurs after the date of the enactment of this Act.

SEC. 213. UPDATED CIVIL MONEY PENALTY FOR CONTROLLING PERSONS IN CONNECTION WITH INSIDER TRADING.

(a) IN GENERAL.—Section 21A(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(3)) is amended by striking "$1,000,000" and inserting "$2,500,000".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to conduct that occurs after the date of the enactment of this Act.

SEC. 214. UPDATE OF CERTAIN OTHER PENALTIES.

(a) IN GENERAL.—Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended—

(1) in subsection (a), by striking "$5,000,000" and inserting "$7,000,000"; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "$2,000,000" and inserting "$4,000,000"; and

(ii) in subparagraph (B), by striking "$10,000" and inserting "$50,000"; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking "$100,000" and inserting "$250,000"; and

(ii) in subparagraph (B), by striking "$10,000" and inserting "$50,000".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to conduct that occurs after the date of the enactment of this Act.

SEC. 215. MONETARY SANCTIONS TO BE USED FOR THE RELIEF OF VICTIMS.

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

"(a) MONETARY SANCTIONS TO BE USED FOR THE RELIEF OF VICTIMS.—

"(1) IN GENERAL.—If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a monetary sanction (as defined in section 21F(a) of the Securities Exchange Act of 1934) against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such monetary sanction, the amount of such monetary sanction shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.

"(2) DEFINITION OF VICTIM.—In this subsection, the term 'victim' has the meaning given the term 'crime victim' in section 3771(e) of title 18, United States Code.".

(b) MONETARY SANCTION DEFINED.—Section 21F(a)(4)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–6(a)(4)(A)) is amended by striking "ordered" and inserting "required".

(c) EFFECTIVE DATE.—The amendments made by this section apply with respect to any monetary sanction ordered or required to be paid before or after the date of enactment of this Act.

SEC. 216. GAO REPORT ON USE OF CIVIL MONEY PENALTY AUTHORITY BY COMMISSION.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the use by the Commission of the authority to impose or obtain civil money penalties for violations of the securities laws during the period beginning on June 1, 2010, and ending on the date of the enactment of this Act.

(b) MATTERS REQUIRED TO BE INCLUDED.—The matters covered by the report required by subsection (a) shall include the following:

(1) The types of violations for which civil money penalties were imposed or obtained.

(2) The types of persons on whom civil money penalties were imposed or from whom such penalties were obtained.

(3) The number and dollar amount of civil money penalties imposed or obtained, disaggregated as follows:

(A) Penalties imposed in administrative actions and penalties obtained in judicial actions.

(B) Penalties imposed on or obtained from issuers (individual and aggregate filers) and penalties imposed on or obtained from other persons.

(C) Penalties permitted to be retained for use by the Commission and penalties deposited in the general fund of the Treasury of the United States.

(4) For penalties imposed on or obtained from issuers:

(A) Whether the violations involved resulted in direct economic benefit to the issuers.

(B) The impact of the penalties on the shareholders of the issuers.

(c) DEFINITIONS.—In this section, the terms "Commission", "issuer", and "securities laws" have the meanings given such terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

Subtitle B—FIRREA Penalties Modernization

SEC. 221. INCREASE OF CIVIL AND CRIMINAL PENALTIES ORIGINALLY ESTABLISHED IN THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

(a) AMENDMENTS TO FIRREA.—Section 951(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833a(b)) is amended—

(1) in paragraph (1), by striking "$1,000,000" and inserting "$1,500,000"; and

(2) in paragraph (2), by striking "$1,000,000 per day or $5,000,000" and inserting "$1,500,000 per day or $7,500,000".

(b) AMENDMENTS TO THE HOME OWNERS' LOAN ACT.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended—

(1) in section 5(v)(6), by striking "$1,000,000" and inserting "$1,500,000"; and

(2) in section 10—

(A) in subsection (r)(3), by striking "$1,000,000" and inserting "$1,500,000"; and

(B) in subsection (i)(1)(B), by striking "$1,000,000" and inserting "$1,500,000".

(c) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 7—

(A) in subsection (a)(1), by striking "$1,000,000" and inserting "$1,500,000"; and

(B) in subsection (j)(16)(D), by striking "$1,000,000" each place such term appears and inserting "$1,500,000";

(2) in section 8—

(A) in subsection (i)(2)(D), by striking "$1,000,000" each place such term appears and inserting "$1,500,000"; and

(B) in subsection (j), by striking "$1,000,000" and inserting "$1,500,000"; and

(3) in section 19(b), by striking "$1,000,000" and inserting "$1,500,000".

(d) AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.—The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended—

(1) in section 202(a)(3), by striking "$1,000,000" and inserting "$1,500,000";

(2) in section 205(d)(3), by striking "$1,000,000" and inserting "$1,500,000"; and

(3) in section 206—

(A) in subsection (k)(2)(D), by striking "$1,000,000" each place such term appears and inserting "$1,500,000"; and

(B) in subsection (l), by striking "$1,000,000" and inserting "$1,500,000".

(e) AMENDMENTS TO THE REVISED STATUTES OF THE UNITED STATES.—Title LXII of the Revised Statutes of the United States is amended—

(1) in section 5213(c), by striking "$1,000,000" and inserting "$1,500,000"; and

(2) in section 5239(b)(4), by striking "$1,000,000" each place such term appears and inserting "$1,500,000".

(f) AMENDMENTS TO THE FEDERAL RESERVE ACT.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—

(1) in the 6th undesignated paragraph of section 9, by striking "$1,000,000" and inserting "$1,500,000";

(2) in section 19(l)(4), by striking "$1,000,000" each place such term appears and inserting "$1,500,000"; and

(3) in section 29(d), by striking "$1,000,000" each place such term appears and inserting "$1,500,000".

(g) AMENDMENTS TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 106(b)(2)(F)(iv) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1978(b)(2)(F)(iv)) is amended by striking "$1,000,000" each place such term appears and inserting "$1,500,000".

(h) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 8 of the Bank Holding Company Act of 1956 (12 U.S.C. 1847) is amended—

(1) in subsection (a)(2), by striking "$1,000,000" and inserting "$1,500,000"; and

(2) in subsection (d)(3), by striking "$1,000,000" and inserting "$1,500,000".

(i) AMENDMENTS TO TITLE 18, UNITED STATES CODE.—Title 18, United States Code, is amended—

(1) in section 215(a) of chapter 11, by striking "$1,000,000" and inserting "$1,500,000";

(2) in chapter 31—

(A) in section 656, by striking "$1,000,000" and inserting "$1,500,000"; and

(B) in section 657, by striking "$1,000,000" and inserting "$1,500,000";

(3) in chapter 47—

(A) in section 1005, by striking "$1,000,000" and inserting "$1,500,000";

(B) in section 1006, by striking "$1,000,000" and inserting "$1,500,000";

(C) in section 1007, by striking "$1,000,000" and inserting "$1,500,000"; and

(D) in section 1014, by striking "$1,000,000" and inserting "$1,500,000"; and

(4) in chapter 63—

(A) in section 1341, by striking "$1,000,000" and inserting "$1,500,000";

(B) in section 1343, by striking "$1,000,000" and inserting "$1,500,000"; and

(C) in section 1344, by striking "$1,000,000" and inserting "$1,500,000".

TITLE III—DEMANDING ACCOUNTABILITY FROM FINANCIAL REGULATORS AND DEVOLVING POWER AWAY FROM WASHINGTON

Subtitle A—Cost-Benefit Analyses

SEC. 311. DEFINITIONS.

As used in this subtitle—

(1) the term "agency" means the Board of Governors of the Federal Reserve System, the Consumer Law Enforcement Agency, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Securities and Exchange Commission;

(2) the term "chief economist" means—

(A) with respect to the Board of Governors of the Federal Reserve System, the Director of the Division of Research and Statistics, or an employee of the agency with comparable authority;

(B) with respect to the Consumer Law Enforcement Agency, the Head of the Office of Economic Analysis, or an employee of the agency with comparable authority;

(C) with respect to the Commodity Futures Trading Commission, the Chief Economist, or an employee of the agency with comparable authority;

(D) with respect to the Federal Deposit Insurance Corporation, the Director of the Division of Insurance and Research, or an employee of the agency with comparable authority;

(E) with respect to the Federal Housing Finance Agency, the Chief Economist, or an employee of the agency with comparable authority;

(F) with respect to the Office of the Comptroller of the Currency, the Director for Policy Analysis, or an employee of the agency with comparable authority;

(G) with respect to the National Credit Union Administration, the Chief Economist, or an employee of the agency with comparable authority; and

(H) with respect to the Securities and Exchange Commission, the Director of the Division of Economic and Risk Analysis, or an employee of the agency with comparable authority;

(3) the term "Council" means the Chief Economists Council established under section 318; and

(4) the term "regulation"—

(A) means an agency statement of general applicability and future effect that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, including rules, orders of general applicability, interpretive releases, and other statements of general applicability that the agency intends to have the force and effect of law; and

(B) does not include—

(i) a regulation issued in accordance with the formal rulemaking provisions of section 556 or 557 of title 5, United States Code;

(ii) a regulation that is limited to agency organization, management, or personnel matters;

(iii) a regulation promulgated pursuant to statutory authority that expressly prohibits compliance with this provision;

(iv) a regulation that is certified by the agency to be an emergency action, if such certification is published in the Federal Register;

(v) a regulation that is promulgated by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee under section 10A, 10B, 13, 13A, or 19 of the Federal Reserve Act, or any of subsections (a) through (f) of section 14 of that Act; or

(vi) a regulation filed with the Commission by the Public Company Accounting Oversight Board, the Municipal Securities Rulemaking Board, or any national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a)) for which the board or association has itself conducted the cost-benefit analysis and otherwise complied with the requirements of section 312.

SEC. 312. REQUIRED REGULATORY ANALYSIS.

(a) REQUIREMENTS FOR NOTICES OF PROPOSED RULEMAKING.—An agency may not issue a notice of proposed rulemaking unless the agency includes in the notice of proposed rulemaking an analysis that contains, at a minimum, with respect to each regulation that is being proposed—

(1) an identification of the need for the regulation and the regulatory objective, including identification of the nature and significance of the market failure, regulatory failure, or other problem that necessitates the regulation;

(2) an explanation of why the private market or State, local, or tribal authorities cannot adequately address the identified market failure or other problem;

(3) an analysis of the adverse impacts to regulated entities, other market participants, economic activity, or agency effectiveness that are engendered by the regulation and the magnitude of such adverse impacts;

(4) a quantitative and qualitative assessment of all anticipated direct and indirect costs and benefits of the regulation (as compared to a benchmark that assumes the absence of the regulation), including—

(A) compliance costs;

(B) effects on economic activity, net job creation (excluding jobs related to ensuring compliance with the regulation), efficiency, competition, and capital formation;

(C) regulatory administrative costs; and

(D) costs imposed by the regulation on State, local, or tribal governments or other regulatory authorities;

(5) if quantified benefits do not outweigh quantitative costs, a justification for the regulation;

(6) an identification and assessment of all available alternatives to the regulation, including modification of an existing regulation or statute, together with—

(A) an explanation of why the regulation meets the objectives of the regulation more effectively than the alternatives, and if the agency is proposing multiple alternatives, an explanation of why a notice of proposed rulemaking, rather than an advanced notice of proposed rulemaking, is appropriate; and

(B) if the regulation is not a pilot program, an explanation of why a pilot program is not appropriate;

(7) if the regulation specifies the behavior or manner of compliance, an explanation of why the agency did not instead specify performance objectives;

(8) an assessment of how the burden imposed by the regulation will be distributed among market participants, including whether consumers, investors, small businesses, or independent financial firms and advisors will be disproportionately burdened;

(9) an assessment of the extent to which the regulation is inconsistent, incompatible, or duplicative with the existing regulations of the agency or those of other domestic and international regulatory authorities with overlapping jurisdiction;

(10) a description of any studies, surveys, or other data relied upon in preparing the analysis;

(11) an assessment of the degree to which the key assumptions underlying the analysis are subject to uncertainty; and

(12) an explanation of predicted changes in market structure and infrastructure and in behavior by market participants, including consumers and investors, assuming that they will pursue their economic interests.

(b) REQUIREMENTS FOR NOTICES OF FINAL RULEMAKING.—

(1) IN GENERAL.—Notwithstanding any other provision of law, an agency may not issue a notice of final rulemaking with respect to a regulation unless the agency—

(A) has issued a notice of proposed rulemaking for the relevant regulation;

(B) has conducted and includes in the notice of final rulemaking an analysis that contains, at a minimum, the elements required under subsection (a); and

(C) includes in the notice of final rulemaking regulatory impact metrics selected by the chief economist to be used in preparing the report required pursuant to section 315.

(2) CONSIDERATION OF COMMENTS.—The agency shall incorporate in the elements described in paragraph (1)(B) the data and analyses provided to the agency by commenters during the comment period, or explain why the data or analyses are not being incorporated.

(3) COMMENT PERIOD.—An agency shall not publish a notice of final rulemaking with respect to a regulation, unless the agency—

(A) has allowed at least 90 days from the date of publication in the Federal Register of the notice of proposed rulemaking for the submission of public comments; or

(B) includes in the notice of final rulemaking an explanation of why the agency was not able to provide a 90-day comment period.

(4) PROHIBITED RULES.—

(A) IN GENERAL.—An agency may not publish a notice of final rulemaking if the agency, in its analysis under paragraph (1)(B), determines that the quantified costs are greater than the quantified benefits under subsection (a)(5).

(B) PUBLICATION OF ANALYSIS.—If the agency is precluded by subparagraph (A) from publishing a notice of final rulemaking, the agency shall publish in the Federal Register and on the public website of the agency its analysis under paragraph (1)(B), and provide the analysis to each House of Congress.

(C) CONGRESSIONAL WAIVER.—If the agency is precluded by subparagraph (A) from publishing a notice of final rulemaking, Congress, by joint resolu-

tion pursuant to the procedures set forth for joint resolutions in section 802 of title 5, United States Code, may direct the agency to publish a notice of final rulemaking notwithstanding the prohibition contained in subparagraph (A). In applying section 802 of title 5, United States Code, for purposes of this paragraph, section 802(e)(2) shall not apply and the terms—

(i) "joint resolution" or "joint resolution described in subsection (a)" means only a joint resolution introduced during the period beginning on the submission or publication date and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: "That Congress directs, notwithstanding the prohibition contained in section 312(b)(4)(A) of the Financial CHOICE Act of 2017, the ____ to publish the notice of final rulemaking for the regulation or regulations that were the subject of the analysis submitted by the ____ to Congress on ____." (The blank spaces being appropriately filled in.); and

(ii) "submission or publication date" means—

(I) the date on which the analysis under paragraph (1)(B) is submitted to Congress under paragraph (4)(B); or

(II) if the analysis is submitted to Congress less than 60 session days or 60 legislative days before the date on which the Congress adjourns a session of Congress, the date on which the same or succeeding Congress first convenes its next session.

SEC. 313. RULE OF CONSTRUCTION.

For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), obtaining, causing to be obtained, or soliciting information for purposes of complying with section 312 with respect to a proposed rulemaking shall not be construed to be a collection of information, provided that the agency has first issued an advanced notice of proposed rulemaking in connection with the regulation, identifies that advanced notice of proposed rulemaking in its solicitation of information, and informs the person from whom the information is obtained or solicited that the provision of information is voluntary.

SEC. 314. PUBLIC AVAILABILITY OF DATA AND REGULATORY ANALYSIS.

(a) IN GENERAL.—At or before the commencement of the public comment period with respect to a regulation, the agency shall make available on its public website sufficient information about the data, methodologies, and assumptions underlying the analyses performed pursuant to section 312 so that the analytical results of the agency are capable of being substantially reproduced, subject to an acceptable degree of imprecision or error.

(b) CONFIDENTIALITY.—The agency shall comply with subsection (a) in a manner that preserves the confidentiality of nonpublic information, including confidential trade secrets, confidential commercial or financial information, and confidential information about positions, transactions, or business practices.

SEC. 315. FIVE-YEAR REGULATORY IMPACT ANALYSIS.

(a) IN GENERAL.—Not later than 5 years after the date of publication in the Federal Register of a notice of final rulemaking, the chief economist of the agency shall issue a report that examines the economic impact of the subject regulation, including the direct and indirect costs and benefits of the regulation.

(b) REGULATORY IMPACT METRICS.—In preparing the report required by subsection (a), the chief economist shall employ the regulatory impact metrics included in the notice of final rulemaking pursuant to section 312(b)(1)(C).

(c) REPRODUCIBILITY.—The report shall include the data, methodologies, and assumptions underlying the evaluation so that the agency's analytical results are capable of being substantially reproduced, subject to an acceptable degree of imprecision or error.

(d) CONFIDENTIALITY.—The agency shall comply with subsection (c) in a manner that preserves the confidentiality of nonpublic information, including confidential trade secrets, confidential commercial or financial information, and confidential information about positions, transactions, or business practices.

(e) REPORT.—The agency shall submit the report required by subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives and post it on the public website of the agency. The Commodity Futures Trading Commission shall also submit its report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives.

SEC. 316. RETROSPECTIVE REVIEW OF EXISTING RULES.

(a) REGULATORY IMPROVEMENT PLAN.—Not later than 1 year after the date of enactment of this Act and every 5 years thereafter, each agency shall develop, submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and post on the public website of the agency a plan, consistent with law and its resources and regulatory priorities, under which the agency will modify, streamline, expand, or repeal existing regulations so as to make the regulatory program of the agency more effective or less burdensome in achieving the regulatory objectives. The Commodity Futures Trading Commission shall also submit its plan to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives.

(b) IMPLEMENTATION PROGRESS REPORT.—Two years after the date of submission of each plan required under subsection (a), each agency shall develop, submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and post on the public website of the agency a report of the steps that it has taken to implement the plan, steps that remain to be taken to implement the plan, and, if any parts of the plan will not be implemented, reasons for not implementing those parts of the plan. The Commodity Futures Trading Commission shall also submit its plan to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives.

SEC. 317. JUDICIAL REVIEW.

(a) IN GENERAL.—Notwithstanding any other provision of law, during the period beginning on the date on which a notice of final rulemaking for a regulation is published in the Federal Register and ending 1 year later, a person that is adversely affected or aggrieved by the regulation is entitled to bring an action in the United States Court of Appeals for the District of Columbia Circuit for judicial review of agency compliance with the requirements of section 312.

(b) STAY.—The court may stay the effective date of the regulation or any provision thereof.

(c) RELIEF.—If the court finds that an agency has not complied with the requirements of section 312, the court shall vacate the subject regulation, unless the agency shows by clear and convincing evidence that vacating the regulation would result in irreparable harm. Nothing in this section affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground.

SEC. 318. CHIEF ECONOMISTS COUNCIL.

(a) ESTABLISHMENT.—There is established the Chief Economists Council.

(b) MEMBERSHIP.—The Council shall consist of the chief economist of each agency. The members of the Council shall select the first chairperson of the Council. Thereafter the position of Chairperson shall rotate annually among the members of the Council.

(c) MEETINGS.—The Council shall meet at the call of the Chairperson, but not less frequently than quarterly.

(d) REPORT.—One year after the effective date of this Act and annually thereafter, the Council shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives a report on—

(1) the benefits and costs of regulations adopted by the agencies during the past 12 months;

(2) the regulatory actions planned by the agencies for the upcoming 12 months;

(3) the cumulative effect of the existing regulations of the agencies on economic activity, innovation, international competitiveness of entities regulated by the agencies, and net job creation (excluding jobs related to ensuring compliance with the regulation);

(4) the training and qualifications of the persons who prepared the cost-benefit analyses of each agency during the past 12 months;

(5) the sufficiency of the resources available to the chief economists during the past 12 months for the conduct of the activities required by this subtitle; and

(6) recommendations for legislative or regulatory action to enhance the efficiency and effectiveness of financial regulation in the United States.

SEC. 319. CONFORMING AMENDMENTS.

Section 15(a) of the Commodity Exchange Act (7 U.S.C. 19(a)) is amended—

(1) by striking paragraph (1);

(2) in paragraph (2), by striking "(2)" and all that follows through "light of—" and inserting the following:

"(1) CONSIDERATIONS.—Before promulgating a regulation under this chapter or issuing an order (except as provided in paragraph (2)), the Commission shall take into consideration—";

(3) in paragraph (1), as so redesignated—

(A) in subparagraph (B), by striking "futures" and inserting "the relevant";

(B) in subparagraph (C), by adding "and" at the end;

(C) in subparagraph (D), by striking "; and" and inserting a period; and

(D) by striking subparagraph (E); and

(4) by redesignating paragraph (3) as paragraph (2).

SEC. 320. OTHER REGULATORY ENTITIES.

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report setting forth a plan for subjecting the Public Company Accounting Oversight Board, the Municipal Securities Rulemaking Board, and any national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a)) to the requirements of this subtitle, other than direct representation on the Council.

SEC. 321. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY ANALYSES.

An agency may perform the analyses required by this subtitle in conjunction with, or as a part of, any other agenda or analysis required by any other provision of law, if such other analysis satisfies the provisions of this subtitle.

Subtitle B—Congressional Review of Federal Financial Agency Rulemaking

SEC. 331. CONGRESSIONAL REVIEW.

(a)(1)(A) Before a rule may take effect, a Federal financial agency shall publish in the Federal Register a list of information on which the rule is based, including data, scientific and economic studies, and cost-benefit analyses, and identify how the public can access such information online, and shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule;

(iii) a classification of the rule as a major or nonmajor rule, including an explanation of the classification specifically addressing each criteria for a major rule contained within subparagraphs (A) through (C) of section 334(2);

(iv) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and

(v) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal financial agency shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any, including an analysis of any jobs added or lost, differentiating between public and private sector jobs;

(ii) the Federal financial agency's actions pursuant to sections 603, 604, 605, 607, and 609 of title 5, United States Code;

(iii) the Federal financial agency's actions pursuant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction by the end of 15 calendar days after the submission or publication date. The report of the Comptroller General shall include an assessment of the Federal financial agency's compliance with procedural steps required by paragraph (1)(B) and an assessment of whether the major rule imposes any new limits or mandates on private-sector activity.

(B) Federal financial agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect upon enactment of a joint resolution of approval described in section 332 or as provided for in the rule following enactment of a joint resolution of approval described in section 332, whichever is later.

(4) A nonmajor rule shall take effect as provided by section 333 after submission to Congress under paragraph (1).

(5) If a joint resolution of approval relating to a major rule is not enacted within the period provided in subsection (b)(2), then a joint resolution of approval relating to the same rule may not be considered under this subtitle in the same Congress by either the House of Representatives or the Senate.

(b)(1) A major rule shall not take effect unless the Congress enacts a joint resolution of approval described under section 332.

(2) If a joint resolution described in subsection (a) is not enacted into law by the end of 70 session days or legislative days, as applicable, beginning on the date on which the report referred to in subsection (a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), then the rule described in that resolution shall be deemed not to be approved and such rule shall not take effect.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a major rule may take effect for one 90-calendar-day period if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the major rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws;

(C) necessary for national security; or

(D) issued pursuant to any statute implementing an international trade agreement.

(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 332.

(d)(1) In addition to the opportunity for review otherwise provided under this subtitle, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

(A) in the case of the Senate, 60 session days; or

(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress is scheduled to adjourn a session of Congress through the date on which the same or succeeding Congress first convenes its next session, sections 332 and 333 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying sections 332 and 333 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register on—

(I) in the case of the Senate, the 15th session day; or

(II) in the case of the House of Representatives, the 15th legislative day, after the succeeding session of Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

SEC. 332. CONGRESSIONAL APPROVAL PROCEDURE FOR MAJOR RULES.

(a)(1) For purposes of this section, the term "joint resolution" means only a joint resolution addressing a report classifying a rule as major pursuant to section 331(a)(1)(A)(iii) that—

(A) bears no preamble;

(B) bears the following title (with blanks filled as appropriate): "Approving the rule submitted by _____ relating to _____.";

(C) includes after its resolving clause only the following (with blanks filled as appropriate): "That Congress approves the rule submitted by _____ relating to _____."; and

(D) is introduced pursuant to paragraph (2).

(2) After a House of Congress receives a report classifying a rule as major pursuant to section 331(a)(1)(A)(iii), the majority leader of that House (or his or her respective designee) shall introduce (by request, if appropriate) a joint resolution described in paragraph (1)—

(A) in the case of the House of Representatives, within 3 legislative days; and

(B) in the case of the Senate, within 3 session days.

(3) A joint resolution described in paragraph (1) shall not be subject to amendment at any stage of proceeding.

(b) A joint resolution described in subsection (a) shall be referred in each House of Congress to the committees having jurisdiction over the provision of law under which the rule is issued.

(c) In the Senate, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 session days after its introduction, such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th session day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

(d)(1) In the Senate, when the committee or committees to which a joint resolution is referred have reported, or when a committee or committees are discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

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

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the House of Representatives, if any committee to which a joint resolution described in subsection (a) has been referred has not reported it to the House at the end of 15 legislative days after its introduction, such committee shall be discharged from further consideration of the joint resolution, and it shall be placed on the appropriate calendar. On the second and fourth Thursdays of each month it shall be in order at any time for the Speaker to recognize a Member who favors passage of a joint resolution that has appeared on the calendar for at least 5 legislative days to call up that joint resolution for immediate consideration in the House without intervention of any point of order. When so called up a joint resolution shall be considered as read and shall be debatable for 1 hour equally divided and controlled by the proponent and an opponent, and the previous question shall be considered as ordered to its passage without intervening motion. It shall not be in order to reconsider the vote on passage. If a vote on final passage of the joint resolution has not been taken by the third Thursday on which the Speaker may recognize a Member under this subsection, such vote shall be taken on that day.

(f)(1) If, before passing a joint resolution described in subsection (a), one House receives from the other a joint resolution having the same text, then—

(A) the joint resolution of the other House shall not be referred to a committee; and

(B) the procedure in the receiving House shall be the same as if no joint resolution had been received from the other House until the vote on passage, when the joint resolution received from the other House shall supplant the joint resolution of the receiving House.

(2) This subsection shall not apply to the House of Representatives if the joint resolution received from the Senate is a revenue measure.

(g) If either House has not taken a vote on final passage of the joint resolution by the last day of the period described in section 331(b)(2), then such vote shall be taken on that day.

(h) This section and section 333 are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a) and superseding other rules only where explicitly so; and

(2) with full recognition of the Constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

SEC. 333. CONGRESSIONAL DISAPPROVAL PROCEDURE FOR NONMAJOR RULES.

(a) For purposes of this section, the term "joint resolution" means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 331(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: "That Congress disapproves the nonmajor rule submitted by the _____ relating to _____, and such rule shall have no force or effect." (The blank spaces being appropriately filled in).

(b) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 15 session days after the date of introduction of the joint resolution, such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the Senate, the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date; or

(2) if the report under section 331(a)(1)(A) was submitted during the period referred to in section 331(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

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

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

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

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

SEC. 334. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Federal financial agency" means the Consumer Law Enforcement Agency, Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Securities and Exchange Commission.

(2) The term "major rule" means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

(A) an annual effect on the economy of $100 million or more;

(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(3) The term "nonmajor rule" means any rule that is not a major rule.

(4) The term "rule" has the meaning given such term in section 551 of title 5, United States Code, except that such term does not include—

(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefore, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

(5) The term "submission date or publication date", except as otherwise provided in this subtitle, means—

(A) in the case of a major rule, the date on which the Congress receives the report submitted under section 331(a)(1)(A); and

(B) in the case of a nonmajor rule, the later of—

(i) the date on which the Congress receives the report submitted under section 331(a)(1)(A); and

(ii) the date on which the nonmajor rule is published in the Federal Register, if so published.

SEC. 335. JUDICIAL REVIEW.

(a) No determination, finding, action, or omission under this subtitle shall be subject to judicial review.

(b) Notwithstanding subsection (a), a court may determine whether a Federal financial agency has completed the necessary requirements under this subtitle for a rule to take effect.

(c) The enactment of a joint resolution of approval under section 332 shall not be interpreted to serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, shall not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule except for purposes of determining whether or not the rule is in effect.

SEC. 336. EFFECTIVE DATE OF CERTAIN RULES.

Notwithstanding section 331—

(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

(2) any rule other than a major rule which the Federal financial agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal financial agency promulgating the rule determines.

SEC. 337. BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 332 OF THE FINANCIAL CHOICE ACT OF 2017.

Section 257(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new subparagraph:

"(E) BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 332 OF THE FINANCIAL CHOICE ACT OF 2017.—Any rules subject to the congressional approval procedure set forth in section 332 of the Financial CHOICE Act of 2017 affecting budget authority, outlays, or receipts shall be assumed to be effective unless it is not approved in accordance with such section.".

Subtitle C—Judicial Review of Agency Actions

SEC. 341. SCOPE OF JUDICIAL REVIEW OF AGENCY ACTIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, in any judicial review of an agency action pursuant to chapter 7 of title 5, United States Code, to the extent necessary to decision and when presented, the reviewing court shall determine the meaning or applicability of the terms of an agency action and decide de novo all relevant questions of law, including the interpretation of constitutional and statutory provisions, and rules made by an agency. Notwithstanding any other provision of law, this section shall apply in any action for judicial review of agency action authorized under any provision of law. No law may exempt any such civil action from the application of this section except by specific reference to this section.

(b) AGENCY DEFINED.—For purposes of this section, the term "agency" means the Consumer Law Enforcement Agency, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Securities and Exchange Commission.

(c) EFFECTIVE DATE.—Subsection (a) shall take effect after the end of the 2-year period beginning on the date of the enactment of this Act.

Subtitle D—Leadership of Financial Regulators

SEC. 351. FEDERAL DEPOSIT INSURANCE CORPORATION.

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

(1) in subsection (a)(1), by striking "5 members" and all that follows through "3 of whom" and inserting the following: "5 members, who";

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

"(d) VACANCY.—Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made."; and

(3) in subsection (f)—

(A) by striking paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2).

SEC. 352. FEDERAL HOUSING FINANCE AGENCY.

Section 1312(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4512) is amended by striking "for cause".

Subtitle E—Congressional Oversight of Appropriations

SEC. 361. BRINGING THE FEDERAL DEPOSIT INSURANCE CORPORATION INTO THE APPROPRIATIONS PROCESS.

(a) IN GENERAL.—Section 10(a) of the Federal Deposit Insurance Act (12 U.S.C. 1820(a)) is amended—

(1) by striking "(a) The" and inserting the following:

"(a) POWERS.—

"(1) IN GENERAL.—The";

(2) by inserting ", subject to paragraph (2)," after "The Board of Directors of the Corporation"; and

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

"(2) APPROPRIATIONS REQUIREMENT.—

"(A) OPERATING FUND.—There is established an Operating Fund, to which Congress shall provide annual appropriations to the Corporation, which shall be separate from the Deposit Insurance Fund.

"(B) RECOVERY OF COSTS OF ANNUAL APPROPRIATION.—The Corporation shall collect assessments and other fees, as provided under this Act, that are designed to recover the costs to the Government of the annual appropriation to the Corporation by Congress. Except as provided in (E) and subject to subparagraph (F), the Corporation may only incur obligations, or allow and pay expenses, from the Operating Fund pursuant to an appropriations Act.

"(C) DEPOSITS.—Assessments and other fees described under subparagraph (B) for any fiscal year—

"(i) shall be deposited in the Operating Fund; and

"(ii) except as provided in subparagraph (E), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

"(D) CREDITS.—Amounts deposited in the Operating Fund during a fiscal year shall be credited as offsetting the amount appropriated to the Operating Fund for such fiscal year.

"(E) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year an appropriation to the Corporation has not been enacted, the Corporation shall continue to collect the assessments and other fees described under subparagraph (B) at the rate in effect during the preceding fiscal year, until 60 days after the date such an appropriation is enacted.

"(F) EXCEPTION FOR CERTAIN PROGRAMS.—This paragraph shall not apply to the Corporation's Insurance Business Line Programs and Receivership Management Business Line Programs, as in existence on the date of enactment of this paragraph.".

(b) CONFORMING AMENDMENT.—Subsection (d) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended to read as follows:

"(d) DEPOSIT INSURANCE FUND EXEMPT FROM APPORTIONMENT.—Notwithstanding any other provision of law, amounts received pursuant to any assessments or other fees that are deposited into the Deposit Insurance Fund shall not be subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or under any other authority.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to expenses paid and fees collected on or after the date that is 90 days after the date of the enactment of the first appropriation Act that provides for appropriations to the Federal Deposit Insurance Corporation and that is enacted after the date of the enactment of this Act.

SEC. 362. BRINGING THE FEDERAL HOUSING FINANCE AGENCY INTO THE APPROPRIATIONS PROCESS.

(a) IN GENERAL.—Section 1316 of the Housing and Community Development Act of 1992 (12 U.S.C. 4516) is amended—

(1) by amending subsection (a) to read as follows:

"(a) APPROPRIATIONS REQUIREMENT.—

"(1) RECOVERY OF COSTS OF ANNUAL APPROPRIATION.—The Agency shall collect assessments and other fees that are designed to recover the costs to the Government of the annual appropriation to the Agency by Congress.

"(2) OFFSETTING COLLECTIONS.—Assessments and other fees described under paragraph (1) for any fiscal year—

"(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Agency; and

"(B) except as provided in paragraph (3), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

"(3) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year an appropriation to the Agency has not been enacted, the Agency shall continue to collect (as offsetting collections) the assessments and other fees described under paragraph (1) at the rate in effect during the preceding fiscal year, until 60 days after the date such an appropriation is enacted."; and

(2) by striking subsection (f).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to expenses paid and assessments and other fees collected on or after the date that is 90 days after the date of the enactment of the first appropriation Act that provides for appropriations to the Federal Housing Finance Agency and that is enacted after the date of the enactment of this Act.

SEC. 363. BRINGING THE NATIONAL CREDIT UNION ADMINISTRATION INTO THE APPROPRIATIONS PROCESS.

(a) IN GENERAL.—Section 105 of the Federal Credit Union Act (12 U.S.C. 1755) is amended—

(1) by amending subsections (a) and (b) to read as follows:

"(a) PAYMENT BY FEDERAL CREDIT UNIONS TO ADMINISTRATION.—Each insured credit union shall pay to the Administration an annual fee.

"(b) DETERMINATIONS OF ASSESSMENT PERIODS AND PAYMENT DATES.—The Board shall determine the periods for which the fee referred to under subsection (a) shall be assessed and the date for the payment of such fee or increments thereof.";

(2) in subsection (c), by striking "operating";

(3) by amending subsection (d) to read as follows:

"(d) APPROPRIATIONS REQUIREMENT.—

"(1) RECOVERY OF COSTS OF ANNUAL APPROPRIATION.—The Administration shall collect fees other than those fees referred to under subsection (a) from each insured credit union, as provided under this Act, in an amount stated as a percentage of insured shares of each insured credit union (which percentage shall be the same for all insured credit unions). Such fees shall be designed to recover the costs to the Government of the annual appropriation to the Administration by Congress.

"(2) OFFSETTING COLLECTIONS.—Fees described under paragraph (1) for any fiscal year—

"(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Administration; and

"(B) except as provided in paragraph (3), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

"(3) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year an appropriation to the Administration has not been enacted, the Administration shall continue to collect (as offsetting collections) the fees described under paragraph (1) at the rate in effect during the preceding fiscal year, until 60 days after the date such an appropriation is enacted.

"(4) EXCEPTION FOR INSURANCE FUNCTIONS.—This subsection shall not apply to the National Credit Union Share Insurance Fund, including assessments and other fees that are deposited into, and amounts paid from, the National Credit Union Share Insurance Fund."; and

(4) by striking subsection (e).

(b) CONFORMING AMENDMENTS.—The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended—

(1) in section 120(j), by striking paragraph (3);

(2) by amending section 128 to read as follows:

"SEC. 128. NATIONAL CREDIT UNION SHARE INSURANCE FUND EXEMPT FROM APPORTIONMENT.

"Notwithstanding any other provision of law, amounts received pursuant to any assessments or other fees that are deposited into the National Credit Union Share Insurance Fund or the Temporary Corporate Credit Union Stabilization Fund shall not be subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or under any other authority."; and

(3) in section 203(a), by striking "and for such administrative and other expenses incurred in carrying out the purposes of this title".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to expenses paid and fees collected on or after the date that is 90 days after the date of the enactment of the first appropriation Act that provides for appropriations to the National Credit Union Administration and that is enacted after the date of the enactment of this Act.

SEC. 364. BRINGING THE OFFICE OF THE COMPTROLLER OF THE CURRENCY INTO THE APPROPRIATIONS PROCESS.

(a) IN GENERAL.—Section 5240A of the Revised Statutes of the United States (12 U.S.C. 16) is amended—

(1) by striking "Sec. 5240A. The Comptroller of the Currency may collect an assessment, fee, or other charge from any entity described in section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(1)), as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency. In establishing the amount of an assessment, fee, or charge collected from an entity under this section," and inserting the following:

"SEC. 5240A. COLLECTION OF FEES; APPROPRIATIONS REQUIREMENT.

"(a) IN GENERAL.—In establishing the amount of an assessment, fee, or charge collected from an entity under subsection (b),";

(2) by striking "Funds derived" and all that follows through the end of the section; and

(3) by adding at the end the following:

"(b) APPROPRIATIONS REQUIREMENT.—

"(1) RECOVERY OF COSTS OF ANNUAL APPROPRIATION.—The Comptroller of the Currency shall impose and collect assessments, fees, or other charges that are designed to recover the costs to the Government of the annual appropriation to the Office of the Comptroller of the Currency by Congress.

"(2) OFFSETTING COLLECTIONS.—Assessments and other fees described under paragraph (1) for any fiscal year—

"(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Office of the Comptroller of the Currency; and

"(B) except as provided in paragraph (3), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

"(3) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year an appropriation to the Office of the Comptroller of the Currency has not been enacted, the Comptroller of the Currency shall continue to collect (as offsetting collections) the assessments and other fees described under paragraph (1) at the rate in effect during the preceding fiscal year, until 60 days after the date such an appropriation is enacted.".

(b) CONFORMING AMENDMENT.—Section 5240 (12 U.S.C. 481 et seq.) of the Revised Statutes of the United States is amended by striking the fourth undesignated paragraph.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to expenses paid and fees collected on or after the date that is 90 days after the date of the enactment of the first appropriation Act that provides for appropriations to the Comptroller of the Currency and that is enacted after the date of the enactment of this Act.

SEC. 365. BRINGING THE NON-MONETARY POLICY RELATED FUNCTIONS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM INTO THE APPROPRIATIONS PROCESS.

(a) IN GENERAL.—The Federal Reserve Act is amended by inserting after section 11B the following:

"SEC. 11C. APPROPRIATIONS REQUIREMENT FOR NON-MONETARY POLICY RELATED ADMINISTRATIVE COSTS.

"(a) APPROPRIATIONS REQUIREMENT.—

"(1) RECOVERY OF COSTS OF ANNUAL APPROPRIATION.—The Board of Governors of the Federal Reserve System and the Federal reserve banks shall collect assessments and other fees, as provided under this Act, that are designed to recover the costs to the Government of the annual appropriation to the Board of Governors of the Federal Reserve System by Congress. The Board of Governors of the Federal Reserve System and the Federal reserve banks may only incur obligations or allow and pay expenses with respect to non-monetary policy related administrative costs pursuant to an appropriations Act.

"(2) OFFSETTING COLLECTIONS.—Assessments and other fees described under paragraph (1) for any fiscal year—

"(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Board of Governors of the Federal Reserve System; and

"(B) except as provided in paragraph (3), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

"(3) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year an appropriation to the Board of Governors of the Federal Reserve System has not been enacted, the Board of Governors of the Federal Reserve System shall continue to collect (as offsetting collections) the assessments and other fees described under paragraph (1) at the rate in effect during the preceding fiscal year, until 60 days after the date such an appropriation is enacted.

"(4) LIMITATION.—This subsection shall only apply to the non-monetary policy related administrative costs of the Board of Governors of the Federal Reserve System.

"(b) DEFINITIONS.—For purposes of this section:

"(1) MONETARY POLICY.—The term 'monetary policy' means a strategy for producing a generally acceptable exchange medium that supports the productive employment of economic resources by reliably serving as both a unit of account and store of value.

"(2) NON-MONETARY POLICY RELATED ADMINISTRATIVE COSTS.—The term 'non-monetary policy related administrative costs' means administrative costs not related to the conduct of monetary policy, and includes—

"(A) direct operating expenses for supervising and regulating entities supervised and regulated by the Board of Governors of the Federal Reserve System, including conducting examinations, conducting stress tests, communicating with the entities regarding supervisory matters and laws, and regulations;

"(B) operating expenses for activities integral to carrying out supervisory and regulatory responsibilities, such as training staff in the supervisory function, research and analysis functions including library subscription services, and collecting and processing regulatory reports filed by supervised institutions; and

"(C) support, overhead, and pension expenses related to the items described under subparagraphs (A) and (B).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to expenses paid and fees collected on or after the date that is 90 days after the date of the enactment of the first appropriation Act that provides for appropriations to the Board of Governors of the Federal Reserve System and that is enacted after the date of the enactment of this Act.

Subtitle F—International Processes

SEC. 371. REQUIREMENTS FOR INTERNATIONAL PROCESSES.

(a) BOARD OF GOVERNORS REQUIREMENTS.—Section 11 of the Federal Reserve Act (12 U.S.C. 248), as amended by section 1007(a), is further amended by adding at the end the following new subsection:

"(w) INTERNATIONAL PROCESSES.—

"(1) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before any member or employee of the Board of Governors of the Federal Reserve System participates in a process of setting financial standards as a part of any foreign or multinational entity, the Board of Governors shall—

"(A) issue a notice of the process, including the subject matter, scope, and goals of the process, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(B) make such notice available to the public, including on the website of the Board of Governors; and

"(C) solicit public comment, and consult with the committees described under subparagraph (A), with respect to the subject matter, scope, and goals of the process.

"(2) PUBLIC REPORTS ON PROCESS.—After the end of any process described under paragraph (1), the Board of Governors shall issue a public report on the topics that were discussed during the process and any new or revised rulemakings or policy changes that the Board of Governors believes should be implemented as a result of the process.

"(3) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before any member or employee of the Board of Governors of the Federal Reserve System participates in a process of setting financial standards as a part of any foreign or multinational entity, the Board of Governors shall—

"(A) issue a notice of agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(B) make such notice available to the public, including on the website of the Board of Governors; and

"(C) consult with the committees described under subparagraph (A) with respect to the nature of the agreement and any anticipated effects such agreement will have on the economy.

"(4) DEFINITION.—For purposes of this subsection, the term 'process' shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization).".

(b) FDIC REQUIREMENTS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 51. INTERNATIONAL PROCESSES.

"(a) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before the Board of Directors participates in a process of setting financial standards as a part of any foreign or multinational entity, the Board of Directors shall—

"(1) issue a notice of the process, including the subject matter, scope, and goals of the process, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(2) make such notice available to the public, including on the website of the Corporation; and

"(3) solicit public comment, and consult with the committees described under paragraph (1), with respect to the subject matter, scope, and goals of the process.

"(b) PUBLIC REPORTS ON PROCESS.—After the end of any process described under subsection (a), the Board of Directors shall issue a public report on the topics that were discussed at the process and any new or revised rulemakings or policy changes that the Board of Directors believes should be implemented as a result of the process.

"(c) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before the Board of Directors participates in a process of setting financial standards as a part of any foreign or multinational entity, the Board of Directors shall—

"(1) issue a notice of agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(2) make such notice available to the public, including on the website of the Corporation; and

"(3) consult with the committees described under paragraph (1) with respect to the nature of the agreement and any anticipated effects such agreement will have on the economy.

"(d) DEFINITION.—For purposes of this section, the term 'process' shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization).".

(c) TREASURY REQUIREMENTS.—Section 325 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(d) INTERNATIONAL PROCESSES.—

"(1) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before the Secretary participates in a process of setting financial standards as a part of any foreign or multinational entity, the Secretary shall—

"(A) issue a notice of the process, including the subject matter, scope, and goals of the process, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(B) make such notice available to the public, including on the website of the Department of the Treasury; and

"(C) solicit public comment, and consult with the committees described under subparagraph (A), with respect to the subject matter, scope, and goals of the process.

"(2) PUBLIC REPORTS ON PROCESS.—After the end of any process described under paragraph (1), the Secretary shall issue a public report on the topics that were discussed at the process and any new or revised rulemakings or policy changes that the Secretary believes should be implemented as a result of the process.

"(3) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before the Secretary participates in a process of setting financial standards as a part of any foreign or multinational entity, the Secretary shall—

"(A) issue a notice of agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(B) make such notice available to the public, including on the website of the Department of the Treasury; and

"(C) consult with the committees described under subparagraph (A) with respect to the nature of the agreement and any anticipated effects such agreement will have on the economy.

"(4) DEFINITION.—For purposes of this subsection, the term 'process' shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global

or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization).".

(d) OCC REQUIREMENTS.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended—

(1) by adding at the end the following new section:

"SEC. 5156B. INTERNATIONAL PROCESSES.

"(a) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before the Comptroller of the Currency participates in a process of setting financial standards as a part of any foreign or multinational entity, the Board of Directors shall—

"(1) issue a notice of the process, including the subject matter, scope, and goals of the process, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(2) make such notice available to the public, including on the website of the Office of the Comptroller of the Currency; and

"(3) solicit public comment, and consult with the committees described under paragraph (1), with respect to the subject matter, scope, and goals of the process.

"(b) PUBLIC REPORTS ON PROCESS.—After the end of any process described under subsection (a), the Board of Directors shall issue a public report on the topics that were discussed at the process and any new or revised rulemakings or policy changes that the Board of Directors believes should be implemented as a result of the process.

"(c) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before the Board of Directors participates in a process of setting financial standards as a part of any foreign or multinational entity, the Board of Directors shall—

"(1) issue a notice of agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(2) make such notice available to the public, including on the website of the Office of the Comptroller of the Currency; and

"(3) consult with the committees described under paragraph (1) with respect to the nature of the agreement and any anticipated effects such agreement will have on the economy.

"(d) DEFINITION.—For purposes of this section, the term 'process' shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization)."; and

(2) in the table of contents for such chapter, by adding at the end the following new item:

"5156B. International processes.".

(e) SECURITIES AND EXCHANGE COMMISSION REQUIREMENTS.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d), as amended by section 818(a), is further amended by adding at the end the following new subsection:

"(j) INTERNATIONAL PROCESSES.—

"(1) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before the Commission participates in a process of setting financial standards as a part of any foreign or multinational entity, the Commission shall—

"(A) issue a notice of the process, including the subject matter, scope, and goals of the process, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(B) make such notice available to the public, including on the website of the Commission; and

"(C) solicit public comment, and consult with the committees described under subparagraph (A), with respect to the subject matter, scope, and goals of the process.

"(2) PUBLIC REPORTS ON PROCESS.—After the end of any process described under paragraph (1), the Commission shall issue a public report on the topics that were discussed at the process and any new or revised rulemakings or policy changes that the Commission believes should be implemented as a result of the process.

"(3) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before the Commission participates in a process of setting financial standards as a part of any foreign or multinational entity, the Commission shall—

"(A) issue a notice of agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(B) make such notice available to the public, including on the website of the Commission; and

"(C) consult with the committees described under subparagraph (A) with respect to the nature of the agreement and any anticipated effects such agreement will have on the economy.

"(4) DEFINITION.—For purposes of this subsection, the term 'process' shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization).".

(f) COMMODITY FUTURES TRADING COMMISSION REQUIREMENTS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by adding at the end the following:

"(k) INTERNATIONAL PROCESSES.—

"(1) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before the Commission participates in a process of setting financial standards as a part of any foreign or multinational entity, the Commission shall—

"(A) issue a notice of the process, including the subject matter, scope, and goals of the process, to—

"(i) the Committees on Financial Services and Agriculture of the House of Representatives; and

"(ii) the Committees on Banking, Housing, and Urban Affairs and Agriculture, Nutrition, and Forestry of the Senate;

"(B) make such notice available to the public, including on the website of the Commission; and

"(C) solicit public comment, and consult with the committees described under subparagraph (A), with respect to the subject matter, scope, and goals of the process.

"(2) PUBLIC REPORTS ON PROCESS.—After the end of any process described under paragraph (1), the Commission shall issue a public report on the topics that were discussed during the process and any new or revised rulemakings or policy changes that the Commission believes should be implemented as a result of the process.

"(3) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before the Commission participates in a process of setting financial standards as a part of any foreign or multinational entity, the Commission shall—

"(A) issue a notice of agreement to—

"(i) the Committees on Financial Services and Agriculture of the House of Representatives; and

"(ii) the Committees on Banking, Housing, and Urban Affairs and Agriculture, Nutrition, and Forestry of the Senate;

"(B) make such notice available to the public, including on the website of the Commission; and

"(C) consult with the committees described under subparagraph (A) with respect to the nature of the agreement and any anticipated effects such agreement will have on the economy.

"(4) DEFINITION.—For purposes of this subsection, the term 'process' shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization).".

Subtitle G—Unfunded Mandates Reform

SEC. 381. DEFINITIONS.

For purposes of this title:

(1) AGENCY.—The term "agency" has the meaning given such term under section 311.

(2) OTHER DEFINITIONS.—Except as provided under paragraph (1), the definitions under section 421 of the Congressional Budget and Impoundment Control Act of 1974 shall apply to this title.

SEC. 382. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Unless otherwise expressly prohibited by law, before promulgating any general notice of proposed rulemaking or any final rule, or within six months after promulgating any final rule that was not preceded by a general notice of proposed rulemaking, if the proposed rulemaking or final rule includes a Federal mandate that may result in an annual effect on State, local, or tribal governments, or to the private sector, in the aggregate of $100,000,000 or more in any 1 year, the agency shall prepare a written statement containing the following:

(1) The text of the draft proposed rulemaking or final rule, together with the information required under subsections (a) and (b)(1) of section 312, as applicable, including an explanation of the manner in which the proposed rulemaking or final rule is consistent with the statutory requirement and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(2) Estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future compliance costs of the Federal mandate; and

(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector.

(3)(A) A detailed description of the extent of the agency's prior consultation with the private sector and elected representatives (under section 384) of the affected State, local, and tribal governments.

(B) A detailed summary of the comments and concerns that were presented by the private sector and State, local, or tribal governments either orally or in writing to the agency.

(C) A detailed summary of the agency's evaluation of those comments and concerns.

(4) A detailed summary of how the agency complied with each of the regulatory principles described under section 312, as applicable.

(b) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(c) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 383. SMALL GOVERNMENT AGENCY PLAN.

Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(1) provide notice of the requirements to potentially affected small governments, if any;

(2) enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and

(3) inform, educate, and advise small governments on compliance with the requirements.

SEC. 384. STATE, LOCAL, AND TRIBAL GOVERNMENT AND PRIVATE SECTOR INPUT.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf), and impacted parties within the private sector (including small business), to provide meaningful and timely input in the development of regulatory proposals containing significant Federal mandates.

(b) MEETINGS BETWEEN STATE, LOCAL, TRIBAL AND FEDERAL OFFICERS.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

(c) GUIDELINES.—For appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations, the following guidelines shall be followed:

(1) Consultations shall take place as early as possible, before issuance of a notice of proposed rulemaking, continue through the final rule stage, and be integrated explicitly into the rulemaking process.

(2) Agencies shall consult with a wide variety of State, local, and tribal officials and impacted parties within the private sector (including small businesses). Geographic, political, and other factors that may differentiate varying points of view should be considered.

(3) Agencies should estimate benefits and costs to assist with these consultations. The scope of the consultation should reflect the cost and significance of the Federal mandate being considered.

(4) Agencies shall, to the extent practicable—

(A) seek out the views of State, local, and tribal governments, and impacted parties within the private sector (including small business), on costs, benefits, and risks; and

(B) solicit ideas about alternative methods of compliance and potential flexibilities, and input on whether the Federal regulation will harmonize with and not duplicate similar laws in other levels of government.

(5) Consultations shall address the cumulative impact of regulations on the affected entities.

(6) Agencies may accept electronic submissions of comments by relevant parties but may not use those comments as the sole method of satisfying the guidelines in this subsection.

SEC. 385. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

(a) IN GENERAL.—Except as provided in subsection (b), before promulgating any rule for which a written statement is required under section 382, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for—

(1) State, local, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate; and

(2) the private sector, in the case of a rule containing a Federal private sector mandate.

(b) EXCEPTION.—The provisions of subsection (a) shall apply unless—

(1) the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or

(2) the provisions are inconsistent with law.

(c) CERTIFICATION.—No later than 1 year after the date of the enactment of this Act, the Administrator of the Office of Information and Regulatory Affairs shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.

SEC. 386. ASSISTANCE TO THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

The Administrator of the Office of Information and Regulatory Affairs shall—

(1) collect from agencies the statements prepared under section 382; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

SEC. 387. OFFICE OF INFORMATION AND REGULATORY AFFAIRS RESPONSIBILITIES.

(a) IN GENERAL.—The Administrator of the Office of Information and Regulatory Affairs shall provide meaningful guidance and oversight so that each agency's regulations for which a written statement is required under section 382 are consistent with the principles and requirements of this title, as well as other applicable laws, and do not conflict with the policies or actions of another agency. If the Administrator determines that an agency's regulations for which a written statement is required under section 382 do not comply with such principles and requirements, are not consistent with other applicable laws, or conflict with the policies or actions of another agency, the Administrator shall identify areas of non-compliance, notify the agency, and request that the agency comply before the agency finalizes the regulation concerned.

(b) ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE.—The Administrator of the Office of Information and Regulatory Affairs annually shall submit to Congress a written report detailing compliance by each agency with the require-

ments of this title that relate to regulations for which a written statement is required by section 382, including activities undertaken at the request of the Administrator to improve compliance, during the preceding reporting period. The report shall also contain an appendix detailing compliance by each agency with section 384.

SEC. 388. JUDICIAL REVIEW.

(a) AGENCY STATEMENTS ON SIGNIFICANT REGULATORY ACTIONS.—

(1) IN GENERAL.—Compliance or noncompliance by any agency with the provisions of section 382, paragraphs (1) and (2) of section 383(a), and subsections (a) and (b) of section 385 shall be subject to judicial review in accordance with this section.

(2) LIMITED REVIEW OF AGENCY COMPLIANCE OR NONCOMPLIANCE.—

(A) Agency compliance or noncompliance with the provisions of section 382, paragraphs (1) and (2) of section 383(a), and subsections (a) and (b) of section 385 shall be subject to judicial review under section 706(1) of title 5, United States Code, and as provided under subparagraph (B).

(B) If an agency fails to prepare the written statement (including the preparation of the estimates, analyses, statements, or descriptions) under section 382, prepare the written plan under paragraphs (1) and (2) of section 383(a), or comply with subsections (a) and (b) of section 385, a court may compel the agency to prepare such written statement, prepare such written plan, or comply with such section;

(3) REVIEW OF AGENCY RULES.—In any judicial review under any other Federal law of an agency rule for which a written statement under section 382, a written plan under paragraphs (1) and (2) of section 383(a), or compliance with subsections (a) and (b) of section 385 is required, the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate, analysis, statement, or description), to prepare such written plan, or to comply with such section may be used as a basis for staying, enjoining, invalidating or otherwise affecting such agency rule.

(4) CERTAIN INFORMATION AS PART OF RECORD.—Any information generated under section 382, paragraphs (1) and (2) of section 383(a), and subsections (a) and (b) of section 385 that is part of the rulemaking record for judicial review under the provisions of any other Federal law may be considered as part of the record for judicial review conducted under such other provisions of Federal law.

(5) APPLICATION OF OTHER FEDERAL LAW.—For any petition under paragraph (2) the provisions of such other Federal law shall control all other matters, such as exhaustion of administrative remedies, the time for and manner of seeking review and venue, except that if such other Federal law does not provide a limitation on the time for filing a petition for judicial review that is less than 180 days, such limitation shall be 180 days after a final rule is promulgated by the appropriate agency.

(6) EFFECTIVE DATE.—This subsection shall apply to any agency rule for which a general notice of proposed rulemaking is promulgated on or after the date of the enactment of this Act.

(b) JUDICIAL REVIEW AND RULE OF CONSTRUCTION.—Except as provided in subsection (a)—

(1) any estimate, analysis, statement, description or report prepared under this title, and any compliance or noncompliance with the provisions of this title, and any determination concerning the applicability of the provisions of this title shall not be subject to judicial review; and

(2) no provision of this title shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action.

Subtitle H—Enforcement Coordination

SEC. 391. POLICIES TO MINIMIZE DUPLICATION OF ENFORCEMENT EFFORTS.

Each agency (as defined under section 311) shall, not later than the end of the 90-day period beginning on the date of the enactment of this Act, implement policies and procedures—

(1) to minimize duplication of efforts with other Federal or State authorities when bringing an administrative or judicial action against an individual or entity;

(2) to establish when joint investigations, administrative actions, or judicial actions or the coordination of law enforcement activities are necessary and appropriate and in the public interest; and

(3) to, in the course of a joint investigation, administrative action, or judicial action, establish a lead agency to avoid duplication of efforts and unnecessary burdens and to ensure consistent enforcement, as necessary and appropriate and in the public interest.

Subtitle I—Penalties for Unauthorized Disclosures

SEC. 392. CRIMINAL PENALTY FOR UNAUTHORIZED DISCLOSURES.

Section 165 of the Financial Stability Act of 2010 (12 U.S.C. 5365), as amended by section 151(b)(6)(M), is further amended by adding at the end the following:

"(m) CRIMINAL PENALTY FOR UNAUTHORIZED DISCLOSURES.—

"(1) IN GENERAL.—Any officer or employee of a Federal department or agency, who by virtue of such officer or employee's employment or official position, has possession of, or access to, agency records which contain individually identifiable information submitted pursuant to the requirements of this section, the disclosure of which is prohibited by Federal statute, rule, or regulation, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

"(2) OBTAINING RECORDS UNDER FALSE PRETENSES.—Any person who knowingly and willfully requests or obtains information described under paragraph (1) from a Federal department or agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

"(3) TREATMENT OF DETERMINATIONS.—For purposes of this subsection, a determination made under subsection (d) or (i) based on individually identifiable information submitted pursuant to the requirements of this section shall be deemed individually identifiable information, the disclosure of which is prohibited by Federal statute.".

Subtitle II—Stop Settlement Slush Funds

SEC. 393. LIMITATION ON DONATIONS MADE PURSUANT TO SETTLEMENT AGREEMENTS TO WHICH CERTAIN DEPARTMENTS OR AGENCIES ARE A PARTY.

(a) LIMITATION ON REQUIRED DONATIONS.—No settlement to which a department or agency is a party may direct or provide for a payment to any person who is not a victim of the alleged wrongdoing.

(b) PENALTY.—Any Executive branch official or agent thereof who enters into or enforces a settlement in violation of subsection (a), shall be subject to the same penalties that would apply in the case of a violation of section 3302 of title 31, United States Code.

(c) EFFECTIVE DATE.—Subsections (a) and (b) apply only in the case of a settlement agreement concluded on or after the date of enactment of this Act.

(d) DEFINITIONS.—

(1) The term "department or agency"—

(A) has the meaning given the term "agency" under section 311; and

(B) means the Department of Housing and Urban Development, the Department of Justice, and the Rural Housing Service of the Department of Agriculture.

(2) The term "settlement agreement" means a settlement agreement resolving a civil action or potential civil action, a plea agreement, a deferred prosecution agreement, or a non-prosecution agreement.

(3) The term "payment" means a payment or loan.

(4) The term "payment to any person who is not a victim" means any payment other than a payment—

(A) to a person who is party to the lawsuit or settlement;

(B) that provides restitution for or otherwise directly remedies actual harm (including to the environment) directly and proximately caused by the party making the payment as a result of that party's alleged wrongdoing;

(C) that constitutes payment for services rendered in connection with the case; or

(D) made pursuant to section 3663 of title 18, United States Code.

TITLE IV—UNLEASHING OPPORTUNITIES FOR SMALL BUSINESSES, INNOVATORS, AND JOB CREATORS BY FACILITATING CAPITAL FORMATION

Subtitle A—Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification

SEC. 401. REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.

Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

"(13) REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an M&A broker shall be exempt from registration under this section.

"(B) EXCLUDED ACTIVITIES.—An M&A broker is not exempt from registration under this paragraph if such broker does any of the following:

"(i) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

"(ii) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the Commission under section 12 or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under subsection (d).

"(iii) Engages on behalf of any party in a transaction involving a public shell company.

"(C) DISQUALIFICATIONS.—An M&A broker is not exempt from registration under this paragraph if such broker is subject to—

"(i) suspension or revocation of registration under paragraph (4);

"(ii) a statutory disqualification described in section 3(a)(39);

"(iii) a disqualification under the rules adopted by the Commission under section 926 of the Investor Protection and Securities Reform Act of 2010 (15 U.S.C. 77d note); or

"(iv) a final order described in paragraph (4)(H).

"(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit any other authority of the Commission to exempt any person, or any class of persons, from any provision of this title, or from any provision of any rule or regulation thereunder.

"(E) DEFINITIONS.—In this paragraph:

"(i) CONTROL.—The term 'control' means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who—

"(I) is a director, general partner, member or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

"(II) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

"(III) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

"(ii) ELIGIBLE PRIVATELY HELD COMPANY.—The term 'eligible privately held company' means a privately held company that meets both of the following conditions:

"(I) The company does not have any class of securities registered, or required to be registered, with the Commission under section 12 or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d).

"(II) In the fiscal year ending immediately before the fiscal year in which the services of the M&A broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

"(aa) The earnings of the company before interest, taxes, depreciation, and amortization are less than $25,000,000.

"(bb) The gross revenues of the company are less than $250,000,000.

"(iii) M&A BROKER.—The term 'M&A broker' means a broker, and any person associated with a broker, engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company, if the broker reasonably believes that—

"(I) upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

"(II) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by the management of the issuer in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant, a balance sheet dated not more than 120 days before the date of the offer, and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

"(iv) PUBLIC SHELL COMPANY.—The term 'public shell company' is a company that at the time of a transaction with an eligible privately held company—

"(I) has any class of securities registered, or required to be registered, with the Commission under section 12 or that is required to file reports pursuant to subsection (d);

"(II) has no or nominal operations; and

"(III) has—

"(aa) no or nominal assets;

"(bb) assets consisting solely of cash and cash equivalents; or

"(cc) assets consisting of any amount of cash and cash equivalents and nominal other assets.

"(F) INFLATION ADJUSTMENT.—

"(i) IN GENERAL.—On the date that is 5 years after the date of the enactment of this paragraph, and every 5 years thereafter, each dollar amount in subparagraph (E)(ii)(II) shall be adjusted by—

"(I) dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2012; and

"(II) multiplying such dollar amount by the quotient obtained under subclause (I).

"(ii) ROUNDING.—Each dollar amount determined under clause (i) shall be rounded to the nearest multiple of $100,000.".

SEC. 402. EFFECTIVE DATE.

This subtitle and any amendment made by this subtitle shall take effect on the date that is 90 days after the date of the enactment of this Act.

Subtitle B—Encouraging Employee Ownership

SEC. 406. INCREASED THRESHOLD FOR DISCLOSURES RELATING TO COMPENSATORY BENEFIT PLANS.

Not later than 60 days after the date of the enactment of this Act, the Securities and Exchange Commission shall revise section 230.701(e) of title 17, Code of Federal

Regulations, so as to increase from $5,000,000 to $20,000,000 the aggregate sales price or amount of securities sold during any consecutive 12-month period in excess of which the issuer is required under such section to deliver an additional disclosure to investors. The Commission shall index for inflation such aggregate sales price or amount every 5 years to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, rounding to the nearest $1,000,000.

Subtitle C—Small Company Disclosure Simplification

SEC. 411. EXEMPTION FROM XBRL REQUIREMENTS FOR EMERGING GROWTH COMPANIES AND OTHER SMALLER COMPANIES.

(a) EXEMPTION FOR EMERGING GROWTH COMPANIES.—Emerging growth companies are exempted from the requirements to use Extensible Business Reporting Language (XBRL) for financial statements and other periodic reporting required to be filed with the Commission under the securities laws. Such companies may elect to use XBRL for such reporting.

(b) EXEMPTION FOR OTHER SMALLER COMPANIES.—Issuers with total annual gross revenues of less than $250,000,000 are exempt from the requirements to use XBRL for financial statements and other periodic reporting required to be filed with the Commission under the securities laws. Such issuers may elect to use XBRL for such reporting. An exemption under this subsection shall continue in effect until—

(1) the date that is five years after the date of enactment of this Act; or

(2) the date that is two years after a determination by the Commission, by order after conducting the analysis required by section 3, that the benefits of such requirements to such issuers outweigh the costs, but no earlier than three years after enactment of this Act.

(c) MODIFICATIONS TO REGULATIONS.—Not later than 60 days after the date of enactment of this Act, the Commission shall revise its regulations under parts 229, 230, 232, 239, 240, and 249 of title 17, Code of Federal Regulations, to reflect the exemptions set forth in subsections (a) and (b).

SEC. 412. ANALYSIS BY THE SEC.

The Commission shall conduct an analysis of the costs and benefits to issuers described in section 411(b) of the requirements to use XBRL for financial statements and other periodic reporting required to be filed with the Commission under the securities laws. Such analysis shall include an assessment of—

(1) how such costs and benefits may differ from the costs and benefits identified by the Commission in the order relating to interactive data to improve financial reporting (dated January 30, 2009; 74 Fed. Reg. 6776) because of the size of such issuers;

(2) the effects on efficiency, competition, capital formation, and financing and on analyst coverage of such issuers (including any such effects resulting from use of XBRL by investors);

(3) the costs to such issuers of—

(A) submitting data to the Commission in XBRL;

(B) posting data on the website of the issuer in XBRL;

(C) software necessary to prepare, submit, or post data in XBRL; and

(D) any additional consulting services or filing agent services;

(4) the benefits to the Commission in terms of improved ability to monitor securities markets, assess the potential outcomes of regulatory alternatives, and enhance investor participation in corporate governance and promote capital formation; and

(5) the effectiveness of standards in the United States for interactive filing data relative to the standards of international counterparts.

SEC. 413. REPORT TO CONGRESS.

Not later than one year after the date of enactment of this Act, the Commission shall provide the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report regarding—

(1) the progress in implementing XBRL reporting within the Commission;

(2) the use of XBRL data by Commission officials;

(3) the use of XBRL data by investors;

(4) the results of the analysis required by section 412; and

(5) any additional information the Commission considers relevant for increasing transparency, decreasing costs, and increasing efficiency of regulatory filings with the Commission.

SEC. 414. DEFINITIONS.

As used in this subtitle, the terms "Commission", "emerging growth company", "issuer", and "securities laws" have the meanings given such terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

Subtitle D—Securities and Exchange Commission Overpayment Credit

SEC. 416. REFUNDING OR CREDITING OVERPAYMENT OF SECTION 31 FEES.

(a) IN GENERAL.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended by adding at the end the following:

"(n) OVERPAYMENT.—If a national securities exchange or national securities association pays to the Commission an amount in excess of fees and assessments due under this section and informs the Commission of such amount paid in excess within 10 years of the date of the payment, the Commission shall offset future fees and assessments due by such exchange or association in an amount equal to such excess amount.".

(b) APPLICABILITY.—The amendment made by this section shall apply to any fees and assessments paid before, on, or after the date of enactment of this section.

Subtitle E—Fair Access to Investment Research

SEC. 421. SAFE HARBOR FOR INVESTMENT FUND RESEARCH.

(a) EXPANSION OF THE SAFE HARBOR.—Not later than the end of the 45-day period beginning on the date of enactment of this Act, the Securities and Exchange Commission shall propose, and not later than the end of the 120-day period beginning on such date, the Commission shall adopt, upon such terms, conditions, or requirements as the Commission may determine necessary or appropriate in the public interest, for the protection of investors, and for the promotion of capital formation, revisions to section 230.139 of title 17, Code of Federal Regulations, to provide that a covered investment fund research report that is published or distributed by a broker or dealer—

(1) shall be deemed, for purposes of sections 2(a)(10) and 5(c) of the Securities Act of 1933 (15 U.S.C. 77b(a)(10), 77e(c)), not to constitute an offer for sale or an offer to sell a security that is the subject of an offering pursuant to a registration statement that is effective, even if the broker or dealer is participating or will participate in the registered offering of the covered investment fund's securities; and

(2) shall be deemed to satisfy the conditions of subsection (a)(1) or (a)(2) of section 230.139 of title 17, Code of Federal Regulations, or any successor provisions, for purposes of the Commission's rules and regulations under the Federal securities laws and the rules of any self-regulatory organization.

(b) IMPLEMENTATION OF SAFE HARBOR.—In implementing the safe harbor pursuant to subsection (a), the Commission shall—

(1) not, in the case of a covered investment fund with a class of securities in substantially continuous distribution, condition the safe harbor on whether the broker's or dealer's publication or distribution of a covered investment fund research report constitutes such broker's or dealer's initiation or reinitiation of research coverage on such covered investment fund or its securities;

(2) not—

(A) require the covered investment fund to have been registered as an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)) for any period exceeding the period of time referenced under paragraph (a)(1)(i)(A)(1) of section 230.139 of title 17, Code of Federal Regulations; or

(B) impose a minimum float provision exceeding that referenced in paragraph (a)(1)(i)(A)(1)(i) of section 230.139 of title 17, Code of Federal Regulations;

(3) provide that a self-regulatory organization may not maintain or enforce any rule that would—

(A) prohibit the ability of a member to publish or distribute a covered investment fund research report solely because the member is also participating in a registered offering or other distribution of any securities of such covered investment fund; or

(B) prohibit the ability of a member to participate in a registered offering or other distribution of securities of a covered investment fund solely because the member has published or distributed a covered investment fund research report about such covered investment fund or its securities; and

(4) provide that a covered investment fund research report shall not be subject to section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(b)) or the rules and regulations thereunder, except that such report may still be subject to such section and the rules and regulations thereunder to the extent that it is otherwise not subject to the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.

(c) RULES OF CONSTRUCTION.—Nothing in this Act shall be construed as in any way limiting—

(1) the applicability of the antifraud or antimanipulation provisions of the Federal securities laws and rules adopted thereunder to a covered investment fund research report, including section 17 of the Securities Act of 1933 (15 U.S.C. 77q), section 34(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–33), and sections 9 and 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78i, 78j); or

(2) the authority of any self-regulatory organization to examine or supervise a member's practices in connection with such member's publication or distribution of a covered investment fund research report for compliance with applicable provisions of the Federal securities laws or self-regulatory organization rules related to research reports, including those contained in rules governing communications with the public.

(d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—

(1) IN GENERAL.—From and after the 120-day period beginning on the date of enactment of this Act, if the Commission has not adopted revisions to section 230.139 of title 17, Code of Federal Regulations, as required by subsection (a), and until such time as the Commission has done so, a broker or dealer distributing or publishing a covered investment fund research report after such date shall be able to rely on the provisions of section 230.139 of title 17, Code of Federal Regulations, and the broker or dealer's publication of such report shall be deemed to satisfy the conditions of subsection (a)(1) or (a)(2) of section 230.139 of title 17, Code of Federal Regulations, if the covered investment fund that is the subject of such report satisfies the reporting history requirements (without regard to Form S–3 or Form F–3 eligibility) and minimum float provisions of such subsections for purposes of the Commission's rules and regulations under the Federal securities laws and the rules of any self-regulatory organization, as if revised and implemented in accordance with subsections (a) and (b).

(2) STATUS OF COVERED INVESTMENT FUND.—After such period and until the Commission has adopted revisions to section 230.139 and FINRA has revised rule 2210, for purposes of subsection (c)(7)(O) of such rule, a covered investment fund shall be deemed to be a security that is listed on a national securities exchange and that is not subject to section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(b)). Communications concerning only covered investment funds that fall within the scope of such section shall not be required to be filed with FINRA.

(e) DEFINITIONS.—For purposes of this section:

(1) The term "covered investment fund research report" means a research report published or distributed by a broker or dealer about a covered investment fund or any securities issued by the covered investment fund, but not including a research report to the extent that it is published or distributed by the covered investment fund or any affiliate of the covered investment fund.

(2) The term "covered investment fund" means—

(A) an investment company registered under, or that has filed an election to be treated as a business development company under, the Investment Company Act of 1940 and that has filed a registration statement under the Securities Act of 1933 for the public offering of a class of its securities, which registration statement has been declared effective by the Commission; and

(B) a trust or other person—

(i) issuing securities in an offering registered under the Securities Act of 1933 and which class of securities is listed for trading on a national securities exchange;

(ii) the assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing; and

(iii) that provides in its registration statement under the Securities Act of 1933 that a class of its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

(3) The term "FINRA" means the Financial Industry Regulatory Authority.

(4) The term "research report" has the meaning given that term under section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)), except that such term shall not include an oral communication.

(5) The term "self-regulatory organization" has the meaning given to that term under section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)).

Subtitle F—Accelerating Access to Capital

SEC. 426. EXPANDED ELIGIBILITY FOR USE OF FORM S–3.

Not later than 45 days after the date of the enactment of this Act, the Securities and Exchange Commission shall revise Form S–3—

(1) so as to permit securities to be registered pursuant to General Instruction I.B.1. of such form provided that either—

(A) the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant is $75,000,000 or more; or

(B) the registrant has at least one class of common equity securities listed and registered on a national securities exchange; and

(2) so as to remove the requirement of paragraph (c) from General Instruction I.B.6. of such form.

Subtitle G—Enhancing the RAISE Act

SEC. 431. CERTAIN ACCREDITED INVESTOR TRANSACTIONS.

Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by amending subsection (d) to read as follows:

"(d)(1) The transactions referred to in subsection (a)(7) are transactions where—

"(A) each purchaser is an accredited investor, as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor thereto); and

"(B) if any securities sold in reliance on subsection (a)(7) are offered by means of any general solicitation or general advertising, all such sales are made through a platform available only to accredited investors.

"(2) Securities sold in reliance on subsection (a)(7) shall be deemed to have been acquired in a transaction not involving any public offering.

"(3) The exemption provided by this subsection shall not be available for a transaction where the seller is—

"(A) an issuer, its subsidiaries or parent;

"(B) an underwriter acting on behalf of the issuer, its subsidiaries or parent, which receives compensation from the issuer with respect to such sale; or

"(C) a dealer.

"(4) A transaction meeting the requirements of this subsection shall be deemed not to be a distribution for purposes of section 2(a)(11).."; and

(2) by striking subsection (e).

Subtitle H—Small Business Credit Availability

SEC. 436. BUSINESS DEVELOPMENT COMPANY OWNERSHIP OF SECURITIES OF INVESTMENT ADVISERS AND CERTAIN FINANCIAL COMPANIES.

(a) IN GENERAL.—Section 60 of the Investment Company Act of 1940 (15 U.S.C. 80a–59) is amended—

(1) by striking "Notwithstanding" and inserting "(a) Notwithstanding";

(2) by striking "except that the Commission shall not" and inserting the following: "except that—

"(1) section 12 shall not apply to the purchasing, otherwise acquiring, or holding by a business development company of any security issued by, or any other interest in the business of, any person who is an investment adviser registered under title II of this Act, who is an investment adviser to an investment company, or who is an eligible portfolio company; and

"(2) the Commission shall not";

(3) by adding at the end the following:

"(b) Nothing in this section shall prevent the Commission from issuing rules to address potential conflicts of interest between business development companies and investment advisers.".

(b) DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.—Section 2(a)(46)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(46)(B)) is amended by inserting before the semicolon the following: "(unless it is described in paragraph (2), (3), (4), (5), (6), or (9) of such section)".

(c) INVESTMENT THRESHOLD.—Section 55(a) of the Investment Company Act of 1940 is amended by inserting before the colon the following: ", provided that no more than 50 percent of its total assets are assets described in section 3(c)".

SEC. 437. EXPANDING ACCESS TO CAPITAL FOR BUSINESS DEVELOPMENT COMPANIES.

(a) IN GENERAL.—Section 61(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–60(a)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively;

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

"(1) Except as provided in paragraph (2), the asset coverage requirements of subparagraphs (A) and (B) of section 18(a)(1) (and any related rule promulgated under this Act) applicable to business development companies shall be 200 percent.

"(2) The asset coverage requirements of subparagraphs (A) and (B) of section 18(a)(1) and of subparagraphs (A) and (B) of section 18(a)(2) (and any related rule promulgated under this Act) applicable to a business development company shall be 150 percent if—

"(A) within five business days of the approval of the adoption of the asset coverage requirements described in clause (ii), the business development company discloses such approval and the date of its effectiveness in a Form 8–K filed with the Commission and in a notice on its website and discloses in its periodic filings made under section 13 of the Securities and Exchange Act of 1934 (15 U.S.C. 78m)—

"(i) the aggregate value of the senior securities issued by such company and the asset coverage percentage as of the date of such company's most recent financial statements; and

"(ii) that such company has adopted the asset coverage requirements of this subparagraph and the effective date of such requirements;

"(B) with respect to a business development company that issues equity securities that are registered on a national securities exchange, the periodic filings of the company under section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m) include disclosures reasonably designed to ensure that shareholders are informed of—

"(i) the amount of indebtedness and asset coverage ratio of the company, determined as of the date of the financial statements of the company dated on or most recently before the date of such filing; and

"(ii) the principal risk factors associated with such indebtedness, to the extent such risk is incurred by the company; and

"(C)(i) the application of this paragraph to the company is approved by the required majority (as defined in section 57(o)) of the directors of or general partners of such company who are not interested persons of the business development company, which application shall become effective on the date that is 1 year after the date of the approval, and, with respect to a business development company that issues equity securities that are not registered on a national securities exchange, the company extends, to each person who is a shareholder as of the date of the approval, an offer to repurchase the equity securities held by such person as of such approval date, with 25 percent of such securities to be repurchased in each of the four quarters following such approval date; or

"(ii) the company obtains, at a special or annual meeting of shareholders or partners at which a quorum is present, the approval of more than 50 percent of the votes cast of the application of this paragraph to the company, which application shall become effective on the date immediately after the date of the approval.";

(3) in paragraph (3) (as redesignated), by inserting "or which is a stock" after "indebtedness";

(4) in subparagraph (A) of paragraph (4) (as redesignated)—

(A) in the matter preceding clause (i), by striking "voting"; and

(B) by amending clause (iii) to read as follows:

"(iii) the exercise or conversion price at the date of issuance of such warrants, options, or rights is not less than—

"(I) the market value of the securities issuable upon the exercise of such warrants, options, or rights at the date of issuance of such warrants, options, or rights; or

"(II) if no such market value exists, the net asset value of the securities issuable upon the exercise of such warrants, options, or rights at the date of issuance of such warrants, options, or rights; and"; and

(5) by adding at the end the following:

"(6)(A) Except as provided in subparagraph (B), the following shall not apply to a business development company:

"(i) Subparagraphs (C) and (D) of section 18(a)(2).

"(ii) Subparagraph (E) of section 18(a)(2), to the extent such subparagraph requires any priority over any other class of stock as to distribution of assets upon liquidation.

"(iii) With respect to a senior security which is a stock, subsections (c) and (i) of section 18.

"(B) Subparagraph (A) shall not apply with respect to preferred stock issued to a person who is not known by the company to be a qualified institutional buyer (as defined in section 3(a) of the Securities Exchange Act of 1934).".

(b) CONFORMING AMENDMENTS.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 57—

(A) in subsection (j)(1), by striking "section 61(a)(3)(B)" and inserting "section 61(a)(4)(B)"; and

(B) in subsection (n)(2), by striking "section 61(a)(3)(B)" and inserting "section 61(a)(4)(B)"; and

(2) in section 63(3), by striking "section 61(a)(3)" and inserting "section 61(a)(4)".

SEC. 438. PARITY FOR BUSINESS DEVELOPMENT COMPANIES REGARDING OFFERING AND PROXY RULES.

(a) REVISION TO RULES.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall revise any rules to the extent necessary to allow a business development company that has filed an election pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53) to use the securities offering and proxy rules that are available to other issuers that are required to file reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)). Any action that the Commission takes pursuant to this subsection shall include the following:

(1) The Commission shall revise rule 405 under the Securities Act of 1933 (17 C.F.R. 230.405)—

(A) to remove the exclusion of a business development company from the definition of a well-known seasoned issuer provided by that rule; and

(B) to add registration statements filed on Form N–2 to the definition of automatic shelf registration statement provided by that rule.

(2) The Commission shall revise rules 168 and 169 under the Securities Act of 1933 (17 C.F.R. 230.168 and 230.169) to remove the exclusion of a business development company from an issuer that can use the exemptions provided by those rules.

(3) The Commission shall revise rules 163 and 163A under the Securities Act of 1933 (17 C.F.R. 230.163 and 230.163A) to remove a business development company from the list of issuers that are ineligible to use the exemptions provided by those rules.

(4) The Commission shall revise rule 134 under the Securities Act of 1933 (17 C.F.R. 230.134) to remove the exclusion of a business development company from that rule.

(5) The Commission shall revise rules 138 and 139 under the Securities Act of 1933 (17 C.F.R. 230.138 and 230.139) to specifically include a business development company as an issuer to which those rules apply.

(6) The Commission shall revise rule 164 under the Securities Act of 1933 (17 C.F.R. 230.164) to remove a business development company from the list of issuers that are excluded from that rule.

(7) The Commission shall revise rule 433 under the Securities Act of 1933 (17 C.F.R. 230.433) to specifically include a business development company that is a well-known seasoned issuer as an issuer to which that rule applies.

(8) The Commission shall revise rule 415 under the Securities Act of 1933 (17 C.F.R. 230.415)—

(A) to state that the registration for securities provided by that rule includes securities registered by a business development company on Form N–2; and

(B) to provide an exception for a business development company from the requirement that a Form N–2 registrant must furnish the undertakings required by item 34.4 of Form N–2.

(9) The Commission shall revise rule 497 under the Securities Act of 1933 (17 C.F.R. 230.497) to include a process for a business development company to file a form of prospectus that is parallel to the process for filing a form of prospectus under rule 424(b).

(10) The Commission shall revise rules 172 and 173 under the Securities Act of 1933 (17 C.F.R. 230.172 and 230.173) to remove the exclusion of an offering of a business development company from those rules.

(11) The Commission shall revise rule 418 under the Securities Act of 1933 (17 C.F.R. 230.418) to provide that a business development company that would otherwise meet the eligibility requirements of General Instruction I.A of Form S–3 shall be exempt from paragraph (a)(3) of that rule.

(12) The Commission shall revise rule 14a–101 under the Securities Exchange Act of 1934 (17 C.F.R. 240.14a–101) to provide that a business development company that would otherwise meet the requirements of General Instruction I.A of Form S–3 shall be deemed to meet the requirements of Form S–3 for purposes of Schedule 14A.

(13) The Commission shall revise rule 103 under Regulation FD (17 C.F.R. 243.103) to provide that paragraph (a) of that rule applies for purposes of Form N–2.

(b) REVISION TO FORM N–2.—Not later than 1 year after the date of enactment of this Act, the Commission shall revise Form N–2—

(1) to include an item or instruction that is similar to item 12 on Form S–3 to provide that a business development company that would otherwise meet the requirements of Form S–3 shall incorporate by reference its reports and documents filed under the Securities Exchange Act of 1934 into its registration statement filed on Form N–2; and

(2) to include an item or instruction that is similar to the instruction regarding automatic shelf offerings by well-known seasoned issuers on Form S–3 to provide that a business development company that is a well-known seasoned issuer may file automatic shelf offerings on Form N–2.

(c) TREATMENT IF REVISIONS NOT COMPLETED IN TIMELY MANNER.—If the Commission fails to complete the revisions required by subsections (a) and (b) by the time required by such subsections, a business development company shall be entitled to treat such revisions as having been completed in accordance with the actions required to be taken by the Commission by such subsections until such time as such revisions are completed by the Commission.

(d) RULE OF CONSTRUCTION.—Any reference in this section to a rule or form means such rule or form or any successor rule or form.

Subtitle I—Fostering Innovation

SEC. 441. TEMPORARY EXEMPTION FOR LOW-REVENUE ISSUERS.

Section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) is amended by adding at the end the following:

"(d) TEMPORARY EXEMPTION FOR LOW-REVENUE ISSUERS.—

"(1) LOW-REVENUE EXEMPTION.—Subsection (b) shall not apply with respect to an audit report prepared for an issuer that—

"(A) ceased to be an emerging growth company on the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

"(B) had average annual gross revenues of less than $50,000,000 as of its most recently completed fiscal year; and

"(C) is not a large accelerated filer.

"(2) EXPIRATION OF TEMPORARY EXEMPTION.—An issuer ceases to be eligible for the exemption described under paragraph (1) at the earliest of—

"(A) the last day of the fiscal year of the issuer following the tenth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

"(B) the last day of the fiscal year of the issuer during which the average annual gross revenues of the issuer exceed $50,000,000; or

"(C) the date on which the issuer becomes a large accelerated filer.

"(3) DEFINITIONS.—For purposes of this subsection:

"(A) AVERAGE ANNUAL GROSS REVENUES.—The term 'average annual gross revenues' means the total gross revenues of an issuer over its most recently completed three fiscal years divided by three.

"(B) EMERGING GROWTH COMPANY.—The term 'emerging growth company' has the meaning given such term under section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

"(C) LARGE ACCELERATED FILER.—The term 'large accelerated filer' has the meaning given that term under section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.".

Subtitle J—Small Business Capital Formation Enhancement

SEC. 446. ANNUAL REVIEW OF GOVERNMENT-BUSINESS FORUM ON CAPITAL FORMATION.

Section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c–1) is amended by adding at the end the following:

"(e) The Commission shall—

"(1) review the findings and recommendations of the forum; and

"(2) each time the forum submits a finding or recommendation to the Commission, promptly issue a public statement—

"(A) assessing the finding or recommendation of the forum; and

"(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.".

Subtitle K—Helping Angels Lead Our Startups

SEC. 451. DEFINITION OF ANGEL INVESTOR GROUP.

As used in this subtitle, the term "angel investor group" means any group that—

(1) is composed of accredited investors interested in investing personal capital in early-stage companies;

(2) holds regular meetings and has defined processes and procedures for making investment decisions, either individually or among the membership of the group as a whole; and

(3) is neither associated nor affiliated with brokers, dealers, or investment advisers.

SEC. 452. CLARIFICATION OF GENERAL SOLICITATION.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Securities and Exchange Commission shall revise Regulation D of its rules (17 C.F.R. 230.500 et seq.) to require that in carrying out the prohibition against general solicitation or general advertising contained in section 230.502(c) of title 17, Code of Federal Regulations, the prohibition shall not apply to a presentation or other communication made by or on behalf of an issuer which is made at an event—

(1) sponsored by—

(A) the United States or any territory thereof, by the District of Columbia, by any State, by a political subdivision of any State or territory, or by any agency or public instrumentality of any of the foregoing;

(B) a college, university, or other institution of higher education;

(C) a nonprofit organization;

(D) an angel investor group;

(E) a venture forum, venture capital association, or trade association; or

(F) any other group, person or entity as the Securities and Exchange Commission may determine by rule;

(2) where any advertising for the event does not reference any specific offering of securities by the issuer;

(3) the sponsor of which—

(A) does not make investment recommendations or provide investment advice to event attendees;

(B) does not engage in an active role in any investment negotiations between the issuer and investors attending the event;

(C) does not charge event attendees any fees other than administrative fees; and

(D) does not receive any compensation with respect to such event that would require registration of the sponsor as a broker or a dealer under the Securities Exchange Act of 1934, or as an investment advisor under the Investment Advisers Act of 1940; and

(4) where no specific information regarding an offering of securities by the issuer is communicated or distributed by or on behalf of the issuer, other than—

(A) that the issuer is in the process of offering securities or planning to offer securities;

(B) the type and amount of securities being offered;

(C) the amount of securities being offered that have already been subscribed for; and

(D) the intended use of proceeds of the offering.

(b) RULE OF CONSTRUCTION.—Subsection (a) may only be construed as requiring the Securities and Exchange Commission to amend the requirements of Regulation D with respect to presentations and communications, and not with respect to purchases or sales.

Subtitle L—Main Street Growth

SEC. 456. VENTURE EXCHANGES.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

"(m) VENTURE EXCHANGE.—

"(1) REGISTRATION.—

"(A) IN GENERAL.—A national securities exchange may elect to be treated (or for a listing tier of such exchange to be treated) as a venture exchange by notifying the Commission of such election, either at the time the exchange applies to be registered as a national securities exchange or after registering as a national securities exchange.

"(B) DETERMINATION TIME PERIOD.—With respect to a securities exchange electing to be treated (or for a listing tier of such exchange to be treated) as a venture exchange—

"(i) at the time the exchange applies to be registered as a national securities exchange, such application and election shall be deemed to have been approved by the Commission unless the Commission denies such application before the end of the 6-month period beginning on the date the Commission received such application; and

"(ii) after registering as a national securities exchange, such election shall be deemed to have been approved by the Commission unless the Commission denies such approval before the end of the 6-month period beginning on the date the Commission received notification of such election.

"(2) POWERS AND RESTRICTIONS.—A venture exchange—

"(A) may only constitute, maintain, or provide a market place or facilities for bringing together purchasers and sellers of venture securities;

"(B) may determine the increment to be used for quoting and trading venture securities on the exchange;

"(C) shall disseminate last sale and quotation information on terms that are fair and reasonable and not unreasonably discriminatory;

"(D) may choose to carry out periodic auctions for the sale of a venture security instead of providing continuous trading of the venture security; and

"(E) may not extend unlisted trading privileges to any venture security.

"(3) EXEMPTIONS FROM CERTAIN NATIONAL SECURITY EXCHANGE REGULATIONS.—A venture exchange shall not be required to—

"(A) comply with any of sections 242.600 through 242.612 of title 17, Code of Federal Regulations;

"(B) comply with any of sections 242.300 through 242.303 of title 17, Code of Federal Regulations;

"(C) submit any data to a securities information processor; or

"(D) use decimal pricing.

"(4) TREATMENT OF CERTAIN EXEMPTED SECURITIES.—A security that is exempt from registration pursuant to section 3(b) of the Securities Act of 1933 shall be exempt from section 12(a) of this title with respect to the trading of such secu-

rity on a venture exchange, if the issuer of such security is in compliance with all disclosure obligations of such section 3(b) and the regulations issued under such section.

"(5) DEFINITIONS.—For purposes of this subsection:

"(A) EARLY-STAGE, GROWTH COMPANY.—

"(i) IN GENERAL.—The term 'early-stage, growth company' means an issuer—

"(I) that has not made an initial public offering of any securities of the issuer; and

"(II) with a market capitalization of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest $1,000,000) or less.

"(ii) TREATMENT WHEN MARKET CAPITALIZATION EXCEEDS THRESHOLD.—

"(I) IN GENERAL.—In the case of an issuer that is an early-stage, growth company the securities of which are traded on a venture exchange, such issuer shall not cease to be an early-stage, growth company by reason of the market capitalization of such issuer exceeding the threshold specified in clause (i)(II) until the end of the period of 24 consecutive months during which the market capitalization of such issuer exceeds $2,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest $1,000,000).

"(II) EXEMPTIONS.—If an issuer would cease to be an early-stage, growth company under subclause (I), the venture exchange may, at the request of the issuer, exempt the issuer from the market capitalization requirements of this subparagraph for the 1-year period that begins on the day after the end of the 24-month period described in such subclause. The venture exchange may, at the request of the issuer, extend the exemption for 1 additional year.

"(B) VENTURE SECURITY.—The term 'venture security' means—

"(i) securities of an early-stage, growth company that are exempt from registration pursuant to section 3(b) of the Securities Act of 1933; and

"(ii) securities of an emerging growth company.".

(b) SECURITIES ACT OF 1933.—Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)) is amended—

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(D) a venture security, as defined under section 6(m)(5) of the Securities Exchange Act of 1934.".

(c) SENSE OF CONGRESS.—It is the sense of the Congress that the Securities and Exchange Commission should—

(1) when necessary or appropriate in the public interest and consistent with the protection of investors, make use of the Commission's general exemptive authority under section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) with respect to the provisions added by this section; and

(2) if the Commission determines appropriate, create an Office of Venture Exchanges within the Commission's Division of Trading and Markets.

(d) RULE OF CONSTRUCTION.—Nothing in this section or the amendments made by this section shall be construed to impair or limit the construction of the antifraud provisions of the securities laws (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))) or the authority of the Securities and Exchange Commission under those provisions.

(e) EFFECTIVE DATE FOR TIERS OF EXISTING NATIONAL SECURITIES EXCHANGES.—In the case of a securities exchange that is registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) on the date of the enactment of this Act, any election for a listing tier of such exchange to be treated as a venture exchange under subsection (m) of such section shall not take effect before the date that is 180 days after such date of enactment.

Subtitle M—Micro Offering Safe Harbor

SEC. 461. EXEMPTIONS FOR MICRO-OFFERINGS.

(a) IN GENERAL.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) in subsection (a), by adding at the end the following:

"(8) transactions meeting the requirements of subsection (e).''; and

(2) as amended by section 434(2), by adding at the end the following:

"(e) CERTAIN MICRO-OFFERINGS.—The transactions referred to in subsection (a)(8) are transactions involving the sale of securities by an issuer (including all entities controlled by or under common control with the issuer) that meet all of the following requirements:

"(1) PRE-EXISTING RELATIONSHIP.—Each purchaser has a substantive pre-existing relationship with an officer of the issuer, a director of the issuer, or a shareholder holding 10 percent or more of the shares of the issuer.

"(2) 35 OR FEWER PURCHASERS.—There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer that are sold in reliance on the exemption provided under subsection (a)(8) during the 12-month period preceding such transaction.

"(3) SMALL OFFERING AMOUNT.—The aggregate amount of all securities sold by the issuer, including any amount sold in reliance on the exemption provided under subsection (a)(8), during the 12-month period preceding such transaction, does not exceed $500,000.''.

(b) EXEMPTION UNDER STATE REGULATIONS.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) in subparagraph (F), by striking "or" at the end;

(2) in subparagraph (G), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(H) section 4(a)(8).''.

Subtitle N—Private Placement Improvement

SEC. 466. REVISIONS TO SEC REGULATION D.

Not later than 45 days following the date of the enactment of this Act, the Securities and Exchange Commission shall revise Regulation D (17 C.F.R. 501 et seq.) in accordance with the following:

(1) The Commission shall revise Form D filing requirements to require an issuer offering or selling securities in reliance on an exemption provided under Rule 506 of Regulation D to file with the Commission a single notice of sales containing the information required by Form D for each new offering of securities no earlier than 15 days after the date of the first sale of securities in the offering. The Commission shall not require such an issuer to file any notice of sales containing the information required by Form D except for the single notice described in the previous sentence.

(2) The Commission shall make the information contained in each Form D filing available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

(3) The Commission shall not condition the availability of any exemption for an issuer under Rule 506 of Regulation D (17 C.F.R. 230.506) on the issuer's or any other person's filing with the Commission of a Form D or any similar report.

(4) The Commission shall not require issuers to submit written general solicitation materials to the Commission in connection with a Rule 506(c) offering, except when the Commission requests such materials pursuant to the Commission's authority under section 8A or section 20 of the Securities Act of 1933 (15 U.S.C. 77h–1 or 77t) or section 9, 10(b), 21A, 21B, or 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78i, 78j(b), 78u–1, 78u–2, or 78u–3).

(5) The Commission shall not extend the requirements contained in Rule 156 to private funds.

(6) The Commission shall revise Rule 501(a) of Regulation D to provide that a person who is a "knowledgeable employee" of a private fund or the fund's investment adviser, as defined in Rule 3c–5(a)(4) (17 C.F.R. 270.3c–5(a)(4)), shall be an accredited investor for purposes of a Rule 506 offering of a private fund with respect to which the person is a knowledgeable employee.

Subtitle O—Supporting America's Innovators

SEC. 471. INVESTOR LIMITATION FOR QUALIFYING VENTURE CAPITAL FUNDS.

Section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1)) is amended—

(1) by inserting after "one hundred persons" the following: "(or, with respect to a qualifying venture capital fund, 500 persons)"; and

(2) by adding at the end the following:

"(C) The term 'qualifying venture capital fund' means any venture capital fund (as defined pursuant to section 203(l)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(l)(1)) with no more than $50,000,000 in aggregate capital contributions and uncalled committed capital, as such dollar amount is annually adjusted by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.".

Subtitle P—Fix Crowdfunding

SEC. 476. CROWDFUNDING EXEMPTION.

(a) SECURITIES ACT OF 1933.—Section 4(a) of the Securities Act of 1933 (15 U.S.C. 77d) is amended by striking paragraph (6) and inserting the following:

"(6) transactions involving the offer or sale of securities by an issuer, provided that—

"(A) in the case of a transaction involving an intermediary between the issuer and the investor, such intermediary complies with the requirements under section 4A(a); and

"(B) in the case of a transaction not involving an intermediary between the issuer and the investor, the issuer complies with the requirements under section 4A(b).".

(b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING EXEMPTION.—Section 4A of the Securities Act of 1933 (15 U.S.C. 77d–1) is amended to read as follows:

"SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.

"(a) REQUIREMENTS ON INTERMEDIARIES.—For purposes of section 4(a)(6), a person acting as an intermediary in a transaction involving the offer or sale of securities shall comply with the requirements of this subsection if the intermediary—

"(1) warns investors, including on the intermediary's website used for the offer and sale of such securities, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

"(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

"(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

"(4) registers with the Commission and the Financial Industry Regulatory Authority, including by providing the Commission with the intermediary's physical address, website address, and the names of the intermediary and employees of the intermediary, and keep such information up-to-date;

"(5) provides the Commission with continuous investor-level access to the intermediary's website;

"(6) requires each potential investor to answer questions demonstrating—

"(A) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

"(B) an understanding of the risk of illiquidity; and

"(C) such other areas as the Commission may determine appropriate by rule or regulation, including information relating to the owners' and management's experience, and any related party transactions and conflicts of interest;

"(7) carries out a background check on the issuer's principals;

"(8) provides the Commission and potential investors with notice of the offering not less than 10 days prior to such offering, not later than the first day securities are offered to potential investors, including—

"(A) the issuer's name, legal status, physical address, and website address;

"(B) the names of the issuer's principals;

"(C) the stated purpose and intended use of the proceeds of the offering sought by the issuer; and

"(D) the target offering amount and the deadline to reach the target offering amount;

"(9) outsources cash-management functions to a qualified third party custodian, such as a broker or dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934, a trust company, or an insured depository institution;

"(10) makes available on the intermediary's website a method of communication that permits the issuer and investors to communicate with one another;

"(11) provides the Commission with a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; and

"(b) REQUIREMENTS ON ISSUERS IF NO INTERMEDIARY.—For purposes of section 4(a)(6), an issuer who offers or sells securities without an intermediary shall comply with the requirements of this subsection if the issuer—

"(1) warns investors, including on the issuer's website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

"(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

"(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

"(4) provides the Commission with the issuer's physical address, website address, and the names of the principals and employees of the issuers, and keeps such information up-to-date;

"(5) provides the Commission with continuous investor-level access to the issuer's website;

"(6) requires each potential investor to answer questions demonstrating—

"(A) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

"(B) an understanding of the risk of illiquidity; and

"(C) such other areas as the Commission may determine appropriate by rule or regulation;

"(7) provides the Commission with notice of the offering not less than 10 days prior to such offering, not later than the first day securities are offered to potential investors, including—

"(A) the stated purpose and intended use of the proceeds of the offering sought by the issuer; and

"(B) the target offering amount and the deadline to reach the target offering amount;

"(8) outsources cash-management functions to a qualified third party custodian, such as a broker or dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934, a trust company, or an insured depository institution;

"(9) makes available on the issuer's website a method of communication that permits the issuer and investors to communicate with one another;

"(10) does not offer personalized investment advice;

"(11) provides the Commission with a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; and

"(c) VERIFICATION OF INCOME.—For purposes of section 4(a)(6), an issuer or intermediary may rely on certifications as to annual income provided by the person to whom the securities are sold to verify the investor's income.

"(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make the notices described under subsections (a)(9), (a)(13), (b)(8), and (b)(13) and the information described under subsections (a)(4) and (b)(4) available to the States.

"(e) RESTRICTION ON SALES.—With respect to a transaction involving the issuance of securities described under section 4(a)(6), a purchaser may not transfer such securities during the 1-year period beginning on the date of purchase, unless such securities are sold to—

"(1) the issuer of such securities; or

"(2) an accredited investor.

"(f) CONSTRUCTION.—

"(1) NO REGISTRATION AS BROKER.—With respect to a transaction described under section 4(a)(6) involving an intermediary, such intermediary shall not be required to register as a broker under section 15(a)(1) of the Securities Exchange Act of 1934 solely by reason of participation in such transaction.

"(2) NO PRECLUSION OF OTHER CAPITAL RAISING.—Nothing in this section or section 4(a)(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(a)(6).".

(c) RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue or revise such rules as may be necessary to carry out section 4A of the Securities Act of 1933, ans amended by this Act. In issuing or revising such rules, the Commission shall consider the costs and benefits of the action.

(d) DISQUALIFICATION.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall by rule or regulation establish disqualification provisions under which an issuer shall not be eligible to utilize the exemption under section 4(a)(6) of the Securities Act of 1933 (as amended by this Act) based on the disciplinary history of the issuer or its predecessors, affiliates, officers, directors, or persons fulfilling similar roles. The Commission shall also establish disqualification provisions under which an intermediary shall not be eligible to act as an intermediary in connection with an offering utilizing the exemption under section 4(a)(6) of the Securities Act of 1933 based on the disciplinary history of the intermediary or its predecessors, affiliates, officers, directors, or persons fulfilling similar roles. Such provisions shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

SEC. 477. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended—

(1) by striking "(5) For the purposes" and inserting:

"(5) DEFINITIONS.—

"(A) IN GENERAL.—For the purposes"; and

(2) by adding at the end the following:

"(B) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—For purposes of this subsection, securities held by persons who purchase such securities in transactions described under section 4(a)(6) of the Securities Act of 1933 shall not be deemed to be 'held of record'.".

SEC. 478. PREEMPTION OF STATE LAW.

(a) IN GENERAL.—Section 18(b)(4)(C) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(C)) is amended by striking "section 4(6)" and inserting "section 4(a)(6)".

(b) CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The amendments made by subsection (a) relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, intermediary, or any other person or entity using the exemption from registration provided by section 4(a)(6) of such Act, except that a State may not impose any fees under such authority.

(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF INTERMEDIARIES, ISSUERS, AND CUSTODIANS.—Section 18(c)(1) of the Securities Act of 1933 is amended by striking "in connection with securities or securities transactions" and all that follows and inserting the following: ", in connection with securities or securities transactions, with respect to—

"(A) fraud or deceit;

"(B) unlawful conduct by a broker or dealer; and

"(C) with respect to a transaction described under section 4(a)(6), unlawful conduct by an intermediary, issuer, or custodian.".

SEC. 479. TREATMENT OF FUNDING PORTALS.

Section 5312(c) of title 31, United States Code, is amended by adding at the end the following:

"(2) FUNDING PORTALS NOT INCLUDED IN DEFINITION.—The term 'financial institution' (as defined in subsection (a)) does not include a funding portal (as defined under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).".

Subtitle Q—Corporate Governance Reform and Transparency

SEC. 481. DEFINITIONS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraphs:

"(83) PROXY ADVISORY FIRM.—The term 'proxy advisory firm' means any person who is primarily engaged in the business of providing proxy voting research, analysis, or recommendations to clients, which conduct constitutes a solicitation within the meaning of section 14 and the Commission's rules and regulations thereunder, except to the extent that the person is exempted by such rules and regulations from requirements otherwise applicable to persons engaged in a solicitation.

"(84) PERSON ASSOCIATED WITH A PROXY ADVISORY FIRM.—The term 'person associated with' a proxy advisory firm means any partner, officer, or director of a proxy advisory firm (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a proxy advisory firm, or any employee of a proxy advisory firm, except that persons associated with a proxy advisory firm whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for purposes or any portion or portions of this Act, persons, including employees controlled by a proxy advisory firm.".

(b) APPLICABLE DEFINITIONS.—As used in this subtitle—

(1) the term "Commission" means the Securities and Exchange Commission; and

(2) the term "proxy advisory firm" has the same meaning as in section 3(a)(83) of the Securities Exchange Act of 1934, as added by this subtitle.

SEC. 482. REGISTRATION OF PROXY ADVISORY FIRMS.

(a) AMENDMENT.—The Securities Exchange Act of 1934 is amended by inserting after section 15G the following new section:

"SEC. 15H. REGISTRATION OF PROXY ADVISORY FIRMS.

"(a) CONDUCT PROHIBITED.—It shall be unlawful for a proxy advisory firm to make use of the mails or any means or instrumentality of interstate commerce to provide proxy voting research, analysis, or recommendations to any client, unless such proxy advisory firm is registered under this section.

"(b) REGISTRATION PROCEDURES.—

"(1) APPLICATION FOR REGISTRATION.—

"(A) IN GENERAL.—A proxy advisory firm must file with the Commission an application for registration, in such form as the Commission shall require, by rule or regulation, and containing the information described in subparagraph (B).

"(B) REQUIRED INFORMATION.—An application for registration under this section shall contain information regarding—

"(i) a certification that the applicant has adequate financial and managerial resources to consistently provide proxy advice based on accurate information;

"(ii) the procedures and methodologies that the applicant uses in developing proxy voting recommendations, including whether and how the applicant considers the size of a company when making proxy voting recommendations;

"(iii) the organizational structure of the applicant;

"(iv) whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;

"(v) any potential or actual conflict of interest relating to the ownership structure of the applicant or the provision of proxy advisory services by the applicant, including whether the proxy advisory firm engages in services ancillary to the provision of proxy advisory services such as consulting services for corporate issuers, and if so the revenues derived therefrom;

"(vi) the policies and procedures in place to manage conflicts of interest under subsection (f); and

"(vii) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(2) REVIEW OF APPLICATION.—

"(A) INITIAL DETERMINATION.—Not later than 90 days after the date on which the application for registration is filed with the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

"(i) by order, grant registration; or

"(ii) institute proceedings to determine whether registration should be denied.

"(B) CONDUCT OF PROCEEDINGS.—

"(i) CONTENT.—Proceedings referred to in subparagraph (A)(ii) shall—

"(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and

"(II) be concluded not later than 120 days after the date on which the application for registration is filed with the Commission under paragraph (1).

"(ii) DETERMINATION.—At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

"(iii) EXTENSION AUTHORIZED.—The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

"(C) GROUNDS FOR DECISION.—The Commission shall grant registration under this subsection—

"(i) if the Commission finds that the requirements of this section are satisfied; and

"(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

"(I) the applicant has failed to certify to the Commission's satisfaction that it has adequate financial and managerial resources to consistently provide proxy advice based on accurate information and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (f) and (g); or

"(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e).

"(3) PUBLIC AVAILABILITY OF INFORMATION.—Subject to section 24, the Commission shall make the information and documents submitted to the Commission by a proxy advisory firm in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (c), publicly available on the Commission's website, or through another comparable, readily accessible means.

"(c) UPDATE OF REGISTRATION.—

"(1) UPDATE.—Each registered proxy advisory firm shall promptly amend and update its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a registered proxy advisory firm is not required to amend the information required to be filed under subsection (b)(1)(B)(i) by filing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection.

"(2) CERTIFICATION.—Not later than 90 calendar days after the end of each calendar year, each registered proxy advisory firm shall file with the Commission an amendment to its registration, in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors—

"(A) certifying that the information and documents in the application for registration of such registered proxy advisory firm continue to be accurate in all material respects; and

"(B) listing any material change that occurred to such information or documents during the previous calendar year.

"(d) CENSURE, DENIAL, OR SUSPENSION OF REGISTRATION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any registered proxy advisory firm if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is necessary for the protection of investors and in the public interest and that such registered proxy advisory firm, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

"(1) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 15(b)(4), has been convicted of any offense specified in section 15(b)(4)(B), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 15(b)(4), during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

"(2) has been convicted during the 10-year period preceding the date on which an application for registration is filed with the Commission under this section, or at any time thereafter, of—

"(A) any crime that is punishable by imprisonment for one or more years, and that is not described in section 15(b)(4)(B); or

"(B) a substantially equivalent crime by a foreign court of competent jurisdiction;

"(3) is subject to any order of the Commission barring or suspending the right of the person to be associated with a registered proxy advisory firm;

"(4) fails to furnish the certifications required under subsections (b)(2)(C)(ii)(I) and (c)(2);

"(5) has engaged in one or more prohibited acts enumerated in paragraph (1); or

"(6) fails to maintain adequate financial and managerial resources to consistently offer advisory services with integrity, including by failing to comply with subsections (f) or (g).

"(e) TERMINATION OF REGISTRATION.—

"(1) VOLUNTARY WITHDRAWAL.—A registered proxy advisory firm may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, which terms and conditions shall include at a minimum that the registered proxy advisory firm will no longer conduct such activities as to bring it within the definition of proxy advisory firm in section 3(a)(83) of the Securities Exchange Act of 1934, withdraw from registration by filing a written notice of withdrawal to the Commission.

"(2) COMMISSION AUTHORITY.—In addition to any other authority of the Commission under this title, if the Commission finds that a registered proxy advisory firm is no longer in existence or has ceased to do business as a proxy advisory firm, the Commission, by order, shall cancel the registration under this section of such registered proxy advisory firm.

"(f) MANAGEMENT OF CONFLICTS OF INTEREST.—

"(1) ORGANIZATION POLICIES AND PROCEDURES.—Each registered proxy advisory firm shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such registered proxy advisory firm and associated persons, to address and manage any conflicts of interest that can arise from such business.

"(2) COMMISSION AUTHORITY.—The Commission shall issue final rules to prohibit, or require the management and disclosure of, any conflicts of interest relating to the offering of proxy advisory services by a registered proxy advisory firm, including, without limitation, conflicts of interest relating to—

"(A) the manner in which a registered proxy advisory firm is compensated by the client, or any affiliate of the client, for providing proxy advisory services;

"(B) the provision of consulting, advisory, or other services by a registered proxy advisory firm, or any person associated with such registered proxy advisory firm, to the client;

"(C) business relationships, ownership interests, or any other financial or personal interests between a registered proxy advisory firm, or any person associated with such registered proxy advisory firm, and any client, or any affiliate of such client;

"(D) transparency around the formulation of proxy voting policies;

"(E) the execution of proxy votes if such votes are based upon recommendations made by the proxy advisory firm in which someone other than the issuer is a proponent;

"(F) issuing recommendations where proxy advisory firms provide advisory services to a company; and

"(G) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

"(g) RELIABILITY OF PROXY ADVISORY FIRM SERVICES.—

"(1) IN GENERAL.—Each registered proxy advisory firm shall have staff sufficient to produce proxy voting recommendations that are based on accurate and current information. Each registered proxy advisory firm shall detail procedures sufficient to permit companies receiving proxy advisory firm recommendations access in a reasonable time to the draft recommendations, with an opportunity to provide meaningful comment thereon, including the opportunity to present details to the person responsible for developing the recommendation in person or telephonically. Each registered proxy advisory firm shall employ an ombudsman to receive complaints about the accuracy of voting information used in making recommendations from the subjects of the proxy advisory firm's voting

recommendations, and shall resolve those complaints in a timely fashion and in any event prior to voting on the matter to which the recommendation relates.

"(2) DRAFT RECOMMENDATIONS DEFINED.—For purposes of this subsection, the term 'draft recommendations'—

"(A) means the overall conclusions of proxy voting recommendations prepared for the clients of a proxy advisory firm, including any public data cited therein, any company information or substantive analysis impacting the recommendation, and the specific voting recommendations on individual proxy ballot issues; and

"(B) does not include the entirety of the proxy advisory firm's final report to its clients.

"(h) DESIGNATION OF COMPLIANCE OFFICER.—Each registered proxy advisory firm shall designate an individual responsible for administering the policies and procedures that are required to be established pursuant to subsections (f) and (g), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

"(i) PROHIBITED CONDUCT.—

"(1) PROHIBITED ACTS AND PRACTICES.—The Commission shall issue final rules to prohibit any act or practice relating to the offering of proxy advisory services by a registered proxy advisory firm that the Commission determines to be unfair or coercive, including any act or practice relating to—

"(A) conditioning a voting recommendation or other proxy advisory firm recommendation on the purchase by an issuer or an affiliate thereof of other services or products, of the registered proxy advisory firm or any person associated with such registered proxy advisory firm; and

"(B) modifying a voting recommendation or otherwise departing from its adopted systematic procedures and methodologies in the provision of proxy advisory services, based on whether an issuer, or affiliate thereof, subscribes or will subscribe to other services or product of the registered proxy advisory firm or any person associated with such organization.

"(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1), or in any rules or regulations adopted thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act, to the extent that such section 5 applies to unfair methods of competition).

"(j) STATEMENTS OF FINANCIAL CONDITION.—Each registered proxy advisory firm shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public auditor, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(k) ANNUAL REPORT.—Each registered proxy advisory firm shall, at the beginning of each fiscal year of such firm, report to the Commission on the number of shareholder proposals its staff reviewed in the prior fiscal year, the number of recommendations made in the prior fiscal year, the number of staff who reviewed and made recommendations on such proposals in the prior fiscal year, and the number of recommendations made in the prior fiscal year where the proponent of such recommendation was a client of or received services from the proxy advisory firm.

"(l) TRANSPARENT POLICIES.—Each registered proxy advisory firm shall file with the Commission and make publicly available its methodology for the formulation of proxy voting policies and voting recommendations.

"(m) RULES OF CONSTRUCTION.—

"(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR DEFENSES.—Registration under and compliance with this section does not constitute a waiver of, or otherwise diminish, any right, privilege, or defense that a registered proxy advisory firm may otherwise have under any provision of State or Federal law, including any rule, regulation, or order thereunder.

"(2) NO PRIVATE RIGHT OF ACTION.—Nothing in this section may be construed as creating any private right of action, and no report filed by a registered proxy advisory firm in accordance with this section or section 17 shall create a private right of action under section 18 or any other provision of law.

"(n) REGULATIONS.—

"(1) NEW PROVISIONS.—Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—

"(A) shall be issued by the Commission, not later than 180 days after the date of enactment of this section; and

"(B) shall become effective not later than 1 year after the date of enactment of this section.

"(2) REVIEW OF EXISTING REGULATIONS.—Not later than 270 days after the date of enactment of this section, the Commission shall—

"(A) review its existing rules and regulations which affect the operations of proxy advisory firms;

"(B) amend or revise such rules and regulations in accordance with the purposes of this section, and issue such guidance, as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors; and

"(C) direct Commission staff to withdraw the Egan Jones Proxy Services (May 27, 2004) and Institutional Shareholder Services, Inc. (September 15, 2004) no-action letters.

"(o) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—

"(1) the date on which regulations are issued in final form under subsection (n)(1); or

"(2) 270 days after the date of enactment of this section.".

(b) CONFORMING AMENDMENT.—Section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)) is amended by inserting "proxy advisory firm," after "nationally recognized statistical rating organization,".

SEC. 483. COMMISSION ANNUAL REPORT.

The Commission shall make an annual report publicly available on the Commission's Internet website. Such report shall, with respect to the year to which the report relates—

(1) identify applicants for registration under section 15H of the Securities Exchange Act of 1934, as added by this subtitle;

(2) specify the number of and actions taken on such applications;

(3) specify the views of the Commission on the state of competition, transparency, policies and methodologies, and conflicts of interest among proxy advisory firms;

(4) include the determination of the Commission with regard to—

(A) the quality of proxy advisory services issued by proxy advisory firms;

(B) the financial markets;

(C) competition among proxy advisory firms;

(D) the incidence of undisclosed conflicts of interest by proxy advisory firms;

(E) the process for registering as a proxy advisory firm; and

(F) such other matters relevant to the implementation of this subtitle and the amendments made by this subtitle, as the Commission determines necessary to bring to the attention of the Congress;

(5) identify problems, if any, that have resulted from the implementation of this subtitle and the amendments made by this subtitle; and

(6) recommend solutions, including any legislative or regulatory solutions, to any problems identified under paragraphs (4) and (5).

Subtitle R—Senior Safe

SEC. 491. IMMUNITY.

(a) DEFINITIONS.—In this subtitle—

(1) the term "Bank Secrecy Act Officer" means an individual responsible for ensuring compliance with the requirements mandated by subchapter II of chapter 53 of title 31, United States Code;

(2) the term "broker-dealer" means a broker or dealer, as those terms are defined, respectively, in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

(3) the term "covered agency" means—

(A) a State financial regulatory agency, including a State securities or law enforcement authority and a State insurance regulator;

(B) each of the Federal financial institutions regulatory agencies;

(C) the Securities and Exchange Commission;

(D) a law enforcement agency;

(E) and State or local agency responsible for administering adult protective service laws; and

(F) a State attorney general.

(4) the term "covered financial institution" means—

(A) a credit union;

(B) a depository institution;
(C) an investment advisor;
(D) a broker-dealer;
(E) an insurance company;
(F) a State attorney general; and
(G) a transfer agent.

(5) the term "credit union" means a Federal credit union, State credit union, or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(6) the term "depository institution" has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(7) the term "exploitation" means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that—

(A) uses the resources of a senior citizen for monetary personal benefit, profit, or gain; or

(B) results in depriving a senior citizen of rightful access to or use of benefits, resources, belongings or assets;

(8) the term "Federal financial institutions regulatory agencies" has the meaning given the term in section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302);

(9) the term "investment adviser" has the meaning given the term in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(10) the term "insurance company" has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a));

(11) the term "registered representative" means an individual who represents a broker-dealer in effecting or attempting to affect a purchase or sale of securities;

(12) the term "senior citizen" means an individual who is not less than 65 years of age;

(13) the term "State insurance regulator" has the meaning given such term in section 315 of the Gramm-Leach-Bliley Act (15 U.S.C. 6735);

(14) the term "State securities or law enforcement authority" has the meaning given the term in section 24(f)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(f)(4)); and

(15) the term "transfer agent" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(b) IMMUNITY FROM SUIT.—

(1) IMMUNITY FOR INDIVIDUALS.—An individual who has received the training described in section 1092 shall not be liable, including in any civil or administrative proceeding, for disclosing the possible exploitation of a senior citizen to a covered agency if the individual, at the time of the disclosure—

(A) served as a supervisor, compliance officer (including a Bank Secrecy Act Officer), or registered representative for a covered financial institution; and

(B) made the disclosure with reasonable care including reasonable efforts to avoid disclosure other than to a covered agency.

(2) IMMUNITY FOR COVERED FINANCIAL INSTITUTIONS.—A covered financial institution shall not be liable, including in any civil or administrative proceeding, for a disclosure made by an individual described in paragraph (1) if—

(A) the individual was employed by, or, in the case of a registered representative, affiliated or associated with, the covered financial institution at the time of the disclosure; and

(B) before the time of the disclosure, the covered financial institution provided the training described in section 492 to each individual described in section 492(a).

SEC. 492. TRAINING REQUIRED.

(a) IN GENERAL.—A covered financial institution may provide training described in subsection (b)(1) to each officer or employee of, or registered representative affiliated or associated with, the covered financial institution who—

(1) is described in section 491(b)(1)(A);

(2) may come into contact with a senior citizen as a regular part of the duties of the officer, employee, or registered representative; or

(3) may review or approve the financial documents, records, or transactions of a senior citizen in connection with providing financial services to a senior citizen.

(b) TRAINING.—

(1) IN GENERAL.—The training described in this paragraph shall—

(A) instruct any individual attending the training on how to identify and report the suspected exploitation of a senior citizen;

(B) discuss the need to protect the privacy and respect the integrity of each individual customer of a covered financial institution; and

(C) be appropriate to the job responsibilities of the individual attending the training.

(2) TIMING.—The training required under subsection (a) shall be provided as soon as reasonably practicable but not later than 1 year after the date on which an officer, employee, or registered representative begins employment with or becomes affiliated or associated with the covered financial institution.

(3) BANK SECRECY ACT OFFICER.—An individual who is designated as a compliance officer under an anti-money laundering program established pursuant to section 5318(h) of title 31, United States Code, shall be deemed to have received the training described under this subsection.

SEC. 493. RELATIONSHIP TO STATE LAW.

Nothing in this Act shall be construed to preempt or limit any provision of State law, except only to the extent that section 1091 provides a greater level of protection against liability to an individual described in section 491(b)(1) or to a covered financial institution described in section 491(b)(2) than is provided under State law.

Subtitle S—National Securities Exchange Regulatory Parity

SEC. 496. APPLICATION OF EXEMPTION.

Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), as amended by section 456(b), is further amended—

(1) by striking subparagraph (A);

(2) in subparagraph (B), by striking "that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A)" and inserting "that have been approved by the Commission";

(3) in subparagraph (C), by striking "or (B)"; and

(4) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

Subtitle T—Private Company Flexibility and Growth

SEC. 497. SHAREHOLDER THRESHOLD FOR REGISTRATION.

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

(1) in section 12(g)—

(A) in paragraph (1)—

(i) by striking "shall—" and all that follows through "register such security" and inserting "shall, not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection on which the issuer has total assets exceeding $10,000,000 (or such greater amount of assets as the Commission may establish by rule) and a class of equity security (other than an exempted security) held of record by 2,000 or more persons (or such greater number of persons as the Commission may establish by rule), register such security"; and

(ii) by adding at the end the following: "The dollar figure in this paragraph shall be indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, rounded to the nearest $100,000."; and

(B) in paragraph (4), by striking "300 persons" and all that follows through "1,200 persons persons" and inserting "1,200 persons"; and

(2) in section 15(d)(1), by striking "300 persons" and all that follows through "1,200 persons persons" and inserting "1,200 persons".

Subtitle U—Small Company Capital Formation Enhancements

SEC. 498. JOBS ACT-RELATED EXEMPTION.

Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended—

(1) in paragraph (2)(A), by striking "$50,000,000" and inserting "$75,000,000, adjusted for inflation by the Commission every 2 years to the nearest $10,000 to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics"; and

(2) in paragraph (5)—

(A) by striking "such amount as" and inserting: "such amount, in addition to the adjustment for inflation provided for under such paragraph (2)(A), as"; and

(B) by striking "such amount, it" and inserting "such amount, in addition to the adjustment for inflation provided for under such paragraph (2)(A), it".

Subtitle V—Encouraging Public Offerings

SEC. 499. EXPANDING TESTING THE WATERS AND CONFIDENTIAL SUBMISSIONS.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 5(d), by striking "an emerging growth company or any person authorized to act on behalf of an emerging growth company" and inserting "an issuer or any person authorized to act on behalf of an issuer"; and

(2) in section 6(e)—

(A) in the heading, by striking "EMERGING GROWTH COMPANIES" and inserting "DRAFT REGISTRATION STATEMENTS"; and

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

"(1) IN GENERAL.—Any issuer, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 15 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto.".

TITLE V—REGULATORY RELIEF FOR MAIN STREET AND COMMUNITY FINANCIAL INSTITUTIONS

Subtitle A—Preserving Access to Manufactured Housing

SEC. 501. MORTGAGE ORIGINATOR DEFINITION.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended—

(1) by redesignating the second subsection (cc) and subsection (dd) as subsections (dd) and (ee), respectively; and

(2) in paragraph (2)(C) of subsection (dd), as so redesignated, by striking "an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs)" and inserting "a retailer of manufactured or modular homes or its employees unless such retailer or its employees receive compensation or gain for engaging in activities described in subparagraph (A) that is in excess of any compensation or gain received in a comparable cash transaction".

SEC. 502. HIGH-COST MORTGAGE DEFINITION.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602), as amended by section 501, is further amended—

(1) by redesignating subsection (aa) (relating to disclosure of greater amount or percentage), as so designated by section 1100A of the Consumer Financial Protection Act of 2010, as subsection (bb);

(2) by redesignating subsection (bb) (relating to high cost mortgages), as so designated by section 1100A of the Consumer Financial Protection Act of 2010, as subsection (aa), and moving such subsection to immediately follow subsection (z); and

(3) in subsection (aa)(1)(A), as so redesignated—

(A) in clause (i)(I), by striking "(8.5 percentage points, if the dwelling is personal property and the transaction is for less than $50,000)" and inserting "(10 percentage points if the dwelling is personal property or is a transaction that does not include the purchase of real property on which a dwelling is to be placed, and the transaction is for less than $75,000 (as such amount is adjusted by the Consumer Law Enforcement Agency to reflect the change in the Consumer Price Index))"; and

(B) in clause (ii)—

(i) in subclause (I), by striking "or" at the end; and

(ii) by adding at the end the following:

"(III) in the case of a transaction for less than $75,000 (as such amount is adjusted by the Consumer Law Enforcement Agency to reflect the change in the Consumer Price Index) in which the dwelling is personal property (or is a consumer credit transaction that does not include the purchase of real property on which a dwelling is to be placed) the greater of 5 percent of the total transaction amount or $3,000 (as such amount is adjusted by the Consumer Law Enforcement Agency to reflect the change in the Consumer Price Index); or".

Subtitle B—Mortgage Choice

SEC. 506. DEFINITION OF POINTS AND FEES.

(a) AMENDMENT TO SECTION 103 OF TILA.—Paragraph (4) of section 103(aa) of the Truth in Lending Act, as redesignated by section 502, is amended—

(1) by striking "paragraph (1)(B)" and inserting "paragraph (1)(A) and section 129C";

(2) in subparagraph (C)—

(A) by inserting "and insurance" after "taxes";

(B) in clause (ii), by inserting ", except as retained by a creditor or its affiliate as a result of their participation in an affiliated business arrangement (as defined in section 3(7) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602(7))" after "compensation"; and

(C) by striking clause (iii) and inserting the following:

"(iii) the charge is—

"(I) a bona fide third-party charge not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator; or

"(II) a charge set forth in section 106(e)(1);"; and

(3) in subparagraph (D)—

(A) by striking "accident,"; and

(B) by striking "or any payments" and inserting "and any payments".

(b) AMENDMENT TO SECTION 129C OF TILA.—Section 129C of the Truth in Lending Act (15 U.S.C. 1639c) is amended—

(1) in subsection (a)(5)(C), by striking "103" and all that follows through "or mortgage originator" and inserting "103(aa)(4)"; and

(2) in subsection (b)(2)(C)(i), by striking "103" and all that follows through "or mortgage originator)" and inserting "103(aa)(4)".

Subtitle C—Financial Institution Customer Protection

SEC. 511. REQUIREMENTS FOR DEPOSIT ACCOUNT TERMINATION REQUESTS AND ORDERS.

(a) TERMINATION REQUESTS OR ORDERS MUST BE MATERIAL.—

(1) IN GENERAL.—An appropriate Federal banking agency may not formally or informally request or order a depository institution to terminate a specific customer account or group of customer accounts or to otherwise restrict or discourage a depository institution from entering into or maintaining a banking relationship with a specific customer or group of customers unless—

(A) the agency has a material reason for such request or order; and

(B) such reason is not based solely on reputation risk.

(2) TREATMENT OF NATIONAL SECURITY THREATS.—If an appropriate Federal banking agency believes a specific customer or group of customers is, or is acting as a conduit for, an entity which—

(A) poses a threat to national security;

(B) is involved in terrorist financing;

(C) is an agency of the government of Iran, North Korea, Syria, or any country listed from time to time on the State Sponsors of Terrorism list;

(D) is located in, or is subject to the jurisdiction of, any country specified in subparagraph (C); or

(E) does business with any entity described in subparagraph (C) or (D), unless the appropriate Federal banking agency determines that the customer or group of customers has used due diligence to avoid doing business with any entity described in subparagraph (C) or (D),

such belief shall satisfy the requirement under paragraph (1).

(b) NOTICE REQUIREMENT.—

(1) IN GENERAL.—If an appropriate Federal banking agency formally or informally requests or orders a depository institution to terminate a specific customer account or a group of customer accounts, the agency shall—

(A) provide such request or order to the institution in writing; and

(B) accompany such request or order with a written justification for why such termination is needed, including any specific laws or regulations the agency believes are being violated by the customer or group of customers, if any.

(2) JUSTIFICATION REQUIREMENT.—A justification described under paragraph (1)(B) may not be based solely on the reputation risk to the depository institution.

(c) CUSTOMER NOTICE.—

(1) NOTICE REQUIRED.—Except as provided under paragraph (2), if an appropriate Federal banking agency orders a depository institution to terminate a specific customer account or a group of customer accounts, the depository institution shall inform the customer or customers of the justification for the customer's account termination described under subsection (b).

(2) NOTICE PROHIBITED IN CASES OF NATIONAL SECURITY.—If an appropriate Federal banking agency requests or orders a depository institution to terminate a specific customer account or a group of customer accounts based on a belief that the customer or customers pose a threat to national security, or are otherwise described under subsection (a)(2), neither the depository institution nor the appropriate Federal banking agency may inform the customer or customers of the justification for the customer's account termination.

(d) REPORTING REQUIREMENT.—Each appropriate Federal banking agency shall issue an annual report to the Congress stating—

(1) the aggregate number of specific customer accounts that the agency requested or ordered a depository institution to terminate during the previous year; and

(2) the legal authority on which the agency relied in making such requests and orders and the frequency on which the agency relied on each such authority.

(e) DEFINITIONS.—For purposes of this section:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" means—

(A) the appropriate Federal banking agency, as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) the National Credit Union Administration, in the case of an insured credit union.

(2) DEPOSITORY INSTITUTION.—The term "depository institution" means—

(A) a depository institution, as defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) an insured credit union.

SEC. 512. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.

Section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833a) is amended—

(1) in subsection (c)(2), by striking "affecting a federally insured financial institution" and inserting "against a federally insured financial institution or by a federally insured financial institution against an unaffiliated third person"; and

(2) in subsection (g)—

(A) in the heading, by striking "SUBPOENAS" and inserting "INVESTIGATIONS"; and

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

"(C) summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry, if the Attorney General—

"(i) requests a court order from a court of competent jurisdiction for such actions and offers specific and articulable facts showing that there are reasonable grounds to believe that the information or testimony sought is relevant and material for conducting an investigation under this section; or

"(ii) either personally or through delegation no lower than the Deputy Attorney General, issues and signs a subpoena for such actions and such subpoena is supported by specific and articulable facts showing that there are reasonable grounds to believe that the information or testimony sought is relevant for conducting an investigation under this section.".

Subtitle D—Portfolio Lending and Mortgage Access

SEC. 516. SAFE HARBOR FOR CERTAIN LOANS HELD ON PORTFOLIO.

(a) IN GENERAL.—Section 129C of the Truth in Lending Act (15 U.S.C. 1639c) is amended by adding at the end the following:

"(j) SAFE HARBOR FOR CERTAIN LOANS HELD ON PORTFOLIO.—

"(1) SAFE HARBOR FOR CREDITORS THAT ARE DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—A creditor that is a depository institution shall not be subject to suit for failure to comply with subsection (a), (c)(1), or (f)(2) of this section or section 129H with respect to a residential mortgage loan, and the banking regulators shall treat such loan as a qualified mortgage, if—

"(i) the creditor has, since the origination of the loan, held the loan on the balance sheet of the creditor; and

"(ii) all prepayment penalties with respect to the loan comply with the limitations described under subsection (c)(3).

"(B) EXCEPTION FOR CERTAIN TRANSFERS.—In the case of a depository institution that transfers a loan originated by that institution to another depository institution by reason of the bankruptcy or failure of the originating depository institution or the purchase of the originating depository institution, the depository institution transferring such loan shall be deemed to have complied with the requirement under subparagraph (A)(i).

"(2) SAFE HARBOR FOR MORTGAGE ORIGINATORS.—A mortgage originator shall not be subject to suit for a violation of section 129B(c)(3)(B) for steering a consumer to a residential mortgage loan if—

"(A) the creditor of such loan is a depository institution and has informed the mortgage originator that the creditor intends to hold the loan on the balance sheet of the creditor for the life of the loan; and

"(B) the mortgage originator informs the consumer that the creditor intends to hold the loan on the balance sheet of the creditor for the life of the loan.

"(3) DEFINITIONS.—For purposes of this subsection:

"(A) BANKING REGULATORS.—The term 'banking regulators' means the Federal banking agencies, the Consumer Law Enforcement Agency, and the National Credit Union Administration.

"(B) DEPOSITORY INSTITUTION.—The term 'depository institution' has the meaning given that term under section 19(b)(1) of the Federal Reserve Act (12 U.S.C. 505(b)(1)).

"(C) FEDERAL BANKING AGENCIES.—The term 'Federal banking agencies' has the meaning given that term under section 3 of the Federal Deposit Insurance Act.".

(b) RULE OF CONSTRUCTION.—Nothing in the amendment made by this section may be construed as preventing a balloon loan from qualifying for the safe harbor provided under section 129C(j) of the Truth in Lending Act if the balloon loan otherwise meets all of the requirements under such subsection (j), regardless of whether the balloon loan meets the requirements described under clauses (i) through (iv) of section 129C(b)(2)(E) of such Act.

Subtitle E—Application of the Expedited Funds Availability Act

SEC. 521. APPLICATION OF THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) IN GENERAL.—The Expedited Funds Availability Act (12 U.S.C. 4001 et seq.) is amended—

(1) in section 602(20) (12 U.S.C. 4001(20)) by inserting ", located in the United States," after "ATM";

(2) in section 602(21) (12 U.S.C. 4001(21)) by inserting "American Samoa, the Commonwealth of the Northern Mariana Islands," after "Puerto Rico,";

(3) in section 602(23) (12 U.S.C. 4001(23)) by inserting "American Samoa, the Commonwealth of the Northern Mariana Islands," after "Puerto Rico,"; and

(4) in section 603(d)(2)(A) (12 U.S.C. 4002(d)(2)(A)), by inserting "American Samoa, the Commonwealth of the Northern Mariana Islands," after "Puerto Rico,".

(b) EFFECTIVE DATE.—This section shall take effect on January 1, 2017.

Subtitle F—Small Bank Holding Company Policy Statement

SEC. 526. CHANGES REQUIRED TO SMALL BANK HOLDING COMPANY POLICY STATEMENT ON ASSESSMENT OF FINANCIAL AND MANAGERIAL FACTORS.

(a) IN GENERAL.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall revise the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors (12 C.F.R. part 225—appendix C) to raise the consolidated asset threshold under such policy statement from $1,000,000,000 (as adjusted by Public Law 113–250) to $10,000,000,000.

(b) CONFORMING AMENDMENT.—Subparagraph (C) of section 171(b)(5) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5371(b)(5)) is amended to read as follows:

"(C) any bank holding company or savings and loan holding company that is subject to the application of the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors of the Board of Governors (12 C.F.R. part 225—appendix C).".

Subtitle G—Community Institution Mortgage Relief

SEC. 531. COMMUNITY FINANCIAL INSTITUTION MORTGAGE RELIEF.

(a) EXEMPTION FROM ESCROW REQUIREMENTS FOR LOANS HELD BY SMALLER CREDITORS.—Section 129D of the Truth in Lending Act (15 U.S.C. 1639d) is amended—

(1) by adding at the end the following:

"(k) SAFE HARBOR FOR LOANS HELD BY SMALLER CREDITORS.—

"(1) IN GENERAL.—A creditor shall not be in violation of subsection (a) with respect to a loan if—

"(A) the creditor has consolidated assets of $10,000,000,000 or less; and

"(B) the creditor holds the loan on the balance sheet of the creditor for the 3-year period beginning on the date of the origination of the loan.

"(2) EXCEPTION FOR CERTAIN TRANSFERS.—In the case of a creditor that transfers a loan to another person by reason of the bankruptcy or failure of the creditor, the purchase of the creditor, or a supervisory act or recommendation from a State or Federal regulator, the creditor shall be deemed to have complied with the requirement under paragraph (1)(B).'; and

(2) by striking the term "Board" each place such term appears and inserting "Consumer Law Enforcement Agency".

(b) MODIFICATION TO EXEMPTION FOR SMALL SERVICERS OF MORTGAGE LOANS.—Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by adding at the end the following:

"(n) SMALL SERVICER EXEMPTION.—The Consumer Law Enforcement Agency shall, by regulation, provide exemptions to, or adjustments for, the provisions of this sec-

tion for a servicer that annually services 20,000 or fewer mortgage loans, in order to reduce regulatory burdens while appropriately balancing consumer protections.".

Subtitle H—Financial Institutions Examination Fairness and Reform

SEC. 536. TIMELINESS OF EXAMINATION REPORTS.

(a) IN GENERAL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

"SEC. 1012. TIMELINESS OF EXAMINATION REPORTS.

"(a) IN GENERAL.—

"(1) FINAL EXAMINATION REPORT.—A Federal financial institutions regulatory agency shall provide a final examination report to a financial institution not later than 60 days after the later of—

"(A) the exit interview for an examination of the institution; or

"(B) the provision of additional information by the institution relating to the examination.

"(2) EXIT INTERVIEW.—If a financial institution is not subject to a resident examiner program, the exit interview shall occur not later than the end of the 9-month period beginning on the commencement of the examination, except that such period may be extended by the Federal financial institutions regulatory agency by providing written notice to the institution and the Independent Examination Review Director describing with particularity the reasons that a longer period is needed to complete the examination.

"(b) EXAMINATION MATERIALS.—Upon the request of a financial institution, the Federal financial institutions regulatory agency shall include with the final report an appendix listing all examination or other factual information relied upon by the agency in support of a material supervisory determination.

"SEC. 1013. EXAMINATION STANDARDS.

"(a) IN GENERAL.—In the examination of a financial institution—

"(1) a commercial loan shall not be placed in non-accrual status solely because the collateral for such loan has deteriorated in value;

"(2) a modified or restructured commercial loan shall be removed from non-accrual status if the borrower demonstrates the ability to perform on such loan over a maximum period of 6 months, except that with respect to loans on a quarterly, semiannual, or longer repayment schedule such period shall be a maximum of 3 consecutive repayment periods;

"(3) a new appraisal on a performing commercial loan shall not be required unless an advance of new funds is involved; and

"(4) in classifying a commercial loan in which there has been deterioration in collateral value, the amount to be classified shall be the portion of the deficiency relating to the decline in collateral value and repayment capacity of the borrower.

"(b) WELL CAPITALIZED INSTITUTIONS.—The Federal financial institutions regulatory agencies may not require a financial institution that is well capitalized to raise additional capital in lieu of an action prohibited under subsection (a).

"(c) CONSISTENT LOAN CLASSIFICATIONS.—The Federal financial institutions regulatory agencies shall develop and apply identical definitions and reporting requirements for non-accrual loans.

"SEC. 1014. OFFICE OF INDEPENDENT EXAMINATION REVIEW.

"(a) ESTABLISHMENT.—There is established in the Council an Office of Independent Examination Review (the 'Office').

"(b) HEAD OF OFFICE.—There is established the position of the Independent Examination Review Director (the 'Director'), as the head of the Office. The Director shall be appointed by the Council and shall be independent from any member agency of the Council.

"(c) STAFFING.—The Director is authorized to hire staff to support the activities of the Office.

"(d) DUTIES.—The Director shall—

"(1) receive and, at the Director's discretion, investigate complaints from financial institutions, their representatives, or another entity acting on behalf of such institutions, concerning examinations, examination practices, or examination reports;

"(2) hold meetings, at least once every three months and in locations designed to encourage participation from all sections of the United States, with financial

institutions, their representatives, or another entity acting on behalf of such institutions, to discuss examination procedures, examination practices, or examination policies;

"(3) review examination procedures of the Federal financial institutions regulatory agencies to ensure that the written examination policies of those agencies are being followed in practice and adhere to the standards for consistency established by the Council;

"(4) conduct a continuing and regular review of examination quality assurance for all examination types conducted by the Federal financial institutions regulatory agencies;

"(5) adjudicate any supervisory appeal initiated under section 1015; and

"(6) report annually to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Council, on the reviews carried out pursuant to paragraphs (3) and (4), including compliance with the requirements set forth in section 1012 regarding timeliness of examination reports, and the Council's recommendations for improvements in examination procedures, practices, and policies.

"(e) CONFIDENTIALITY.—The Director shall keep confidential all meetings with, discussions with, and information provided by financial institutions.

"SEC. 1015. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SUPERVISORY DETERMINATIONS.

"(a) IN GENERAL.—A financial institution shall have the right to obtain an independent review of a material supervisory determination contained in a final report of examination.

"(b) NOTICE.—

"(1) TIMING.—A financial institution seeking review of a material supervisory determination under this section shall file a written notice with the Independent Examination Review Director (the 'Director') within 60 days after receiving the final report of examination that is the subject of such review.

"(2) IDENTIFICATION OF DETERMINATION.—The written notice shall identify the material supervisory determination that is the subject of the independent examination review, and a statement of the reasons why the institution believes that the determination is incorrect or should otherwise be modified.

"(3) INFORMATION TO BE PROVIDED TO INSTITUTION.—Any information relied upon by the agency in the final report that is not in the possession of the financial institution may be requested by the financial institution and shall be delivered promptly by the agency to the financial institution.

"(c) RIGHT TO HEARING.—

"(1) IN GENERAL.—The Director shall determine the merits of the appeal on the record or, at the financial institution's election, shall refer the appeal to an Administrative Law Judge to conduct a confidential hearing pursuant to the procedures set forth under sections 556 and 557 of title 5, United States Code, which hearing shall take place not later than 60 days after the petition for review was received by the Director, and to issue a proposed decision to the Director based upon the record established at such hearing.

"(2) STANDARD OF REVIEW.—In rendering a determination or recommendation under this subsection, neither the Administrative Law Judge nor the Director shall defer to the opinions of the examiner or agency, but shall conduct a de novo review to independently determine the appropriateness of the agency's decision based upon the relevant statutes, regulations, and other appropriate guidance, as well as evidence adduced at any hearing.

"(d) FINAL DECISION.—A decision by the Director on an independent review under this section shall—

"(1) be made not later than 60 days after the record has been closed; and

"(2) be deemed final agency action and shall bind the agency whose supervisory determination was the subject of the review and the financial institution requesting the review.

"(e) RIGHT TO JUDICIAL REVIEW.—A financial institution shall have the right to petition for review of final agency action under this section by filing a Petition for Review within 60 days of the Director's decision in the United States Court of Appeals for the District of Columbia Circuit or the Circuit in which the financial institution is located.

"(f) REPORT.—The Director shall report annually to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on actions taken under this section, including the types of issues that the Director has reviewed and the results of those reviews. In no case shall such a report contain information about individual financial institutions or any confidential or privileged information shared by financial institutions.

"(g) RETALIATION PROHIBITED.—A Federal financial institutions regulatory agency may not—

"(1) retaliate against a financial institution, including service providers, or any institution-affiliated party (as defined under section 3 of the Federal Deposit Insurance Act), for exercising appellate rights under this section; or

"(2) delay or deny any agency action that would benefit a financial institution or any institution-affiliated party on the basis that an appeal under this section is pending under this section.

"(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed—

"(1) to affect the right of a Federal financial institutions regulatory agency to take enforcement or other supervisory actions related to a material supervisory determination under review under this section; or

"(2) to prohibit the review under this section of a material supervisory determination with respect to which there is an ongoing enforcement or other supervisory action.".

(b) ADDITIONAL AMENDMENTS.—

(1) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.—Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806) is amended—

(A) in subsection (a), by inserting after "appropriate Federal banking agency" the following: ", the Consumer Law Enforcement Agency,";

(B) in subsection (b)—

(i) in paragraph (2), by striking "the appellant from retaliation by agency examiners" and inserting "the insured depository institution or insured credit union from retaliation by the agencies referred to in subsection (a)"; and

(ii) by adding at the end the following flush-left text:

"For purposes of this subsection and subsection (e), retaliation includes delaying consideration of, or withholding approval of, any request, notice, or application that otherwise would have been approved, but for the exercise of the institution's or credit union's rights under this section.";

(C) in subsection (e)(2)—

(i) in subparagraph (B), by striking "and" at the end;

(ii) in subparagraph (C), by striking the period and inserting "; and"; and

(iii) by adding at the end the following:

"(D) ensure that appropriate safeguards exist for protecting the insured depository institution or insured credit union from retaliation by any agency referred to in subsection (a) for exercising its rights under this subsection."; and

(D) in subsection (f)(1)(A)—

(i) in clause (ii), by striking "and" at the end;

(ii) in clause (iii), by striking "and" at the end; and

(iii) by adding at the end the following:

"(iv) any issue specifically listed in an exam report as a matter requiring attention by the institution's management or board of directors; and

"(v) any suspension or removal of an institution's status as eligible for expedited processing of applications, requests, notices, or filings on the grounds of a supervisory or compliance concern, regardless of whether that concern has been cited as a basis for another material supervisory determination or matter requiring attention in an examination report, provided that the conduct at issue did not involve violation of any criminal law; and".

(2) FEDERAL CREDIT UNION ACT.—Section 205(j) of the Federal Credit Union Act (12 U.S.C. 1785(j)) is amended by inserting "the Consumer Law Enforcement Agency," before "the Administration" each place such term appears.

(3) FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended—

(A) in section 1003, by amending paragraph (1) to read as follows:

"(1) the term 'Federal financial institutions regulatory agencies'—

"(A) means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and

"(B) for purposes of sections 1012, 1013, 1014, and 1015, includes the Consumer Law Enforcement Agency;"; and

(B) in section 1005, by striking "One-fifth" and inserting "One-fourth".

Subtitle I—National Credit Union Administration Budget Transparency

SEC. 541. BUDGET TRANSPARENCY FOR THE NCUA.

Section 209(b) of the Federal Credit Union Act (12 U.S.C. 1789) is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(2) by inserting before paragraph (2), as so redesignated, the following:

"(1) on an annual basis and prior to the submission of the detailed business-type budget required under paragraph (2)—

"(A) make publicly available and cause to be printed in the Federal Register a draft of such detailed business-type budget; and

"(B) hold a public hearing, with public notice provided of such hearing, wherein the public can submit comments on the draft of such detailed business-type budget;"; and

(3) in paragraph (2), as so redesignated—

(A) by inserting "detailed" after "submit a"; and

(B) by inserting ", and where such budget shall address any comments submitted by the public pursuant to paragraph (1)(B)" after "Control Act".

Subtitle J—Taking Account of Institutions With Low Operation Risk

SEC. 546. REGULATIONS APPROPRIATE TO BUSINESS MODELS.

(a) IN GENERAL.—For any regulatory action occurring after the date of the enactment of this Act, each Federal financial institutions regulatory agency shall—

(1) take into consideration the risk profile and business models of each type of institution or class of institutions subject to the regulatory action;

(2) determine the necessity, appropriateness, and impact of applying such regulatory action to such institutions or classes of institutions; and

(3) tailor such regulatory action in a manner that limits the regulatory compliance impact, cost, liability risk, and other burdens, as appropriate, for the risk profile and business model of the institution or class of institutions involved.

(b) OTHER CONSIDERATIONS.—In carrying out the requirements of subsection (a), each Federal financial institutions regulatory agency shall consider—

(1) the impact that such regulatory action, both by itself and in conjunction with the aggregate effect of other regulations, has on the ability of the applicable institution or class of institutions to serve evolving and diverse customer needs;

(2) the potential impact of examination manuals, regulatory actions taken with respect to third-party service providers, or other regulatory directives that may be in conflict or inconsistent with the tailoring of such regulatory action described in subsection (a)(3); and

(3) the underlying policy objectives of the regulatory action and statutory scheme involved.

(c) NOTICE OF PROPOSED AND FINAL RULEMAKING.—Each Federal financial institutions regulatory agency shall disclose in every notice of proposed rulemaking and in any final rulemaking for a regulatory action how the agency has applied subsections (a) and (b).

(d) REPORTS TO CONGRESS.—

(1) INDIVIDUAL AGENCY REPORTS.—

(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act and annually thereafter, each Federal financial institutions regulatory agency shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the specific actions taken to tailor the regulatory actions of the agency pursuant to the requirements of this Act.

(B) APPEARANCE BEFORE THE COMMITTEES.—The head of each Federal financial institution regulatory agency shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate after each report is made pursuant to subparagraph (A) to testify on the contents of such report.

(2) FIEC REPORTS.—

(A) IN GENERAL.—Not later than 3 months after each report is submitted under paragraph (1), the Financial Institutions Examination Council shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on—

(i) the extent to which regulatory actions tailored pursuant to this Act result in different treatment of similarly situated institutions of diverse charter types; and

(ii) the reasons for such differential treatment.

(B) APPEARANCE BEFORE THE COMMITTEES.—The Chairman of the Financial Institutions Examination Council shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate after each report is made pursuant to subparagraph (A) to testify on the contents of such report.

(e) LIMITED LOOK-BACK APPLICATION.—

(1) IN GENERAL.—Each Federal financial institutions regulatory agency shall conduct a review of all regulations adopted during the period beginning on the date that is seven years before the date of the introduction of this Act in the House of Representatives and ending on the date of the enactment of this Act, and apply the requirements of this Act to such regulations.

(2) REVISION.—If the application of the requirements of this Act to any such regulation requires such regulation to be revised, the applicable Federal financial institutions regulatory agency shall revise such regulation within 3 years of the enactment of this Act.

(f) DEFINITIONS.—In this Act, the following definitions shall apply:

(1) FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES.—The term "Federal financial institutions regulatory agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Consumer Law Enforcement Agency.

(2) REGULATORY ACTION.—The term "regulatory action" means any proposed, interim, or final rule or regulation, guidance, or published interpretation.

Subtitle K—Federal Savings Association Charter Flexibility

SEC. 551. OPTION FOR FEDERAL SAVINGS ASSOCIATIONS TO OPERATE AS A COVERED SAVINGS ASSOCIATION.

The Home Owners' Loan Act is amended by inserting after section 5 (12 U.S.C. 1464) the following:

"SEC. 5A. ELECTION TO OPERATE AS A COVERED SAVINGS ASSOCIATION.

"(a) DEFINITION.—In this section, the term 'covered savings association' means a Federal savings association that makes an election approved under subsection (b).

"(b) ELECTION.—

"(1) IN GENERAL.—Upon issuance of the rules described in subsection (f), a Federal savings association may elect to operate as a covered savings association by submitting a notice to the Comptroller of such election.

"(2) APPROVAL.—A Federal savings association shall be deemed to be approved to operate as a covered savings association on the date that is 60 days after the date on which the Comptroller receives the notice under paragraph (1), unless the Comptroller notifies the Federal savings association otherwise.

"(c) RIGHTS AND DUTIES.—Notwithstanding any other provision of law and except as otherwise provided in this section, a covered savings association shall—

"(1) have the same rights and privileges as a national bank that has its main office situated in the same location as the home office of the covered savings association; and

"(2) be subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to such a national bank.

"(d) TREATMENT OF COVERED SAVINGS ASSOCIATIONS.—A covered savings association shall be treated as a Federal savings association for the purposes—

"(1) of governance of the covered savings association, including incorporation, bylaws, boards of directors, shareholders, and distribution of dividends;

"(2) of consolidation, merger, dissolution, conversion (including conversion to a stock bank or to another charter), conservatorship, and receivership; and

"(3) determined by regulation of the Comptroller.

"(e) EXISTING BRANCHES.—A covered savings association may continue to operate any branch or agency the covered savings association operated on the date on which an election under subsection (b) is approved.

"(f) RULEMAKING.—The Comptroller shall issue rules to carry out this section—

"(1) that establish streamlined standards and procedures that clearly identify required documentation or timelines for an election under subsection (b);

"(2) that require a Federal savings association that makes an election under subsection (b) to identify specific assets and subsidiaries—

"(A) that do not conform to the requirements for assets and subsidiaries of a national bank; and

"(B) that are held by the Federal savings association on the date on which the Federal savings association submits a notice of such election;

"(3) that establish—

"(A) a transition process for bringing such assets and subsidiaries into conformance with the requirements for a national bank; and

"(B) procedures for allowing the Federal savings association to provide a justification for grandfathering such assets and subsidiaries after electing to operate as a covered savings association;

"(4) that establish standards and procedures to allow a covered savings association to terminate an election under subsection (b) after an appropriate period of time or to make a subsequent election;

"(5) that clarify requirements for the treatment of covered savings associations, including the provisions of law that apply to covered savings associations; and

"(6) as the Comptroller deems necessary and in the interests of safety and soundness.".

Subtitle L—SAFE Transitional Licensing

SEC. 556. ELIMINATING BARRIERS TO JOBS FOR LOAN ORIGINATORS.

(a) IN GENERAL.—The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended by adding at the end the following:

"SEC. 1518. EMPLOYMENT TRANSITION OF LOAN ORIGINATORS.

"(a) TEMPORARY AUTHORITY TO ORIGINATE LOANS FOR LOAN ORIGINATORS MOVING FROM A DEPOSITORY INSTITUTION TO A NON-DEPOSITORY INSTITUTION.—

"(1) IN GENERAL.—Upon employment by a State-licensed mortgage company, an individual who is a registered loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph (2) if the individual—

"(A) has not had an application for a loan originator license denied, or had such a license revoked or suspended in any governmental jurisdiction;

"(B) has not been subject to or served with a cease and desist order in any governmental jurisdiction or as described in section 1514(c);

"(C) has not been convicted of a felony that would preclude licensure under the law of the application State;

"(D) has submitted an application to be a State-licensed loan originator in the application State; and

"(E) was registered in the Nationwide Mortgage Licensing System and Registry as a loan originator during the 12-month period preceding the date of submission of the information required under section 1505(a).

"(2) PERIOD.—The period described in paragraph (1) shall begin on the date that the individual submits the information required under section 1505(a) and shall end on the earliest of—

"(A) the date that the individual withdraws the application to be a State-licensed loan originator in the application State;

"(B) the date that the application State denies, or issues a notice of intent to deny, the application;

"(C) the date that the application State grants a State license; or

"(D) the date that is 120 days after the date on which the individual submits the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

"(b) TEMPORARY AUTHORITY TO ORIGINATE LOANS FOR STATE-LICENSED LOAN ORIGINATORS MOVING INTERSTATE.—

"(1) IN GENERAL.—A State-licensed loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph (2) if the State-licensed loan originator—

"(A) meets the requirements of subparagraphs (A), (B), (C), and (D) of subsection (a)(1);

"(B) is employed by a State-licensed mortgage company in the application State; and

"(C) was licensed in a State that is not the application State during the 30-day period preceding the date of submission of the information required under section 1505(a) in connection with the application submitted to the application State.

"(2) PERIOD.—The period described in paragraph (1) shall begin on the date that the State-licensed loan originator submits the information required under section 1505(a) in connection with the application submitted to the application State and end on the earliest of—

"(A) the date that the State-licensed loan originator withdraws the application to be a State-licensed loan originator in the application State;

"(B) the date that the application State denies, or issues a notice of intent to deny, the application;

"(C) the date that the application State grants a State license; or

"(D) the date that is 120 days after the date on which the State-licensed loan originator submits the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

"(c) APPLICABILITY.—

"(1) Any person employing an individual who is deemed to have temporary authority to act as a loan originator in an application State pursuant to this section shall be subject to the requirements of this title and to applicable State law to the same extent as if such individual was a State-licensed loan originator licensed by the application State.

"(2) Any individual who is deemed to have temporary authority to act as a loan originator in an application State pursuant to this section and who engages in residential mortgage loan origination activities shall be subject to the requirements of this title and to applicable State law to the same extent as if such individual was a State-licensed loan originator licensed by the application State.

"(d) DEFINITIONS.—In this section, the following definitions shall apply:

"(1) STATE-LICENSED MORTGAGE COMPANY.—The term 'State-licensed mortgage company' means an entity licensed or registered under the law of any State to engage in residential mortgage loan origination and processing activities.

"(2) APPLICATION STATE.—The term 'application State' means a State in which a registered loan originator or a State-licensed loan originator seeks to be licensed.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1(b) of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 4501 note) is amended by inserting after the item relating to section 1517 the following:

"Sec. 1518. Employment transition of loan originators.".

(c) AMENDMENT TO CIVIL LIABILITY OF THE CONSUMER LAW ENFORCEMENT AGENCY AND OTHER OFFICIALS.—Section 1513 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5112) is amended by striking "are loan originators or are applying for licensing or registration as loan originators" and inserting "are applying for licensing or registration using the Nationwide Mortgage Licensing System and Registry".

Subtitle M—Right to Lend

SEC. 561. SMALL BUSINESS LOAN DATA COLLECTION REQUIREMENT.

(a) REPEAL.—Section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) is repealed.

(b) CONFORMING AMENDMENTS.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) in paragraph (3), by inserting "or" at the end;

(2) in paragraph (4), by striking "; or" and inserting a period; and

(3) by striking paragraph (5).

(c) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is amended by striking the item relating to section 704B.

Subtitle N—Community Bank Reporting Relief

SEC. 566. SHORT FORM CALL REPORT.

(a) IN GENERAL.—Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding at the end the following:

"(12) SHORT FORM REPORTING.—

"(A) IN GENERAL.—The appropriate Federal banking agencies shall issue regulations allowing for a reduced reporting requirement for covered depository institutions when making the first and third report of condition for a year, as required pursuant to paragraph (3).

"(B) COVERED DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term 'covered depository institution' means an insured depository institution that—

"(i) is well capitalized (as defined under section 38(b)); and

"(ii) satisfies such other criteria as the appropriate Federal banking agencies determine appropriate.".

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, and every 365 days thereafter until the appropriate Federal banking agencies (as defined under section 3 of the Federal Deposit Insurance Act) have issued the regulations required under section 7(a)(12)(A) of the Federal Deposit Insurance Act, such agencies shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the progress made in issuing such regulations.

Subtitle O—Homeowner Information Privacy Protection

SEC. 571. STUDY REGARDING PRIVACY OF INFORMATION COLLECTED UNDER THE HOME MORTGAGE DISCLOSURE ACT OF 1975.

(a) STUDY.—The Comptroller General of the United States shall conduct a study to determine whether the data required to be published, made available, or disclosed under the final rule, in connection with other publicly available data sources, including data made publicly available under Regulation C (12 C.F.R. 1003) before the effective date of the final rule, could allow for or increase the probability of—

(1) exposure of the identity of mortgage applicants or mortgagors through reverse engineering;

(2) exposure of mortgage applicants or mortgagors to identity theft or the loss of sensitive personal financial information;

(3) the marketing or sale of unfair or deceptive financial products to mortgage applicants or mortgagors based on such data;

(4) personal financial loss or emotional distress resulting from the exposure of mortgage applicants or mortgagors to identify theft or the loss of sensitive personal financial information; and

(5) the potential legal liability facing the Consumer Law Enforcement Agency and market participants in the event the data required to be published, made available, or disclosed under the final rule leads or contributes to identity theft or the capture of sensitive personal financial information.

(b) REPORT.—The Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that includes—

(1) the findings and conclusions of the Comptroller General with respect to the study required under subsection (a); and

(2) any recommendations for legislative or regulatory actions that—

(A) would enhance the privacy of a consumer when accessing mortgage credit; and

(B) are consistent with consumer protections and safe and sound banking operations.

(c) SUSPENSION OF DATA SHARING REQUIREMENTS.—Notwithstanding any other provision of law, including the final rule—

(1) depository institutions shall not be required to publish, disclose, or otherwise make available to the public, pursuant to the Home Mortgage Disclosure Act of 1975 (or regulations issued under such Act) any data that was not required to be published, disclosed, or otherwise made available pursuant to such Act (or regulations issued under such Act) on the day before the date of the en-

actment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(2) the Consumer Law Enforcement Agency and the Financial Institutions Examination Council shall not publish, disclose, or otherwise make available to the public any such information received from a depository institution pursuant to the final rule.

(d) DEFINITIONS.—For purposes of this section:

(1) DEPOSITORY INSTITUTION.—The term "depository institution" has the meaning given that term under section 303 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802).

(2) FINAL RULE.—The term "final rule" means the final rule issued by the Bureau of Consumer Financial Protection titled "Home Mortgage Disclosure (Regulation C)" (October 28, 2015; 80 Fed. Reg. 66128).

Subtitle P—Home Mortgage Disclosure Adjustment

SEC. 576. DEPOSITORY INSTITUTIONS SUBJECT TO MAINTENANCE OF RECORDS AND DISCLOSURE REQUIREMENTS.

(a) IN GENERAL.—Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803) is amended—

(1) by redesignating subsection (i) as paragraph (2) and adjusting the margin appropriately; and

(2) by inserting before such paragraph (2) the following:

"(i) EXEMPTIONS.—

"(1) IN GENERAL.—With respect to a depository institution, the requirements of subsections (a) and (b) shall not apply—

"(A) with respect to closed-end mortgage loans, if such depository institution originated less than 100 closed-end mortgage loans in each of the two preceding calendar years; and

"(B) with respect to open-end lines of credit, if such depository institution originated less than 200 open-end lines of credit in each of the two preceding calendar years.".

(b) TECHNICAL CORRECTION.—Section 304(i)(2) of such Act, as redesignated by subsection (a), is amended by striking "section 303(2)(A)" and inserting "section 303(3)(A)".

Subtitle Q—Protecting Consumers' Access to Credit

SEC. 581. RATE OF INTEREST AFTER TRANSFER OF LOAN.

(a) AMENDMENT TO THE REVISED STATUTES.—Section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) is amended by adding at the end the following new sentence: "A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.".

(b) AMENDMENT TO THE HOME OWNERS' LOAN ACT.—Section 4(g)(1) of the Home Owners' Loan Act (12 U.S.C. 1463(g)(1)) is amended by adding at the end the following new sentence: "A loan that is valid when made as to its maximum rate of interest in accordance with this subsection shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.".

(c) AMENDMENT TO THE FEDERAL CREDIT UNION ACT.—Section 205(g)(1) of the Federal Credit Union Act (12 U.S.C. 1785(g)(1)) is amended by adding at the end the following new sentence: "A loan that is valid when made as to its maximum rate of interest in accordance with this subsection shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.".

(d) AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 27(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831d(a)) is amended by adding at the end the following new sentence: "A loan that is valid when made as to its maximum rate

of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.".

Subtitle R—NCUA Overhead Transparency

SEC. 586. FUND TRANSPARENCY.

Section 203 of the Federal Credit Union Act (12 U.S.C. 1783) is amended by adding at the end the following:

"(g) FUND TRANSPARENCY.—

"(1) IN GENERAL.—The Board shall accompany each annual budget submitted pursuant to section 209(b) with a report containing—

"(A) a detailed analysis of how the expenses of the Administration are assigned between prudential activities and insurance-related activities and the extent to which those expenses are paid from the fees collected pursuant to section 105 or from the Fund; and

"(B) the Board's supporting rationale for any proposed use of amounts in the Fund contained in such budget, including detailed breakdowns and supporting rationales for any such proposed use related to titles of this Act other than this title.

"(2) PUBLIC DISCLOSURE.—The Board shall make each report described under paragraph (1) available to the public.".

Subtitle S—Housing Opportunities Made Easier

SEC. 591. CLARIFICATION OF DONATED SERVICES TO NON-PROFITS.

Section 129E(i) of the Truth in Lending Act (15 U.S.C. 1639e(i)) is amended by adding at the end the following:

"(4) RULE OF CONSTRUCTION RELATED TO APPRAISAL DONATIONS.—For purposes of paragraph (1), if a fee appraiser voluntarily donates appraisal services to an organization described in section 170(c)(2) of the Internal Revenue Code of 1986, such voluntary donation shall be deemed customary and reasonable.".

TITLE VI—REGULATORY RELIEF FOR STRONGLY CAPITALIZED, WELL MANAGED BANKING ORGANIZATIONS

SEC. 601. CAPITAL ELECTION.

(a) IN GENERAL.—A banking organization may make an election under this section to be treated as a qualifying banking organization for purposes of the regulatory relief described under section 602.

(b) REQUIREMENTS.—A banking organization may qualify to be treated as a qualifying banking organization if—

(1) the banking organization has an average leverage ratio of at least 10 percent;

(2) with respect to a depository institution holding company, each insured depository institution subsidiary of the holding company simultaneously makes the election described under subsection (a); and

(3) with respect to an insured depository institution, any parent depository institution holding company of the institution simultaneously makes the election described under subsection (a).

(c) ELECTION PROCESS.—To make an election under this section, a banking organization shall submit an election to the appropriate Federal banking agency (and any applicable State bank supervisor that regulates the banking organization) containing—

(1) a notice of such election;

(2) the banking organization's average leverage ratio, as well as the organization's quarterly leverage ratio for each of the most recently completed four calendar quarters;

(3) if the banking organization is a depository institution holding company, the information described under paragraph (2) for each of the organization's insured depository institution subsidiaries; and

(4) if the banking organization is an insured depository institution, the information described under paragraph (2) for any parent depository institution holding company of the institution.

(d) EFFECTIVE DATE OF ELECTION.—

(1) IN GENERAL.—An election made under this section shall take effect at the end of the 30-day period beginning on the date that the appropriate Federal banking agency receives the application described under subsection (c), unless the appropriate Federal banking agency determines that the banking organization has not met the requirements described under subsection (b).

(2) NOTICE OF FAILURE TO MEET REQUIREMENTS.—If the appropriate Federal banking agency determines that a banking organization submitting an election notice under subsection (c) does not meet the requirements described under subsection (b), the agency shall—

(A) notify the banking organization (and any applicable State bank supervisor that regulates the banking organization), in writing, of such determination as soon as possible after such determination is made, but in no case later than the end of the 30-day period beginning on the date that the appropriate Federal banking agency receives the election; and

(B) include in such notification the specific reasons for such determination and steps that the banking organization can take to meet such requirements.

(e) TREATMENT OF CERTAIN NEW BANKING ORGANIZATIONS.—In the case of a banking organization that is a newly-chartered insured depository institution or a banking organization that becomes a banking organization because it controls a newly-chartered insured depository institution, such banking organization may be treated as a qualifying banking organization immediately upon becoming a banking organization, if—

(1) an election to be treated as a qualifying banking organization was included in the application filed with the appropriate Federal banking agency in connection with becoming a banking organization; and

(2) as of the date the banking organization becomes a banking organization, the banking organization's tangible equity divided by the banking organization's leverage exposure, expressed as a percentage, is at least 10 percent.

(f) FAILURE TO MAINTAIN QUARTERLY LEVERAGE RATIO AND LOSS OF ELECTION.—

(1) EFFECT OF FAILURE TO MAINTAIN QUARTERLY LEVERAGE RATIO.—

(A) IN GENERAL.—If, with respect to the most recently completed calendar quarter, the appropriate Federal banking agency determines that a qualifying banking organization's quarterly leverage ratio is below 10 percent—

(i) the appropriate Federal banking agency shall notify the qualifying banking organization and any applicable State bank supervisor that regulates the banking organization of such determination;

(ii) the appropriate Federal banking agency may prohibit the banking organization from making a capital distribution; and

(iii) the banking organization shall, within 3 months of the first such determination, submit a capital restoration plan to the appropriate Federal banking agency.

(B) LOSS OF ELECTION AFTER ONE-YEAR REMEDIATION PERIOD.—If a banking organization described under subparagraph (A) does not, within the 1-year period beginning on the date of such determination, raise the organization's quarterly leverage ratio for a calendar quarter ending in such 1-year period to at least 10 percent, the banking organization's election under this section shall be terminated, and the appropriate Federal banking agency shall notify any applicable State bank supervisor that regulates the banking organization of such termination.

(C) EFFECT OF SUBSIDIARY ON PARENT ORGANIZATION.—With respect to a qualifying banking organization described under subparagraph (A) that is an insured depository institution, any parent depository institution holding company of the qualifying banking organization shall—

(i) if the appropriate Federal banking agency determines it appropriate, be prohibited from making a capital distribution (other than a capital contribution to such qualifying banking organization described under subparagraph (A)); and

(ii) if the qualifying banking organization has an election terminated under subparagraph (B), any such parent depository institution holding company shall also have its election under this section terminated.

(2) IMMEDIATE LOSS OF ELECTION IF THE QUARTERLY LEVERAGE RATIO FALLS BELOW 6 PERCENT.—

(A) IN GENERAL.—If, with respect to the most recently completed calendar quarter, the appropriate Federal banking agency determines that a quali-

fying banking organization's quarterly leverage ratio is below 6 percent, the banking organization's election under this section shall be terminated, and the appropriate Federal banking agency shall notify any applicable State bank supervisor that regulates the banking organization of such termination.

(B) EFFECT OF SUBSIDIARY ON PARENT ORGANIZATION.—With respect to a qualifying banking organization described under subparagraph (A) that is an insured depository institution, any parent depository institution holding company of the qualifying banking organization shall also have its election under this section terminated.

(3) ABILITY TO MAKE FUTURE ELECTIONS.—If a banking organization has an election under this section terminated, the banking organization may not apply for another election under this section until the banking organization has maintained a quarterly leverage ratio of at least 10 percent for 8 consecutive calendar quarters.

SEC. 602. REGULATORY RELIEF.

(a) IN GENERAL.—A qualifying banking organization shall be exempt from the following:

(1) Any Federal law, rule, or regulation addressing capital or liquidity requirements or standards.

(2) Any Federal law, rule, or regulation that permits an appropriate Federal banking agency to object to a capital distribution.

(3) Any consideration by an appropriate Federal banking agency of the following:

(A) Any risk the qualifying banking organization may pose to "the stability of the financial system of the United States", under section 5(c)(2) of the Bank Holding Company Act of 1956.

(B) The "extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system", under section 3(c)(7) of the Bank Holding Company Act of 1956, so long as the banking organization, after such proposed acquisition, merger, or consolidation, would maintain a quarterly leverage ratio of at least 10 percent.

(C) Whether the performance of an activity by the banking organization could possibly pose a "risk to the stability of the United States banking or financial system", under section 4(j)(2)(A) of the Bank Holding Company Act of 1956.

(D) Whether the acquisition of control of shares of a company engaged in an activity described in section 4(j)(1)(A) of the Bank Holding Company Act of 1956 could possibly pose a "risk to the stability of the United States banking or financial system", under section 4(j)(2)(A) of the Bank Holding Company Act of 1956, so long as the banking organization, after acquiring control of such company, would maintain a quarterly leverage ratio of at least 10 percent.

(E) Whether a merger would pose a "risk to the stability of the United States banking or financial system", under section 18(c)(5) of the Federal Deposit Insurance Act, so long as the banking organization, after such proposed merger, would maintain a quarterly leverage ratio of at least 10 percent.

(F) Any risk the qualifying banking organization may pose to "the stability of the financial system of the United States", under section 10(b)(4) of the Home Owners' Loan Act.

(4) Subsections (i)(8) and (k)(6)(B)(ii) of section 4 and section 14 of the Bank Holding Company Act of 1956.

(5) Section 18(c)(13) of the Federal Deposit Insurance Act.

(6) Section 163 of the Financial Stability Act of 2010.

(7) Section 10(e)(2)(E) of the Home Owners' Loan Act.

(8) Any Federal law, rule, or regulation implementing standards of the type provided for in subsections (b), (c), (d), (e), (g), (h), (i), and (j) of section 165 of the Financial Stability Act of 2010.

(9) Any Federal law, rule, or regulation providing limitations on mergers, consolidations, or acquisitions of assets or control, to the extent such limitations relate to capital or liquidity standards or concentrations of deposits or assets, so long as the banking organization, after such proposed merger, consolidation, or acquisition, would maintain a quarterly leverage ratio of at least 10 percent.

(b) QUALIFYING BANKING ORGANIZATIONS TREATED AS WELL CAPITALIZED.—A qualifying banking organization shall be deemed to be "well capitalized" for purposes of—

(1) section 216 of the Federal Credit Union Act; and

(2) sections 29, 38, 44, and 46 of the Federal Deposit Insurance Act.

(c) TREATMENT OF CERTAIN RISK-WEIGHTED ASSET REQUIREMENTS FOR QUALIFYING BANKING ORGANIZATIONS.—

(1) ACQUISITION SIZE CRITERIA TREATMENT.—A qualifying banking organization shall be deemed to meet the criteria described under section 4(j)(4)(D) of the Bank Holding Company Act of 1956, so long as after the proposed transaction the acquiring qualifying banking organization would maintain a quarterly leverage ratio of at least 10 percent.

(2) USE OF LEVERAGE EXPOSURE.—With respect to a qualifying banking organization, in determining whether a proposal qualifies with the criteria described under subparagraphs (A)(iii) and (B)(i) of section 4(j)(4) of the Bank Holding Company Act of 1956, the Board of Governors of the Federal Reserve System shall consider the leverage exposure of an insured depository institution instead of the total risk-weighted assets of such institution.

SEC. 603. CONTINGENT CAPITAL STUDY.

(a) STUDY.—The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency shall each carry out a study, which shall include holding public hearings, on how to design a requirement that banking organizations issue contingent capital with a market-based conversion trigger.

(b) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, each agency described under subsection (a) shall submit a report to the Congress containing—

(1) all findings and determinations made by the agency in carrying out the study required under subsection (a); and

(2) the agency's recommendations on how the Congress should design a requirement that banking organizations issue contingent capital with a market-based conversion trigger.

SEC. 604. STUDY ON ALTERING THE CURRENT PROMPT CORRECTIVE ACTION RULES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study to assess the benefits and feasibility of altering the current prompt corrective action rules and replacing the Basel-based capital ratios with the nonperforming asset coverage ratio or NACR as the trigger for specific required supervisory interventions. The Comptroller General shall ensure that such study includes the following:

(1) An assessment of the performance of an NACR forward-looking measure of a banking organization's solvency condition relative to the regulatory capital ratios currently used by prompt corrective action rules.

(2) An analysis of the performance of alternative definitions of nonperforming assets.

(3) An assessment of the impact of two alternative intervention thresholds:

(A) An initial (high) intervention threshold, below which appropriate Federal banking agency examiners are required to intervene and assess a banking organization's condition and prescribe remedial measures.

(B) A lower threshold, below which banking organizations must increase their capital, seek an acquirer, or face mandatory resolution within 90 days.

(b) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing—

(1) all findings and determinations made in carrying out the study required under subsection (a); and

(2) recommendations on the most suitable definition of nonperforming assets, as well as the two numerical thresholds that trigger specific required supervisory interventions.

SEC. 605. DEFINITIONS.

For purposes of this title:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency"—

(A) has the meaning given such term under section 3 of the Federal Deposit Insurance Act; and

(B) means the National Credit Union Administration, in the case of an insured credit union.

(2) BANKING ORGANIZATION.—The term "banking organization" means—

(A) an insured depository institution;

(B) an insured credit union;

(C) a depository institution holding company;

(D) a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act; and

(E) a U.S. intermediate holding company established by a foreign banking organization pursuant to section 252.153 of title 12, Code of Federal Regulations.

(3) FOREIGN EXCHANGE SWAP .—The term "foreign exchange swap" has the meaning given that term under section 1a of the Commodity Exchange Act.

(4) INSURED CREDIT UNION.—The term "insured credit union" has the meaning given that term under section 101 of the Federal Credit Union Act.

(5) LEVERAGE EXPOSURE.—The term "leverage exposure"—

(A) with respect to a banking organization other than an insured credit union or a traditional banking organization, has the meaning given the term "total leverage exposure" under section 3.10(c)(4)(ii), 217.10(c)(4), or 324.10(c)(4) of title 12, Code of Federal Regulations, as applicable, as in effect on the date of the enactment of this Act;

(B) with respect to a traditional banking organization other than an insured credit union, means total assets (minus any items deducted from common equity tier 1 capital) as calculated in accordance with generally accepted accounting principles and as reported on the traditional banking organization's applicable regulatory filing with the banking organization's appropriate Federal banking agency; and

(C) with respect to a banking organization that is an insured credit union, has the meaning given the term "total assets" under section 702.2 of title 12, Code of Federal Regulations, as in effect on the date of the enactment of this Act.

(6) LEVERAGE RATIO DEFINITIONS.—

(A) AVERAGE LEVERAGE RATIO.—With respect to a banking organization, the term "average leverage ratio" means the average of the banking organization's quarterly leverage ratios for each of the most recently completed four calendar quarters.

(B) QUARTERLY LEVERAGE RATIO.—With respect to a banking organization and a calendar quarter, the term "quarterly leverage ratio" means the organization's tangible equity divided by the organization's leverage exposure, expressed as a percentage, on the last day of such quarter.

(7) NACR.—The term "NACR" means—

(A) book equity less nonperforming assets plus loan loss reserves, divided by

(B) total banking organization assets.

(8) NONPERFORMING ASSETS.—The term "nonperforming assets" means—

(A) 20 percent of assets that are past due 30 to 89 days, plus

(B) 50 percent of assets that are past due 90 days or more, plus

(C) 100 percent of nonaccrual assets and other real estate owned.

(9) QUALIFYING BANKING ORGANIZATION.—The term "qualifying banking organization" means a banking organization that has made an election under section 601 and with respect to which such election is in effect.

(10) SECURITY-BASED SWAP .—The term "security-based swap" has the meaning given that term under section 3 of the Securities Exchange Act of 1934.

(11) SWAP.—The term "swap" has the meaning given that term under section 1a of the Commodity Exchange Act.

(12) TANGIBLE EQUITY.—The term "tangible equity"—

(A) with respect to a banking organization other than a credit union, means the sum of—

(i) common equity tier 1 capital;

(ii) additional tier 1 capital consisting of instruments issued on or before the date of enactment of this Act; and

(iii) with respect to a depository institution holding company that had less than $15,000,000,000 in total consolidated assets as of December 31, 2009, or March 31, 2010, or a banking organization that was a mutual holding company as of May 19, 2010, trust preferred securities issued prior to May 19, 2010, to the extent such organization was permitted, as of the date of the enactment of this Act, to consider such securities as tier 1 capital under existing regulations of the appropriate Federal banking agency; and

(B) with respect to a banking organization that is a credit union, has the meaning given the term "net worth" under section 702.2 of title 12, Code of Federal Regulations, as in effect on the date of the enactment of this Act.

(13) TRADITIONAL BANKING ORGANIZATION.—The term "traditional banking organization" means a banking organization that—

(A) has zero trading assets and zero trading liabilities;

(B) does not engage in swaps or security-based swaps, other than swaps or security-based swaps referencing interest rates or foreign exchange swaps; and

(C) has a total notional exposure of swaps and security-based swaps of not more than $8,000,000,000.

(14) OTHER BANKING TERMS.—The terms "insured depository institution" and "depository institution holding company" have the meaning given those terms, respectively, under section 3 of the Federal Deposit Insurance Act.

(15) OTHER CAPITAL TERMS.—With respect to a banking organization, the terms "additional tier 1 capital" and "common equity tier 1 capital" have the meaning given such terms, respectively, under section 3.20, 217.20, or 324.20 of title 12, Code of Federal Regulations, as applicable, as in effect on the date of the enactment of this Act.

TITLE VII—EMPOWERING AMERICANS TO ACHIEVE FINANCIAL INDEPENDENCE

Subtitle A—Separation of Powers and Liberty Enhancements

SEC. 711. CONSUMER LAW ENFORCEMENT AGENCY.

(a) MAKING THE BUREAU AN INDEPENDENT CONSUMER LAW ENFORCEMENT AGENCY.—The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1011—

(A) in the heading of such section, by striking "**BUREAU OF CONSUMER FINANCIAL PROTECTION**" and inserting "**CONSUMER LAW ENFORCEMENT AGENCY**";

(B) in subsection (a)—

(i) in the heading of such subsection, by striking "BUREAU" and inserting "AGENCY";

(ii) by striking "in the Federal Reserve System,";

(iii) by striking "independent bureau" and inserting "independent agency"; and

(iv) by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency (hereinafter in this section referred to as the 'Agency')";

(C) in subsection (b)(5), by amending subparagraph (A) to read as follows: "(A) shall be appointed by the President; and";

(D) in subsection (c), by striking paragraph (3);

(E) in subsection (e), by striking ", including in cities in which the Federal reserve banks, or branches of such banks, are located,"; and

(F) by striking "Bureau" each place such term appears and inserting "Agency"; and

(2) in section 1012—

(A) in subsection (a)(10), by striking "examinations,"; and

(B) by striking subsection (c).

(b) DEEMING OF NAME.—Any reference in a law, regulation, document, paper, or other record of the United States to the Bureau of Consumer Financial Protection shall be deemed a reference to the Consumer Law Enforcement Agency.

(c) CONFORMING AMENDMENTS.—

(1) DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.—The Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) is amended—

(A) in the table of contents in section 1(b)—

(i) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency"; and

(ii) in the table of contents relating to title X, in the items relating to subtitle B, subtitle C, and section 1027, by striking "Bureau" each place such term appears and inserting "Agency";

(B) in section 2, by amending paragraph (4) to read as follows:

"(4) AGENCY.—The term 'Agency' means the Consumer Law Enforcement Agency established under title X.";

(C) in section 342 by striking "Bureau" each place such term appears in headings and text and inserting "Agency";

(D) in section 1400(b)—

(i) by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency"; and

(ii) in the subsection heading, by striking "BUREAU OF CONSUMER FINANCIAL PROTECTION" and inserting "CONSUMER LAW ENFORCEMENT AGENCY";

(E) in section 1411(a)(1), by striking "Bureau" and inserting "Agency"; and

(F) in section 1447, by striking "Director of the Bureau" each place such term appears and inserting "Director of the Consumer Law Enforcement Agency".

(2) ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency"; and

(B) in the subsection heading of subsection (d) of section 804 (12 U.S.C. 3803(d)), by striking "BUREAU" and inserting "AGENCY".

(3) ELECTRONIC FUND TRANSFER ACT.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(A) by amending the second paragraph (4) (defining the term "Bureau") to read as follows:

"(4) the term 'Agency' means the Consumer Law Enforcement Agency;";

(B) in section 916(d)(1), by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency"; and

(C) by striking "Bureau" each place that term appears in heading or text and inserting "Agency".

(4) EQUAL CREDIT OPPORTUNITY ACT.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(A) in section 702 (15 U.S.C. 1691a), by amending subsection (c) to read as follows:

"(c) The term 'Agency' means the Consumer Law Enforcement Agency."; and

(B) by striking "Bureau" each place that term appears in heading or text and inserting "Agency".

(5) EXPEDITED FUNDS AVAILABILITY ACT.—The Expedited Funds Availability Act (12 U.S.C. 4001 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency"; and

(B) in the heading of section 605(f)(1), by striking "BOARD AND BUREAU" and inserting "BOARD AND AGENCY".

(6) FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.—The Fair and Accurate Credit Transactions Act of 2003 (Public Law 108–159) is amended by striking "Bureau" each place such term appears and inserting "Agency".

(7) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(A) by amending section 603(w) to read as follows:

"(w) AGENCY.—The term 'Agency' means the Consumer Law Enforcement Agency."; and

(B) by striking "Bureau" each place such term appears, other than in sections 626 and 603(v), and inserting "Agency".

(8) FAIR DEBT COLLECTION PRACTICES ACT.—The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(A) by amending section 803(1) to read as follows:

"(1) The term 'Agency' means the Consumer Law Enforcement Agency."; and

(B) by striking "Bureau" each place such term appears in heading or text and inserting "Agency".

(9) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(A) in the second paragraph (6) (with the heading "Referral to bureau of consumer financial protection") of section 8(t) (12 U.S.C. 1818(t))—

(i) in the paragraph heading, by striking "BUREAU OF CONSUMER FINANCIAL PROTECTION"; and inserting "CONSUMER LAW ENFORCEMENT AGENCY"; and

(ii) by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency";

(B) by amending clause (vi) of section 11(t)(2)(A) (12 U.S.C. 1821(t)(2)(A)(vi)) to read as follows:

"(vi) The Consumer Law Enforcement Agency.";

(C) in section 18(x) (12 U.S.C. 1828(x)), by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency";

(D) by striking "Bureau" each place such term appears and inserting "Agency"; and

(E) in section 43(e) (12 U.S.C. 1831t(e)), by amending paragraph (5) to read as follows:

"(5) AGENCY.—The term 'Agency' means the Consumer Law Enforcement Agency.".

(10) FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended—

(A) in section 1004(a)(4), by striking "Consumer Financial Protection Bureau" and inserting "Consumer Law Enforcement Agency"; and

(B) in section 1011, by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency".

(11) FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.—The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73; 103 Stat. 183) is amended—

(A) in section 1112(b) (12 U.S.C. 3341), by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency";

(B) in section 1124 (12 U.S.C. 3353), by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency";

(C) in section 1125 (12 U.S.C. 3354), by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency"; and

(D) in section 1206(a) (12 U.S.C. 1833b(a)), by striking "Federal Housing Finance Board" and all that follows through "Farm Credit Administration" and inserting "Federal Housing Finance Board, the Consumer Law Enforcement Agency, and the Farm Credit Administration".

(12) FINANCIAL LITERACY AND EDUCATION IMPROVEMENT ACT.—Section 513 of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702) is amended by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency".

(13) GRAMM-LEACH-BLILEY ACT.—Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency"; and

(B) in section 505(a)(8) (15 U.S.C. 6805(a)(8)), by striking "Bureau" and inserting "Agency".

(14) HOME MORTGAGE DISCLOSURE ACT OF 1975.—The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency";

(B) by striking "Bureau" each place such term appears and inserting "Agency"; and

(C) in section 303, by amending paragraph (1) to read as follows:

"(1) the term 'Agency' means the Consumer Law Enforcement Agency;".

(15) HOMEOWNERS PROTECTION ACT OF 1998.—Section 10(a)(4) of the Homeowners Protection Act of 1998 (12 U.S.C. 4909(a)(4)) is amended by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency".

(16) HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994.—Section 158(a) of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note) is amended by striking "Bureau" and inserting "Consumer Law Enforcement Agency".

(17) INTERSTATE LAND SALES FULL DISCLOSURE ACT.—The Interstate Land Sales Full Disclosure Act (12 U.S.C. 1701 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Agency";

(B) in section 1402, by amending paragraph (12) to read as follows:

"(12) 'Agency' means the Consumer Law Enforcement Agency."; and

(C) in section 1416, by striking "Bureau" each place such term appears and inserting "Agency".

(18) REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.—The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(A) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency";

(B) by striking "Bureau" each place such term appears and inserting "Agency"; and

(C) in section 3, by amending paragraph (9) to read as follows:

"(9) the term 'Agency' means the Consumer Law Enforcement Agency.".

(19) REVISED STATUES OF THE UNITED STATES.—Section 5136C(b)(3)(B) of the Revised Statutes of the United States (12 U.S.C. 25b(b)(3)(B)) is amended by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency".

(20) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(A) by amending subparagraph (B) of section 1101(7) (12 U.S.C. 3401(7)(B)) to read as follows:

"(B) the Consumer Law Enforcement Agency;"; and

(B) by striking "Bureau of Consumer Financial Protection" each place such term appears in heading or text and inserting "Consumer Law Enforcement Agency".

(21) S.A.F.E. MORTGAGE LICENSING ACT OF 2008.—The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(A) in section 1507, by striking "Bureau, and the Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency";

(B) by striking "Bureau of Consumer Financial Protection" each place such term appears and inserting "Consumer Law Enforcement Agency";

(C) by striking "Bureau" each place such appears, other than in sections 1505(a)(1), 1507(a)(2)(A), and 1511(b), and inserting "Agency";

(D) in section 1503, by amending paragraph (1) to read as follows:

"(1) AGENCY.—The term 'Agency' means the Consumer Law Enforcement Agency.";

(E) in the heading of section 1508, by striking "**BUREAU OF CONSUMER FINANCIAL PROTECTION**" and inserting "**CONSUMER LAW ENFORCEMENT AGENCY**"; and

(F) in the heading of section 1514, by striking "**BUREAU**" and inserting "**AGENCY**".

(22) TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.—The Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.) is amended by striking "Bureau of Consumer Financial Protection" each place such term appears in heading or text and inserting "Consumer Law Enforcement Agency".

(23) TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(A) in section 552a(w)—

(i) in the subsection heading, by striking "BUREAU OF CONSUMER FINANCIAL PROTECTION" and inserting "CONSUMER LAW ENFORCEMENT AGENCY";

(ii) by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency";

(B) in section 609(d)(2), by striking "Consumer Financial Protection Bureau of the Federal Reserve System" and inserting "Consumer Law Enforcement Agency"; and

(C) in section 3132(a)(1)(D), as amended by section 151(a)(1), is further amended by inserting "the Consumer Law Enforcement Agency," before "and the National Credit Union Administration".

(24) TITLE 10, UNITED STATES CODE.—

(A) SECTION 987.—Section 987(h)(3)(E) of title 10, United States Code, is amended by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency".

(B) NDAA FY 2015.—Section 557(a) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–29; 128 Stat. 3381; 10 U.S.C. 1144 note), is amended by striking "Consumer Financial Protection Bureau" each place such term appears and inserting "Consumer Law Enforcement Agency".

(25) TITLE 44, UNITED STATES CODE.—Title 44, United States Code, is amended—

(A) in section 3502(5), by striking "the Bureau of Consumer Financial Protection, the Office of Financial Research," and inserting "the Consumer Law Enforcement Agency,"; and

(B) in section 3513(c), by striking "Bureau of Consumer Financial Protection" and inserting "Consumer Law Enforcement Agency".

(26) TRUTH IN LENDING ACT.—The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

(A) by amending section 103(b) (15 U.S.C. 1602(b)) to read as follows:

"(b) AGENCY.—The term 'Agency' means the Consumer Law Enforcement Agency.";

(B) by amending section 103(c) (15 U.S.C. 1602(c)) to read as follows:

"(c) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System."; and

(C) in section 128(f) (15 U.S.C. 1638(f)), by striking "Board" each place such term appears and inserting "Agency";

(D) in sections 129B (15 U.S.C. 1639b) and 129C (15 U.S.C. 1639c), by striking "Board" each place such term appears and inserting "Agency";

(E) in section 140A (15 U.S.C. 1651), by striking "in consultation with the Bureau" and inserting "in consultation with the Federal Trade Commission";

(F) by striking "National Credit Union Administration Bureau" each place such term appears and inserting "National Credit Union Administration Board";

(G) by striking "Bureau" each place such term appears in heading or text and inserting "Agency"; and

(H) by striking "BUREAU" and inserting "AGENCY" in the paragraph headings for—

(i) section 122(d)(2) (15 U.S.C. 1632(d)(2));

(ii) section 127(c)(5) (15 U.S.C. 1637(c)(5));

(iii) section 127(r)(3) (15 U.S.C. 1637(r)(3)); and

(iv) section 127A(a)(14) (15 U.S.C. 1637a(a)(14)).

(27) TRUTH IN SAVINGS ACT.—The Truth in Savings Act (12 U.S.C. 4301 et seq.) is amended—

(A) by amending paragraph (4) of section 274 (12 U.S.C. 4313(4)) to read as follows:

"(4) AGENCY.—The term 'Agency' means the Consumer Law Enforcement Agency.";

(B) by striking "National Credit Union Administration Bureau" each place such term appears and inserting "National Credit Union Administration Board"; and

(C) by striking "Bureau" each place such term appears and inserting "Agency".

SEC. 712. AUTHORITY OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

Section 1022 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512) is amended by adding at the end the following:

"(e) AUTHORITY OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS.—The Office of Information and Regulatory Affairs shall have the same duties and authorities with respect to the Consumer Law Enforcement Agency as the Office of Information and Regulatory Affairs has with respect to any other agency that is not an independent regulatory agency (as such terms are defined, respectively, under section 3502 of title 44, United States Code).".

SEC. 713. BRINGING THE AGENCY INTO THE REGULAR APPROPRIATIONS PROCESS.

Section 1017 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5497) is amended—

(1) in subsection (a)—

(A) by amending the heading of such subsection to read as follows: "BUDGET, FINANCIAL MANAGEMENT, AND AUDIT.—";

(B) by striking paragraphs (1), (2), and (3);

(C) by redesignating paragraphs (4) and (5) as paragraphs (1) and (2), respectively; and

(D) by striking subparagraphs (E) and (F) of paragraph (1), as so redesignated;

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as subsections (b) and (c), respectively; and

(4) in subsection (c), as so redesignated—

(A) by striking paragraphs (1), (2), and (3) and inserting the following:

"(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Agency for each of fiscal years 2017 and 2018 an amount equal to the aggregate amount of funds transferred by the Board of Governors to the Bureau of Consumer Financial Protection during fiscal year 2015."; and

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

SEC. 714. CONSUMER LAW ENFORCEMENT AGENCY INSPECTOR GENERAL REFORM.

(a) APPOINTMENT OF INSPECTOR GENERAL.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8G—

(A) in subsection (a)(2), by striking "and the Bureau of Consumer Financial Protection";

(B) in subsection (c), by striking "For purposes of implementing this section" and all that follows through the end of the subsection; and

(C) in subsection (g)(3), by striking "and the Bureau of Consumer Financial Protection"; and

(2) in section 12—

(A) in paragraph (1), by inserting "the Consumer Law Enforcement Agency;" after "the President of the Export-Import Bank;"; and

(B) in paragraph (2), by inserting "the Consumer Law Enforcement Agency," after "the Export-Import Bank,".

(b) REQUIREMENTS FOR THE INSPECTOR GENERAL FOR THE CONSUMER LAW ENFORCEMENT AGENCY.—

(1) ESTABLISHMENT.—Section 1011 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5491), as amended by section 311, is further amended by adding at the end the following:

"(i) INSPECTOR GENERAL.—There is established the position of the Inspector General of the Agency."; and

(2) HEARINGS.—Section 1016 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5496) is amended by inserting after subsection (c) the following:

"(d) ADDITIONAL REQUIREMENT FOR INSPECTOR GENERAL.—On a separate occasion from that described in subsection (a), the Inspector General of the Agency shall appear, upon invitation, before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b) and the reports required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).".

(3) PARTICIPATION IN THE COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—Section 989E(a)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by adding at the end the following:

"(J) The Consumer Law Enforcement Agency.".

(4) DEADLINE FOR APPOINTMENT.—Not later than 60 days after the date of the enactment of this Act, the President shall appoint an Inspector General for the Consumer Law Enforcement Agency in accordance with section 3 of the Inspector General Act of 1978 (5 U.S.C. App.).

(c) TRANSITION PERIOD.—The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall serve in that position until the confirmation of an Inspector General for the Consumer Law Enforcement Agency. At that time, the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall become the Inspector General of the Board of Governors of the Federal Reserve System.

SEC. 715. PRIVATE PARTIES AUTHORIZED TO COMPEL THE AGENCY TO SEEK SANCTIONS BY FILING CIVIL ACTIONS; ADJUDICATIONS DEEMED ACTIONS.

Section 1053 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5563) is amended by adding at the end the following:

"(f) PRIVATE PARTIES AUTHORIZED TO COMPEL THE AGENCY TO SEEK SANCTIONS BY FILING CIVIL ACTIONS.—

"(1) TERMINATION OF ADMINISTRATIVE PROCEEDING.—In the case of any person who is a party to a proceeding brought by the Agency under this section, to which chapter 5 of title 5, United States Code, applies, and against whom an order imposing a cease and desist order or a penalty may be issued at the conclusion of the proceeding, that person may, not later than 20 days after receiving notice of such proceeding, and at that person's discretion, require the Agency to terminate the proceeding.

"(2) CIVIL ACTION AUTHORIZED.—If a person requires the Agency to terminate a proceeding pursuant to paragraph (1), the Agency may bring a civil action against that person for the same remedy that might be imposed.

"(g) ADJUDICATIONS DEEMED ACTIONS.—Any administrative adjudication commenced under this section shall be deemed an 'action' for purposes of section 1054(g).".

SEC. 716. CIVIL INVESTIGATIVE DEMANDS TO BE APPEALED TO COURTS.

Section 1052 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5562) is amended—

(1) in subsection (c)—

(A) in paragraph (2), by inserting after "shall state" the following: "with specificity"; and

(B) by adding at the end the following:

"(14) MEETING REQUIREMENT.—The recipient of a civil investigative demand shall meet and confer with an Agency investigator within 30 calendar days after receipt of the demand to discuss and attempt to resolve all issues regarding compliance with the civil investigative demand, unless the Agency grants an extension requested by such recipient.";

(2) in subsection (f)—

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

"(1) IN GENERAL.—Not later than 45 days after the service of any civil investigative demand upon any person under subsection (c), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 45 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Agency investigator named in the demand, such person may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, a petition for an order modifying or setting aside the demand."; and

(B) in paragraph (2), by striking "at the Bureau"; and

(3) in subsection (h)—

(A) by striking "(1) IN GENERAL.—"; and

(B) by striking paragraph (2).

SEC. 717. AGENCY DUAL MANDATE AND ECONOMIC ANALYSIS.

(a) PURPOSE.—Section 1021(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5511(a)) is amended by adding at the end the following: "In addition, the Director shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of strengthening participation in markets by covered persons, without Government interference or subsidies, to increase competition and enhance consumer choice.".

(b) OFFICE OF ECONOMIC ANALYSIS.—

(1) IN GENERAL.—Section 1013 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493) is amended by adding at the end the following:

"(h) OFFICE OF ECONOMIC ANALYSIS.—

"(1) ESTABLISHMENT.—The Director shall, not later than the end of the 60-day period beginning on the date of the enactment of this subsection, establish an Office of Economic Analysis.

"(2) DIRECT REPORTING.—The head of the Office of Economic Analysis shall report directly to the Director.

"(3) REVIEW AND ASSESSMENT OF PROPOSED RULES AND REGULATIONS.—The Office of Economic Analysis shall—

"(A) review all proposed rules and regulations of the Agency;

"(B) assess the impact of such rules and regulations on consumer choice, price, and access to credit products; and

"(C) publish a report on such reviews and assessments in the Federal Register.

"(4) MEASURING EXISTING RULES AND REGULATIONS.—The Office of Economic Analysis shall—

"(A) review each rule and regulation issued by the Commission after 1, 2, 6, and 11 years;

"(B) measure the rule or regulation's success in solving the problem that the rule or regulation was intended to solve when issued; and

"(C) publish a report on such review and measurement in the Federal Register.

"(5) COST-BENEFIT ANALYSIS RELATED TO ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS.—The Office of Economic Analysis shall—

"(A) carry out a cost-benefit analysis of any proposed administrative enforcement action, civil lawsuit, or consent order of the Agency; and

"(B) assess the impact of such complaint, lawsuit, or order on consumer choice, price, and access to credit products.".

(2) CONSIDERATION OF REVIEW AND ASSESSMENT; RULEMAKING REQUIREMENTS.—Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended by adding at the end the following:

"(5) CONSIDERATION OF REVIEW AND ASSESSMENT BY THE OFFICE OF ECONOMIC ANALYSIS.—Before issuing any rule or regulation, the Director shall consider the review and assessment of such rule or regulation carried out by the Office of Economic Analysis.

"(6) IDENTIFICATION OF PROBLEMS AND METRICS FOR JUDGING SUCCESS.—

"(A) IN GENERAL.—The Director shall, in each proposed rulemaking of the Agency—

"(i) identify the problem that the particular rule or regulations is seeking to solve; and

"(ii) specify the metrics by which the Agency will measure the success of the rule or regulation in solving such problem.

"(B) REQUIRED METRICS.—The metrics specified under subparagraph (A)(ii) shall include a measurement of changes to consumer access to, and cost of, consumer financial products and services.".

(3) CONSIDERATION OF COST-BENEFIT REVIEW RELATED TO ADMINISTRATIVE ACTIONS.—The Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) is amended—

(A) in subtitle E of title X, by adding at the end the following:

"SEC. 1059. CONSIDERATION OF COST-BENEFIT ANALYSIS RELATED TO ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS.

"Before initiating any administrative enforcement action or civil lawsuit or entering into a consent order, the Director shall consider the cost-benefit analysis of such action, lawsuit, or order carried out by the Office of Economic Analysis."; and

(B) in the table of contents under section 1(b), by inserting after the item relating to section 1058 the following:

"Sec. 1059. Consideration of cost-benefit analysis related to administrative enforcement and civil actions.".

(c) AVOIDANCE OF DUPLICATIVE OR UNNECESSARY ANALYSES.—The Consumer Law Enforcement Agency may perform any of the analyses required by the amendments made by this section in conjunction with, or as part of, any other agenda or analysis required by any other provision of law, if such other agenda or analysis satisfies the provisions of this section.

SEC. 718. NO DEFERENCE TO AGENCY INTERPRETATION.

The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1022(b)(4)—

(A) by striking "(A) IN GENERAL.—"; and

(B) by striking subparagraph (B); and

(2) in section 1061(b)(5)(E)—

(A) by striking "affords to the—" and all that follows through "(i) Federal Trade Commission" and inserting "affords to the Federal Trade Commission";

(B) by striking "; or" and inserting a period; and

(C) by striking clause (ii).

Subtitle B—Administrative Enhancements

SEC. 721. ADVISORY OPINIONS.

Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)), as amended by section 717, is further amended by adding at the end the following:

"(7) ADVISORY OPINIONS.—

"(A) ESTABLISHING PROCEDURES.—

"(i) IN GENERAL.—The Director shall establish a procedure and, as necessary, promulgate rules to provide written opinions in response to inquiries concerning the conformance of specific conduct with Federal consumer financial law. In establishing the procedure, the Director shall consult with the prudential regulators and such other Federal departments and agencies as the Director determines appropriate, and obtain the views of all interested persons through a public notice and comment period.

"(ii) SCOPE OF REQUEST.—A request for an opinion under this paragraph must relate to specific proposed or prospective conduct by a covered person contemplating the proposed or prospective conduct.

"(iii) SUBMISSION.—A request for an opinion under this paragraph may be submitted to the Director either by or on behalf of a covered person.

"(iv) RIGHT TO WITHDRAW INQUIRY.—Any inquiry under this paragraph may be withdrawn at any time prior to the Director issuing an opinion in response to such inquiry, and any opinion based on an inquiry that has been withdrawn shall have no force or effect.

"(B) ISSUANCE OF OPINIONS.—

"(i) IN GENERAL.—The Director shall, within 90 days of receiving the request for an opinion under this paragraph, either—

"(I) issue an opinion stating whether the described conduct would violate Federal consumer financial law;

"(II) if permissible under clause (iii), deny the request; or

"(III) explain why it is not feasible to issue an opinion.

"(ii) EXTENSION.—Notwithstanding clause (i), if the Director determines that the Agency requires additional time to issue an opinion, the Director may make a single extension of the deadline of 90 days or less.

"(iii) DENIAL OF REQUESTS.—The Director shall not issue an opinion, and shall so inform the requestor, if the request for an opinion—

"(I) asks a general question of interpretation;

"(II) asks about a hypothetical situation;

"(III) asks about the conduct of someone other than the covered person on whose behalf the request is made;

"(IV) asks about past conduct that the covered person on whose behalf the request is made does not plan to continue in the future; or

"(V) fails to provide necessary supporting information requested by the Agency within a reasonable time established by the Agency.

"(iv) AMENDMENT AND REVOCATION.—An advisory opinion issued under this paragraph may be amended or revoked at any time.

"(v) PUBLIC DISCLOSURE.—An opinion rendered pursuant to this paragraph shall be placed in the Agency's public record 90 days after the requesting party has received the advice, subject to any limitations on public disclosure arising from statutory restrictions, Agency regulations, or the public interest. The Agency shall redact any personal, confidential, or identifying information about the covered person or any other persons mentioned in the advisory opinion, unless the covered person consents to such disclosure.

"(vi) REPORT TO CONGRESS.—The Agency shall, concurrent with the semi-annual report required under section 1016(b), submit information regarding the number of requests for an advisory opinion received, the subject of each request, the number of requests denied pursuant to clause (iii), and the time needed to respond to each request.

"(C) RELIANCE ON OPINION.—Any person may rely on an opinion issued by the Director pursuant to this paragraph that has not been amended or withdrawn. No liability under Federal consumer financial law shall attach to conduct consistent with an advisory opinion that had not been amended or withdrawn at the time the conduct was undertaken.

"(D) CONFIDENTIALITY.—Any document or other material that is received by the Agency or any other Federal department or agency in connection with an inquiry under this paragraph shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the 'Freedom of Information Act') and may not, except with the consent of the covered person making such inquiry, be made publicly available, regardless of whether the Director responds to such inquiry or the covered person withdraws such inquiry before receiving an opinion.

"(E) ASSISTANCE FOR SMALL BUSINESSES.—

"(i) IN GENERAL.—The Agency shall assist, to the maximum extent practicable, small businesses in preparing inquiries under this paragraph.

"(ii) SMALL BUSINESS DEFINED.—For purposes of this subparagraph, the term 'small business' has the meaning given the term 'small business concern' under section 3 of the Small Business Act (15 U.S.C. 632).

"(F) INQUIRY FEE.—

"(i) IN GENERAL.—The Director shall develop a system to charge a fee for each inquiry made under this paragraph in an amount sufficient, in the aggregate, to pay for the cost of carrying out this paragraph.

"(ii) NOTICE AND COMMENT.—Not later than 45 days after the date of the enactment of this paragraph, the Director shall publish a description of the fee system described in clause (i) in the Federal Register and shall solicit comments from the public for a period of 60 days after publication.

"(iii) FINALIZATION.—The Director shall publish a final description of the fee system and implement such fee system not later than 30 days after the end of the public comment period described in clause (ii).".

SEC. 722. REFORM OF CONSUMER FINANCIAL CIVIL PENALTY FUND.

(a) SEGREGATED ACCOUNTS.—Section 1017(b) of the Consumer Financial Protection Act of 2010, as redesignated by section 713, is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

"(2) SEGREGATED ACCOUNTS IN CIVIL PENALTY FUND.—

"(A) IN GENERAL.—The Agency shall establish and maintain a segregated account in the Civil Penalty Fund each time the Agency obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws.

"(B) DEPOSITS IN SEGREGATED ACCOUNTS.—The Agency shall deposit each civil penalty collected into the segregated account established for such penalty under subparagraph (A).".

(b) PAYMENT TO VICTIMS.—Paragraph (3) of section 1017(b) of such Act, as redesignated by subsection (a), is amended to read as follows:

"(3) PAYMENT TO VICTIMS.—

"(A) IN GENERAL.—

"(i) IDENTIFICATION OF CLASS.—Not later than 60 days after the date of deposit of amounts in a segregated account in the Civil Penalty Fund, the Agency shall identify the class of victims of the violation of Federal consumer financial laws for which such amounts were collected and deposited under paragraph (2).

"(ii) PAYMENTS.—The Agency, within 2 years after the date on which such class of victims is identified, shall locate and make payments from such amounts to each victim.

"(B) FUNDS DEPOSITED IN TREASURY.—

"(i) IN GENERAL.—The Agency shall deposit into the general fund of the Treasury any amounts remaining in a segregated account in the Civil Penalty Fund at the end of the 2-year period for payments to victims under subparagraph (A).

"(ii) IMPOSSIBLE OR IMPRACTICAL PAYMENTS.—If the Agency determines before the end of the 2-year period for payments to victims under subparagraph (A) that such victims cannot be located or payments to such victims are otherwise not practicable, the Agency shall deposit into the general fund of the Treasury the amounts in the segregated account in the Civil Penalty Fund.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to civil penalties collected after the date of enactment of this Act.

(2) AMOUNTS IN CONSUMER FINANCIAL CIVIL PENALTY FUND ON DATE OF ENACTMENT.—With respect to amounts in the Consumer Financial Civil Penalty Fund on the date of enactment of this Act that were not allocated for consumer education and financial literacy programs on or before September 30, 2015, the Consumer Law Enforcement Agency shall separate such amounts into segregated accounts in accordance with, and for purposes of, section 1017(d) of the Consumer Financial Protection Act of 2010, as amended by this section. The date of deposit of such amounts shall be deemed to be the date of enactment of this Act.

SEC. 723. AGENCY PAY FAIRNESS.

(a) IN GENERAL.—Section 1013(a)(2) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493(a)(2)) is amended to read as follows:

"(2) COMPENSATION.—The rates of basic pay for all employees of the Agency shall be set and adjusted by the Director in accordance with the General Schedule set forth in section 5332 of title 5, United States Code.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to service by an employee of the Consumer Law Enforcement Agency following the 90-day period beginning on the date of enactment of this Act.

SEC. 724. ELIMINATION OF MARKET MONITORING FUNCTIONS.

The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1021(c)—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively;

(2) in section 1022, by striking subsection (c); and

(3) in section 1026(b), by striking ", and to assess and detect risks to consumers and consumer financial markets".

SEC. 725. REFORMS TO MANDATORY FUNCTIONAL UNITS.

The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1013—

(A) in subsection (b)—

(i) in paragraph (1), by striking "shall establish" and inserting "may establish";

(ii) in paragraph (2), by striking "shall establish" and inserting "may establish"; and

(iii) paragraph (3)(D)—

(I) by striking "To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the" and inserting "The"; and

(II) by adding at the end the following: "Information collected under this paragraph may not be made publicly available.";

(B) in subsection (c)—

(i) in paragraph (1), by striking "shall establish" and inserting "may establish"; and

(ii) in paragraph (3), by striking "There is established the" and inserting "At any time when the Office of Fair Lending and Equal Opportunity exists within the Agency, there shall be a";

(C) in subsection (d)—

(i) in paragraph (1), by striking "shall establish" and inserting "may establish";

(ii) in paragraph (3)—

(I) in subparagraph (A), by inserting ", if such Office exists within the Agency," after "Community Affairs Office"; and

(II) in subparagraph (B), by striking "established by the Director" and inserting ", if established by the Director,"; and

(iii) in paragraph (4), by striking "Not later than 24 months after the designated transfer date, and annually thereafter," and inserting "Annually, at any time when the Office of Financial Education exists within the Agency,";

(D) in subsection (e)(1), by striking "shall establish" and inserting "may establish";

(E) by striking subsection (f);

(F) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively; and

(G) in subsection (f), as so redesignated—

(i) in paragraph (1)—

(I) by striking "Before the end of the 180-day period beginning on the designated transfer date, the Director shall" and inserting "The Director may"; and

(II) by striking "on protection from unfair, deceptive, and abusive practices and";

(ii) in paragraph (2), by striking "The Office" and inserting "At any time when the Office of Financial Protection for Older Americans exists within the Agency, the Office"; and

(iii) in paragraph (3)—

(I) in subparagraph (A)—

(aa) by striking clause (i);

(bb) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(cc) in clause (ii), as so redesignated, by striking "to respond to consumer problems caused by unfair, deceptive, or abusive practices";

(II) in subparagraph (B), by striking "and alert the Commission and State regulators of certifications or designations that are identified as unfair, deceptive, or abusive"; and

(III) in subparagraph (D)—

(aa) by striking clause (i); and

(bb) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively;

(2) in section 1029(e), by inserting after "Affairs," the following: "if established under this title,"; and

(3) in section 1035—

(A) in subsection (a), by striking "shall designate" and inserting "may designate"; and

(B) in subsection (b), by striking "The Secretary" and inserting "If the Secretary designates the Ombudsman under subsection (a), the Secretary".

SEC. 726. REPEAL OF MANDATORY ADVISORY BOARD.

(a) IN GENERAL.—Section 1014 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5494) is repealed.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the item relation to section 1014.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed as limiting the authority of the Director of the Consumer Law Enforcement Agency to establish advisory committees pursuant to the Federal Advisory Committee Act.

SEC. 727. ELIMINATION OF SUPERVISION AUTHORITY.

(a) IN GENERAL.—The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1002(15)(B)(ii)(I), by striking "examination or";

(2) in section 1013(a)(1)(B), by striking "compliance examiners, compliance supervision analysts,";

(3) in section 1016(c)—

(A) in paragraph (5), by striking "supervisory and"; and

(B) in paragraph (6), by striking "orders, and supervisory actions" and inserting "and orders";

(4) in section 1024—

(A) in the heading, by striking "**SUPERVISION OF**" and inserting "**AUTHORITY WITH RESPECT TO CERTAIN**";

(B) in subsection (a)—

(i) in paragraph (1)(B), by striking "as defined by rule in accordance with paragraph (2)" and inserting "as of the date of the enactment of the Financial CHOICE Act of 2017";

(ii) by striking paragraph (2);

(iii) by redesignating paragraph (3) as paragraph (2); and

(iv) in subparagraph (A) of paragraph (2), as so redesignated, by striking "1025(a) or";

(C) by striking subsection (b);

(D) by redesignating subsections (c), (d), (e), and (f) as subsections (b), (c), (d), and (e), respectively;

(E) in subsection (c), as so redesignated—

(i) in the heading, by striking "AND EXAMINATION AUTHORITY"; and

(ii) by striking ", conduct examinations," each place such term appears;

(F) in subsection (d), as so redesignated—

(i) by inserting "rulemaking and enforcement, but not supervisory," before "authority of the Bureau"; and

(ii) by striking "conducting any examination or requiring any report from a service provider subject to this subsection" and inserting "carrying out any authority pursuant to this subsection with respect to a service provider";

(5) by striking section 1025;

(6) in section 1026—

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

"(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is an insured depository institution or an insured credit union.";

(B) in subsection (b)(3), by striking "report of examination or related";

(C) by striking subsection (c);

(D) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(E) in subsection (d), as so redesignated—

(i) by striking "section 1025" and inserting "this section"; and

(ii) by striking "When conducting any examination or requiring any report from a service provider subject to this subsection" and inserting "In carrying out any authority pursuant to this subsection with respect to a service provider";

(7) in section 1027—

(A) by striking "supervisory," each place such term appears;

(B) in subsection (e)(1), by striking "supervisory or"; and

(C) in subsection (p), by striking "section 1024(c)(1)" and inserting "section 1024(b)(1)";

(8) in section 1034—

(A) by striking subsections (b) and (c); and

(B) by redesignating subsection (d) as subsection (b);

(9) in section 1053—

(A) in subsection (b)(1)(A), by striking "sections 1024, 1025, and 1026" and inserting "sections 1024 and 1026"; and

(B) in subsection (c)(3)(B)(ii)(II), by striking ", by examination or otherwise,";

(10) in section 1054(a), by striking "sections 1024, 1025, and 1026" and inserting "sections 1024 and 1026";

(11) in section 1061—

(A) in subsection (a)(1)—

(i) in subparagraph (A), by striking "; and" at the end and inserting a period; and

(ii) by striking subparagraph (B); and

(B) in subsection (c)—

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

"(1) EXAMINATION.—A transferor agency that is a prudential regulator shall have exclusive authority (relative to the Bureau) to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 1026(a).";

(ii) in paragraph (2)—

(I) by striking subparagraph (A); and

(II) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(12) in section 1063, by striking "sections 1024, 1025, and 1026" each place such term appears and inserting "sections 1024 and 1026"; and

(13) in section 1067, by striking subsection (e).

(b) HOME MORTGAGE DISCLOSURE ACT OF 1975.—Section 305(d) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804(d)) is amended by striking "examine and".

(c) OMNIBUS APPROPRIATIONS ACT, 2009.—Section 626 of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note) is repealed.

(d) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended—

(1) in the item relating to section 1024, by striking "SUPERVISION OF" and inserting "AUTHORITY WITH RESPECT TO CERTAIN"; and

(2) by striking the item relating to section 1025.

SEC. 728. TRANSFER OF OLD OTS BUILDING FROM OCC TO GSA.

Not later than 180 days after the date of enactment of this Act, the Comptroller of the Currency shall transfer administrative jurisdiction over the Federal property located at 1700 G Street, Northwest, in the District of Columbia to the Administrator of General Services.

SEC. 729. LIMITATION ON AGENCY AUTHORITY.

Section 1027 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5517) is amended—

(1) in subsection (g)(3)(A), by striking "may not exercise any rulemaking or enforcement authority" and inserting "may not exercise any rulemaking, enforcement, or other authority";

(2) in subsection (i)(1), by striking "shall have no authority to exercise any power to enforce this title" and inserting "may not exercise any rulemaking, enforcement, or other authority"; and

(3) in subsection (j)(1), by striking "shall have no authority to exercise any power to enforce this title" and inserting "may not exercise any rulemaking, enforcement, or other authority".

Subtitle C—Policy Enhancements

SEC. 731. CONSUMER RIGHT TO FINANCIAL PRIVACY.

(a) REQUIREMENT OF THE AGENCY TO OBTAIN PERMISSION BEFORE COLLECTING NONPUBLIC PERSONAL INFORMATION.—Section 1022 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512), as amended by section 724(3), is further amended by inserting after subsection (b) the following:

"(c) CONSUMER PRIVACY.—

"(1) IN GENERAL.—The Agency may not request, obtain, access, collect, use, retain, or disclose any nonpublic personal information about a consumer unless—

"(A) the Agency clearly and conspicuously discloses to the consumer, in writing or in an electronic form, what information will be requested, obtained, accessed, collected, used, retained, or disclosed; and

"(B) before such information is requested, obtained, accessed, collected, used, retained, or disclosed, the consumer informs the Agency that such information may be requested, obtained, accessed, collected, used, retained, or disclosed.

"(2) APPLICATION OF REQUIREMENT TO CONTRACTORS OF THE AGENCY.—Paragraph (1) shall apply to any person directed or engaged by the Agency to collect information to the extent such information is being collected on behalf of the Agency.

"(3) DEFINITION OF NONPUBLIC PERSONAL INFORMATION.—In this subsection, the term 'nonpublic personal information' has the meaning given the term in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809).".

(b) REMOVAL OF EXEMPTION FOR THE AGENCY FROM THE RIGHT TO FINANCIAL PRIVACY ACT.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by striking subsection (r).

SEC. 732. REPEAL OF COUNCIL AUTHORITY TO SET ASIDE AGENCY RULES AND REQUIREMENT OF SAFETY AND SOUNDNESS CONSIDERATIONS WHEN ISSUING RULES.

(a) REPEAL OF AUTHORITY.—

(1) IN GENERAL.—Section 1023 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5513) is hereby repealed.

(2) CONFORMING AMENDMENT.—Section 1022(b)(2)(C) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)(2)(C)) is amended by striking ", except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau".

(3) CLERICAL AMENDMENT.—The table of contents under section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the item relating to section 1023.

(b) SAFETY AND SOUNDNESS CHECK.—Section 1022(b)(2)(A) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)(2)(A)) is amended—

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by adding "and" at the end; and

(3) by adding at the end the following:

"(iii) the impact of such rule on the financial safety or soundness of an insured depository institution;".

SEC. 733. REMOVAL OF AUTHORITY TO REGULATE SMALL-DOLLAR CREDIT.

The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1024(a)(1)—

(A) in subparagraph (C), by adding "or" at the end;

(B) in subparagraph (D), by striking "; or" and inserting a period; and

(C) by striking subparagraph (E); and

(2) in section 1027, by adding at the end the following:

"(t) NO AUTHORITY TO REGULATE SMALL-DOLLAR CREDIT.—The Agency may not exercise any rulemaking, enforcement, or other authority with respect to payday loans, vehicle title loans, or other similar loans.".

SEC. 734. REFORMING INDIRECT AUTO FINANCING GUIDANCE.

(a) NULLIFICATION OF AUTO LENDING GUIDANCE.—Bulletin 2013–02 of the Bureau of Consumer Financial Protection (published March 21, 2013) shall have no force or effect.

(b) GUIDANCE REQUIREMENTS.—Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)), as amended by section 721, is further amended by adding at the end the following:

"(8) GUIDANCE ON INDIRECT AUTO FINANCING.—In proposing and issuing guidance primarily related to indirect auto financing, the Agency shall—

"(A) provide for a public notice and comment period before issuing the guidance in final form;

"(B) make available to the public, including on the website of the Agency, all studies, data, methodologies, analyses, and other information relied on by the Agency in preparing such guidance;

"(C) redact any information that is exempt from disclosure under paragraph (3), (4), (6), (7), or (8) of section 552(b) of title 5, United States Code;

"(D) consult with the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Justice; and

"(E) conduct a study on the costs and impacts of such guidance to consumers and women-owned, minority-owned, veteran-owned, and small businesses, including consumers and small businesses in rural areas.".

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to apply to guidance issued by the Consumer Law Enforcement Agency that is not primarily related to indirect auto financing.

SEC. 735. PROHIBITION OF GOVERNMENT PRICE CONTROLS FOR PAYMENT CARD TRANSACTIONS.

(a) IN GENERAL.—Section 1075 of the Consumer Financial Protection Act of 2010 is hereby repealed and the provisions of law amended by such section are revived or restored as if such section had not been enacted.

(b) CLERICAL AMENDMENT.—The table of contents under section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the item relating to section 1075.

SEC. 736. REMOVAL OF AGENCY UDAAP AUTHORITY.

(a) IN GENERAL.—The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1021(b)(2), by striking "unfair, deceptive, or abusive acts and practices and";

(2) by striking section 1031;

(3) in section 1036(a)—

(A) in paragraph (1)—

(i) by striking "provider" and all that follows through "to offer" and inserting "provider to offer";

(ii) by striking subparagraph (B); and

(B) in paragraph (2)(C), by striking "; or" at the end and inserting a period; and

(C) by striking paragraph (3); and

(4) in section 1061(b)(5)—

(A) in subparagraph (B), by striking clause (ii);

(B) by striking subparagraph (D); and

(C) by redesignating subparagraph (E) (as amended by section 718(2)) as subparagraph (D); and

(5) in section 1076(b)(2), by striking "determine—" and all that follows through "(B) provide for" and inserting "determine, provide for".

(b) TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.—Section 3(c) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended—

(1) in paragraph (1), by striking "; and" at the end and inserting a period;

(2) by striking paragraph (2); and

(3) by striking "subsection (a)—" and all that follows through "(1) shall" and inserting "subsection (a) shall".

(c) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the item relating to section 1031.

SEC. 737. PRESERVATION OF UDAP AUTHORITY FOR FEDERAL BANKING REGULATORS.

(a) IN GENERAL.—Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)) is amended to read as follows:

"(f) UNFAIR OR DECEPTIVE ACTS OR PRACTICES BY DEPOSITORY INSTITUTIONS.—

"(1) IN GENERAL.—In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by depository institutions, each Federal banking regulator shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices.

"(2) PROMULGATING SUBSTANTIALLY SIMILAR REGULATIONS.—Whenever the Commission prescribes a rule under subsection (a)(1)(B), then within 60 days after such rule takes effect each Federal banking regulator shall promulgate substantially similar regulations prohibiting acts or practices of depository institutions which are substantially similar to those prohibited by rules of the Commission and which impose substantially similar requirements, unless—

"(A) the Federal banking regulator finds that such acts or practices of depository institutions are not unfair or deceptive; or

"(B) the Board of Governors of the Federal Reserve System finds that implementation of similar regulations with respect to depository institutions would seriously conflict with essential monetary and payments systems

policies of such Board, and publishes any such finding, and the reasons therefor, in the Federal Register.

"(3) ENFORCEMENT.—

"(A) IN GENERAL.—Compliance with regulations prescribed under this subsection shall be enforced—

"(i) under section 8 of the Federal Deposit Insurance Act, with respect to a depository institution other than a Federal credit union; and

"(ii) under sections 120 and 206 of the Federal Credit Union Act, with respect to a Federal credit union.

"(B) DEEMING OF VIOLATION.—For the purpose of the exercise by a Federal banking regulator of the regulator's powers under any Act referred to in subparagraph (A), a violation of any regulation prescribed under this subsection shall be deemed to be a violation of a requirement imposed under that Act.

"(C) ENFORCEMENT THROUGH ANY EXISTING AUTHORITY.—In addition to its powers under any provision of law specifically referred to in subparagraph (A), each Federal banking regulator may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on the regulator by law.

"(4) RULE OF CONSTRUCTION.—The authority of the Board of Governors of the Federal Reserve System to issue regulations under this subsection does not impair the authority of any other Federal banking regulator to make rules respecting the regulator's own procedures in enforcing compliance with regulations prescribed under this subsection.

"(5) REPORT TO CONGRESS.—Each Federal banking regulator exercising authority under this subsection shall transmit to the Congress each year a detailed report on its activities under this subsection during the preceding calendar year.

"(6) DEFINITIONS.—For purposes of this Act:

"(A) BANK.—The term 'bank' means—

"(i) national banks and Federal branches and Federal agencies of foreign banks;

"(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

"(iii) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in clause (i) or (ii) and insured State branches of foreign banks.

"(B) DEPOSITORY INSTITUTION.—The term 'depository institution' means a bank, a savings and loan institution, or a Federal credit union.

"(C) FEDERAL BANKING REGULATOR.—The term 'Federal banking regulator'—

"(i) has the meaning given the term 'appropriate Federal banking agency' under section 3 of the Federal Deposit Insurance Act; and

"(ii) means the National Credit Union Administration, in the case of a Federal credit union.

"(D) FEDERAL CREDIT UNION.—The term 'Federal credit union' has the same meaning as in section 101 of the Federal Credit Union Act.

"(E) SAVINGS AND LOAN INSTITUTION.—The term 'savings and loan institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(F) OTHER TERMS.—The terms used in this paragraph that are not defined in this Act or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the meaning given to them in section 1(b) of the International Banking Act of 1978.".

(b) CONFORMING AMENDMENTS.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended—

(1) in section 6(j)(6), by striking "section 18(f)(3) (15 U.S.C. 57a(f)(3)), a Federal credit union described in section 18(f)(4) (15 U.S.C. 57a(f)(4))" and inserting "section 18(f), a Federal credit union described in section 18(f)";

(2) in section 21(b)(6)(C), by striking "section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)), or a Federal credit union described in section 18(f)(4) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(4))" and inserting "18(f), or a Federal credit union described in section 18(f)";

(3) by striking "section 18(f)(2)" each place such term appears and inserting "section 18(f)";

(4) by striking "section 18(f)(3)" each place such term appears and inserting "section 18(f)"; and

(5) by striking "section 18(f)(4)" each place such term appears and inserting "section 18(f)".

SEC. 738. REPEAL OF AUTHORITY TO RESTRICT ARBITRATION.

(a) IN GENERAL.—Section 1028 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5518) is hereby repealed.

(b) CLERICAL AMENDMENT.—The table of contents under section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the item relating to section 1028.

TITLE VIII—CAPITAL MARKETS IMPROVEMENTS

Subtitle A—SEC Reform, Restructuring, and Accountability

SEC. 801. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended by striking paragraphs (1) through (5) and inserting the following:

"(1) for fiscal year 2017, $1,555,000,000;

"(2) for fiscal year 2018, $1,605,000,000;

"(3) for fiscal year 2019, $1,655,000,000;

"(4) for fiscal year 2020, $1,705,000,000;

"(5) for fiscal year 2021, $1,755,000,000; and

"(6) for fiscal year 2022, $1,805,000,000.".

SEC. 802. REPORT ON UNOBLIGATED APPROPRIATIONS.

Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by adding at the end the following:

"(e) REPORT ON UNOBLIGATED APPROPRIATIONS.—If, at the end of any fiscal year, there remain unobligated any funds that were appropriated to the Commission for such fiscal year, the Commission shall, not later than 30 days after the last day of such fiscal year, submit to the Committee on Financial Services and the Committee on Appropriations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate a report stating the amount of such unobligated funds. If there is any material change in the amount stated in the report, the Commission shall, not later than 7 days after determining the amount of the change, submit to such committees a supplementary report stating the amount of and reason for the change.".

SEC. 803. SEC RESERVE FUND ABOLISHED.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by striking subsection (i).

SEC. 804. FEES TO OFFSET APPROPRIATIONS.

(a) SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

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

"(a) COLLECTION.—The Commission shall, in accordance with this section, collect transaction fees and assessments.";

(2) in subsection (i)—

(A) in paragraph (1)(A), by inserting "except as provided in paragraph (2)," before "shall"; and

(B) by striking paragraph (2) and inserting the following:

"(2) GENERAL REVENUE.—Any fees collected for a fiscal year pursuant to this section, sections 13(e) and 14(g) of this title, and section 6(b) of the Securities Act of 1933 in excess of the amount provided in appropriation Acts for collection for such fiscal year pursuant to such sections shall be deposited and credited as general revenue of the Treasury.";

(3) in subsection (j)—

(A) by striking "the regular appropriation to the Commission by Congress for such fiscal year" each place it appears and inserting "the target offsetting collection amount for such fiscal year"; and

(B) in paragraph (2), by striking "subsection (l)" and inserting "subsection (l)(2)"; and

(4) by striking subsection (l) and inserting the following:

"(l) DEFINITIONS.—For purposes of this section:

"(1) TARGET OFFSETTING COLLECTION AMOUNT.—The target offsetting collection amount for a fiscal year is—

"(A) for fiscal year 2017, $1,400,000,000; and

"(B) for each succeeding fiscal year, the target offsetting collection amount for the prior fiscal year, adjusted by the rate of inflation.

"(2) BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES.—The baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures products, and options on securities indexes (excluding a narrow-based security index)) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(b) SECTION 6(b) OF THE SECURITIES ACT OF 1933.—Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended—

(1) by striking "target fee collection amount" each place it appears and inserting "target offsetting collection amount";

(2) in paragraph (4), by striking the last sentence and inserting the following: "Subject to paragraphs (6)(B) and (7), an adjusted rate prescribed under paragraph (2) shall take effect on the later of—

"(A) the first day of the fiscal year to which such rate applies; or

"(B) five days after the date on which a regular appropriation to the Commission for such fiscal year is enacted.";

(3) in paragraph (5), by inserting "of the Securities Exchange Act of 1934" after "sections 13(e) and 14(g)";

(4) by redesignating paragraph (6) as paragraph (8);

(5) by inserting after paragraph (5) the following:

"(6) OFFSETTING COLLECTIONS.—Fees collected pursuant to this subsection for any fiscal year—

"(A) except as provided in section 31(i)(2) of the Securities Exchange Act of 1934, shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

"(B) except as provided in paragraph (7), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

"(7) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted."; and

(6) in subparagraph (A) of paragraph (8) (as so redesignated)—

(A) by striking the subparagraph heading and inserting "TARGET OFFSETTING COLLECTION AMOUNT.—"; and

(B) in the heading of the right column of the table, by striking "**fee**" and inserting "**offsetting**".

(c) SECTION 13(e) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended—

(1) by striking paragraph (5) and inserting the following:

"(5) OFFSETTING COLLECTIONS.—Fees collected pursuant to this subsection for any fiscal year—

"(A) except as provided in section 31(i)(2), shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

"(B) except as provided in paragraph (8), shall not be collected for any fiscal year except to the extent provided in advance in appropriations Acts."; and

(2) by adding at the end the following:

"(8) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.".

(d) SECTION 14(g) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(g)) is amended—

(1) by striking paragraph (5) and inserting the following:

"(5) OFFSETTING COLLECTIONS.—Fees collected pursuant to this subsection for any fiscal year—

"(A) except as provided in section 31(i)(2), shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

"(B) except as provided in paragraph (8), shall not be collected for any fiscal year except to the extent provided in advance in appropriations Acts.";

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7) the following:

"(8) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.".

(e) EFFECTIVE DATE.—The amendments made by this section—

(1) shall apply beginning on October 1, 2017, except that for fiscal year 2018, the Securities and Exchange Commission shall publish—

(A) the rates established under section 31 of the Securities Exchange Act of 1934, as amended by this section, not later than 30 days after the date on which an Act making a regular appropriation to the Commission for fiscal year 2018 is enacted; and

(B) the rate established under section 6(b) of the Securities Act of 1933, as amended by this section, not later than August 31, 2017; and

(2) shall not apply with respect to fees for any fiscal year before fiscal year 2018.

SEC. 805. COMMISSION RELOCATION FUNDING PROHIBITION.

The Securities and Exchange Commission may not obligate any funds for the purpose of constructing a new headquarters of the Commission.

SEC. 806. IMPLEMENTATION OF RECOMMENDATIONS.

Section 967 of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by adding at the end the following:

"(d) IMPLEMENTATION OF RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this subsection, the Securities and Exchange Commission shall complete an implementation of the recommendations contained in the report of the independent consultant issued under subsection (b) on March 10, 2011. To the extent that implementation of certain recommendations requires legislation, the Commission shall submit a report to Congress containing a request for legislation granting the Commission such authority it needs to fully implement such recommendations.".

SEC. 807. OFFICE OF CREDIT RATINGS TO REPORT TO THE DIVISION OF TRADING AND MARKETS.

Section 15E(p)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(p)(1)) is amended—

(1) in subparagraph (A), by striking "within the Commission" and inserting "within the Division of Trading and Markets"; and

(2) in subparagraph (B), by striking "report to the Chairman" and inserting "report to the head of the Division of Trading and Markets".

SEC. 808. OFFICE OF MUNICIPAL SECURITIES TO REPORT TO THE DIVISION OF TRADING AND MARKETS.

Section 979 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 78o–4a) is amended—

(1) in subsection (a), by inserting ", within the Division of Trading and Markets," after "There shall be in the Commission"; and

(2) in subsection (b), by striking "report to the Chairman" and inserting "report to the head of the Division of Trading and Markets".

SEC. 809. INDEPENDENCE OF COMMISSION OMBUDSMAN.

Section 4(g)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(g)(8)) is amended—

(1) in subparagraph (A), by striking "the Investor Advocate shall appoint" and all that follows through "Investor Advocate" and inserting "the Chairman shall appoint an Ombudsman, who shall report to the Commission"; and

(2) in subparagraph (D)—

(A) by striking "report to the Investor Advocate" and inserting "report to the Commission"; and

(B) by striking the last sentence.

SEC. 810. INVESTOR ADVISORY COMMITTEE IMPROVEMENTS.

Section 39 of the Securities Exchange Act of 1934 (15 U.S.C. 78pp) is amended—

(1) in subsection (a)(2)(B), by striking "submit" and inserting, "in consultation with the Small Business Capital Formation Advisory Committee established under section 40, submit";

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (C), by striking "and";

(ii) in subparagraph (D)(iv), by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

"(E) a member of the Small Business Capital Formation Advisory Committee who shall be a nonvoting member.";

(B) by amending paragraph (2) to read as follows:

"(2) TERM.—

"(A) LENGTH OF TERM FOR MEMBERS OF THE COMMITTEE.—Each member of the Committee appointed under paragraph (1), other than the Investor Advocate, shall serve for a term of 4 years.

"(B) LIMITATION ON MULTIPLE TERMS.—A member of the Committee may not serve for more than one term, except for the Investor Advocate, a representative of State securities commissions, and the member of the Small Business Capital Formation Advisory Committee."; and

(C) in paragraph (3), by striking "paragraph (1)(B)" and inserting "paragraph (1)";

(3) in subsection (c), by amending paragraph (2) to read as follows:

"(2) TERM.—

"(A) LENGTH OF TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

"(B) LIMITATION ON MULTIPLE TERMS.—A member elected under paragraph (1) may not serve for more than one term in the capacity for which the member was elected under paragraph (1)."; and

(4) by striking subsections (i) and (j).

SEC. 811. DUTIES OF INVESTOR ADVOCATE.

Section 4(g)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(g)(4)) is amended—

(1) in subparagraph (D)(ii), by striking "and";

(2) in subparagraph (E), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(F) not take a position on any legislation pending before Congress other than a legislative change proposed by the Investor Advocate pursuant to subparagraph (E);

"(G) consult with the Advocate for Small Business Capital Formation on proposed recommendations made under subparagraph (E); and

"(H) advise the Advocate for Small Business Capital Formation on issues related to small business investors.".

SEC. 812. ELIMINATION OF EXEMPTION OF SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE FROM FEDERAL ADVISORY COMMITTEE ACT.

Section 40 of the Securities Exchange Act of 1934 (as added by Public Law 114–284) is amended by striking subsection (h).

SEC. 813. INTERNAL RISK CONTROLS.

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

(1) by inserting after section 4G, as added by this Act, the following:

"SEC. 4H. INTERNAL RISK CONTROLS.

"(a) IN GENERAL.—Each of the following entities, in consultation with the Chief Economist, shall develop comprehensive internal risk control mechanisms to safeguard and govern the storage of all market data by such entity, all market data sharing agreements of such entity, and all academic research performed at such entity using market data:

"(1) The Commission.

"(2) Each national security association required to register under section 15A.

"(b) CONSOLIDATED AUDIT TRAIL.—The Commission may not approve a national market system plan pursuant to part 242.613 of title 17, Code of Federal Regulations (or any successor regulation), unless the operator of the consolidated audit

trail created by such plan has developed, in consultation with the Chief Economist, comprehensive internal risk control mechanisms to safeguard and govern the storage of all market data by such operator, all market data sharing agreements of such operator, and all academic research performed at such operator using market data.";

(2) in section 3(a), by redesignating the second paragraph (80) (relating to funding portals) as paragraph (81); and

(3) in section 3(a), by adding at the end the following:

"(82) CHIEF ECONOMIST.—The term 'Chief Economist' means the Director of the Division of Economic and Risk Analysis, or an employee of the Commission with comparable authority, as determined by the Commission.".

SEC. 814. APPLICABILITY OF NOTICE AND COMMENT REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT TO GUIDANCE VOTED ON BY THE COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4H, as added by this Act, the following:

"SEC. 4I. APPLICABILITY OF NOTICE AND COMMENT REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT TO GUIDANCE VOTED ON BY THE COMMISSION.

"The notice and comment requirements of section 553 of title 5, United States Code, shall also apply with respect to any Commission statement or guidance, including interpretive rules, general statements of policy, or rules of Commission organization, procedure, or practice, that has the effect of implementing, interpreting, or prescribing law or policy and that is voted on by the Commission.".

SEC. 815. LIMITATION ON PILOT PROGRAMS.

(a) IN GENERAL.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d), as amended by section 371(e), is further amended by adding at the end the following:

"(k) LIMITATION ON PILOT PROGRAMS.—

"(1) IN GENERAL.—Any pilot program established by self-regulatory organizations, either individually or jointly, and filed with the Commission, including under section 11A or 19, shall terminate after the end of the 5-year period beginning on the date that the Commission approved such program, unless the Commission issues a rule to permanently continue such program or approves such program on a permanent basis.

"(2) EXTENSION.—With respect to a particular pilot program described under paragraph (1), the Commission may extend the 5-year period described under such paragraph for an additional 3 years if the Commission determines such extension is necessary or appropriate in the public interest or for the protection of investors.

"(3) LACK OF STATUTORY AUTHORITY.—If, with respect to a pilot program described under paragraph (1), the Commission determines that the pilot program should continue permanently, but the Commission lacks sufficient statutory authority to permanently continue the program, the Commission shall, not later than 1 year before such pilot program is scheduled to terminate pursuant to paragraph (1), notify the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that the Commission believes the program should continue permanently but does not have sufficient statutory authority to continue the program.".

(b) TREATMENT OF EXISTING PILOT PROGRAMS.—For purposes of section 4(k) of Securities Exchange Act of 1934, as added by subsection (a), the date on which the Commission approved a pilot program that was in existence on the date of the enactment of this Act shall be deemed to be the date of the enactment of this Act.

SEC. 816. PROCEDURE FOR OBTAINING CERTAIN INTELLECTUAL PROPERTY.

(a) PERSONS UNDER SECURITIES ACT OF 1933.—Section 8 of the Securities Act of 1933 (15 U.S.C. 77h) is amended by adding at the end the following:

"(g) PROCEDURE FOR OBTAINING CERTAIN INTELLECTUAL PROPERTY.—The Commission is not authorized to compel under this title a person to produce or furnish source code, including algorithmic trading source code or similar intellectual property, to the Commission unless the Commission first issues a subpoena.".

(b) PERSONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by adding at the end the following:

"(e) PROCEDURE FOR OBTAINING CERTAIN INTELLECTUAL PROPERTY.—The Commission is not authorized to compel under this title a person to produce or furnish source code, including algorithmic trading source code or similar intellectual property, to the Commission unless the Commission first issues a subpoena.".

(c) INVESTMENT COMPANIES.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended by adding at the end the following:

"(e) PROCEDURE FOR OBTAINING CERTAIN INTELLECTUAL PROPERTY.—The Commission is not authorized to compel under this title an investment company to produce or furnish source code, including algorithmic trading source code or similar intellectual property, to the Commission unless the Commission first issues a subpoena.".

(d) INVESTMENT ADVISERS.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

(1) by adding at the end the following:

"(f) PROCEDURE FOR OBTAINING CERTAIN INTELLECTUAL PROPERTY.—The Commission is not authorized to compel under this title an investment adviser to produce or furnish source code, including algorithmic trading source code or similar intellectual property, to the Commission unless the Commission first issues a subpoena."; and

(2) in the second subsection (d), by striking "(d)" and inserting "(e)".

SEC. 817. PROCESS FOR CLOSING INVESTIGATIONS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall establish a process for closing investigations (including preliminary or informal investigations) that is designed to ensure that the Commission, in a timely manner—

(1) makes a determination of whether or not to institute an administrative or judicial action in a matter or refer the matter to the Attorney General for potential criminal prosecution; and

(2) if the Commission determines not to institute such an action or refer the matter to the Attorney General, informs the persons who are the subject of the investigation that the investigation is closed.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of the Commission to re-open an investigation if the Commission obtains new evidence after the investigation is closed, subject to any applicable statute of limitations.

SEC. 818. ENFORCEMENT OMBUDSMAN.

(a) IN GENERAL.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d), as amended by section 803, is further amended by adding at the end the following:

"(i) ENFORCEMENT OMBUDSMAN.—

"(1) ESTABLISHMENT.—The Commission shall have an Enforcement Ombudsman, who shall be appointed by and report directly to the Commission.

"(2) DUTIES.—The Enforcement Ombudsman shall—

"(A) act as a liaison between the Commission and any person who is the subject of an investigation (including a preliminary or informal investigation) by the Commission or an administrative or judicial action brought by the Commission in resolving problems that such persons may have with the Commission or the conduct of Commission staff; and

"(B) establish safeguards to maintain the confidentiality of communications between the persons described in subparagraph (A) and the Enforcement Ombudsman.

"(3) LIMITATION.—In carrying out the duties of the Enforcement Ombudsman under paragraph (2), the Enforcement Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this subsection shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

"(4) REPORT.—The Enforcement Ombudsman shall submit to the Commission and to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate an annual report that describes the activities and evaluates the effectiveness of the Enforcement Ombudsman during the preceding year.".

(b) DEADLINE FOR INITIAL APPOINTMENT.—The Securities and Exchange Commission shall appoint the initial Enforcement Ombudsman under subsection (i) of section 4 of the Securities Exchange Act of 1934, as added by subsection (a), not later than 180 days after the date of the enactment of this Act.

SEC. 819. ADEQUATE NOTICE.

Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following:

"(k) ADEQUATE NOTICE REQUIRED BEFORE BRINGING AN ENFORCEMENT ACTION.—

"(1) IN GENERAL.—No person shall be subject to an enforcement action by the Commission for an alleged violation of the securities laws or the rules and regulations issued thereunder if such person did not have adequate notice of such law, rule, or regulation.

"(2) PUBLISHING OF INTERPRETATION DEEMED ADEQUATE NOTICE.—With respect to an enforcement action, adequate notice of a securities law or a rule or regulation issued thereunder shall be deemed to have been provided to a person if the Commission approved a statement or guidance, in accordance with Section 4I, with respect to the conduct that is the subject of the enforcement action, prior to the time that the person engaged in the conduct that is the subject of the enforcement action.".

SEC. 820. ADVISORY COMMITTEE ON COMMISSION'S ENFORCEMENT POLICIES AND PRACTICES.

(a) ESTABLISHMENT.—Not later than 6 months after the date of the enactment of this Act, the Chairman shall establish an advisory committee on the Commission's enforcement policies and practices (in this section referred to as the "Committee").

(b) DUTIES.—

(1) ANALYSIS AND RECOMMENDATIONS.—

(A) IN GENERAL.—The Committee shall conduct an analysis of the policies and practices of the Commission relating to the enforcement of the securities laws and make recommendations to the Commission regarding changes to such policies and practices.

(B) SPECIFIC MATTERS INCLUDED.—In carrying out subparagraph (A), the Committee shall analyze and make recommendations to the Commission regarding matters including the following:

(i) How the Commission's enforcement objectives and strategies may be more effective.

(ii) The Commission's enforcement practices and procedures from the point of view of due process, the relationship of enforcement action to notice of legal requirements, the attribution of responsibility for violations, and the protection of reputation and rights of privacy.

(iii) The Commission's enforcement policies and practices in light of its statutory responsibility to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

(iv) The appropriate blend of regulation, publicity, and formal enforcement action and on methods of furthering voluntary compliance.

(v) Criteria for the selection and disposition of enforcement actions, the adequacy of sanctions authorized by law, and the suitability and effectiveness of sanctions imposed by the Commission proceedings.

(2) REPORT.—Not later than 1 year after the establishment of the Committee under subsection (a), the Committee shall submit to the Commission and the appropriate congressional committees a report containing the results of the analysis and the recommendations required by paragraph (1)(A).

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Committee shall be composed of not less than 3 and not greater than 7 members appointed by the Chairman.

(2) CHAIRPERSON.—The Chairperson of the Committee shall be designated by the Chairman at the time of appointment of the members.

(d) SUPPORT.—The Commission shall provide the Committee with the administrative, professional, and technical support required by the Committee to carry out its responsibilities under this section.

(e) TERMINATION OF COMMITTEE.—The Committee established by subsection (a) shall terminate on the date that the report required by subsection (b)(2) is submitted.

(f) CONSIDERATION AND ADOPTION OF RECOMMENDATIONS BY COMMISSION.—Not later than 180 days after the Committee submits the report required by subsection (b)(2), the Commission shall—

(1) consider the analysis and recommendations included in such report;

(2) adopt such recommendations, with any modifications, as the Commission considers appropriate; and

(3) submit to the appropriate congressional committees a report that—

(A) lists each recommendation included in such report that the Commission does not adopt or adopts with material modifications; and

(B) for each recommendation listed under subparagraph (A), explains why the Commission does not consider it appropriate or does not have sufficient authority to adopt the recommendation or to adopt the recommendation without material modification.

(g) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) CHAIRMAN.—The term "Chairman" means the Chairman of the Commission.

(3) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(4) SECURITIES LAWS.—The term "securities laws" has the meaning given such term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

SEC. 821. PROCESS TO PERMIT RECIPIENT OF WELLS NOTIFICATION TO APPEAR BEFORE COMMISSION STAFF IN-PERSON.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall establish a process under which, in any instance in which the Commission staff provides a written Wells notification to an individual informing the individual that the Commission staff has made a preliminary determination to recommend that the Commission bring an administrative or judicial action against the individual, the individual shall have the right to make an in-person presentation before the Commission staff concerning such recommendation and to be represented by counsel at such presentation, at the individual's own expense.

(b) ATTENDANCE BY COMMISSIONERS.—Such process shall provide that each Commissioner of the Commission, or a designee of the Commissioner, may attend any such presentation.

(c) REPORT BY COMMISSION STAFF.—Such process shall provide that, before any Commission vote on whether to bring the administrative or judicial action against the individual, the Commission staff shall provide to each Commissioner a written report on any such presentation, including any factual or legal arguments made by the individual and any supporting documents provided by the individual.

SEC. 822. PUBLICATION OF ENFORCEMENT MANUAL.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission shall approve, by vote of the Commission, and publish an updated manual that sets forth the policies and practices that the Commission will follow in the enforcement of the securities laws (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))). Such manual shall include policies and practices required by this Act, and by the amendments made by this Act, and shall be developed so as to ensure transparency in such enforcement and uniform application of such laws by the Commission.

(b) ENFORCEMENT PLAN AND REPORT.—Beginning on the date that is one year after the date of enactment of this Act, and each year thereafter, and the Securities and Exchange Commission shall transmit to Congress and publish on its Internet website an annual enforcement plan and report that shall—

(1) detail the priorities of the Commission with regard to enforcement and examination activities for the forthcoming year;

(2) report on the Commission's enforcement and examination activities for the previous year, including an assessment of how such activities comported with the priorities identified for that year pursuant to paragraph (1);

(3) contain an analysis of litigated decisions found not in favor of the Commission over the preceding year;

(4) contain a description of any emerging trends the Commission has focused on as part of its enforcement program, including whether and how the Commission has alerted or communicated with those who may be subject to the Commission's regulation of emerging trends;

(5) contain a description of legal theories or standards employed by the Commission in enforcement over the preceding year that had not previously been employed, and a summary justifying each such theory or standard; and

(6) provide an opportunity and mechanism for public comment.

SEC. 823. PRIVATE PARTIES AUTHORIZED TO COMPEL THE SECURITIES AND EXCHANGE COMMISSION TO SEEK SANCTIONS BY FILING CIVIL ACTIONS.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

"SEC. 41. PRIVATE PARTIES AUTHORIZED TO COMPEL THE COMMISSION TO SEEK SANCTIONS BY FILING CIVIL ACTIONS.

"(a) TERMINATION OF ADMINISTRATIVE PROCEEDING.—In the case of any person who is a party to a proceeding brought by the Commission under a securities law, to which section 554 of title 5, United States Code, applies, and against whom an order imposing a cease and desist order and a penalty may be issued at the conclusion of the proceeding, that person may, not later than 20 days after receiving notice of such proceeding, and at that person's discretion, require the Commission to terminate the proceeding.

"(b) CIVIL ACTION AUTHORIZED.—If a person requires the Commission to terminate a proceeding pursuant to subsection (a), the Commission may bring a civil action against that person for the same remedy that might be imposed.

"(c) STANDARD OF PROOF IN ADMINISTRATIVE PROCEEDING.—Notwithstanding any other provision of law, in the case of a proceeding brought by the Commission under a securities law, to which section 554 of title 5, United States Code, applies, a legal or equitable remedy may be imposed on the person against whom the proceeding was brought only on a showing by the Commission of clear and convincing evidence that the person has violated the relevant provision of law.".

SEC. 824. CERTAIN FINDINGS REQUIRED TO APPROVE CIVIL MONEY PENALTIES AGAINST ISSUERS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4E the following:

"SEC. 4F. CERTAIN FINDINGS REQUIRED TO APPROVE CIVIL MONEY PENALTIES AGAINST ISSUERS.

"The Commission may not seek against or impose on an issuer a civil money penalty for violation of the securities laws unless the publicly available text of the order approving the seeking or imposition of such penalty contains findings, supported by an analysis by the Division of Economic and Risk Analysis and certified by the Chief Economist, of whether—

"(1) the alleged violation resulted in direct economic benefit to the issuer; and

"(2) the penalty will harm the shareholders of the issuer.".

SEC. 825. REPEAL OF AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) UNDER SECURITIES ACT OF 1933.—Subsection (f) of section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is repealed.

(b) UNDER SECURITIES EXCHANGE ACT OF 1934.—Subsection (f) of section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is repealed.

SEC. 826. SUBPOENA DURATION AND RENEWAL.

Section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)) is amended—

(1) by inserting "SUBPOENA.—" after the enumerator;

(2) by striking "For the purpose of" and inserting the following:

"(1) IN GENERAL.—For the purpose of"; and

(3) by adding at the end the following:

"(2) OMNIBUS ORDERS OF INVESTIGATION.—

"(A) DURATION AND RENEWAL.—An omnibus order of investigation shall not be for an indefinite duration and may be renewed only by Commission action.

"(B) DEFINITION.—In paragraph (A), the term 'omnibus order of investigation' means an order of the Commission authorizing 1 of more members of the Commission or its staff to issue subpoenas under paragraph (1) to multiple persons in relation to a particular subject matter area.".

SEC. 827. ELIMINATION OF AUTOMATIC DISQUALIFICATIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended by this Act, is further amended by inserting after section 4F the following:

"SEC. 4G. ELIMINATION OF AUTOMATIC DISQUALIFICATIONS.

"(a) IN GENERAL.—Notwithstanding any other provision of law, a non-natural person may not be disqualified or otherwise made ineligible to use an exemption or registration provision, engage in an activity, or qualify for any similar treatment under a provision of the securities laws or the rules issued by the Commission under the securities laws by reason of having, or a person described in subsection (b) having, been convicted of any felony or misdemeanor or made the subject of any judicial or administrative order, judgment, or decree arising out of a governmental action (including an order, judgment, or decree agreed to in a settlement), or having, or a person described in subsection (b) having, been suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade, unless the Commission, by order, on the record after notice and an opportunity for hearing, makes a determination that such non-natural person should be so disqualified or otherwise made ineligible for purposes of such provision.

"(b) PERSON DESCRIBED.—A person is described in this subsection if the person is—

"(1) a natural person who is a director, officer, employee, partner, member, or shareholder of the non-natural person referred to in subsection (a) or is otherwise associated or affiliated with such non-natural person in any way; or

"(2) a non-natural person who is associated or affiliated with the non-natural person referred to in subsection (a) in any way.

"(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit any authority of the Commission, by order, on the record after notice and an opportunity for hearing, to prohibit a person from using an exemption or registration provision, engaging in an activity, or qualifying for any similar treatment under a provision of the securities laws, or the rules issued by the Commission under the securities laws, by reason of a circumstance referred to in subsection (a) or any similar circumstance.".

SEC. 828. DENIAL OF AWARD TO CULPABLE WHISTLEBLOWERS.

Section 21F(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–6(c)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (C), by striking "or" at the end;

(B) in subparagraph (D), by striking the period and inserting "; or"; and

(C) by adding at the end the following:

"(E) to any whistleblower who is responsible for, or complicit in, the violation of the securities laws for which the whistleblower provided information to the Commission."; and

(2) by adding at the end the following:

"(3) DEFINITION.—For purposes of paragraph (2)(E), a person is responsible for, or complicit in, a violation of the securities laws if, with the intent to promote or assist the violation, the person—

"(A) procures, induces, or causes another person to commit the offense;

"(B) aids or abets another person in committing the offense; or

"(C) having a duty to prevent the violation, fails to make an effort the person is required to make.".

SEC. 829. CONFIDENTIALITY OF RECORDS OBTAINED FROM FOREIGN SECURITIES AND LAW ENFORCEMENT AUTHORITIES.

Section 24(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(d)) is amended to read as follows:

"(d) RECORDS OBTAINED FROM FOREIGN SECURITIES AND LAW ENFORCEMENT AUTHORITIES.—Except as provided in subsection (g), the Commission shall not be compelled to disclose records obtained from a foreign securities authority, or from a foreign law enforcement authority as defined in subsection (f)(4), if—

"(1) the foreign securities authority or foreign law enforcement authority has in good faith determined and represented to the Commission that the records are confidential under the laws of the country of such authority; and

"(2) the Commission obtains such records pursuant to—

"(A) such procedure as the Commission may authorize for use in connection with the administration or enforcement of the securities laws; or

"(B) a memorandum of understanding.

For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.".

SEC. 830. CLARIFICATION OF AUTHORITY TO IMPOSE SANCTIONS ON PERSONS ASSOCIATED WITH A BROKER OR DEALER.

Section 15(b)(6)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)(i)) is amended by striking "enumerated" and all that follows and inserting "enumerated in subparagraph (A), (D), (E), (G), or (H) of paragraph (4) of this subsection;".

SEC. 831. COMPLAINT AND BURDEN OF PROOF REQUIREMENTS FOR CERTAIN ACTIONS FOR BREACH OF FIDUCIARY DUTY.

Section 36(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(b)) is amended by adding at the end the following:

"(7) In any such action brought by a security holder of a registered investment company on behalf of such company—

"(A) the complaint shall state with particularity all facts establishing a breach of fiduciary duty, and, if an allegation of any such facts is based on information and belief, the complaint shall state with particularity all facts on which that belief is formed; and

"(B) such security holder shall have the burden of proving a breach of fiduciary duty by clear and convincing evidence.".

SEC. 832. CONGRESSIONAL ACCESS TO INFORMATION HELD BY THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.

Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended—

(1) in subparagraph (A), by striking "subparagraphs (B) and (C)" and inserting "subparagraphs (B), (C) and (D)"; and

(2) by adding at the end the following:

"(D) AVAILABILITY TO THE CONGRESSIONAL COMMITTEES.—The Board shall make available to the Committees specified under section 101(h)—

"(i) such information as the Committees shall request; and

"(ii) with respect to any confidential or privileged information provided in response to a request under clause (i), including any information subject to section 104(g) and subparagraph (A), or any confidential or privileged information provided orally in response to such a request, such information shall maintain the protections provided in subparagraph (A), and shall retain its confidential and privileged status in the hands of the Board and the Committees.".

SEC. 833. ABOLISHING INVESTOR ADVISORY GROUP.

The Public Company Accounting Oversight Board shall abolish the Investor Advisory Group.

SEC. 834. REPEAL OF REQUIREMENT FOR PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD TO USE CERTAIN FUNDS FOR MERIT SCHOLARSHIP PROGRAM.

(a) IN GENERAL.—Section 109(c) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7219(c)) is amended by striking paragraph (2).

(b) CONFORMING AMENDMENTS.—Section 109 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7219) is amended—

(1) in subsection (c), by striking "USES OF FUNDS" and all that follows through "The budget" and inserting "USES OF FUNDS.—The budget"; and

(2) in subsection (f), by striking "subsection (c)(1)" and inserting "subsection (c)".

SEC. 835. REALLOCATION OF FINES FOR VIOLATIONS OF RULES OF MUNICIPAL SECURITIES RULEMAKING BOARD.

(a) IN GENERAL.—Section 15B(c)(9) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(9)) is amended to read as follows:

"(9) Fines collected for violations of the rules of the Board shall be deposited and credited as general revenue of the Treasury, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002 or section 21F of this title.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to fines collected after the date of enactment of this Act.

Subtitle B—Eliminating Excessive Government Intrusion in the Capital Markets

SEC. 841. REPEAL OF DEPARTMENT OF LABOR FIDUCIARY RULE AND REQUIREMENTS PRIOR TO RULEMAKING RELATING TO STANDARDS OF CONDUCT FOR BROKERS AND DEALERS.

(a) REPEAL OF DEPARTMENT OF LABOR FIDUCIARY RULE.—The final rule of the Department of Labor titled "Definition of the Term 'Fiduciary'; Conflict of Interest Rule—Retirement Investment Advice" and related prohibited transaction exemptions published April 8, 2016 (81 Fed. Reg. 20946) shall have no force or effect.

(b) STAY ON RULES DEFINING CERTAIN FIDUCIARIES.—After the date of enactment of this Act, the Secretary of Labor shall not prescribe any regulation under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) defining the circumstances under which an individual is considered a fiduciary until the date that is 60 days after the Securities and Exchange Commission issues a final rule relating to standards of conduct for brokers and dealers pursuant to the second subsection (k) of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o(k)).

(c) REQUIREMENT AFTER STAY.—If, after the stay described under subsection (b), the Secretary of Labor prescribes a regulation described under such subsection, the Secretary of Labor shall prescribe a substantially identical definition of what constitutes fiduciary investment advice and impose substantially identical standards of care and conditions as the Securities and Exchange Commission has imposed on brokers, dealers, or investment advisers.

(d) REQUIREMENTS PRIOR TO RULEMAKING RELATING TO STANDARDS OF CONDUCT FOR BROKERS AND DEALERS.—The second subsection (k) of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o(k)), as added by section 913(g)(1) of the

Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.), is amended by adding at the end the following:

"(3) REQUIREMENTS PRIOR TO RULEMAKING.—The Commission shall not promulgate a rule pursuant to paragraph (1) before providing a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing whether—

"(A) retail investors (and such other customers as the Commission may provide) are being harmed due to brokers or dealers operating under different standards of conduct than those that apply to investment advisors under section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11);

"(B) alternative remedies will reduce any confusion or harm to retail investors due to brokers or dealers operating under different standards of conduct than those standards that apply to investment advisors under section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11), including—

"(i) simplifying the titles used by brokers, dealers, and investment advisers; and

"(ii) enhancing disclosure surrounding the different standards of conduct currently applicable to brokers, dealers, and investment advisers;

"(C) the adoption of a uniform fiduciary standard of conduct for brokers, dealers, and investment advisors would adversely impact the commissions of brokers and dealers, the availability of proprietary products offered by brokers and dealers, and the ability of brokers and dealers to engage in principal transactions with customers; and

"(D) the adoption of a uniform fiduciary standard of conduct for brokers or dealers and investment advisors would adversely impact retail investor access to personalized and cost-effective investment advice, recommendations about securities, or the availability of such advice and recommendations.

"(4) ECONOMIC ANALYSIS.—The Commission's conclusions contained in the report described in paragraph (3) shall be supported by economic analysis.

"(5) REQUIREMENTS FOR PROMULGATING A RULE.—The Commission shall publish in the Federal Register alongside the rule promulgated pursuant to paragraph (1) formal findings that such rule would reduce confusion or harm to retail customers (and such other customers as the Commission may by rule provide) due to different standards of conduct applicable to brokers, dealers, and investment advisors.

"(6) REQUIREMENTS UNDER INVESTMENT ADVISERS ACT OF 1940.—In proposing rules under paragraph (1) for brokers or dealers, the Commission shall consider the differences in the registration, supervision, and examination requirements applicable to brokers, dealers, and investment advisors.".

SEC. 842. EXEMPTION FROM RISK RETENTION REQUIREMENTS FOR NONRESIDENTIAL MORTGAGE.

(a) IN GENERAL.—Section 15G of the Securities Exchange Act of 1934 (15 U.S.C. 78o–11) is amended—

(1) in subsection (a)—

(A) in paragraph (3)(B), by striking "and" at the end;

(B) in paragraph (4)(B), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(5) the term 'asset-backed security' refers only to an asset-backed security that is comprised wholly of residential mortgages.";

(2) in subsection (b)—

(A) by striking paragraph (1); and

(B) by striking "(2) RESIDENTIAL MORTGAGES.—";

(3) by striking subsection (h) and redesignating subsection (i) as subsection (h); and

(4) in subsection (h) (as so redesignated)—

(A) by striking "effective—" and all that follows through "(1) with respect to" and inserting "effective with respect to";

(B) in paragraph (1), by striking "; and" and inserting a period; and

(C) by striking paragraph (2).

(b) CONFORMING AMENDMENT.—Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking subsection (c).

SEC. 843. FREQUENCY OF SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

Section 14A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n–1(a)) is amended—

(1) in paragraph (1), by striking "Not less frequently than once every 3 years" and inserting "Each year in which there has been a material change to the compensation of executives of an issuer from the previous year"; and

(2) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

SEC. 844. SHAREHOLDER PROPOSALS.

(a) RESUBMISSION THRESHOLDS.—The Securities and Exchange Commission shall revise section 240.14a–8(i)(12) of title 17, Code of Federal Regulations to—

(1) in paragraph (i), adjust the 3 percent threshold to 6 percent;

(2) in paragraph (ii), adjust the 6 percent threshold to 15 percent; and

(3) in paragraph (iii), adjust the 10 percent threshold to 30 percent.

(b) HOLDING REQUIREMENT.—The Securities and Exchange Commission shall revise the holding requirement for a shareholder to be eligible to submit a shareholder proposal to an issuer in section 240.14a–8(b)(1) of title 17, Code of Federal Regulations, to—

(1) eliminate the option to satisfy the holding requirement by holding a certain dollar amount;

(2) require the shareholder to hold 1 percent of the issuer's securities entitled to be voted on the proposal, or such greater percentage as determined by the Commission; and

(3) adjust the 1 year holding period to 3 years.

(c) SHAREHOLDER PROPOSALS ISSUED BY PROXIES.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following:

"(j) SHAREHOLDER PROPOSALS BY PROXIES NOT PERMITTED.—An issuer may not include in its proxy materials a shareholder proposal submitted by a person in such person's capacity as a proxy, representative, agent, or person otherwise acting on behalf of a shareholder.".

SEC. 845. PROHIBITION ON REQUIRING A SINGLE BALLOT.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following:

"(k) PROHIBITION ON REQUIRING A SINGLE BALLOT.—The Commission may not require that a solicitation of a proxy, consent, or authorization to vote a security of an issuer in an election of members of the board of directors of the issuer be made using a single ballot or card that lists both individuals nominated by (or on behalf of) the issuer and individuals nominated by (or on behalf of) other proponents and permits the person granting the proxy, consent, or authorization to select from among individuals in both groups.".

SEC. 846. REQUIREMENT FOR MUNICIPAL ADVISOR FOR ISSUERS OF MUNICIPAL SECURITIES.

Section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(d)) is amended by adding at the end the following:

"(3) An issuer of municipal securities shall not be required to retain a municipal advisor prior to issuing any such securities.".

SEC. 847. SMALL ISSUER EXEMPTION FROM INTERNAL CONTROL EVALUATION.

Section 404(c) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(c)) is amended to read as follows:

"(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that has total market capitalization of less than $500,000,000, nor to any issuer that is a depository institution with assets of less than $1,000,000,000.".

SEC. 848. STREAMLINING OF APPLICATIONS FOR AN EXEMPTION FROM THE INVESTMENT COMPANY ACT OF 1940.

Section 6(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(c)) is amended—

(1) by striking "(c) The Commission" and inserting the following:

"(c) GENERAL EXEMPTIVE AUTHORITY.—

"(1) IN GENERAL.—The Commission"; and

(2) by adding at the end the following:

"(2) APPLICATION PROCESS.—

"(A) IN GENERAL.—A person who wishes to receive an exemption from the Commission pursuant to paragraph (1) shall file an application with the Commission in such form and manner and containing such information as the Commission may require.

"(B) PUBLICATION; REJECTION OF INVALID APPLICATIONS.—

"(i) IN GENERAL.—Not later than the end of the 5-day period beginning on the date that the Commission receives an application under subparagraph (A), the Commission shall either—

"(I) publish the application, including by publication on the website of the Commission; or

"(II) if the Commission determines that the application does not comply with the proper form, manner, or information requirements described under subparagraph (A), reject such application and notify the applicant of the specific reasons the application was rejected.

"(ii) FAILURE TO PUBLISH APPLICATION.—If the Commission does not reject an application under clause (i)(II), but fails to publish the application by the end of the time period specified under clause (i), such application shall be deemed to have been published on the date that is the end of such time period.

"(3) DETERMINATION BY COMMISSION.—

"(A) IN GENERAL.—Not later than 45 days after the date that the Commission publishes an application pursuant to paragraph (2)(B), the Commission shall, by order—

"(i) approve the application;

"(ii) if the Commission determines that the application would have been approved had the applicant provided additional supporting documentation or made certain amendments to the application—

"(I) provide the applicant with the specific additional supporting documentation or amendments that the Commission believes are necessary for the applicant to provide in order for the application to be approved; and

"(II) request that the applicant withdraw the application and resubmit the application with such additional supporting documentation and amendments; or

"(iii) deny the application.

"(B) EXTENSION OF TIME PERIOD.—The Commission may extend the time period described under subparagraph (A) by not more than an additional 45 days, if—

"(i) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

"(ii) the applicant consents to the longer period.

"(C) TIME PERIOD FOR WITHDRAWAL.—If the Commission makes a request under subparagraph (A)(ii) for an applicant to withdraw an application, such application shall be deemed to be denied if the applicant informs the Commission that the applicant will not withdraw the application or if the applicant does not withdraw the application before the end of the 30-day period beginning on the date the Commission makes such request.

"(4) PROCEEDINGS; NOTICE AND HEARING.—If an application is denied pursuant to paragraph (3), the Commission shall provide the applicant with—

"(A) a written explanation for why the application was not approved; and

"(B) an opportunity for hearing, if requested by the applicant not later than 20 days after the date of such denial, with such hearing to be commenced not later than 30 days after the date of such denial.

"(5) RESULT OF FAILURE TO INSTITUTE OR COMMENCE PROCEEDINGS.—An application shall be deemed to have been approved by the Commission, if—

"(A) the Commission fails to either approve, request the withdrawal of, or deny the application, as required under paragraph (3)(A), within the time period required under paragraph (3)(A), as such time period may have been extended pursuant to paragraph (3)(B); or

"(B) the applicant requests an opportunity for hearing, pursuant to paragraph (4)(B), but the Commission does not commence such hearing within the time period required under paragraph (4)(B).

"(6) RULEMAKING.—Not later than 180 days after the date of enactment of this paragraph, the Commission shall issue rules to carry out this subsection.".

SEC. 849. RESTRICTION ON RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION.

Section 10D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–4(b)(2)) is amended by inserting before the period the following: ", where such executive officer had control or authority over the financial reporting that resulted in the accounting restatement".

SEC. 850. EXEMPTIVE AUTHORITY FOR CERTAIN PROVISIONS RELATING TO REGISTRATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) is amended by adding at the end the following:

"(w) COMMISSION EXEMPTIVE AUTHORITY.—The Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or uncon-

ditionally exempt any person from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent it determines that such rule, regulation, or requirement is creating a barrier to entry into the market for nationally recognized statistical rating organizations or impeding competition among such organizations, or that such an exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.".

SEC. 851. RISK-BASED EXAMINATIONS OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

Section 15E(p)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(p)(3)) is amended—

(1) in subparagraph (A)—

(A) in the heading, by striking "ANNUAL" and inserting "RISK-BASED";

(B) by striking "an examination" and inserting "examinations"; and

(C) by striking "at least annually"; and

(2) in subparagraph (B), in the matter preceding clause (i), by inserting ", as appropriate," after "Each examination under subparagraph (A) shall include".

SEC. 852. TRANSPARENCY OF CREDIT RATING METHODOLOGIES.

Section 15E(s) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(s)) is amended—

(1) in paragraph (2)(B), by inserting before the semicolon the following: "rated by the nationally recognized statistical rating agency"; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ix), by inserting before the period the following: ", except that the Commission may not require the inclusion of references to statutory or regulatory requirements or statutory provision headings or enumerators for any specific disclosure";

(B) in subparagraph (B)(iv), by inserting before the period the following: ", except that the Commission may not require the inclusion of references to statutory or regulatory requirements or statutory provision headings or enumerators for any specific disclosure"; and

(C) by adding at the end the following:

"(C) NO MANDATE ON THE ORGANIZATION OF DISCLOSURES.—The Commission may not mandate the specific organization of the disclosures required under this paragraph.".

SEC. 853. REPEAL OF CERTAIN ATTESTATION REQUIREMENTS RELATING TO CREDIT RATINGS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) is amended—

(1) in subsection (c)(3)(B)—

(A) in clause (i), by adding "and" at the end;

(B) in clause (ii), by striking "; and" and inserting a period; and

(C) by striking clause (iii); and

(2) in subsection (q)(2)—

(A) in subparagraph (D), by adding "and" at the end;

(B) in subparagraph (E), by striking "; and" and inserting a period; and

(C) by striking subparagraph (F).

SEC. 854. LOOK-BACK REVIEW BY NRSRO.

Section 15E(h)(4)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(h)(4)(A)) is amended—

(1) by striking "Each nationally" and inserting the following:

"(i) IN GENERAL.—Each nationally";

(2) by striking "underwriter" and inserting "lead underwriter";

(3) by striking "in any capacity";

(4) by striking "during the 1-year period preceding the date an action was taken with respect to the credit rating";

(5) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and adjusting the margin of such subclauses accordingly;

(6) in subclause (I), as so redesignated, by inserting before the semicolon the following: "during the 1-year period preceding the departure of the employee from the nationally recognized statistical rating organization"; and

(7) by adding at the end the following:

"(ii) MAINTENANCE OF RATINGS ACTIONS.—In the case of maintenance of ratings actions, the requirement under clause (i) shall only apply to employees of a person subject to a credit rating of the nationally recognized statistical rating organization or an issuer of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization.".

SEC. 855. APPROVAL OF CREDIT RATING PROCEDURES AND METHODOLOGIES.

Section 15E(r)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(r)(1)(A)) is amended by inserting ", or the Chief Credit Officer" after "performing a function similar to that of a board".

SEC. 856. EXCEPTION FOR PROVIDING CERTAIN MATERIAL INFORMATION RELATING TO A CREDIT RATING.

Section 15E(h)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(h)(3)) is amended by adding at the end the following:

"(C) EXCEPTION FOR PROVIDING CERTAIN MATERIAL INFORMATION.—Rules issued under this paragraph may not prohibit a person who participates in sales or marketing of a product or service of a nationally recognized statistical rating organization from providing material information, or information believed in good faith to be material, to the issuance or maintenance of a credit rating to a person who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, so long as the information provided is not intended to influence the determination of a credit rating, or the procedures or methodologies used to determine credit ratings.".

SEC. 857. REPEALS.

(a) REPEALS.—The following provisions of title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted:

(1) Section 912.
(2) Section 914.
(3) Section 917.
(4) Section 918.
(5) Section 919A.
(6) Section 919B.
(7) Section 919C.
(8) Section 921.
(9) Section 929T.
(10) Section 929X.
(11) Section 929Y.
(12) Section 929Z.
(13) Section 931.
(14) Section 933.
(15) Section 937.
(16) Section 939B.
(17) Section 939C.
(18) Section 939D.
(19) Section 939E.
(20) Section 939F.
(21) Section 939G.
(22) Section 939H.
(23) Section 946.
(24) Subsection (b) of section 953.
(25) Section 955.
(26) Section 956.
(27) Section 964.
(28) Section 965.
(29) Section 968.
(30) Section 971.
(31) Section 972.
(32) Section 976.
(33) Section 977.
(34) Section 978.
(35) Section 984.
(36) Section 989.
(37) Section 989A.
(38) Section 989F.
(39) Subsection (b) of section 989G.
(40) Section 989I.

(b) CONFORMING AMENDMENTS.—The Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301) is amended—

(1) in the table of contents in section 1(b), by striking the items relating to the sections described under paragraphs (1) through (23), (25) through (38), and (40) of subsection (a);

(2) in section 953, by striking "(a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—"; and

(3) in section 989G, by striking "(a) EXEMPTION.—".

SEC. 858. EXEMPTION OF AND REPORTING BY PRIVATE EQUITY FUND ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

"(o) EXEMPTION OF AND REPORTING BY PRIVATE EQUITY FUND ADVISERS.—

"(1) IN GENERAL.—Except as provided in this subsection, no investment adviser shall be subject to the registration or reporting requirements of this title with respect to the provision of investment advice relating to a private equity fund.

"(2) MAINTENANCE OF RECORDS AND ACCESS BY COMMISSION.—Not later than 6 months after the date of enactment of this subsection, the Commission shall issue final rules—

"(A) to require investment advisers described in paragraph (1) to maintain such records and provide to the Commission such annual or other reports as the Commission, taking into account fund size, governance, investment strategy, risk, and other factors, determines necessary and appropriate in the public interest and for the protection of investors; and

"(B) to define the term 'private equity fund' for purposes of this subsection.".

SEC. 859. RECORDS AND REPORTS OF PRIVATE FUNDS.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

(1) in section 204(b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "investors," and all that follows and inserting "investors.";

(ii) by striking subparagraph (B); and

(iii) by striking "this title—" and all that follows through "to maintain" and inserting "this title to maintain";

(B) in paragraph (3)(H)—

(i) by striking ", in consultation with the Council,"; and

(ii) by striking "or for the assessment of systemic risk";

(C) in paragraph (4), by striking ", or for the assessment of systemic risk";

(D) in paragraph (5), by striking "or for the assessment of systemic risk";

(E) in paragraph (6)(A)(ii), by striking ", or for the assessment of systemic risk";

(F) by striking paragraph (7) and redesignating paragraphs (8) through (11) as paragraphs (7) through (10), respectively; and

(G) in paragraph (8) (as so redesignated), by striking "paragraph (8)" and inserting "paragraph (7)"; and

(2) in section 211(e)—

(A) by striking "after consultation with the Council but"; and

(B) by striking "subsection 204(b)" and inserting "section 204(b)".

SEC. 860. DEFINITION OF ACCREDITED INVESTOR.

(a) IN GENERAL.—Section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)) is amended—

(1) by redesignating clauses (i) and (ii) as subparagraphs (A) and (F), respectively; and

(2) in subparagraph (A) (as so redesignated), by striking "; or" at the end and inserting a semicolon, and inserting after such subparagraph the following:

"(B) any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds $1,000,000 (which amount, along with the amounts set forth in subparagraph (C), shall be adjusted for inflation by the Commission every 5 years to the nearest $10,000 to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics) where, for purposes of calculating net worth under this subparagraph—

"(i) the person's primary residence shall not be included as an asset;

"(ii) indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

"(iii) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;

"(C) any natural person who had an individual income in excess of $200,000 in each of the 2 most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

"(D) any natural person who, by reason of their net worth or income, is an accredited investor under section 230.215 of title 17, Code of Federal Regulations (as in effect on the day before the date of enactment of this subparagraph);

"(E) any natural person who is currently licensed or registered as a broker or investment adviser by the Commission, the Financial Industry Regulatory Authority, or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), or the securities division of a State or the equivalent State division responsible for licensing or registration of individuals in connection with securities activities;

"(F) any natural person the Commission determines, by regulation, to have demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a particular investment, and whose education or job experience is verified by the Financial Industry Regulatory Authority or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934); or".

(b) REPEAL.—

(1) IN GENERAL.—Section 413 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203) is hereby repealed.

(2) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the items relating to section 413.

SEC. 861. REPEAL OF CERTAIN PROVISIONS REQUIRING A STUDY AND REPORT TO CONGRESS.

(a) REPEAL.—The following provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act are repealed:

(1) Section 412.
(2) Section 415.
(3) Section 416.
(4) Section 417.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the items relating to sections 412, 415, 416, and 417.

SEC. 862. REPEAL.

(a) REPEAL.—The following sections of title XV of the Dodd-Frank Wall Street Reform and Consumer Protection Act are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted:

(1) Section 1502.
(2) Section 1503.
(3) Section 1504.
(4) Section 1505.
(5) Section 1506.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the items relating to sections 1502, 1503, 1504, 1505, and 1506.

Subtitle C—Harmonization of Derivatives Rules

SEC. 871. COMMISSIONS REVIEW AND HARMONIZATION OF RULES RELATING TO THE REGULATION OF OVER-THE-COUNTER SWAPS MARKETS.

The Securities and Exchange Commission and the Commodity Futures Trading Commission shall review each rule, order, and interpretive guidance issued by either such Commission pursuant to title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8301 et seq.) and, where the Commissions find inconsistencies in any such rules, orders, or interpretive guidance, shall jointly issue new rules, orders, or interpretive guidance to resolve such inconsistencies.

SEC. 872. TREATMENT OF TRANSACTIONS BETWEEN AFFILIATES.

(a) COMMODITY EXCHANGE ACT.—Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) is amended by adding at the end the following:

"(G) TREATMENT OF SWAP TRANSACTIONS BETWEEN AFFILIATES.—

"(i) EXEMPTION FROM SWAP RULES.—Except as provided under clause (ii), the Commission may not regulate a swap under this Act if all of the following apply to such swap:

"(I) AFFILIATION.—One counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, or a third party, directly or indirectly, holds a majority ownership interest in both counterparties.

"(II) FINANCIAL STATEMENTS.—The affiliated counterparty that holds the majority interest in the other counterparty or the third party that, directly or indirectly, holds the majority interests in both affiliated counterparties, reports its financial statements on a consolidated basis under generally accepted accounting principles or International Financial Reporting Standards, or other similar standards, and the financial statements include the financial results of the majority-owned affiliated counterparty or counterparties.

"(ii) REQUIREMENTS FOR EXEMPTED SWAPS.—With respect to a swap described under clause (i):

"(I) REPORTING REQUIREMENT.—If at least one counterparty is a swap dealer or major swap participant, that counterparty shall report the swap pursuant to section 4r, within such time period as the Commission may by rule or regulation prescribe—

"(aa) to a swap data repository; or

"(bb) if there is no swap data repository that would accept the agreement, contract or transaction, to the Commission.

"(II) RISK MANAGEMENT REQUIREMENT.—If at least one counterparty is a swap dealer or major swap participant, the swap shall be subject to a centralized risk management program pursuant to section 4s(j) that is reasonably designed to monitor and to manage the risks associated with the swap.

"(III) ANTI-EVASION REQUIREMENT.—The swap shall not be structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 721(c) of such Act.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)) is amended by inserting before subsection (b) the following:

"(F) TREATMENT OF SECURITY-BASED SWAP TRANSACTIONS BETWEEN AFFILIATES.—

"(i) EXEMPTION FROM SECURITY-BASED SWAP RULES.—Except as provided under clause (ii), the Commission may not regulate a security-based swap under this Act if all of the following apply to such security-based swap:

"(I) AFFILIATION.—One counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, or a third party, directly or indirectly, holds a majority ownership interest in both counterparties.

"(II) FINANCIAL STATEMENTS.—The affiliated counterparty that holds the majority interest in the other counterparty or the third party that, directly or indirectly, holds the majority interests in both affiliated counterparties, reports its financial statements on a consolidated basis under generally accepted accounting principles or International Financial Reporting Standards, or other similar standards, and the financial statements include the financial results of the majority-owned affiliated counterparty or counterparties.

"(ii) REQUIREMENTS FOR EXEMPTED SECURITY-BASED SWAPS.—With respect to a security-based swap described under clause (i):

"(I) REPORTING REQUIREMENT.—If at least one counterparty is a security-based swap dealer or major security-based swap participant, that counterparty shall report the security-based swap pursuant to section 13A, within such time period as the Commission may by rule or regulation prescribe—

"(aa) to a security-based swap data repository; or

"(bb) if there is no security-based swap data repository that would accept the agreement, contract or transaction, to the Commission.

"(II) RISK MANAGEMENT REQUIREMENT.—If at least one counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap shall be subject to a centralized risk management program pursuant to section 15F(j) that is reasonably designed to monitor and to manage the risks associated with the security-based swap.

"(III) ANTI-EVASION REQUIREMENT.—The security-based swap shall not be structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 761(b)(3) of such Act.".

TITLE IX—REPEAL OF THE VOLCKER RULE AND OTHER PROVISIONS

SEC. 901. REPEALS.

(a) IN GENERAL.—The following sections of title VI of the Dodd-Frank Wall Street Reform and Consumer Protection Act are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted:

(1) Section 603.
(2) Section 618.
(3) Section 619.
(4) Section 620.
(5) Section 621.

(b) CLERICAL AMENDMENT.—The table of contents under section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the items relating to sections 603, 618, 619, 620, and 621.

TITLE X—FED OVERSIGHT REFORM AND MODERNIZATION

SEC. 1001. REQUIREMENTS FOR POLICY RULES OF THE FEDERAL OPEN MARKET COMMITTEE.

The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 2B the following new section:

"SEC. 2C. DIRECTIVE POLICY RULES OF THE FEDERAL OPEN MARKET COMMITTEE.

"(a) DEFINITIONS.—In this section the following definitions shall apply:

"(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(2) DIRECTIVE POLICY RULE.—The term 'Directive Policy Rule' means a policy rule developed by the Federal Open Market Committee that meets the requirements of subsection (c) and that provides the basis for the Open Market Operations Directive.

"(3) GDP.—The term 'GDP' means the gross domestic product of the United States as computed and published by the Department of Commerce.

"(4) INTERMEDIATE POLICY INPUT.—The term 'Intermediate Policy Input'—

"(A) may include any variable determined by the Federal Open Market Committee as a necessary input to guide open-market operations;

"(B) shall include an estimate of, and the method of calculation for, the current rate of inflation or current inflation expectations; and

"(C) shall include, specifying whether the variable or estimate is historical, current, or a forecast and the method of calculation, at least one of—

"(i) an estimate of real GDP, nominal GDP, or potential GDP;

"(ii) an estimate of the monetary aggregate compiled by the Board of Governors of the Federal Reserve System and Federal reserve banks; or

"(iii) an interactive variable or a net estimate composed of the estimates described in clauses (i) and (ii).

"(5) LEGISLATIVE DAY.—The term 'legislative day' means a day on which either House of Congress is in session.

"(6) OPEN MARKET OPERATIONS DIRECTIVE.—The term 'Open Market Operations Directive' means an order to achieve a specified Policy Instrument Target provided to the Federal Reserve Bank of New York by the Federal Open Market Committee pursuant to powers authorized under section 14 of this Act that guide open-market operations.

"(7) POLICY INSTRUMENT.—The term 'Policy Instrument' means—

"(A) the nominal Federal funds rate;

"(B) the nominal rate of interest paid on nonborrowed reserves; or

"(C) the discount window primary credit interest rate most recently published on the Federal Reserve Statistical Release on selected interest rates (daily or weekly), commonly referred to as the H.15 release.

"(8) POLICY INSTRUMENT TARGET.—The term 'Policy Instrument Target' means the target for the Policy Instrument specified in the Open Market Operations Directive.

"(9) REFERENCE POLICY RULE.—The term 'Reference Policy Rule' means a calculation of the nominal Federal funds rate as equal to the sum of the following:

"(A) The rate of inflation over the previous four quarters.

"(B) One-half of the percentage deviation of the real GDP from an estimate of potential GDP.

"(C) One-half of the difference between the rate of inflation over the previous four quarters and two percent.

"(D) Two percent.

"(b) SUBMITTING A DIRECTIVE POLICY RULE.—Not later than 48 hours after the end of a meeting of the Federal Open Market Committee, the Chairman of the Federal Open Market Committee shall submit to the appropriate congressional committees and the Comptroller General of the United States a Directive Policy Rule and a statement that identifies the members of the Federal Open Market Committee who voted in favor of the Directive Policy Rule.

"(c) REQUIREMENTS FOR A DIRECTIVE POLICY RULE.—A Directive Policy Rule shall—

"(1) identify the Policy Instrument the Directive Policy Rule is designed to target;

"(2) describe the strategy or rule of the Federal Open Market Committee for the systematic quantitative adjustment of the Policy Instrument Target to respond to a change in the Intermediate Policy Inputs;

"(3) include a function that comprehensively models the interactive relationship between the Intermediate Policy Inputs;

"(4) include the coefficients of the Directive Policy Rule that generate the current Policy Instrument Target and a range of predicted future values for the Policy Instrument Target if changes occur in any Intermediate Policy Input;

"(5) describe the procedure for adjusting the supply of bank reserves to achieve the Policy Instrument Target;

"(6) include a statement as to whether the Directive Policy Rule substantially conforms to the Reference Policy Rule and, if applicable—

"(A) an explanation of the extent to which it departs from the Reference Policy Rule;

"(B) a detailed justification for that departure; and

"(C) a description of the circumstances under which the Directive Policy Rule may be amended in the future;

"(7) include a certification that the Directive Policy Rule is expected to support the economy in achieving stable prices and maximum natural employment over the long term;

"(8) include a calculation that describes with mathematical precision the expected annual inflation rate over a 5-year period; and

"(9) include a plan to use the most accurate data, subject to all historical revisions, for inputs into the Directive Policy Rule and the Reference Policy Rule.

"(d) GAO REPORT.—The Comptroller General of the United States shall compare the Directive Policy Rule submitted under subsection (b) with the rule that was most recently submitted to determine whether the Directive Policy Rule has materially changed. If the Directive Policy Rule has materially changed, the Comptroller General shall, not later than 7 days after each meeting of the Federal Open Market Committee, prepare and submit a compliance report to the appropriate congressional committees specifying whether the Directive Policy Rule submitted after that meeting and the Federal Open Market Committee are in compliance with this section.

"(e) CHANGING MARKET CONDITIONS.—

"(1) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to require that the plans with respect to the systematic quantitative adjustment of the Policy Instrument Target described under subsection (c)(2) be implemented if the Federal Open Market Committee determines that such plans cannot or should not be achieved due to changing market conditions.

"(2) GAO APPROVAL OF UPDATE.—Upon determining that plans described in paragraph (1) cannot or should not be achieved, the Federal Open Market Committee shall submit an explanation for that determination and an updated version of the Directive Policy Rule to the Comptroller General of the United States and the appropriate congressional committees not later than 48 hours after making the determination. The Comptroller General shall, not later than 48 hours after receiving such updated version, prepare and submit to the appropriate congressional committees a compliance report determining whether such updated version and the Federal Open Market Committee are in compliance with this section.

"(f) DIRECTIVE POLICY RULE AND FEDERAL OPEN MARKET COMMITTEE NOT IN COMPLIANCE.—

"(1) IN GENERAL.—If the Comptroller General of the United States determines that the Directive Policy Rule and the Federal Open Market Committee are not in compliance with this section in the report submitted pursuant to subsection (d), or that the updated version of the Directive Policy Rule and the Federal Open Market Committee are not in compliance with this section in the report submitted pursuant to subsection (e)(2), the Chairman of the Board of Governors of the Federal Reserve System shall, if requested by the chairman of either of the appropriate congressional committees, not later than 7 legislative days after such request, testify before such committee as to why the Directive Policy Rule, the updated version, or the Federal Open Market Committee is not in compliance.

"(2) GAO AUDIT.—Notwithstanding subsection (b) of section 714 of title 31, United States Code, upon submitting a report of noncompliance pursuant to subsection (d) or subsection (e)(2) and after the period of 7 legislative days described in paragraph (1), the Comptroller General shall audit the conduct of monetary policy by the Board of Governors of the Federal Reserve System and the Federal Open Market Committee upon request of the appropriate congressional committee. Such committee may specify the parameters of such audit.

"(g) CONGRESSIONAL HEARINGS.—The Chairman of the Board of Governors of the Federal Reserve System shall, if requested by the chairman of either of the appropriate congressional committees and not later than 7 legislative days after such request, appear before such committee to explain any change to the Directive Policy Rule.".

SEC. 1002. FEDERAL OPEN MARKET COMMITTEE BLACKOUT PERIOD.

Section 12A of the Federal Reserve Act (12 U.S.C. 263) is amended by adding at the end the following new subsection:

"(d) BLACKOUT PERIOD.—

"(1) IN GENERAL.—During a blackout period, the only public communications that may be made by members and staff of the Committee with respect to macroeconomic or financial developments or about current or prospective monetary policy issues are the following:

"(A) The dissemination of published data, surveys, and reports that have been cleared for publication by the Board of Governors of the Federal Reserve System.

"(B) Answers to technical questions specific to a data release.

"(C) Communications with respect to the prudential or supervisory functions of the Board of Governors.

"(2) BLACKOUT PERIOD DEFINED.—For purposes of this subsection, and with respect to a meeting of the Committee described under subsection (a), the term 'blackout period' means the time period that—

"(A) begins immediately after midnight on the day that is one week prior to the date on which such meeting takes place; and

"(B) ends at midnight on the day after the date on which such meeting takes place.

"(3) EXEMPTION FOR CHAIRMAN OF THE BOARD OF GOVERNORS.—Nothing in this section shall prohibit the Chairman of the Board of Governors of the Federal Reserve System from participating in or issuing public communications.".

SEC. 1003. PUBLIC TRANSCRIPTS OF FOMC MEETINGS.

Section 12A of the Federal Reserve Act (12 U.S.C. 263), as amended by section 1002, is further amended by adding at the end the following:

"(e) PUBLIC TRANSCRIPTS OF MEETINGS.—The Committee shall—

"(1) record all meetings of the Committee; and

"(2) make the full transcript of such meetings available to the public.".

SEC. 1004. MEMBERSHIP OF FEDERAL OPEN MARKET COMMITTEE.

Section 12A(a) of the Federal Reserve Act (12 U.S.C. 263(a)) is amended—

(1) in the first sentence, by striking "five" and inserting "six";

(2) in the second sentence, by striking "One by the board of directors" and all that follows through the period at the end and inserting the following: "One by the boards of directors of the Federal Reserve Banks of New York and Boston; one by the boards of directors of the Federal Reserve Banks of Philadelphia and Cleveland; one by the boards of directors of the Federal Reserve Banks of Richmond and Atlanta; one by the boards of directors of the Federal Reserve Banks of Chicago and St. Louis; one by the boards of directors of the Federal Reserve Banks of Minneapolis and Kansas City; and one by the boards of directors of the Federal Reserve Banks of Dallas and San Francisco."; and

(3) by inserting after the second sentence the following: "In odd numbered calendar years, one representative shall be elected from each of the Federal Reserve Banks of Boston, Philadelphia, Richmond, Chicago, Minneapolis, and Dallas. In even-numbered calendar years, one representative shall be elected from each of the Federal Reserve Banks of New York, Cleveland, Atlanta, St. Louis, Kansas City, and San Francisco.".

SEC. 1005. FREQUENCY OF TESTIMONY OF THE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM TO CONGRESS.

(a) IN GENERAL.—Section 2B of the Federal Reserve Act (12 U.S.C. 225b) is amended—

(1) by striking "semi-annual" each place it appears and inserting "quarterly"; and

(2) in subsection (a)(2)—

(A) by inserting "and October 20" after "July 20" each place it appears; and

(B) by inserting "and May 20" after "February 20" each place it appears.

(b) CONFORMING AMENDMENT.—Paragraph (12) of section 10 of the Federal Reserve Act (12 U.S.C. 247b(12)) is amended by striking "semi-annual" and inserting "quarterly".

SEC. 1006. VICE CHAIRMAN FOR SUPERVISION REPORT REQUIREMENT.

Paragraph (12) of section 10 of the Federal Reserve Act (12 U.S.C. 247(b)) is amended—

(1) by redesignating such paragraph as paragraph (11); and

(2) in such paragraph, by adding at the end the following: "In each such appearance, the Vice Chairman for Supervision shall provide written testimony that includes the status of all pending and anticipated rulemakings that are being made by the Board of Governors of the Federal Reserve System. If, at the time of any appearance described in this paragraph, the position of Vice Chairman for Supervision is vacant, the Vice Chairman for the Board of Governors of the Federal Reserve System (who has the responsibility to serve in the absence of the Chairman) shall appear instead and provide the required written testimony. If, at the time of any appearance described in this paragraph, both Vice Chairman positions are vacant, the Chairman of the Board of Governors of the Federal Reserve System shall appear instead and provide the required written testimony.".

SEC. 1007. SALARIES, FINANCIAL DISCLOSURES, AND OFFICE STAFF OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

(a) IN GENERAL.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended—

(1) by redesignating the second subsection (s) (relating to "Assessments, Fees, and Other Charges for Certain Companies") as subsection (t); and

(2) by inserting before subsection (w), as added by section 371(a), the following new subsections:

"(u) ETHICS STANDARDS FOR MEMBERS AND EMPLOYEES.—

"(1) PROHIBITED AND RESTRICTED FINANCIAL INTERESTS AND TRANSACTIONS.—The members and employees of the Board of Governors of the Federal Reserve System shall be subject to the provisions under section 4401.102 of title 5, Code of Federal Regulations, to the same extent as such provisions apply to an employee of the Securities and Exchange Commission.

"(2) TREATMENT OF BROKERAGE ACCOUNTS AND AVAILABILITY OF ACCOUNT STATEMENTS.—The members and employees of the Board of Governors of the Federal Reserve System shall—

"(A) disclose all brokerage accounts that the member or employee maintains, as well as any accounts in which the member or employee controls trading or has a financial interest (including managed accounts, trust accounts, investment club accounts, and accounts of spouses or minor children who live with the member or employee); and

"(B) with respect to any securities account that the member or employee is required to disclose to the Board of Governors, authorize the brokers and dealers of such account to send duplicate account statements directly to Board of Governors.

"(3) PROHIBITIONS RELATED TO OUTSIDE EMPLOYMENT AND ACTIVITIES.—The members and employees of the Board of Governors of the Federal Reserve System shall be subject to the prohibitions related to outside employment and activities described under section 4401.103(c) of title 5, Code of Federal Regulations, to the same extent as such prohibitions apply to an employee of the Securities and Exchange Commission.

"(4) ADDITIONAL ETHICS STANDARDS.—The members and employees of the Board of Governors of the Federal Reserve System shall be subject to—

"(A) the employee responsibilities and conduct regulations of the Office of Personnel Management under part 735 of title 5, Code of Federal Regulations;

"(B) the canons of ethics contained in subpart C of part 200 of title 17, Code of Federal Regulations, to the same extent as such subpart applies to the employees of the Securities and Exchange Commission; and

"(C) the regulations concerning the conduct of members and employees and former members and employees contained in subpart M of part 200 of title 17, Code of Federal Regulations, to the same extent as such subpart applies to the employees of the Securities and Exchange Commission.

"(v) DISCLOSURE OF STAFF SALARIES AND FINANCIAL INFORMATION.—The Board of Governors of the Federal Reserve System shall make publicly available, on the website of the Board of Governors, a searchable database that contains the names of all members, officers, and employees of the Board of Governors who receive an annual salary in excess of the annual rate of basic pay for GS–15 of the General Schedule, and—

"(1) the yearly salary information for such individuals, along with any non-salary compensation received by such individuals; and

"(2) any financial disclosures required to be made by such individuals.".

(b) OFFICE STAFF FOR EACH MEMBER OF THE BOARD OF GOVERNORS.—Subsection (l) of section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following: "Each member of the Board of Governors of the Federal Reserve System may employ, at a minimum, 2 individuals, with such individuals selected by such member and the salaries of such individuals set by such member. A member may employ additional individuals as determined necessary by the Board of Governors.".

SEC. 1008. AMENDMENTS TO POWERS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

(a) IN GENERAL.—Section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3)), as amended by section 111(b)(3), is further amended—

(1) in subparagraph (A)—

(A) by inserting "that pose a threat to the financial stability of the United States" after "unusual and exigent circumstances"; and

(B) by inserting "and by the affirmative vote of not less than nine presidents of the Federal reserve banks" after "five members";

(2) in subparagraph (B)—

(A) in clause (i), by inserting at the end the following: "Federal reserve banks may not accept equity securities issued by the recipient of any loan or other financial assistance under this paragraph as collateral. Not later than 6 months after the date of enactment of this sentence, the Board shall, by rule, establish—

"(I) a method for determining the sufficiency of the collateral required under this paragraph;

"(II) acceptable classes of collateral;

"(III) the amount of any discount on the value of the collateral that the Federal reserve banks will apply for purposes of calculating the sufficiency of collateral under this paragraph; and

"(IV) a method for obtaining independent appraisals of the value of collateral the Federal reserve banks receive."; and

(B) in clause (ii)—

(i) by striking the second sentence; and

(ii) by inserting after the first sentence the following: "A borrower shall not be eligible to borrow from any emergency lending program or facility unless the Board and all Federal banking regulators with jurisdiction over the borrower certify that, at the time the borrower initially borrows under the program or facility, the borrower is not insolvent.";

(3) by inserting "financial institution" before "participant" each place such term appears;

(4) in subparagraph (D)(i), by inserting "financial institution" before "participants"; and

(5) by adding at the end the following new subparagraphs:

"(E) PENALTY RATE.—

"(i) IN GENERAL.—Not later than 6 months after the date of enactment of this subparagraph, the Board shall, with respect to a recipient of any loan or other financial assistance under this paragraph, establish by rule a minimum interest rate on the principal amount of any loan or other financial assistance.

"(ii) MINIMUM INTEREST RATE DEFINED.—In this subparagraph, the term 'minimum interest rate' shall mean the sum of—

"(I) the average of the secondary discount rate of all Federal Reserve banks over the most recent 90-day period; and

"(II) the average of the difference between a distressed corporate bond yield index (as defined by rule of the Board) and a bond yield index of debt issued by the United States (as defined by rule of the Board) over the most recent 90-day period.

"(F) FINANCIAL INSTITUTION PARTICIPANT DEFINED.—For purposes of this paragraph, the term 'financial institution participant'—

"(i) means a company that is predominantly engaged in financial activities (as defined in section 102(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5311(a))); and

"(ii) does not include an agency described in subparagraph (W) of section 5312(a)(2) of title 31, United States Code, or an entity controlled or sponsored by such an agency.".

(b) CONFORMING AMENDMENT.—Section 11(r)(2)(A) of the Federal Reserve Act (12 U.S.C. 248(r)(2)(A)) is amended—

(1) in clause (ii)(IV), by striking "; and" and inserting a semicolon;

(2) in clause (iii), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new clause:

"(iv) the available members secure the affirmative vote of not less than nine presidents of the Federal reserve banks.".

SEC. 1009. INTEREST RATES ON BALANCES MAINTAINED AT A FEDERAL RESERVE BANK BY DEPOSITORY INSTITUTIONS ESTABLISHED BY FEDERAL OPEN MARKET COMMITTEE.

Subparagraph (A) of section 19(b)(12) of the Federal Reserve Act (12 U.S.C. 461(b)(12)(A)) is amended by inserting "established by the Federal Open Market Committee" after "rate or rates".

SEC. 1010. AUDIT REFORM AND TRANSPARENCY FOR THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

(a) IN GENERAL.—Notwithstanding section 714 of title 31, United States Code, or any other provision of law, the Comptroller General of the United States shall annually complete an audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks under subsection (b) of such section 714 within 12 months after the date of the enactment of this Act.

(b) REPORT.—

(1) IN GENERAL.—Not later than 90 days after each audit required pursuant to subsection (a) is completed, the Comptroller General—

(A) shall submit to Congress a report on such audit; and

(B) shall make such report available to the Speaker of the House, the majority and minority leaders of the House of Representatives, the majority and minority leaders of the Senate, the Chairman and Ranking Member of the committee and each subcommittee of jurisdiction in the House of Representatives and the Senate, and any other Member of Congress who requests the report.

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

(c) REPEAL OF CERTAIN LIMITATIONS.—Subsection (b) of section 714 of title 31, United States Code, is amended by striking the second sentence.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 714 of title 31, United States Code, is amended—

(A) in subsection (d)(3), by striking "or (f)" each place such term appears;

(B) in subsection (e), by striking "the third undesignated paragraph of section 13" and inserting "section 13(3)"; and

(C) by striking subsection (f).

(2) FEDERAL RESERVE ACT.—Subsection (s) (relating to "Federal Reserve Transparency and Release of Information") of section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended—

(A) in paragraph (4)(A), by striking "has the same meaning as in section 714(f)(1)(A) of title 31, United States Code" and inserting "means a program or facility, including any special purpose vehicle or other entity established by or on behalf of the Board of Governors of the Federal Reserve System or a Federal reserve bank, authorized by the Board of Governors under section 13(3), that is not subject to audit under section 714(e) of title 31, United States Code";

(B) in paragraph (6), by striking "or in section 714(f)(3)(C) of title 31, United States Code, the information described in paragraph (1) and information concerning the transactions described in section 714(f) of such title," and inserting "the information described in paragraph (1)"; and

(C) in paragraph (7), by striking "and section 13(3)(C), section 714(f)(3)(C) of title 31, United States Code, and" and inserting ", section 13(3)(C), and".

SEC. 1011. ESTABLISHMENT OF A CENTENNIAL MONETARY COMMISSION.

(a) FINDINGS.—Congress finds the following:

(1) The Constitution endows Congress with the power "to coin money, regulate the value thereof".

(2) Following the financial crisis known as the Panic of 1907, Congress established the National Monetary Commission to provide recommendations for the reform of the financial and monetary systems of the United States.

(3) Incorporating several of the recommendations of the National Monetary Commission, Congress created the Federal Reserve System in 1913. As currently organized, the Federal Reserve System consists of the Board of Governors in Washington, District of Columbia, and the Federal reserve banks organized into 12 districts around the United States. The stockholders of the 12 Federal reserve banks include national and certain State-chartered commercial banks, which operate on a fractional reserve basis.

(4) Originally, Congress gave the Federal Reserve System a monetary mandate to provide an elastic currency, within the context of a gold standard, in response to seasonal fluctuations in the demand for currency.

(5) Congress also gave the Federal Reserve System a financial stability mandate to serve as the lender of last resort to solvent but illiquid banks during a financial crisis.

(6) In 1977, Congress changed the monetary mandate of the Federal Reserve System to a dual mandate for maximum employment and stable prices.

(7) Empirical studies and historical evidence, both within the United States and in other countries, demonstrate that price stability is desirable because both inflation and deflation damage the economy.

(8) The economic challenge of recent years—most notably the bursting of the housing bubble, the financial crisis of 2008, and the ensuing anemic recovery—have occurred at great cost in terms of lost jobs and output.

(9) Policymakers are reexamining the structure and functioning of financial institutions and markets to determine what, if any, changes need to be made to place the financial system on a stronger, more sustainable path going forward.

(10) The Federal Reserve System has taken extraordinary actions in response to the recent economic challenges.

(11) The Federal Open Market Committee has engaged in multiple rounds of quantitative easing, providing unprecedented liquidity to financial markets, while committing to holding short-term interest rates low for a seemingly indefinite period, and pursuing a policy of credit allocation by purchasing Federal agency debt and mortgage-backed securities.

(12) In the wake of the recent extraordinary actions of the Federal Reserve System, Congress—consistent with its constitutional responsibilities and as it has done periodically throughout the history of the United States—has once again renewed its examination of monetary policy.

(13) Central in such examination has been a renewed look at what is the most proper mandate for the Federal Reserve System to conduct monetary policy in the 21st century.

(b) ESTABLISHMENT OF A CENTENNIAL MONETARY COMMISSION.—There is established a commission to be known as the "Centennial Monetary Commission" (in this section referred to as the "Commission").

(c) STUDY AND REPORT ON MONETARY POLICY.—

(1) STUDY.—The Commission shall—

(A) examine how United States monetary policy since the creation of the Board of Governors of the Federal Reserve System in 1913 has affected the performance of the United States economy in terms of output, employment, prices, and financial stability over time;

(B) evaluate various operational regimes under which the Board of Governors of the Federal Reserve System and the Federal Open Market Committee may conduct monetary policy in terms achieving the maximum sustainable level of output and employment and price stability over the long term, including—

(i) discretion in determining monetary policy without an operational regime;

(ii) price level targeting;

(iii) inflation rate targeting;

(iv) nominal gross domestic product targeting (both level and growth rate);

(v) the use of monetary policy rules; and

(vi) the gold standard;

(C) evaluate the use of macro-prudential supervision and regulation as a tool of monetary policy in terms of achieving the maximum sustainable level of output and employment and price stability over the long term;

(D) evaluate the use of the lender-of-last-resort function of the Board of Governors of the Federal Reserve System as a tool of monetary policy in terms of achieving the maximum sustainable level of output and employment and price stability over the long term;

(E) recommend a course for United States monetary policy going forward, including—

(i) the legislative mandate;

(ii) the operational regime;

(iii) the securities used in open-market operations; and

(iv) transparency issues; and

(F) consider the effects of the GDP output and employment targets of the "dual mandate" (both from the creation of the dual mandate in 1977 until the present time and estimates of the future effect of the dual mandate) on—

(i) United States economic activity;

(ii) actions of the Board of Governors of the Federal Reserve System; and

(iii) Federal debt.

(2) REPORT.—Not later than 1 year after the date of the enactment of this section, the Commission shall submit to Congress and make publicly available a report containing a statement of the findings and conclusions of the Commission in carrying out the study under paragraph (1), together with the recommendations the Commission considers appropriate. In making such report, the Commission shall specifically report on the considerations required under paragraph (1)(F).

(d) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—

(A) APPOINTED VOTING MEMBERS.—The Commission shall contain 12 voting members as follows:

(i) Six members appointed by the Speaker of the House of Representatives, with four members from the majority party and two members from the minority party.

(ii) Six members appointed by the President Pro Tempore of the Senate, with four members from the majority party and two members from the minority party.

(B) CHAIRMAN.—The Speaker of the House of Representatives and the majority leader of the Senate shall jointly designate one of the members of the Commission as Chairman.

(C) NON-VOTING MEMBERS.—The Commission shall contain 2 non-voting members as follows:

(i) One member appointed by the Secretary of the Treasury.

(ii) One member who is the president of a district Federal reserve bank appointed by the Chair of the Board of Governors of the Federal Reserve System.

(2) PERIOD OF APPOINTMENT.—Each member shall be appointed for the life of the Commission.

(3) TIMING OF APPOINTMENT.—All members of the Commission shall be appointed not later than 30 days after the date of the enactment of this section.

(4) VACANCIES.—A vacancy in the Commission shall not affect its powers, and shall be filled in the manner in which the original appointment was made.

(5) MEETINGS.—

(A) INITIAL MEETING.—The Commission shall hold its initial meeting and begin the operations of the Commission as soon as is practicable.

(B) FURTHER MEETINGS.—The Commission shall meet upon the call of the Chair or a majority of its members.

(6) QUORUM.—Seven voting members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(7) MEMBER OF CONGRESS DEFINED.—In this subsection, the term "Member of Congress" means a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress.

(e) POWERS.—

(1) HEARINGS AND SESSIONS.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, receive evidence, or administer oaths as the Commission or such subcommittee or member thereof considers appropriate.

(2) CONTRACT AUTHORITY.—To the extent or in the amounts provided in advance in appropriation Acts, the Commission may contract with and compensate government and private agencies or persons to enable the Commission to discharge its duties under this section, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

(3) OBTAINING OFFICIAL DATA.—

(A) IN GENERAL.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, any information, including suggestions, estimates, or statistics, for the purposes of this section.

(B) REQUESTING OFFICIAL DATA.—The head of such department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the government shall, to the extent authorized by law, furnish such information upon request made by—

(i) the Chair;

(ii) the Chair of any subcommittee created by a majority of the Commission; or

(iii) any member of the Commission designated by a majority of the commission to request such information.

(4) ASSISTANCE FROM FEDERAL AGENCIES.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the functions of the Commission.

(B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in subparagraph (A), at the request of the Commission, departments and agencies of the United States shall provide such services, funds, facilities, staff, and other support services as may be authorized by law.

(5) POSTAL SERVICE.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) COMMISSION PERSONNEL.—

(1) APPOINTMENT AND COMPENSATION OF STAFF.—

(A) IN GENERAL.—Subject to rules prescribed by the Commission, the Chair may appoint and fix the pay of the executive director and other personnel as the Chair considers appropriate.

(B) APPLICABILITY OF CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of level V of the Executive Schedule.

(2) CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the rate of pay for a person occupying a position at level IV of the Executive Schedule.

(3) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist it in carrying out its duties under this section.

(g) TERMINATION OF COMMISSION.—

(1) IN GENERAL.—The Commission shall terminate 6 months after the date on which the report is submitted under subsection (c)(2).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the period between the submission of its report and its termination for the purpose of concluding its activities, including providing testimony to the committee of Congress concerning its report.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $1,000,000, which shall remain available until the date on which the Commission terminates.

TITLE XI—IMPROVING INSURANCE COORDINATION THROUGH AN INDEPENDENT ADVOCATE

SEC. 1101. REPEAL OF THE FEDERAL INSURANCE OFFICE; CREATION OF THE OFFICE OF THE INDEPENDENT INSURANCE ADVOCATE.

(a) ESTABLISHMENT.—Section 313 of title 31, United States Code, is amended to read as follows (and conforming the table of contents for chapter 3 of such title accordingly):

"§ 313. Office of the Independent Insurance Advocate

"(a) ESTABLISHMENT.—There is established in the Department of the Treasury a bureau to be known as the Office of the Independent Insurance Advocate (in this section referred to as the 'Office').

"(b) INDEPENDENT INSURANCE ADVOCATE.—

"(1) ESTABLISHMENT OF POSITION.—The chief officer of the Office of the Independent Insurance Advocate shall be known as the Independent Insurance Advocate. The Independent Insurance Advocate shall perform the duties of such office under the general direction of the Secretary of the Treasury.

"(2) APPOINTMENT.—The Independent Insurance Advocate shall be appointed by the President, by and with the advice and consent of the Senate, from among persons having insurance expertise.

"(3) TERM.—

"(A) IN GENERAL.—The Independent Insurance Advocate shall serve a term of 6 years, unless sooner removed by the President upon reasons which shall be communicated to the Senate.

"(B) SERVICE AFTER EXPIRATION.—If a successor is not nominated and confirmed by the end of the term of service of the Independent Insurance Advocate, the person serving as Independent Insurance Advocate shall continue to serve until such time a successor is appointed and confirmed.

"(C) VACANCY.—An Independent Insurance Advocate who is appointed to serve the remainder of a predecessor's uncompleted term shall be eligible thereafter to be appointed to a full 6 year term.

"(D) ACTING OFFICIAL ON FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event of a vacancy in the office of the Independent Insurance Advocate, and pending the appointment and confirmation of a successor, or during the absence or disability of the Independent Insurance Advocate, the Independent Member shall appoint a federal official appointed by the President and confirmed by the Senate from a member agency of the Financial Stability Oversight Council, not otherwise serving on the Council, who shall serve as a member of the Council and act in the place of the Independent Insurance Advocate until such vacancy, absence, or disability concludes.

"(4) EMPLOYMENT.—The Independent Insurance Advocate shall be an employee of the Federal Government within the definition of employee under section 2105 of title 5, United States Code.

"(c) INDEPENDENCE; OVERSIGHT.—

"(1) INDEPENDENCE.—The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Inde-

pendent Insurance Advocate, and may not intervene in any matter or proceeding before the Independent Insurance Advocate, unless otherwise specifically provided by law.

"(2) OVERSIGHT BY INSPECTOR GENERAL.—The Office of the Independent Insurance Advocate shall be an office in the establishment of the Department of the Treasury for purposes of the Inspector General Act of 1978 (5 U.S.C. App.).

"(d) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.

"(e) BUDGET.—

"(1) ANNUAL TRANSMITTAL.—For each fiscal year, the Independent Insurance Advocate shall transmit a budget estimate and request to the Secretary of the Treasury, which shall specify the aggregate amount of funds requested for such fiscal year for the operations of the Office of the Independent Insurance Advocate.

"(2) INCLUSIONS.—In transmitting the proposed budget to the President for approval, the Secretary of the Treasury shall include—

"(A) an aggregate request for the Independent Insurance Advocate; and

"(B) any comments of the Independent Insurance Advocate with respect to the proposal.

"(3) PRESIDENT'S BUDGET.—The President shall include in each budget of the United States Government submitted to the Congress—

"(A) a separate statement of the budget estimate prepared in accordance with paragraph (1);

"(B) the amount requested by the President for the Independent Insurance Advocate; and

"(C) any comments of the Independent Insurance Advocate with respect to the proposal if the Independent Insurance Advocate concludes that the budget submitted by the President would substantially inhibit the Independent Insurance Advocate from performing the duties of the office.

"(f) ASSISTANCE.—The Secretary of the Treasury shall provide the Independent Insurance Advocate such services, funds, facilities and other support services as the Independent Insurance Advocate may request and as the Secretary may approve.

"(g) PERSONNEL.—

"(1) EMPLOYEES.—The Independent Insurance Advocate may fix the number of, and appoint and direct, the employees of the Office, in accordance with the applicable provisions of title 5, United States Code. The Independent Insurance Advocate is authorized to employ attorneys, analysts, economists, and other employees as may be deemed necessary to assist the Independent Insurance Advocate to carry out the duties and functions of the Office. Unless otherwise provided expressly by law, any individual appointed under this paragraph shall be an employee as defined in section 2105 of title 5, United States Code, and subject to the provisions of such title and other laws generally applicable to the employees of the Executive Branch.

"(2) COMPENSATION.—Employees of the Office shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

"(3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Independent Insurance Advocate may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.

"(4) DETAILS.—Any employee of the Federal Government may be detailed to the Office with or without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Office shall report to and be subject to oversight by the Independent Insurance Advocate during the assignment to the office, and may be compensated by the branch, department, or agency from which the employee was detailed.

"(5) INTERGOVERNMENTAL PERSONNEL.—The Independent Insurance Advocate may enter into agreements under subchapter VI of chapter 33 of title 5, United States Code, with State and local governments, institutions of higher education, Indian tribal governments, and other eligible organizations for the assignment of intermittent, part-time, and full-time personnel, on a reimbursable or nonreimbursable basis.

"(h) ETHICS.—

"(1) DESIGNATED ETHICS OFFICIAL.—The Legal Counsel of the Financial Stability Oversight Council, or in the absence of a Legal Counsel of the Council,

the designated ethics official of any Council member agency, as chosen by the Independent Insurance Advocate, shall be the ethics official for the Independent Insurance Advocate.

"(2) RESTRICTION ON REPRESENTATION.—In addition to any restriction under section 205(c) of title18, United States Code, except as provided in subsections (d) through (i) of section 205 of such title, the Independent Insurance Advocate (except in the proper discharge of official duties) shall not, with or without compensation, represent anyone to or before any officer or employee of—

"(A) the Financial Stability Oversight Council on any matter; or

"(B) the Department of Justice with respect to litigation involving a matter described in subparagraph (A).

"(3) COMPENSATION FOR SERVICES PROVIDED BY ANOTHER.—For purposes of section 203 of title 18, United States Code, and if a special government employee—

"(A) the Independent Insurance Advocate shall not be subject to the restrictions of subsection (a)(1) of section 203,of title 18, United States Code, for sharing in compensation earned by another for representations on matters covered by such section; and

"(B) a person shall not be subject to the restrictions of subsection (a)(2) of such section for sharing such compensation with the Independent Insurance Advocate.

"(i) ADVISORY, TECHNICAL, AND PROFESSIONAL COMMITTEES.—The Independent Insurance Advocate may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office and the members of such committees may be staff of the Office, or other persons, or both.

"(j) MISSION AND FUNCTIONS.—

"(1) MISSION.—In carrying out the functions under this subsection, the mission of the Office shall be to act as an independent advocate on behalf of the interests of United States policyholders on prudential aspects of insurance matters of importance, and to provide perspective on protecting their interests, separate and apart from any other Federal agency or State insurance regulator.

"(2) OFFICE.—The Office shall have the authority—

"(A) to coordinate Federal efforts on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating covered agreements (as such term is defined in subsection (q)) in coordination with States (including State insurance commissioners) and the United States Trade Representative;

"(B) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance;

"(C) to assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

"(D) to observe all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system; and

"(E) to make determinations and exercise the authority under subsection (m) with respect to covered agreements and State insurance measures.

"(3) MEMBERSHIP ON FINANCIAL STABILITY OVERSIGHT COUNCIL.—

"(A) IN GENERAL.—The Independent Insurance Advocate shall serve, pursuant to section 111(b)(1)(J) of the Financial Stability Act of 2010 (12 U.S.C. 5321(b)(1)(J)), as a member on the Financial Stability Oversight Council.

"(B) AUTHORITY.—To assist the Financial Stability Oversight Council with its responsibilities to monitor international insurance developments, advise the Congress, and make recommendations, the Independent Insurance Advocate shall have the authority—

"(i) to regularly consult with international insurance supervisors and international financial stability counterparts;

"(ii) to consult with the Board of Governors of the Federal Reserve System and the States with respect to representing the United States, as appropriate, in the International Association of Insurance Supervisors (including to become a non-voting member thereof), particularly on matters of systemic risk;

"(iii) to participate at the Financial Stability Board of The Group of Twenty and to join with other members from the United States including on matters related to insurance; and

"(iv) to participate with the United States delegation to the Organization for Economic Cooperation and Development and observe and participate at the Insurance and Private Pensions Committee.

"(4) LIMITATIONS ON PARTICIPATION IN SUPERVISORY COLLEGES.—The Office may not engage in any activities that it is not specifically authorized to engage in under this section or any other provision of law, including participation in any supervisory college or other meetings or fora for cooperation and communication between the involved insurance supervisors established for the fundamental purpose of facilitating the effectiveness of supervision of entities which belong to an insurance group.

"(k) SCOPE.—The authority of the Office as specified and limited in this section shall extend to all lines of insurance except—

"(1) health insurance, as determined by the Secretary in coordination with the Secretary of Health and Human Services based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91);

"(2) long-term care insurance, except long-term care insurance that is included with life or annuity insurance components, as determined by the Secretary in coordination with the Secretary of Health and Human Services, and in the case of long-term care insurance that is included with such components, the Secretary shall coordinate with the Secretary of Health and Human Services in performing the functions of the Office; and

"(3) crop insurance, as established by the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

"(l) ACCESS TO INFORMATION.—In carrying out the functions required under subsection (j), the Office may coordinate with any relevant Federal agency and any State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources for the provision to the Office of publicly available information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

"(m) PREEMPTION PURSUANT TO COVERED AGREEMENTS.—

"(1) STANDARDS.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Independent Insurance Advocate determines, in accordance with this subsection, that the measure—

"(A) results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

"(B) is inconsistent with a covered agreement.

"(2) DETERMINATION.—

"(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the Independent Insurance Advocate shall—

"(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

"(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

"(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

"(iv) provide interested parties a reasonable opportunity to submit written comments to the Office; and

"(v) consider any comments received.

"(B) SCOPE OF REVIEW.—For purposes of this subsection, any determination of the Independent Insurance Advocate regarding State insurance measures, and any preemption under paragraph (1) as a result of such determination, shall be limited to the subject matter contained within the covered agreement involved and shall achieve a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

"(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

"(i) notify the appropriate State of the determination and the extent of the inconsistency;

"(ii) establish a reasonable period of time, which shall not be less than 30 days, before the determination shall become effective; and

"(iii) notify the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate.

"(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Independent Insurance Advocate shall—

"(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

"(B) notify the appropriate State.

"(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

"(5) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to paragraph (2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

"(n) CONSULTATION.—The Independent Insurance Advocate shall consult with State insurance regulators, individually or collectively, to the extent the Independent Insurance Advocate determines appropriate, in carrying out the functions of the Office.

"(o) NOTICES AND REQUESTS FOR COMMENT.—In addition to the other functions and duties specified in this section, the Independent Insurance Advocate may prescribe such notices and requests for comment in the Federal Register as are deemed necessary related to and governing the manner in which the duties and authorities of the Independent Insurance Advocate are carried out;

"(p) SAVINGS PROVISIONS.—Nothing in this section shall—

"(1) preempt—

"(A) any State insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices;

"(B) any State coverage requirements for insurance;

"(C) the application of the antitrust laws of any State to the business of insurance; or

"(D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure results in less favorable treatment of a non-United State insurer than a United States insurer; or

"(2) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

"(q) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multinational regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

"(r) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

"(s) CONGRESSIONAL TESTIMONY.—The Independent Insurance Advocate shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs at semi-annual hearings and shall provide testimony, which shall include submitting written testimony in advance of such appearances to such committees and to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, on the following matters:

"(1) OFFICE ACTIVITIES.—The efforts, activities, objectives, and plans of the Office.

"(2) SECTION 313(L) ACTIONS.—Any actions taken by the Office pursuant to subsection (l) (regarding preemption pursuant to covered agreements).

"(3) INSURANCE INDUSTRY.—The state of, and developments in, the insurance industry.

"(4) U.S. AND GLOBAL INSURANCE AND REINSURANCE MARKETS.—The breadth and scope of the global insurance and reinsurance markets and the critical role

such markets plays in supporting insurance in the United States and the ongoing impacts of part II of the Nonadmitted and Reinsurance Reform Act of 2010 on the ability of State regulators to access reinsurance information for regulated companies in their jurisdictions.

"(5) OTHER.—Any other matters as deemed relevant by the Independent Insurance Advocate or requested by such Committees.

"(t) REPORT UPON END OF TERM OF OFFICE.—Not later than two months prior to the expiration of the term of office, or discontinuation of service, of each individual serving as the Independent Insurance Advocate, the Independent Insurance Advocate shall submit a report to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate setting forth recommendations regarding the Financial Stability Oversight Council and the role, duties, and functions of the Independent Insurance Advocate.

"(u) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

"(1) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

"(2) COVERED AGREEMENT.—The term 'covered agreement' means a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that—

"(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

"(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

"(3) INSURER.—The term 'insurer' means any person engaged in the business of insurance, including reinsurance.

"(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term 'Federal financial regulatory agency' means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

"(5) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The term 'Financial Stability Oversight Council ' means the Financial Stability Oversight Council established under section 111(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321(a)).

"(6) MEMBER AGENCY.—The term 'member agency' has the meaning given such term in section 111(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321(a)).

"(7) NON-UNITED STATES INSURER.—The term 'non-United States insurer' means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

"(8) OFFICE.—The term 'Office' means the Office of the Independent Insurance Advocate established by this section.

"(9) STATE INSURANCE MEASURE.—The term 'State insurance measure' means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

"(10) STATE INSURANCE REGULATOR.—The term 'State insurance regulator' means any State regulatory authority responsible for the supervision of insurers.

"(11) SUBSTANTIALLY EQUIVALENT TO THE LEVEL OF PROTECTION ACHIEVED.—The term 'substantially equivalent to the level of protection achieved' means the prudential measures of a foreign government, authority, or regulatory entity achieve a similar outcome in consumer protection as the outcome achieved under State insurance or reinsurance regulation.

"(12) UNITED STATES INSURER.—The term 'United States insurer' means—

"(A) an insurer that is organized under the laws of a State; or

"(B) a United States branch of a non-United States insurer.".

(b) PAY AT LEVEL III OF EXECUTIVE SCHEDULE.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

"Independent Insurance Advocate, Department of the Treasury.".

(c) VOTING MEMBER OF FSOC.—Paragraph (1) of section 111(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321(b)(1)) is amended by striking subparagraph (J) and inserting the following new subparagraph:

"(J) the Independent Insurance Advocate appointed pursuant to section 313 of title 31, United States Code.".

(d) INDEPENDENCE.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended—

(1) by inserting "the Independent Insurance Advocate of the Department of the Treasury," after "Federal Housing Finance Agency,"; and

(2) by inserting "or official" before "submitting them".

(e) TRANSFER OF EMPLOYEES.—All employees of the Department of Treasury who are performing staff functions for the independent member of the Financial Stability Oversight Council under section 111(b)(2)(J) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321(b)(2)(J)) on a full-time equivalent basis as of the date of enactment of this Act shall be eligible for transfer to the Office of the Independent Insurance Advocate established pursuant to the amendment made by subsection (a) of this section for appointment as an employee and shall be transferred at the joint discretion of the Independent Insurance Advocate and the eligible employee. Any employee eligible for transfer that is not appointed within 360 days from the date of enactment of this Act shall be eligible for detail under section 313(f)(4) of title 31, United States Code.

(f) TEMPORARY SERVICE; TRANSITION.—Notwithstanding the amendment made by subsection (a) of this section, during the period beginning on the date of the enactment of this Act and ending on the date on which the Independent Insurance Advocate is appointed and confirmed pursuant to section 313(b)(2) of title 31, United States Code, as amended by such amendment, the person serving, on such date of enactment, as the independent member of the Financial Stability Oversight Council pursuant to section 111(b)(1)(J) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321(b)(1)(J)) shall act for all purposes as, and with the full powers of, the Independent Insurance Advocate.

(g) COMPARABILITY IN COMPENSATION SCHEDULES.—Subsection (a) of section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended by inserting "the Office of the Independent Insurance Advocate of the Department of the Treasury," before "and the Farm Credit Administration,".

(h) SENIOR EXECUTIVES.—Subparagraph (D) of section 3132(a)(1) of title 5, United States Code, is amended by inserting "the Office of the Independent Insurance Advocate of the Department of the Treasury," after "Finance Agency,".

SEC. 1102. TREATMENT OF COVERED AGREEMENTS.

Subsection (c) of section 314 of title 31, United States Code is amended—

(1) by designating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by inserting before paragraph (2), as so redesignated, the following new paragraph:

"(1) the Secretary of the Treasury and the United States Trade Representative have caused to be published in the Federal Register, and made available for public comment for a period of not fewer than 30 days and not greater than 90 days (which period may run concurrently with the 90-day period for the covered agreement referred to in paragraph (3)), the proposed text of the covered agreement;".

TITLE XII—TECHNICAL CORRECTIONS

SEC. 1201. TABLE OF CONTENTS; DEFINITIONAL CORRECTIONS.

(a) TABLE OF CONTENTS.—The table of contents for the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376) is amended by striking the items relating to section 407 through 414 and inserting the following:

"Sec. 407. Exemption of and reporting by venture capital fund advisers.
"Sec. 408. Exemption of and reporting by certain private fund advisers.
"Sec. 409. Family offices.
"Sec. 410. State and Federal responsibilities; asset threshold for Federal registration of investment advisers.
"Sec. 411. Custody of client assets.
"Sec. 414. Rule of construction relating to the Commodity Exchange Act.
"Sec. 418. Qualified client standard.
"Sec. 419. Transition period.".

(b) DEFINITIONS.—Section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301) is amended—

(1) in paragraph (1)—
(A) by striking "section 3" and inserting "section 3(w)"; and
(B) by striking "(12 U.S.C. 1813)" and inserting "(12 U.S.C. 1813(w))";
(2) in paragraph (6), by striking "1 et seq." and inserting "1a"; and
(3) in paragraph (18)(A)—
(A) by striking "'bank holding company',"; and
(B) by inserting "'includes'," before "'including',".

SEC. 1202. ANTITRUST SAVINGS CLAUSE CORRECTIONS.

Section 6 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5303) is amended, in the second sentence—
(1) by inserting "(15 U.S.C. 12(a))" after "Clayton Act"; and
(2) by striking "Act, to" and inserting "Act (15 U.S.C. 45) to".

SEC. 1203. TITLE I CORRECTIONS.

Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5311 et seq.) is amended—
(1) in section 102(a)(6) (12 U.S.C. 5311(a)(6)), by inserting "(12 U.S.C. 1843(k))" after "of 1956" each place that term appears;
(2) in section 111(c)(3) (12 U.S.C. 5321(c)(3)), by striking "that agency or department head" and inserting "the head of that member agency or department";
(3) in section 112 (12 U.S.C. 5322)—
(A) in subsection (a)(2)—
(i) in subparagraph (C) (as redesignated by section 151)—
(I) by striking "to monitor" and inserting "monitor"; and
(II) by striking "to advise" and inserting "advise";
(ii) in subparagraph (H) (as redesignated by section 151), by striking "may"; and
(B) in subsection (d)(5), by striking "subsection and subtitle B" each place such term appears and inserting "subtitle"; and
(4) in section 171(b)(4)(D) (12 U.S.C. 5371(b)(4)(D)), by adding a period at the end.

SEC. 1204. TITLE III CORRECTIONS.

(a) IN GENERAL.—Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5401 et seq.) is amended—
(1) in section 327(b)(5) (12 U.S.C. 5437(b)(5)), by striking "in" and inserting "into";
(2) in section 333(b)(2) (124 Stat. 1539), by inserting "the second place that term appears" before "and inserting"; and
(3) in section 369(5) (124 Stat. 1559)—
(A) in subparagraph (D)(i)—
(i) in subclause (III), by redesignating items (aa), (bb), and (cc) as subitems (AA), (BB), and (CC), respectively, and adjusting the margins accordingly;
(ii) in subclause (IV), redesignating items (aa) and (bb) as subitems (AA) and (BB), respectively, and adjusting the margins accordingly;
(iii) in subclause (V), by redesignating items (aa), (bb), and (cc) as subitems (AA), (BB), and (CC), respectively, and adjusting the margins accordingly; and
(iv) by redesignating subclauses (III), (IV), and (V) as items (bb), (cc), and (dd), respectively, and adjusting the margins accordingly;
(B) in subparagraph (F)—
(i) in clause (ii), by adding "and" at the end;
(ii) in clause (iii), by striking "; and" and inserting a period; and
(iii) by striking clause (iv); and
(C) in subparagraph (G)(i), by inserting "each place such term appears" before "and inserting".

(b) EFFECTIVE DATES.—
(1) SECTION 333.—The amendment made by subsection (a)(2) of this section shall take effect as though enacted as part of subtitle C of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 1538).
(2) SECTION 369.—The amendments made by subsection (a)(3) of this section shall take effect as though enacted as part of subtitle E of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 1546).

SEC. 1205. TITLE IV CORRECTION.

Section 414 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 1578) is amended in the section heading by striking "**COMMODITIES**" and inserting "**COMMODITY**".

SEC. 1206. TITLE VI CORRECTIONS.

(a) IN GENERAL.—Section 610 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 1596) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) of this section shall take effect as though enacted as part of section 610 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 1611).

SEC. 1207. TITLE VII CORRECTIONS.

(a) IN GENERAL.—Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8301 et seq.) is amended—

(1) in section 719(c)(1)(B) (15 U.S.C. 8307(c)(1)(B)), by adding a period at the end;

(2) in section 723(a)(1)(B) (124 Stat. 1675), by inserting ", as added by section 107 of the Commodity Futures Modernization Act of 2000 (Appendix E of Public Law 106–554; 114 Stat. 2763A–382)," after "subsection (i)";

(3) in section 734(b)(1) (124 Stat. 1718), by striking "is amended" and all that follows through "(B) in" and inserting "is amended in";

(4) in section 741(b)(10) (124 Stat. 1732), by striking "1a(19)(A)(iv)(II)" each place it appears and inserting "1a(18)(A)(iv)(II)"; and

(5) in section 749 (124 Stat. 1746)—

(A) in subsection (a)(2), by striking "adding at the end" and inserting "inserting after subsection (f)"; and

(B) in subsection (h)(1)(B), by inserting "the second place that term appears" before the semicolon.

(b) EFFECTIVE DATE.—The amendments made by paragraphs (3), (4), and (5) of subsection (a) of this section shall take effect as though enacted as part of part II of subtitle A of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 1658).

SEC. 1208. TITLE IX CORRECTIONS.

Section 939(h)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 1887) is amended—

(1) in the matter preceding subparagraph (A), by inserting "The" before "Commission"; and

(2) by striking "feasability" and inserting "feasibility".

SEC. 1209. TITLE X CORRECTIONS.

(a) IN GENERAL.—Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481 et seq.) is amended—

(1) in section 1002(12)(G) (12 U.S.C. 5481(12)(G)), by striking "Home Owners" and inserting "Homeowners";

(2) in section 1013(a)(1)(C) (12 U.S.C. 5493(a)(1)(C)), by striking "section 11(1)" and inserting "subsection (l) of section 11";

(3) in section 1017(a)(2) (as so redesignated by section 713) (12 U.S.C. 5497(a)(5))—

(A) in subparagraph (A), in the last sentence by striking "716(c) of title 31, United States Code" and inserting "716 of title 31, United States Code"; and

(B) in subparagraph (C), by striking "section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)" and inserting "section 6101 of title 41, United States Code";

(4) in section 1027(d)(1)(B) (12 U.S.C. 5517(d)(1)(B)), by inserting a comma after "(A)";

(5) in section 1029(d) (12 U.S.C. 5519(d)), by striking the period after "Commission Act";

(6) in section 1061(b)(7) (12 U.S.C. 5581(b)(7))—

(A) by striking "Secretary of the Department of Housing and Urban Development" each place that term appears and inserting "Department of Housing and Urban Development"; and

(B) in subparagraph (A), by striking "(12 U.S.C. 5102 et seq.)" and inserting "(12 U.S.C. 5101 et seq.)";

(7) in section 1063 (12 U.S.C. 5583)—

(A) in subsection (f)(1)(B), by striking "that"; and

(B) in subsection (g)(1)(A)—

(i) by striking "(12 U.S.C. 5102 et seq.)" and inserting "(12 U.S.C. 5101 et seq.)"; and

(ii) by striking "seq)" and inserting "seq.)";

(8) in section 1064(i)(1)(A)(iii) (12 U.S.C. 5584(i)(1)(A)(iii)), by inserting a period before "If an";

(9) in section 1073(c)(2) (12 U.S.C. 5601(c)(2))—

(A) in the paragraph heading, by inserting "AND EDUCATION" after "FINANCIAL LITERACY"; and

(B) by striking "its duties" and inserting "their duties";

(10) in section 1076(b)(1) (12 U.S.C. 5602(b)(1)), by inserting before the period at the end the following: ", the Agency may, after notice and opportunity for comment, prescribe regulations";

(11) in section 1077(b)(4)(F) (124 Stat. 2076), by striking "associates" and inserting "associate's";

(12) in section 1084(1) (124 Stat. 2081), by inserting a comma after "2009)";

(13) in section 1089 (124 Stat. 2092)—

(A) in paragraph (3)—

(i) in subparagraph (A), by striking "and" at the end; and

(ii) in subparagraph (B)(vi), by striking the period at the end and inserting "; and"; and

(B) by redesignating paragraph (4) as subparagraph (C) and adjusting the margins accordingly; and

(14) in section 1098(6) (124 Stat. 2104), by inserting "the first place that term appears" before "and".

(b) EFFECTIVE DATE.—The amendments made by paragraphs (11), (12), (13), (14), and (15) of subsection (a) shall take effect as though enacted as part of subtitle H of title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 2080).

SEC. 1210. TITLE XII CORRECTION.

Title XII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 2129) is amended, in section 1208(b) (12 U.S.C. 5626(b)), by inserting ", as defined in section 103(10) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(10))," after "appropriated to the Fund".

SEC. 1211. TITLE XIV CORRECTION.

Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 2136) is amended, in section 1451(c) (12 U.S.C. 1701x–1(c)), by striking "pursuant".

SEC. 1212. TECHNICAL CORRECTIONS TO OTHER STATUTES.

(a) ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(1) in section 802(a)(3) (12 U.S.C. 3801(a)(3)), by striking "the Director of the Office of Thrift Supervision" and inserting "the Consumer Law Enforcement Agency";

(2) in section 804 (12 U.S.C. 3803)—

(A) in subsection (a), by striking "the Director of the Office of Thrift Supervision" each place such term appears and inserting "the Comptroller of the Currency"; and

(B) in subsection (d)(1), by striking the comma after "Administration".

(b) BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 106(b)(1) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(1)) is amended, in the undesignated matter at the end, by striking "Federal Deposit Insurance Company" and inserting "Federal Deposit Insurance Corporation".

(c) BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by striking "Office of Thrift Supervision (20–4108–0–3–373).".

(d) BRETTON WOODS AGREEMENTS ACT.—Section 68(a)(1) of the Bretton Woods Agreements Act (22 U.S.C. 286tt(a)(1)) is amended by striking "Fund ," and inserting "Fund,".

(e) CAN–SPAM ACT OF 2003.—Section 7(b)(1)(D) of the CAN–SPAM Act of 2003 (15 U.S.C. 7706(b)(1)(D)) is amended by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency or the Board of Directors of Federal Deposit Insurance Corporation, as applicable,".

(f) CHILDREN'S ONLINE PRIVACY PROTECTION ACT OF 1998.—Section 1306(b)(2) of the Children's Online Privacy Protection Act of 1998 (15 U.S.C. 6505(b)(2)) is amended by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency and the Board of Directors of Federal Deposit Insurance Corporation, as applicable,".

(g) COMMUNITY REINVESTMENT ACT OF 1977.—The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended—

(1) in section 803(1)(C) (12 U.S.C. 2902(1)(C)), by striking the period at the end and inserting a semicolon; and

(2) in section 806 (12 U.S.C. 2905), by striking "companies,," and inserting "companies,".

(h) CREDIT REPAIR ORGANIZATIONS ACT.—Section 403(4) of the Credit Repair Organizations Act (15 U.S.C. 1679a(4)) is amended by striking "103(e)" and inserting "103(f)".

(i) DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.—Section 205(9) of the Depository Institution Management Interlocks Act (12 U.S.C. 3204(9)) is amended by striking "Director of the Office of Thrift Supervision" and inserting "appropriate Federal banking agency".

(j) ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1996.—Section 2227(a)(1) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (12 U.S.C. 252(a)(1)) is amended by striking "the Director of the Office of Thrift Supervision,".

(k) ELECTRONIC FUND TRANSFER ACT.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) in section 903 (15 U.S.C. 1693a)—

(A) in paragraph (2), by striking "103(i)" and inserting "103(j)"; and

(B) by redesignating the first paragraph designated as paragraph (4) (defining the term "Board"), as paragraph (3);

(2) in section 904(a) (15 U.S.C. 1693b(a))—

(A) by redesignating the second paragraph designated as paragraph (1) (relating to consultation with other agencies), the second paragraph designated as paragraph (2) (relating to the preparation of an analysis of economic impact), paragraph (3), and paragraph (4), as subparagraphs (A), (B), (C), and (D), respectively, and adjusting the margins accordingly; and

(B) by striking "In prescribing such regulations, the Board shall:" and inserting the following:

"(3) REGULATIONS.—In prescribing regulations under this subsection, the Agency and the Board shall—";

(3) in section 909(c) (15 U.S.C. 1693g(c)), by striking "103(e)" and inserting "103(f)";

(4) in section 918(a)(4) (15 U.S.C. 1693o(a)(4), by striking "Act and" and inserting "Act; and";

(5) by redesignating the section added by section 1073(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (relating to remittance transfers) (15 U.S.C. 1693o–1) as section 920 of the Electronic Fund Transfer Act;

(6) by redesignating the section headed "Relation to State laws" (15 U.S.C. 1693q) as section 921 of the Electronic Fund Transfer Act;

(7) by redesignating the section headed "Exemption for State regulation" (15 U.S.C. 1693r) as section 922 of the Electronic Fund Transfer Act; and

(8) by redesignating the section headed "Effective date" (15 U.S.C. 1693 note) as section 923 of the Electronic Fund Transfer Act.

(l) EMERGENCY ECONOMIC STABILIZATION ACT OF 2008.—Section 101(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(b)) is amended by striking "the Director of the Office of Thrift Supervision,".

(m) EQUAL CREDIT OPPORTUNITY ACT.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(1) in section 703 (15 U.S.C. 1691b)—

(A) in each of subsections (c) and (d), by striking "paragraph" each place that term appears and inserting "subsection"; and

(B) in subsection (g), by adding a period at the end;

(2) in section 704 (15 U.S.C. 1691c)—

(A) in subsection (a)—

(i) by striking "Consumer Protection Financial Protection Act of 2010 with" and inserting "Consumer Financial Protection Act of 2010, compliance with";

(ii) in paragraph (1)—

(I) by striking "section 8" and inserting "Section 8"; and

(II) in subparagraph (C), by striking "banks;" and inserting "banks.";

(iii) in each of paragraphs (6) and (7), by striking the semicolon at the end and inserting a period; and

(iv) in paragraph (8), by striking "; and" and inserting a period; and

(B) in subsection (c), in the second sentence, by striking "subchapter" and inserting "title"; and

(3) in section 706(k) (15 U.S.C. 1691e(k)), by striking ", (2), or (3)" and inserting "or (2)".

(n) EXPEDITED FUNDS AVAILABILITY ACT.—The Expedited Funds Availability Act (12 U.S.C. 4001 et seq.) is amended—

(1) in section 605(f)(2)(A) (12 U.S.C. 4004(f)(2)(A)), by striking ",," and inserting a semicolon; and

(2) in section 610(a)(2) (12 U.S.C. 4009(a)(2)), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency and the Board of Directors of the Federal Deposit Insurance Corporation, as appropriate,".

(o) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) in subsection (d)(2)(D), by striking "(x)" and inserting "(y)";

(B) in subsection (q)(5), by striking "103(i)" and inserting "103(j)"; and

(C) in subsection (v), by striking "Bureau" and inserting "Federal Trade Commission";

(2) in section 604 (15 U.S.C. 1681b)—

(A) in subsection (b)—

(i) in paragraph (2)(B)(i), by striking "section 615(a)(3)" and inserting "section 615(a)(4)";

(ii) in paragraph (3)(B)(ii), by striking "clause (B)(i)(IV)" and inserting "clause (i)(IV)";

(iii) in paragraph (4)(A)(ii), by inserting "and" after the semicolon; and

(iv) by striking "section 609(c)(3)" each place that term appears and inserting "section 609(c)"; and

(B) in subsection (g)(5), by striking "PARAGRAPH (2).—" and all that follows through "The Bureau" and inserting "PARAGRAPH (2).—The Agency";

(3) in section 605 (15 U.S.C. 1681c)—

(A) in subsection (f), by striking "who" and inserting "which"; and

(B) in subsection (h)(2)(A)—

(i) by striking "shall,," and inserting "shall,"; and

(ii) by striking "Commission,," and inserting "Commission,";

(4) in section 605A(h)(1)(A) (15 U.S.C. 1681c–1(h)(1)(A)), by striking "103(i)" and inserting "103(j)";

(5) in section 607(e)(3)(A) (15 U.S.C. 1681e(e)(3)(A)), by striking "section 604(b)(4)(E)(i)" and inserting "section 604(b)(4)(D)(i)";

(6) in section 609 (15 U.S.C. 1681g)—

(A) in subsection (a)(3)(C)(i), by striking "section 604(b)(4)(E)(i)" and inserting "section 604(b)(4)(D)(i)";

(B) in subsection (c)(1)—

(i) in the paragraph heading, by striking "COMMISSION" and inserting "BUREAU"; and

(ii) in subparagraph (B)(vi), by striking "603(w)" and inserting "603(x)";

(C) in subsection (e)(2)(B)(ii)(II), by striking "an"; and

(D) by striking "The Commission" each place that term appears and inserting "The Bureau";

(7) in section 610 (15 U.S.C. 1681h)—

(A) in subsection (b)(1), by inserting "section" after "under"; and

(B) in subsection (e), by inserting a comma after "on the report";

(8) in section 611 (15 U.S.C. 1681i), by striking "The Commission" each place that term appears and inserting "The Agency";

(9) in section 612 (15 U.S.C. 1681j)—

(A) in subsection (a)(1)—

(i) by striking "(w)" and inserting "(x)"; and

(ii) in subparagraph (C), by striking "603(w)" each place that term appears and inserting "603(x)";

(B) in subsection (g), by striking "televison" and inserting "television"; and

(C) by striking "The Commission" each place that term appears and inserting "The Bureau";

(10) in section 621 (15 U.S.C. 1681s)—

(A) in subsection (a)(1), in the first sentence, by striking ", subsection (b)";

(B) in subsection (e)(2), by inserting a period after "provisions of this title"; and

(C) in subsection (f)(2), by striking "The Commission" and inserting "The Agency" and

(11) in section 623(a)(5) (15 U.S.C. 1681s–2(a)(5)), by striking "OF ACCOUNTS.—(A) IN GENERAL.—A person" and inserting "OF ACCOUNTS.—

"(A) IN GENERAL.—A person".

(p) FEDERAL CREDIT UNION ACT.—Section 206(g)(7)(D)(iv) of the Federal Credit Union Act (12 U.S.C. 1786(g)(7)(D)(iv)) is amended by striking the semicolon at the end and inserting a period.

(q) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 3(q)(2)(C) (12 U.S.C. 1813(q)(2)(C)), by adding "and" at the end;

(2) in section 7 (12 U.S.C. 1817)—

(A) in subsection (b)(2)—

(i) in subparagraph (A), by striking "(D)" and inserting "(C)"; and

(ii) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and

(B) in subsection (e)(2)(C), by adding a period at the end;

(3) in section 8 (12 U.S.C. 1818)—

(A) in subsection (b)(3), by striking "Act))" and inserting "Act)"; and

(B) in subsection (t)(2)(C), by striking "depositors or" and inserting "depositors; or";

(4) in section 11 (12 U.S.C. 1821)—

(A) in subsection (d)(2)(I)(ii), by striking "and section 21A(b)(4)"; and

(B) in subsection (m), in each of paragraphs (16) and (18), by striking the comma after "Comptroller of the Currency" each place it appears; and

(5) in section 26(a) (12 U.S.C. 1831c(a)), by striking "Holding Company Act" each place that term appears and inserting "Holding Company Act of 1956".

(r) FEDERAL FIRE PREVENTION AND CONTROL ACT OF 1974.—Section 31(a)(5)(B) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2227(a)(5)(B)) is amended by striking "the Federal Deposit Insurance Corporation" and all that follows through the period and inserting "or the Federal Deposit Insurance Corporation under the affordable housing program under section 40 of the Federal Deposit Insurance Act.".

(s) FEDERAL HOME LOAN BANK ACT.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended—

(1) in section 10(h)(1) (12 U.S.C. 1430(h)(1)), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Currency or the Board of Directors of the Federal Deposit Insurance Corporation, as applicable"; and

(2) in section 22(a) (12 U.S.C. 1442(a))—

(A) in the matter preceding paragraph (1), by striking "Comptroller of the Currency" and all that follows through "Supervision" and inserting "Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairman of the National Credit Union Administration"; and

(B) in the undesignated matter following paragraph (2), by striking "Comptroller of the Currency" and all that follows through "Supervision" and inserting "Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the National Credit Union Administration".

(t) FEDERAL RESERVE ACT.—Paragraph (8)(B) of section 11(s) of the Federal Reserve Act (headed "Federal Reserve Transparency and Release of Information") (12 U.S.C. 248) is amended by striking "this section" and inserting "this subsection".

(u) FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.—The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73; 103 Stat. 183) is amended in section 1121(6) (12 U.S.C. 3350(6)), by striking "the Office of Thrift Supervision,".

(v) GRAMM-LEACH-BLILEY ACT.—The Gramm-Leach-Bliley Act (Public Law 106–102; 113 Stat. 1338) is amended—

(1) in section 132(a) (12 U.S.C. 1828b(a)), by striking "the Director of the Office of Thrift Supervision,";

(2) in section 206(a) (15 U.S.C. 78c note), by striking "Except as provided in subsection (e), for" and inserting "For";

(3) in section 502(e)(5) (15 U.S.C. 6802(e)(5)), by striking "a Federal" and inserting ", a Federal";

(4) in section 504(a)(2) (15 U.S.C. 6804(a)(2)), by striking "and, as appropriate, and with" and inserting "and, as appropriate, with";

(5) in section 509(2) (15 U.S.C. 6809(2))—

(A) by striking subparagraph (D); and

(B) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively; and

(6) in section 522(b)(1)(A)(iv) (15 U.S.C. 6822(b)(1)(A)(iv)), by striking "Director of the Office of Thrift Supervision" and inserting "Comptroller of the Cur-

rency and the Board of Directors of the Federal Deposit Insurance Corporation, as appropriate".

(w) HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009.—Section 104 of the Helping Families Save Their Homes Act of 2009 (12 U.S.C. 1715z–25) is amended—

(1) in subsection (a)—

(A) by striking "and the Director of the Office of Thrift Supervision, shall jointly" and inserting "shall";

(B) by striking "and the Office of Thrift Supervision"; and

(C) by striking "each such" and inserting "such"; and

(2) in subsection (b)(1)—

(A) in subparagraph (A)—

(i) in the first sentence—

(I) by striking "and the Director of the Office of Thrift Supervision,"; and

(II) by striking "or the Director";

(ii) in the second sentence, by striking "and the Director of the Office of Thrift Supervision"; and

(B) in subparagraph (B), by striking "and the Director of the Office of Thrift Supervision".

(x) HOME MORTGAGE DISCLOSURE ACT OF 1975.—The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—

(1) in section 304—

(A) in subsection (b)(5)(A), by striking "15 U.S.C. 1602(aa)(4)" and inserting "section 103(aa)(4) of the Truth in Lending Act"; and

(B) in subsection (j)(3) (12 U.S.C. 2803(j)(3)), by adding a period at the end; and

(2) in section 305(b)(1)(A)(iii) (12 U.S.C. 2804(b)(1)(A)(iii)), by striking "bank as," and inserting "bank, as".

(y) HOME OWNERS' LOAN ACT.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended—

(1) in section 5 (12 U.S.C. 1464)—

(A) in subsection (d)(2)(E)(ii)—

(i) in the first sentence, by striking "Except as provided in section 21A of the Federal Home Loan Bank Act, the" and inserting "The"; and

(ii) by striking ", at the Director's discretion,";

(B) in subsection (i)(6), by striking "the Office of Thrift Supervision or";

(C) in subsection (m), by striking "Director's" each place that term appears and inserting "appropriate Federal banking agency's";

(D) in subsection (n)(9)(B), by striking "Director's" and inserting "Comptroller's"; and

(E) in subsection (s)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), by striking "of such Act)" and all that follows through "shall require" and inserting "of such Act), the appropriate Federal banking agency shall require"; and

(II) in subparagraph (B), by striking "other methods" and all that follows through "determines" and inserting "other methods as the appropriate Federal banking agency determines";

(ii) in paragraph (2)—

(I) by striking "DETERMINED" and all that follows through "may, consistent" and inserting "DETERMINED BY APPROPRIATE FEDERAL BANKING AGENCY CASE-BY-CASE.—The appropriate Federal banking agency may, consistent"; and

(II) by striking "capital-to-assets" and all that follows through "determines to be necessary" and inserting "capital-to-assets as the appropriate Federal banking agency determines to be necessary";

(2) in section 6(c) (12 U.S.C. 1465(c)), by striking "sections" and inserting "section";

(3) in section 10 (12 U.S.C. 1467a)—

(A) in subsection (b)(6), by striking "time" and all that follows through "release" and inserting "time, upon the motion or application of the Board, release";

(B) in subsection (c)(2)(H)—

(i) in the matter preceding clause (i)—

(I) by striking "1841(p))" and inserting "1841(p)))"; and

(II) by inserting "(12 U.S.C. 1843(k))" before "if—"; and

(ii) in clause (i), by inserting "of 1956 (12 U.S.C. 1843(l) and (m))" after "Company Act"; and

(C) in subsection (e)(7)(B)(iii)—

(i) by striking "Board of the Office of Thrift Supervision" and inserting "Director of the Office of Thrift Supervision"; and

(ii) by inserting ", as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301)" after "transfer date"; and

(4) in section 13 (12 U.S.C. 1468b), by striking "the a" and inserting "a".

(z) HOUSING ACT OF 1948.—Section 502(c)(3) of the Housing Act of 1948 (12 U.S.C. 1701c(c)(3)) is amended by striking "Federal Home Loan Bank Agency" and inserting "Federal Housing Finance Agency".

(aa) HOUSING AND URBAN DEVELOPMENT ACT OF 1968.—Section 106(h)(5) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(h)(5)) is amended by striking "authorised" and inserting "authorized".

(bb) INTERNATIONAL BANKING ACT OF 1978.—Section 15 of the International Banking Act of 1978 (12 U.S.C. 3109) is amended—

(1) in each of subsections (a) and (b)—

(A) by striking ", and Director of the Office of Thrift Supervision" each place that term appears; and

(B) by inserting "and" before "Federal Deposit" each place that term appears;

(2) in subsection (a), by striking "Comptroller, Corporation, or Director" and inserting "Comptroller of the Currency, or Corporation"; and

(3) in subsection (c)(4)—

(A) by inserting "and" before "the Federal Deposit"; and

(B) by striking ", and the Director of the Office of Thrift Supervision".

(cc) INTERNATIONAL LENDING SUPERVISION ACT OF 1983.—Section 912 of the International Lending Supervision Act of 1983 (12 U.S.C. 3911) is amended—

(1) by amending the section heading to read as follows: "**EQUAL REPRESENTATION FOR FEDERAL DEPOSIT INSURANCE CORPORATION**";

(2) by striking "(a) IN GENERAL.—"; and

(3) by striking subsection (b).

(dd) INTERSTATE LAND SALES FULL DISCLOSURE ACT.—The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) is amended in each of section 1411(b) (15 U.S.C. 1710(b)) and subsections (b)(4) and (d) of section 1418a (15 U.S.C. 1717a), by striking "Secretary's" each place that term appears and inserting "Director's".

(ee) LEGAL CERTAINTY FOR BANK PRODUCTS ACT OF 2000.—Section 403(b)(1) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a(b)(1)) is amended by striking "that section" and inserting "section".

(ff) PUBLIC LAW 93–495.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by striking "the Director of the Office of Thrift Supervision,".

(gg) REVISED STATUTES OF THE UNITED STATES.—Section 5136C(i) of the Revised Statutes of the United States (12 U.S.C. 25b(i)) is amended by striking "POWERS.—" and all that follows through "In accordance" and inserting "POWERS.—In accordance".

(hh) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4716(e)) is amended by striking "the Director of the Office of Thrift Supervision,".

(ii) S.A.F.E. MORTGAGE LICENSING ACT OF 2008.—Section 1514 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5113) is amended in each of subsections (b)(5) and (c)(4)(C), by striking "Secretary's" each place that term appears and inserting "Director's".

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

(1) in section 3C(g)(4)(B)(v) (15 U.S.C. 78c–3(g)(4)(B)(v)), by striking "of that Act" and inserting "of that section";

(2) in section 3D(d)(10)(A) (15 U.S.C. 78c–4(d)(10)(A)), by striking "taking" and inserting "take";

(3) in section 3E(b)(1) (15 U.S.C. 78c–5(b)(1)), by striking "though" and inserting "through";

(4) in section 4(g)(8)(A) (15 U.S.C. 78d(g)(8)(A)), by striking "(2)(A)(i)" and inserting "(2)(A)(ii)";

(5) in section 15 (15 U.S.C. 78o)—

(A) in each of subparagraphs (B)(ii) and (C) of subsection (b)(4), by striking "dealer municipal advisor,," and inserting "dealer, municipal advisor,";

(B) by redesignating subsection (j) (relating to the authority of the Commission) as subsection (p) and moving that subsection to the end;

(C) as amended by section 841(d), by redesignating the section subsection (k) and second subsection (l) (relating to standard of conduct and other mat-

ters, respectively), as added by section 913(g)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 1828), as subsections (q) and (r), respectively and moving those subsections to the end; and

(D) in subsection (m), by inserting "the" before "same extent";

(6) in section 15F(h) (15 U.S.C. 78o–10(h))—

(A) in paragraph (2)(A), by inserting "a" after "that acts as an advisor to";

(B) in paragraph (2)(B), by inserting "a" after "offers to enter into"; and

(C) in paragraph (5)(A)(i)—

(i) by inserting "(A)" after "(18)"; and

(ii) in subclause (VII), by striking "act of" and inserting "Act of";

(7) in section 15G (15 U.S.C. 78o–11)—

(A) in subsection (b)(2), by inserting "Board of Directors of the" before "Federal Housing";

(B) in subsection (e)(4)(A), by striking "subsection" and inserting "section";

(C) in subsection (e)(4)(C)—

(i) by striking "129C(c)(2)" and inserting "129C(b)(2)(A)"; and

(ii) by inserting "(15 U.S.C. 1639c(b)(2)(A))" after "Lending Act"; and

(D) in subsection (e)(5), by striking "subsection" and inserting "section"; and

(8) in section 17A (15 U.S.C. 78q–1), by redesignating subsection (g), as added by section 929W of the Dodd-Frank Wall Street Reform and Consumer Protection Act (relating to due diligence for the delivery of dividends, interest, and other valuable property rights) as subsection (n) and moving that subsection to the end.

(kk) TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.—Section 3(b) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102(b)) is amended by inserting before the period at the end the following: ", provided, however, nothing in this section shall conflict with or supersede section 6 of the Federal Trade Commission Act (15 U.S.C. 46)".

(ll) TITLE 5.—Title 5, United States Code, is amended—

(1) in section 3132(a)(1)(D), as amended by section 711, by striking "the Office of Thrift Supervision,, the Resolution Trust Corporation,"; and

(2) in section 5314, by striking "Director of the Office of Thrift Supervision.".

(mm) TITLE 31.—

(1) AMENDMENTS.—Title 31, United States Code, is amended—

(A) by striking section 309; and

(B) in section 714(d)(3)(B) by striking "a audit" and inserting "an audit".

(2) ANALYSIS.—The analysis for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 309.

(nn) TRUTH IN LENDING ACT.—The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

(1) in section 105 (15 U.S.C. 1604), by inserting subsection (h), as added by section 1472(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (124 Stat. 2187), before subsection (i), as added by section 1100A(7) of that Act (124 Stat. 2108);

(2) in section 106(f)(2)(B)(i) (15 U.S.C. 1605(f)(2)(B)(i)), by striking "103(w)" and inserting "103(x)";

(3) in section 121(b) (15 U.S.C. 1631(b)), by striking "103(f)" and inserting "103(g)";

(4) in section 122(d)(5) (15 U.S.C. 1632(d)(5)), by striking "section 603)" and all that follows through "promulgate" and inserting "section 603), may promulgate";

(5) in section 125(e)(1) (15 U.S.C. 1635(e)(1)), by striking "103(w)" and inserting "103(x)";

(6) in section 129 (15 U.S.C. 1639)—

(A) in subsection (q), by striking "(l)(2)" and inserting "(p)(2)"; and

(B) in subsection (u)(3), by striking "Board" each place that term appears and inserting "Agency";

(7) in section 129C (15 U.S.C. 1639c)—

(A) in subsection (b)(2)(B), by striking the second period at the end; and

(B) in subsection (c)(1)(B)(ii)(I), by striking "a original" and inserting "an original";

(8) in section 148(d) (15 U.S.C. 1665c(d)), by striking "Bureau" and inserting "Board";

(9) in section 149 (15 U.S.C. 1665d)—

(A) by striking "the Director of the Office of Thrift Supervision," each place that term appears;

(B) by striking "National Credit Union Administration Bureau" and inserting "National Credit Union Administration Board" each place that term appears; and

(C) by striking "Bureau of Directors of the Federal Deposit Insurance Corporation" and inserting "Board of Directors of the Federal Deposit Insurance Corporation" each place that term appears; and

(10) in section 181(1) (15 U.S.C. 1667(1)), by striking "103(g)" and inserting "103(h)".

(oo) TRUTH IN SAVINGS ACT.—The Truth in Savings Act (12 U.S.C. 4301 et seq.) is amended in each of sections 269(a)(4) (12 U.S.C. 4308(a)(4)), 270(a)(2) (12 U.S.C. 4309(a)(2)), and 274(6) (12 U.S.C. 4313(6)), by striking "Administration Bureau" each place that term appears and inserting "Administration Board".

PURPOSE AND SUMMARY

Introduced by Chairman Jeb Hensarling on April 26, 2017, H.R. 10, the Financial CHOICE Act of 2017 replaces harmful provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. No. 111–203) with free market solutions that will grow the economy, end the phenomenon of "too big to fail" financial institutions, restore the Article I powers provided to the Congress, and strengthen tools to police fraud and deception. The CHOICE Act also contains key reforms to ensure that the Federal Reserve sets effective, rules-based monetary policy without political interference, while also increasing transparency and accountability for the Federal Reserve's regulatory functions.

BACKGROUND AND NEED FOR LEGISLATION

It has been almost seven years since the passage of the Dodd-Frank Act. The proponents of the Dodd-Frank Act told us that it would lift our economy, but instead the United States continues to experience the slowest, weakest, most tepid recovery in its history. The economy does not work for working people. They have seen their paychecks stagnate. They have seen their savings decimated. We have seen millions who remain unemployed and underemployed and an economy working at roughly half of its potential. The Dodd-Frank Act has imposed more regulatory restrictions on the U.S. economy than all other Obama-era laws combined.

There is a better way and it is the Financial CHOICE Act of 2017. The legislation replaces onerous government fiat with market discipline; substitutes bankruptcy for taxpayer-funded bailouts; throws a deregulatory life preserver to our community financial institutions; replaces complexity with simplicity; holds both Washington and Wall Street accountable; and unleashes capital formation so the economy can move yet again for the betterment of our citizens. The legislation will unleash opportunities for economic growth, foster capital formation and provide Main Street job creators with regulatory relief so more Americans can go back to work, have good careers and give their families a better life. Under the Financial CHOICE Act there will be economic opportunity for all and bank bailouts for none.

TITLE I—ENDING "TOO BIG TO FAIL" AND BANK BAILOUTS

The problems with a system in which government regulators deem certain financial institutions "too big to fail" are self-evident. First, "too big to fail" creates perverse incentives: if government officials and regulators in any way create the impression that some

institutions are "systemically important," the inevitable conclusion that market participants will draw is that government will likely bail out its creditors in an emergency. That implicit guarantee allows the bank to borrow more cheaply than its smaller competitors. Second, the "too big to fail" doctrine makes the financial system even more fragile, which in turn makes bailouts more likely: the prospect of government bailouts makes creditors indifferent to the bets that financial institutions are making with the funds they borrow, which promotes moral hazard and further increases risk in the financial system. Third, "too big to fail" violates the basic tenets of a free enterprise system. It interrupts the normal operation of markets and rewards the imprudent and reckless while punishing the prudent and productive; it undermines equal treatment and the Rule of Law by privatizing profits and socializing losses; and it undermines public faith in the economic system by failing to hold businesses and individuals accountable for the consequences of their actions. But far from ending bailouts, the Dodd-Frank Act institutionalized them and made them a permanent feature of the regulatory toolkit, in the form of the "Orderly Liquidation Authority" set forth in Title II of the Act.

If we learned nothing else from the financial crisis, it is that federal subsidies of the financial sector promote moral hazard and expose taxpayers to an unacceptable risk of loss. So long as market participants perceive that regulators and politicians have the legal wherewithal to ride to their rescue in times of crisis, they will be tempted to engage in the kind of reckless behavior that makes the financial system more fragile than it otherwise would be, which in turn makes it more likely that regulators will not only face a financial crisis but will once again resort to extraordinary measures to avoid it. The solution to this problem is to make it clear to market participants in advance that they alone will bear the consequences of the risks they choose to undertake. In order to end "too big to fail" and prevent future taxpayer bailouts of financial firms, the Financial CHOICE Act implements the following five policy changes:

1. Repeal Title II's "Orderly Liquidation Authority" (OLA);
2. Replace OLA with a new chapter of the federal bankruptcy code designed to accommodate the failure of a large, complex financial institution (H.R. 1667, the Financial Institution Bankruptcy Act of 2017);
3. Prohibit the future use of the Exchange Stabilization Fund to bail out a financial firm or its creditors.
4. Repeal the FDIC's authority to establish a widely available program to guarantee obligations of banks during times of severe economic stress; and
5. Repeal the authority vested in the Financial Stability Oversight Council by Titles I and VIII of the Dodd-Frank Act to designate certain financial organizations as "too big to fail," and rescinding previous FSOC designations.

The Republican preference for bankruptcy over bailouts is grounded in three fundamental principles: First, the bankruptcy process is administered through the judicial system, by impartial bankruptcy judges charged by the Constitution to guarantee due process in public proceedings under well-settled rules and procedures. It is a process that is faithful to this country's belief in the Rule of Law. By contrast, the Dodd-Frank's "Orderly Liquidation

Authority" places vast amounts of discretion in a handful of unelected bureaucrats to seize an institution and wind it down, paying off some creditors in full and imposing losses on others, in a process that takes place behind closed doors and that effectively cannot be challenged by the institution, its creditors, or the public.

Second, the bankruptcy process provides a certainty that the "Orderly Liquidation Authority" lacks. Management, shareholders, creditors, and—most importantly—market participants understand how the firm will be treated in bankruptcy, based upon centuries of well-settled legal precedents. Under the "Orderly Liquidation Authority," the best that anyone can do is to surmise what the FDIC might do. And while the FDIC has sought to provide certainty about how it might resolve a firm under Title II by issuing its "Single Point of Entry" proposal, the FDIC has been clear that the "Single Point of Entry" is a strategy that it might—or might not—follow. That lack of certainty re-creates the dangerous ad hoc rescue policies that were in place in the fall of 2008, and which precipitated the financial crisis. Bankruptcy provides certainty, and with it financial stability. Title II preserves the regulators' unfettered discretion, and with it, the same dangerous uncertainty that roiled financial markets and brought them down in 2008.

Indeed, the decision whether to invoke the "Orderly Liquidation Authority" in the first place—as opposed to placing a large firm in bankruptcy—is entirely within the discretion of the regulators, subject to very limited judicial review, which is itself a huge source of uncertainty. As former Comptroller of the Currency John Dugan put it, "It's hard to tell people exactly what's going to happen because we're saying, Well, it might be bankruptcy and it might not.'" In the words of noted financial analyst Josh Rosner in testimony before the Financial Services Committee, "[i]t is very problematic if the same institution has the possibility of going through two different insolvency regimes, depending on the whim of regulators."

Third, and most importantly, bankruptcy does not depend on taxpayer-provided funds to bail out, liquidate, or reorganize a failing institution. Rather than learning from the mistakes that the government made in using government funds to bail out Bear Stearns, AIG, and host of other large financial institutions, the "Orderly Liquidation Authority" embraces that strategy and explicitly makes the taxpayer the source of funding to pay for the reorganization of a large financial institution by way of the "Orderly Liquidation Fund," a facility that exists not to "liquidate" an insolvent institution, but to reorganize it by paying off its creditors and counterparties, just as the Federal Reserve did when it bailed out AIG.

By contrast, the bankruptcy code does not provide government officials with a taxpayer-backed pot of money to wind down or reorganize a failing institution. Under the bankruptcy code, those funds come not from the government or the taxpayer but from the private sector. As a result, bankruptcy forces losses upon the creditors of the failing institution, rather than taxpayers. By committing government to bankruptcy as the method of resolving insolvent firms—rather than bailing out creditors of these firms—implicit government guarantees are ended, counterparty discipline is strengthened, and more vigilant due diligence is encouraged before a large firm becomes insolvent and bankruptcy is initiated.

Because government commits to bankruptcy rather than bailout before a large firm becomes insolvent, creditors will become more careful about extending credit to large firms, knowing that they will bear the costs of failure and therefore limiting their exposure to these firms. Moreover, large firms will likely become smaller, because the credit they obtain is now priced according to their risk of failure, rather than the implicit government-guarantee backing a firm that is "too big to fail." As a result, failure—when it does happen—will be more easily contained and less destabilizing.

Another bailout title of the Dodd-Frank Act, which received little discussion prior to its inclusion in the law is Title VIII, which authorizes the FSOC to designate CCPs and payment systems as "systemically important financial market utilities," or FMUs. However, Title VIII must be read in conjunction with Title VII of Dodd-Frank, which governs the regulation of the over-the-counter derivatives (OTC) market.

Title VII of the Dodd-Frank Act required that certain standardized OTC derivatives contracts be cleared through central clearinghouses (CCPs) in order to mitigate systemic risk. This troublesome concentration of risk is compounded by the decision of Dodd-Frank's drafters to anoint CCPs as the next generation of "too big to fail" firms. While experts disagree on whether increased reliance upon CCPs amplifies rather than mitigates systemic risk, there is broad agreement that designating these organizations as "systemically important" and granting them immediate access to the Fed discount window increases financial instability by creating the perception that they are "too big to fail." As New York Times columnist Gretchen Morgenson put it, "these large and systemically important financial utilities that together trade and clear trillions of dollars in transactions appear to have won the daily double—access to federal money, without the accountability."

The legislative history of the Dodd-Frank Act shows that at least some proponents of the Dodd-Frank Act recognized the danger of expanding the safety net to include FMUs. Even former Chairman Barney Frank saw the hazards of creating a new category of "too big to fail" institutions. During the Financial Services Committee's markup of financial reform legislation in 2009, Republicans offered an amendment to strike the FMU provision from the bill. Rather than defend the provision, Chairman Frank supported the Republican amendment to strike it, describing the attempt to expand the Fed's regulatory fiefdom as "an example of overreach on the part of some for the Federal Reserve." But the FMU provision reemerged in the Senate's version of the financial reform bill, ultimately making it into the Dodd-Frank conference report that was signed into law.

Title I of the Financial CHOICE Act also repeals the authority of the FSOC to designate non-bank financial companies as systemically important financial institutions or SIFIs; retroactively repeals its previous designations of certain non-bank financial companies; repeals the FSOC's related authority to designate particular financial activities for heightened prudential standards or safeguards, which includes the power to mandate that an activity be conducted in a certain way or be prohibited altogether; and repeals the FSOC's authority to break up a large financial institution if the Federal Reserve finds that the firm "poses a grave threat to

the financial stability of the United States." more fundamental problem exists with respect to Dodd-Frank's nonbank SIFI regime. Under the Financial CHOICE Act, the FSOC would continue to serve as an inter-agency forum to:

(1) monitor market developments;

(2) facilitate information-sharing and regulatory coordination;

(3) bring the primary federal regulators together with the goal of identifying and mitigating risks to financial stability; and

(4) report to Congress on those risks and making policy recommendations to address them.

But the FSOC would be required to operate with a higher degree of transparency and inclusiveness than in it has the past, through the following reforms:

• The FSOC would be subject to both the "Government in the Sunshine Act" and the Federal Advisory Committee Act;

• All of the members of the commissions and boards represented on the FSOC—such as the SEC, the Federal Reserve, Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission and the National Credit Union Administration—would be permitted to attend and participate in the FSOC's meetings;

• Before the principal of a Commission or Board represented on the FSOC votes as an FSOC member on an issue before the FSOC, the Commission or Board would have to vote on the issue, and the principal would have to abide by the results of that vote at the FSOC meeting; and

• Members of certain congressional committees would be permitted to attend all FSOC meetings, whether or not the meeting is open to the public.

This title also repeals the Office of Financial Research (OFR). By driving regulators towards a homogenized assessment of financial system threats, the OFR contributes to a "one-world view" of risk that has had such disastrous consequences in Basel and other regulatory contexts. Eliminating the OFR would actually improve risk management by encouraging diverse perceptions of risk and risk management strategies. There are countless other federal agencies—most notably the Federal Reserve, which maintains a "Division of Financial Stability" and employs over 300 PhD economists—that perform market surveillance and collect and analyze data for purposes of identifying threats to financial stability. Eliminating the OFR will result in one less redundant federal bureaucracy.

In an effort to inject badly needed accountability, transparency, and targeted relief into the living will and stress test processes, the Financial CHOICE Act makes a number of important reforms. For banking organizations that do not make a qualifying capital election under Title VI and continue to submit living wills, the Financial CHOICE Act:

(1) provides that "living wills" can only be requested by a banking agency once every two years;

(2) requires the banking agencies to provide feedback on "living wills" to banking organizations within six months of their submission; and

(3) requires the banking agencies to publicly disclose their assessment frameworks.

In addition, the Financial CHOICE Act would overhaul the current regime for stress testing banks, by:

(1) requiring the Federal Reserve to issue regulations, after providing for notice and comment, that provide for at least three different sets of conditions under which the evaluation required by Section 165 of the Dodd-Frank Act (or under the Federal Reserve's rules implementing stress testing requirements) will be conducted, including baseline, adverse, and severely adverse, and methodologies, as well as models to estimate losses on certain assets;

(2) requiring the Federal Reserve to provide copies of such regulations to the GAO and the Panel of Economic Advisors of the Congressional Budget Office before publishing such regulation; and

(3) requiring the Federal Reserve to publish a summary of all stress test results.

Additionally, the Financial CHOICE Act will make the company-run stress test an annual exercise, move the Federal Reserve's Comprehensive Capital Analysis and Review (CCAR) to a biennial process, and extend the Federal Reserve's regulatory relief from CCAR's qualitative assessment to all banks. Further, the Financial CHOICE Act will provide much needed transparency to the Federal Reserve's stress tests consistent with findings in the GAO report.

Further, Title I improves the requirements for banking entities to hold capital against "operational risk." All banking organizations should adopt written policies and procedures to identify and manage operational risk that is appropriate based on their size, activities, and product offerings. To require banking organizations, however, to hold operational risk capital against former activities is an unnecessary restraint and the Financial CHOICE Act limits the imposition of operational risk capital requirements to a bank's current activities and businesses and permits adjustments for operational risk mitigants.

TITLE II—DEMANDING ACCOUNTABILITY FROM WALL STREET

Because both Wall Street and Washington must be held accountable if future financial melt-downs are to be averted, the Financial CHOICE Act increases penalties for violations of the securities laws for individuals and entities, but couples those increases with important reforms to the SEC's enforcement program designed to promote the Rule of Law and ensure due process. The vigorous enforcement of the federal securities laws is paramount and the SEC must have the tools it needs to deter and punish wrongdoing and, whenever possible, to make defrauded investors whole. Many of the civil monetary penalties administered by the SEC are based on a three-tiered structure, in which the severity of the penalty increases according to the gravity of the offense.

The SEC previously expressed concern that the current statutory authorities limit their ability to pursue penalties and influence the structure of settlement agreements. To address these concerns, the Financial CHOICE Act significantly increases the SEC's civil penalty authority, as well as criminal sanctions under the federal securities laws, for the most serious offenses. It increases the first and second tier penalties, and nearly doubles the penalty amounts for third-tier offenses—those involving substantial losses for the victim or substantial pecuniary gain for the offender—for both individuals and corporations. Additionally, the Financial CHOICE Act establishes a new fourth tier for recidivist offenders that allows for damages that are triple otherwise maximum monetary penalties. It also

significantly increases the criminal penalties for individuals for insider trading and other corrupt practices. Overall, the Republican approach allows the SEC Enforcement Division and the Department of Justice to pursue the worst offenders with stronger penalty authority than was provided for in the Dodd-Frank Act, which will have a deterrent effect on corporate executives considering stepping over the line.

TITLE III—DEMANDING ACCOUNTABILITY FROM FINANCIAL REGULATORS AND DEVOLVING POWER AWAY FROM WASHINGTON

The Constitution envisioned a system of checks and balances whereby power would be distributed among three distinct branches of government. Financial regulators instead exercise the powers of all three branches of government, aided by Dodd-Frank provisions that have largely immunized them from accountability to Congress, the President, and the courts. The Dodd-Frank Act erodes basic Rule of Law principles and produces unnecessarily costly regulations—which harm job creation and limit economic opportunity—by devolving enormous power to unaccountable and unelected agency bureaucrats. Only by restoring the Constitutional separation of powers and reclaiming its legislative authority can Congress restore accountability and democratic control over federal agencies and ensure the financial regulatory process is accountable, fair, and efficient. The Financial CHOICE Act aims to restore the checks and balances the Constitution established between the branches of government. In an effort to stem the considerable economic damage being done by Dodd-Frank—as well as restore the proper balance of power between the executive and congressional branches of government—the Financial CHOICE Act incorporates the provisions of the Regulations from the Executive in Need of Scrutiny (REINS) Act legislation previously passed by the House (H.R. 26). The REINS Act requires Congress to pass, and the President to sign, a joint resolution of approval for all major regulations before they are effective. Major regulations are those that produce $100 million or more in impacts on the U.S. economy, spur major increases in costs or prices for consumers, or have certain other significant adverse effects on the economy. These provisions will provide much-needed congressional oversight of and accountability for the burdensome major rules that are weighing down our economy with billions of dollars in compliance costs.

A fundamental tenet of sound regulatory practice is that the benefits of a proposed regulation should, as a general matter, outweigh the costs that such regulation imposes on society. Yet the federal financial regulators have historically conducted ineffective economic analysis of proposed rules, when they conduct it at all, and have refused to change course even after a regulation has been proven to be too costly. The Financial CHOICE Act will increase regulatory transparency and accountability in the rulemaking process by putting in place economic analysis requirements for all financial regulators. Specifically, when proposing a rule, regulators must include an assessment of the rule's need and conduct a rigorous economic analysis of its quantitative and qualitative impacts. Regulators must allow at least 90 days for notice and comment on a proposed rule and publicly release the data underlying their analyses. If the rule's costs are determined to outweigh its benefits, the

regulators will be prohibited from finalizing the rule absent an express authorization from Congress.

The Financial CHOICE Act also strengthens retrospective review requirements—another regulatory best practice. Within five years of a new rule's implementation, the regulator must also complete an analysis that examines the economic impact of the rule, including its direct and indirect costs. The Financial CHOICE Act also directs regulators to conduct retrospective reviews of previous rules every five years to modify, streamline, expand, or repeal existing regulations.

Additionally, the legislation creates a Chief Economist Council comprised of the chief economists from each of the financial regulatory agencies, which will meet quarterly. The Council will be required to conduct a review and report on the costs and benefits of all financial regulations released in the previous year. It also will report on the cumulative effects of regulations finalized within the same timeframe.

To return to a Constitutional structure and create agency accountability, Congress must reclaim its "power of the purse"—one of the most potent tools the Constitution gives Congress for conducting oversight of federal agencies and implementing real reforms. This tool is needed now more than ever before. There can be no "consent of the governed" if the American people, through their democratically elected representatives, have no say in how their government spends their hard-earned dollars. To reassert Congress' power of the purse, the Financial CHOICE Act calls for all of the federal financial regulatory agencies—including the CFPB and the FSOC—to be funded through the Congressional appropriations process. This will allow Congress to ensure that these agencies use their funding effectively and transparently to fulfill their missions of protecting consumers and investors.

The Financial CHOICE Act also addresses concerns with the so-called "Chevron doctrine." In far too many instances in recent years, federal courts have refused to fulfill their Constitutional responsibility to interpret and apply the laws as Congress has written them, contributing to the unchecked expansion of federal agencies' powers. This trend began in earnest with the 1984 case of Chevron v. Natural Resources Defense Council. Under the "Chevron doctrine" or "Chevron deference" established in that case, if there is ambiguity in how to interpret a statute, courts must accept an agency's interpretation of a law unless it is arbitrary or manifestly contrary to the statute. In fact, the Supreme Court ruled in the 2013 case City of Arlington v. FCC that courts must even defer to an agency's interpretation of the laws that establish the agency's own jurisdiction. Because of these court rulings, agencies now have virtually unfettered power to expand the scope of their own authority by regulatory fiat. And, courts also defer to agency interpretations of their own rules and regulations. The Dodd-Frank Act went still further, instructing courts to grant heightened deference to the CFPB.

This pattern of regulatory overreach is why Congress must eliminate the "Chevron doctrine" and hold the judicial branch to its Constitutional responsibilities. Unelected bureaucrats now decide what and who they can regulate, and how to regulate, with only the flimsiest of limitations on how far they can go in stretching and

torturing the meaning of the laws written by Congress. Until both Congress and the courts uphold their end of the bargain to fulfill their Constitutional responsibilities, the administrative state will continue to grow in power and shrink in accountability, to the detriment of the American people. Therefore, the Financial CHOICE Act repeals the "Chevron doctrine" for federal financial regulators, after two years, requiring courts to review their rules de novo.

Finally, the Financial CHOICE Act makes additional changes to bring greater transparency and accountability to financial regulatory agencies. Specifically, the bill requires that they provide notice and opportunity for comment on international standard setting negotiations and agreements, undertake greater analysis of their rules' impact on state and local governments and private entities, similar to the Unfunded Mandates Reform Act, requires they implement policies and procedures to minimize duplication of investigations and enforcement actions, prohibits settlement payments to non-victim third parties, and institutes criminal penalties for the unauthorized disclosure of sensitive, market-moving information and regulatory determinations.

TITLE IV—UNLEASHING OPPORTUNITIES FOR SMALL BUSINESSES, INNOVATORS, AND JOB CREATORS BY FACILITATING CAPITAL FORMATION

Congress entrusted the SEC with a three-part statutory mission in overseeing the U.S. capital markets: to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Unfortunately, the Dodd-Frank Act's answer to the financial crisis was to burden the SEC with myriad responsibilities, many of which were unrelated to its statutory mission. Because these extraneous responsibilities make it harder for the SEC to meet its statutory responsibilities, Congress has the responsibility to either amend or repeal the provisions in the Dodd-Frank Act that not only divert the SEC from its statutory mission but also force the SEC to expend valuable resources on activities that do not benefit capital markets or investors.

Since 2010, the SEC has devoted thousands of man-hours and millions of dollars to finish rules mandated by the Dodd-Frank Act that neither address the causes of the financial crises nor advance the SEC's statutory mission. For example, rather than devote time and resources to rules that would protect investors or facilitate capital formation, the SEC has instead focused its efforts on rules to require public companies to make confusing and immaterial disclosures relating to, for example, conflict minerals, resource extraction, and CEO pay ratios. The Dodd-Frank Act has accelerated a troubling trend in which the securities laws have been hijacked by those more interested in scoring political points than enhancing capital markets or investor protection.

Although small companies are at the forefront of technological innovation and job creation, they frequently face obstacles in obtaining funding in the capital markets. These obstacles are often attributable to the proportionately larger burden that securities regulations—written for large public companies—place on small companies when they seek to go public. The Jumpstart Our Business Startups Act—popularly known as the JOBS Act—makes it easier for smaller companies to access capital markets. Signed into law on

April 5, 2012, the bipartisan JOBS Act consists of six bills that originated in the Financial Services Committee that help small companies obtain access to capital markets by lifting the burden of certain securities regulations. By helping small companies obtain funding, the JOBS Act facilitates economic growth and job creation. It does this by encouraging the SEC to expand its mission beyond its traditional approach to securities regulation.

This title of the Financial CHOICE Act includes numerous provisions—many of them strongly bipartisan—to further capital formation. Specifically, the legislation will modernize the regulatory regime for business development companies (BDCs) to allow them to amplify financing for small and medium-size businesses at a time when these companies are struggling to access capital to support growth and job creation. It will facilitate the creation of venture exchanges to encourage smaller companies to access capital in the public markets, with the potential to create millions of jobs. It will expand provisions of the JOBS Act helping companies offer securities in a public offering. It will eliminate onerous and unnecessary regulatory burdens on smaller public and private companies that are restricting their ability to access capital to grow and create jobs. And it will require the SEC to consider the recommendations of its Forum on Small Business Capital Formation, and outline what, if any, action the SEC intends to take to implement those recommendations, thereby ensuring the SEC no longer neglects its statutory mission.

TITLE V—REGULATORY RELIEF FOR MAIN STREET AND COMMUNITY FINANCIAL INSTITUTIONS

While sold to the American public as "Wall Street reform," the Dodd-Frank Act's most pernicious effects have been felt on Main Street, among community-based financial institutions and the customers they serve. Dodd-Frank's slew of new regulatory mandates disproportionately harms smaller institutions that lack the personnel and financial resources of larger firms, and ultimately results in a less competitive marketplace, as smaller institutions overwhelmed by the volume and complexity of regulations are forced to exit business lines or seek to merge with other institutions. The end results for consumers are fewer and more expensive borrowing choices and reduced upward mobility—particularly for those economically disadvantaged groups that have historically had the most difficulty accessing credit.

Multiple studies and surveys have documented the destructive effect of excessive regulation on the ability of community financial institutions to meet the needs of their customers. For example, a February 2017 paper by researchers at the University of Maryland examined the effects of Dodd-Frank on mortgage originations. They found that while "Dodd-Frank aimed at reducing mortgage fees and abuses against vulnerable borrowers," the lending regulations of Dodd-Frank actually "triggered a substantial redistribution of credit from the middle-class households to wealthy households." They also found that while "[p]roponents of regulation aim to help vulnerable consumers," in fact the same regulators "underestimate the fact that lenders are private organizations competing in a free market, and hence they react to the incentives regulation creates based on their own objective function." Ultimately, "in the case of Dodd-

Frank, middle class households did not obtain cheaper mortgages, but were cut out of the mortgage market altogether."

Compliance with new regulations is expensive. After a regulation has been finalized, an institution must hire lawyers to review its procedures and forms to ensure that it complies with the regulation; coordinate its compliance activities and design internal audit programs; train its employees; buy additional information technology; design, print, and mail new forms and other disclosures; monitor its employees' compliance with new rules; and make records and employees available for regulatory examinations. These expenses exact a higher toll on smaller institutions than they do larger ones.

The Financial CHOICE Act includes a host of reforms to address the plight of consumers finding it increasingly difficult to access affordable credit and community financial institutions unable to offer the products and services that those consumers demand. The goal is to free community financial institutions from unnecessarily burdensome regulations so that they can offer customers the personalized level of service that is the hallmark of the relationship-based lending model.

Like community banks, America's credit unions did not cause the financial crisis, but are nonetheless caught in Dodd-Frank's regulatory cross-hairs. They, too, receive significant regulatory relief under the Financial CHOICE Act. In addition to benefiting from many of the same reforms applicable to community banks (described above), credit unions will be afforded relief unique to their charter. Additionally, the Financial CHOICE Act requires the National Credit Union Administration (NCUA), which regulates federally insured credit unions, to hold annual budget hearings that are open to the public, and also requires the inclusion in each annual budget of a report detailing the NCUA's "overhead transfer rate."

TITLE VI—REGULATORY RELIEF FOR STRONGLY CAPITALIZED, WELL MANAGED BANKING ORGANIZATIONS

As the enormous costs and economic harm from the Dodd-Frank Act and other post-crisis regulatory initiatives have come into sharper relief, a consensus has begun to emerge that there has to be a better approach to financial regulation, one that prizes simplicity over needless complexity, and market discipline over regulatory arbitrage and central planning.

Under the Financial CHOICE Act, banking organizations that maintain a leverage ratio of at least 10 percent, at the time of the election, may elect to be exempted from a number of regulatory requirements, including the Basel III capital and liquidity standards and the "heightened prudential standards" applicable to larger institutions under section 165 of the Dodd-Frank Act. The CHOICE Act thus offers financial institutions of all shapes and sizes a Dodd-Frank "off-ramp"—freedom from an overly burdensome and highly intrusive regulatory regime in exchange for maintaining significantly higher capital than is required by current law and regulation.

The leverage ratio used to assess capital adequacy under the Financial CHOICE Act is more stringent than the risk-based capital regime traditionally favored by global banking regulators and embodied in the successive iterations of the Basel capital accord. Un-

like Basel's risk-weighted capital requirements, a leverage ratio measures a bank's capital against its total assets, without incorporating subjective regulatory judgments about the relative riskiness of those assets. Apologists for the Basel status quo can be expected to argue that by treating all assets the same for capital purposes, a leverage ratio is too blunt an instrument, because there is no "penalty" for holding risky assets if those assets are not adjusted for relative risk. Far better, they say, to trust regulators to carefully calibrate the risk weights on specific asset classes so that banks do not gorge themselves on highly speculative investments in search of higher returns.

By relying upon a simple leverage ratio, which measures shareholder equity available to absorb losses from total balance sheet and some off-balance sheet assets, the Financial CHOICE Act substitutes simplicity and market discipline for the complexity and unfettered regulatory discretion embodied by the Basel regime. FDIC Vice Chairman Hoenig, who has spent virtually his entire career in bank supervision, has argued that a leverage ratio approach will yield a more effective, more efficient, and more cost-effective supervisory regime than one in which regulators spend endless hours calibrating risk weights and policing banks' calculations of their risk-adjusted capital ratios: "From a supervisory program perspective, moving away from risk-based capital measures toward an assessment of adequacy based on tangible equity would generate more reliable information from which to make supervisory judgments and would free up billions of dollars from supervision budgets currently spent waiting for, understanding, and implementing risk-based measures."

Had the leverage ratio approach proposed by the Financial CHOICE Act been in place prior to the financial crisis—instead of Basel's risk-based capital regime—much of the economic carnage from that crisis could have been avoided, as banks would have lacked incentives to herd into risky mortgage-backed securities and sovereign debt.

Banks that make the capital election available under the Financial CHOICE Act will do so only if they believe it will create more value for their customers and investors. Moreover, electing banks will not only do better for themselves, they will contribute to a less fragile financial sector and more dynamic economy. Indeed, electing banks will reduce risks to taxpayers, who serve as the real lenders of last resort under the current system. Finally, by putting more of their own money to work in the real economy, and wasting less on compliance with regulatory diktats from Washington, electing banks will increase productivity in an economy that continues to suffer through the slowest economic recovery in the post-World War II era.

A less leveraged, less highly concentrated banking sector, combined with a simplified regulatory scheme and a repeal of Dodd-Frank's taxpayer bailout mechanisms, will produce a financial system that is far less susceptible to destabilizing panics than the system we had prior to 2008. Investors and creditors will allocate capital and price risk based upon the state of a firm's balance sheet and the strength of its management, not their assessment of the likelihood that its failure will prompt government intervention to protect those investors and creditors. The Financial CHOICE Act's

solution is not to expunge all risk from the financial system and turn banks into functional utilities. Rather, it is to confront bank management, shareholders, and creditors with the full consequences of their decisions (both good and bad), to ensure that the market rewards both effective risk management and prudent risk-taking, and to make good on Dodd-Frank's broken promise to taxpayers that they will never again be asked to pick up the tab for mistakes made on Wall Street or in Washington.

TITLE VII—EMPOWERING AMERICANS TO ACHIEVE FINANCIAL INDEPENDENCE

Title X of the Dodd-Frank Act established the Bureau of Consumer Financial Protection for the purpose of implementing and enforcing federal consumer financial law while ensuring that consumers have access to financial products and services, and warranting fair, transparent, and competitive markets for such services and products. Under the Dodd-Frank Act, the Bureau can issue rules, examine certain institutions, and enforce consumer protection laws and regulations. The Consumer Financial Protection Bureau is not accountable to Congress or the American people. The Bureau's policies often harm consumers or exceed its legal authority because the Bureau is not subject to checks and balances that apply to other regulatory agencies. The Bureau symbolizes a paternalistic approach to consumer protection that empowers bureaucrats while denying consumers access to financial products and services they want and need. The Financial CHOICE Act will increase accountability by changing the Bureau's governance and funding mechanism, and promote real consumer protection by putting power where it belongs: in the hands of consumers, not Washington bureaucrats.

The Financial CHOICE Act remedies the defects in the Bureau's design in a number of ways, providing accountability to Congress and ensuring that the Bureau will benefit—rather than harm—consumers. The Act begins by renaming the Bureau to reflect its mission of protecting consumer opportunity: the Consumer Law Enforcement Agency (CLEA). The Financial CHOICE Act provides accountability to the Agency's Director by making him or her removable by the President at will, and brings the Agency's structure into conformity with the Constitution. The Act additionally subjects the agency to the congressional appropriations process, providing oversight and accountability.

The Financial CHOICE Act reforms the Agency's statutory mandate to ensure that it takes into account, and seeks to promote, robust market competition, while it simultaneously refocuses the Bureau on its responsibility to conduct robust and effective civil enforcement of consumer protection statutes. By restructuring the Agency as a civil enforcement agency, the Act ensures the Agency has the same effective tools to enforce the consumer protection statutes as those the Federal Trade Commission has successfully utilized for decades.

The Financial CHOICE Act also provides courts with enhanced authority to correct any erroneous interpretation made by the Agency of its own legal authority. It requires that the Bureau complete comprehensive cost-benefit analysis before adopting regulations, and affords Congress the opportunity to approve significant

Agency regulations before they take effect. It repeals the CFPB's standard-less authority to deny consumers access to any financial product and service it declares "unfair, deceptive, or abusive." And, the CHOICE Act removes the Agency's ability to make rules that unilaterally expand its own authority to regulate markets Congress did not expressly authorize.

Effective consumer protection requires policing markets for fraud and deception while promoting competition and choice among financial products and services, ultimately advancing the goal of financial inclusion. By creating checks-and-balances for the Agency's operations, the Financial CHOICE Act achieves these goals and shields consumers from further harm under Dodd-Frank's command-and-control economy.

The Durbin Amendment, which was inserted into the Dodd-Frank Act without adequate congressional deliberation, is a price-fixing scheme that picks winners and losers in the marketplace. When a customer uses a credit or debit card to pay for goods or services at a merchant, the merchant's bank pays the customer's bank an "interchange fee" for purchases that use a card network such as Visa and MasterCard. These fees are set by the credit card networks, and are the biggest part of the fees that merchants pay for the privilege of accepting credit cards. Interchange fees have a complex pricing structure, and those fees are set according to the card brand, the type of credit or debit card, the type and size of the accepting merchant, and the type of transaction. Interchange fees are typically a flat fee plus a percentage of the total purchase price.

Many large retail "big box" merchants can negotiate the fees they pay because they control large transaction volumes; other merchants refuse to accept credit cards to avoid paying the fees; still other merchants believe they cannot refuse to accept the major network-branded cards, because they are ubiquitous and preferred by their customers. Merchants have complained that the interchange fees they pay are set at levels that are far higher than the banks' costs for processing these transactions. Merchants claim that if fees were set at competitive rates, consumers would benefit from lower prices.

The banking industry counters that consumers do not benefit from lower interchange fees, both because merchants do not pass savings on to consumers in the form of lower prices and because bank profits from interchange fees subsidize the costs—and thereby lower the prices—of other financial products and services that consumers rely upon. Capping interchange fees thus forces banks to raise prices for other goods and services and restrict choices for bank customers.

Overall, the Durbin Amendment has resulted in the elimination of free checking accounts at banks, pushing vulnerable Americans out of the mainstream banking system, while providing no discernible benefit to retail consumers. The Durbin amendment has had the effect on debit card pricing that its proponents intended. According to the Federal Reserve, the average interchange fee for covered issuers per debit card transaction was 24 cents in the fourth quarter of 2011, immediately after the adoption of the restrictions, which is a 45 percent decrease from 2009, when the average interchange fee was 43 cents. This amounts to a government-mandated

wealth transfer, and the evidence strongly suggests that financial products and services have become less available and more expensive as a result.

A January 2014 Moebs Services survey of 2,890 financial institutions, including large and small banks and credit unions, found that "overall, about 41% of U.S. financial institutions aren't offering unconditional free checking accounts this year [2014], up eight percentage points from a year earlier [2013]." A Wall Street Journal report on the survey noted that "the last time free checking was harder to come by was in 2002," and "the trend marks the steepest annual drop in the percentage of banks and other financial institutions offering free checking since 2010, and follows a trend of less-generous deposit accounts since the recession." The article also cited the imposition of higher minimum balance requirements and new account maintenance fees at several large U.S. banks.

Additionally, before Dodd-Frank became law, just over 75 percent of banks offered free checking. By 2015, just 37 percent of banks offered free checking. Research finds that the Durbin Amendment has contributed to this drop, as well as a 165 percent increase in the average minimum balance for noninterest checking accounts, which along with other Durbin-related fee increases, has driven up the number of unbanked Americans. An October 2014 report in The Economist cited estimates that the Durbin Amendment has resulted "in the transfer of between $1 billion and $3 billion annually from poor households to big retailers and their shareholders."

Also worth noting is an October 23, 2013, University of Chicago working paper entitled "The Impact of the U.S. Debit Card Interchange Fee Regulation on Consumer Welfare: An Event Study Analysis." The paper questions whether consumers gained more from cost savings passed on by merchants, in the form of higher prices and better services, than they lost from cost increases passed on by banks, in the form of higher prices or less services. The authors concluded that "consumers lost more on the bank side than they gained on the merchant side. Our estimate is that, based on the expectations of investors, the present discounted value of the losses for consumers as a result of the implementation of the Durbin Amendment is between $22 and $25 billion."

The Financial CHOICE Act would repeal the Durbin amendment, and thereby bring an end to a misguided government experiment in price-fixing that has done consumers more harm than good. It is time for Congress to get out of the business of rationing consumer access to the mainstream banking system.

TITLE VIII—CAPITAL MARKETS IMPROVEMENTS

Title IX of the Dodd-Frank Act is an almost perfect embodiment of the adage coined by former Obama chief of staff Rahm Emanuel in the early days of the Administration: "Never let a good crisis go to waste." It consists of a grab bag of items culled from the wish list of congressional Democrats and their political allies that in most instances have nothing to do with addressing the causes of the financial crisis. The Dodd-Frank Act represented a missed opportunity to streamline and rationalize the SEC's balkanized and overly bureaucratic structure. The Financial CHOICE Act includes organizational changes and other reforms of the SEC that will

make for a more nimble, less sclerotic agency better-suited to fulfilling its statutory mission.

Driven by a belief that the financial crisis resulted from a lack of regulation, the drafters of the Dodd-Frank Act promised that by increasing government oversight and control over the economy to an unprecedented degree, they would head off future financial crises. This "command-and-control" philosophy is evidenced by numerous mandates included in Title IX of the Act, which empowered the SEC to promulgate an array of new federal regulations that had little or nothing to with the financial crisis. Title IX contains ten subtitles and more than 100 provisions on topics that range from investor protection, civil enforcement remedies and penalties, fiduciary duty, securities arbitration, the SEC's operations/structure/funding/authority, corporate governance, whistleblowers, compensation practices, credit rating agencies, asset-backed securities and risk retention, the Sarbanes-Oxley Act and the PCAOB, municipal securities, municipal advisers, and the Municipal Securities Rulemaking Board and the powers and authorities of Inspectors General. The Financial CHOICE Act repeals the most egregious examples of government overreach in Title IX, modifies several other provisions, and leaves others intact.

The Financial CHOICE Act also repeals the DOL's fiduciary rule and requires the SEC, before promulgating any such rule, to report to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs on whether (i) retail customers are being harmed because broker-dealers are held to a different standard of conduct from that of investment advisers; (ii) alternative remedies will reduce any confusion and harm to retail investors due to the different standard of conduct; (iii) adoption of a uniform fiduciary standard would adversely impact the commissions of broker-dealers or the availability of certain financial products and transactions; and (iv) the adoption of a uniform fiduciary standard would adversely impact retail investors' access to personalized and cost-effective investment advice or recommendations about securities. Additionally, the SEC's chief economist is required to support any conclusion in the report with economic analysis. Finally, it requires the DOL, if it promulgates a fiduciary rule under the Employee Retirement Income Security Act, to substantially conform it to the SEC's standards.

Another Dodd-Frank Act provision that holds the potential for investor harm is Section 921, which authorized the SEC to prohibit or restrict the use of pre-dispute arbitration if it found it to be in the public interest and necessary for the protection of investors. While the SEC has not taken any action under Section 921, using this authority to eliminate arbitration would harm—rather than protect—investors. Such regulatory attempts to prohibit or restrict arbitration would likely leave investors worse off, while significantly benefitting trial lawyers who stand to gain from increased litigation and class action lawsuits. Therefore, the Financial CHOICE Act eliminates the SEC's authority to prohibit or restrict arbitration agreements.

Many post mortems of the financial crisis posit that a perceived misalignment of incentives in the originate-to-distribute model led to the proliferation of poorly underwritten mortgages, which triggered the housing market collapse. But the mulita-trillion dollar

asset-backed securities (ABS) market is much broader than residential mortgages, covering securities backed by everything from auto loans, business loans, credit cards, and equipment leases to commercial real estate. Many of these instruments performed well during the crisis, while others did not. Unfortunately, the Dodd-Frank Act essentially treats all of these categories of ABS as subprime residential mortgages. By failing to differentiate among types of borrowers, collateral, maturities, and investors, Dodd-Frank's "one size fits all" approach hampers market efficiency and harms those borrowers that rely on the ABS market.

Ultimately, the Dodd-Frank Act will increase costs for the businesses and consumers that rely on the ABS market for credit. For instance, a business that takes out a loan that becomes part of a collateralized loan obligation (CLO) will find it more difficult and costly to refinance or roll over that loan if the CLO market shrinks because the Dodd-Frank Act's risk retention requirements reduces market capacity. In fact, CLO issuance declined over 20 percent once CLOs were required to comply with risk retention. To avoid that result, the Financial CHOICE Act eliminates the risk retention requirements for asset-backed securities other than residential mortgages.

Another Republican proposal that was ultimately incorporated in the Dodd-Frank Act is Section 989G, which made permanent the exemption for non-accelerated filers to comply with an outside auditor's attestation of a company's internal financial controls mandated by Section 404(b) of the Sarbanes-Oxley Act. However, the arbitrary threshold of $75 million in market capitalization still captures thousands of small companies grappling with the burdensome costs of 404(b) compliance. A 2011 SEC study found that Section 404(b) compliance can cost over $1 million annually, a staggering sum for a start-up or other small business that has not yet begun generating meaningful revenues. The Financial CHOICE Act increases the exemption to issuers with a market capitalization of up to $500 million and extends the exemption to depository institutions with less than $1 billion in assets.

Other provisions of Title IX of the Dodd-Frank Act represent a broad expansion of the federal government's reach into the corporate boardroom, including on corporate governance matters that have traditionally been the province of state law. Nowhere is this interventionist approach on greater display than in the area of executive compensation. Popular outrage over instances of lavish pay packages for Wall Street traders whose bad bets helped spark the financial crisis provided the impetus for broad new government mandates that may have made for good politics, but have resulted in highly questionable public policy. Two of the most misguided Dodd-Frank provisions—relating to incentive-based compensation and pay ratio disclosures—are repealed by the Financial CHOICE Act.

The Financial CHOICE Act also will modernize, and right size, the federal government's role in shareholder proposals with an emphasis on allowing corporate boards to responsibly guide the companies focused on maximizing shareholder value. Specifically, it will remove the dollar threshold, leaving in place a percentage of ownership threshold and extending the holding period to three years. This critical modernization of the SEC rule will ensure that

shareholders with sufficient "skin in the game," and interest in the long-term value of the company have access to the corporate proxy, and eliminate the ability for gadflies to abuse the system. Additionally, it will update the resubmission thresholds consistent with the SEC's 1997 proposal.

Additionally, Title XV of the Dodd-Frank Act imposes a number of overly burdensome disclosure requirements related to conflict minerals, extractive industries, and mine safety that bare no rational relationship to the SEC's statutory mission to protect investors, maintain fair, orderly, and efficient markets, and promote capital formation. The Financial CHOICE Act repeals those requirements. There is overwhelming evidence that Dodd-Frank's conflict minerals disclosure requirement has done far more harm than good to its intended beneficiaries—the citizens of the Democratic Republic of Congo and neighboring Central African countries. Former SEC Chair Mary Jo White, an Obama appointee, has conceded the Commission is not the appropriate agency to carry out humanitarian policy. The provisions of Title XV of the Dodd-Frank Act are a prime example of the increasing use of the federal securities laws as a cudgel to force public companies to disclose extraneous political, social, and environmental matters in their periodic filings. That core mission of the SEC is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The politically motivated provisions in the Title XV "Miscellaneous" do nothing to fulfill the SEC's statutory mandate. The Financial CHOICE Act repeals these harmful and counterproductive provisions of the Dodd-Frank Act that are "more directed at exerting societal pressure on companies to change behavior, rather than to disclose information that primarily informs investment decisions." Although private equity funds did not cause nor contribute to the financial crisis, Dodd-Frank imposes burdensome requirements on advisers to private equity funds, which unnecessarily punishes their investors and impedes job creation. Title IV of the Dodd-Frank Act requires the SEC to expend scarce resources on the protection of sophisticated institutional investors and wealthy individual investors that would be better utilized protecting the millions of retail investors of more modest means who have a far greater need for the SEC's assistance. The Financial CHOICE Act amends Title IV of the Dodd-Frank Act to enhance funding opportunities for start-up companies and other job creators, and to focus government resources on protecting mom-and-pop investors instead of the wealthiest Americans.

Title IV of the Dodd-Frank Act also directed the SEC to adjust the standard for calculating the net worth of an accredited investor who is a natural person by excluding the value of the investor's primary residence from the calculation, and requiring the Commission to engage in a quadrennial review of the standard to determine whether it should be further adjusted. Private placement offerings are a key source of equity capital for many small and emerging companies that generate a disproportionate share of the new jobs in our economy. Because such offerings are generally available only to accredited and other sophisticated investors, it is essential that the SEC not overly restrict the pool of accredited investors.

By expanding the definition of accredited investor to include sophisticated individuals who do not otherwise satisfy the net worth

test, the Financial CHOICE Act seeks to promote capital formation and extend investment opportunity beyond a narrow class of wealthy Americans. The legislation is premised upon a belief that individual investors who have the risk appetite and ability to understand a private offering should be able to invest in it—the government should not limit the options of individual investors to only those the government deems worthy based on their income and net worth.

Finally, the Financial CHOICE Act seeks to modernize aspects of the SEC's enforcement program to ensure that the Commission upholds important due process protections while vigorously enforcing the federal securities laws. The SEC possesses a wide array of enforcement tools to supplement and effectuate its penalty authority. However, there have been increasing concerns regarding the SEC's use of this authority in its enforcement of the federal securities laws.

Over the past seven years, the SEC has increasingly turned to its own ALJs—rather than the federal courts—to adjudicate enforcement actions. This shift from litigation in federal court to administrative proceedings occurred largely as a result of Section 929P of the Dodd-Frank Act, which expanded the SEC's authority to obtain civil penalties in administrative proceedings against any person or entity. SEC administrative proceedings are quasi-judicial proceedings in which ALJs appointed by the SEC adjudicate enforcement actions under SEC rules. While the SEC has publicly supported administrative proceedings as a more efficient way to resolve enforcement matters, critics have noted that administrative proceedings confer several advantages on the SEC and may deprive defendants of their due process rights.

The SEC's "home court" advantage in administrative proceedings has been manifest in its win-loss record compared to cases it brings in the federal courts. During FY 2014, the SEC's Enforcement Division won all six of its litigated administrative proceedings, compared to only 11 of its 18 cases brought in federal court. The Enforcement Division's broad prosecutorial discretion, coupled with Section 929P's enhanced authority to obtain penalties in administrative proceedings, has created a strong incentive for the SEC to bring cases in an administrative forum that have historically been brought in the federal courts instead. SEC Acting Chairman Michael Piwowar observed in a 2015 speech that the Enforcement Division's avoidance of federal court "has the appearance of the Commission looking to improve its chances of success by moving cases to its in-house administrative system."

In December 2016, the U.S. Court of Appeals for the Tenth Circuit dealt the SEC's in-house tribunals a serious blow, ruling that the SEC's process for hiring ALJs violates the Appointments Clause of the U.S. Constitution, because the judges are "inferior officers" within the meaning of that clause and must therefore be appointed directly by the SEC Commissioners. The Tenth Circuit's opinion conflicts with an earlier decision by the U.S. Court of Appeals for the D.C. Circuit. In August 2016 the D.C. Circuit held that ALJs need not be appointed directly because their decisions are reviewable by the SEC Commissioners.

The SEC's recent penchant for imposing civil penalties on corporations that violate the federal securities laws instead of bring-

ing enforcement actions against individual offenders also has raised concerns among SEC commissioners and other commentators that innocent shareholders are being penalized while the culpable corporate officers escape liability. As a result of this policy, even though the SEC is collecting larger penalties from public companies, those penalties may not be having the intended effect. Corporate employees tempted to cut legal corners or engage in malfeasance will think twice if they know they are likely to pay a price for their wrongdoing. If it is far more likely that the costs will instead be imposed on the company or its shareholders, that deterrent effect is undermined.

Critics also have noted that the Enforcement Division has broad discretion to set the amount of civil penalties and that there are no binding rules or guidelines requiring the SEC to consider the best interests of shareholders in deciding whether to approve a civil penalty proposed by the Division. At the 2015 edition of the "SEC Speaks" conference, Commissioner Piwowar commented that the imposition of corporate penalties and the issuance of waivers "would benefit from the consistent application of public stated guidelines or factors."

Yet there are circumstances in which civil money penalties against corporations are clearly warranted. For example, penalties against regulated entities (which submit to substantive and comprehensive regulation by the SEC) or corporations where the shareholders receive a direct benefit from the fraud (for example, bribery of a foreign official to secure lucrative business in violation of the Foreign Corrupt Practices Act) may deter and punish fraudulent conduct without further harming shareholders.

Another concern is the SEC's system for automatic disqualifications, in which individuals and other entities found to have committed certain bad acts, or deemed to have done so through the operation of a legal settlement with the federal government, are barred from engaging in certain activities or from relying on exemptions that otherwise would be available to them. The SEC has the discretion to waive the disqualification based in its review of the facts and circumstances. While this may seem like a reasonable approach, it has resulted in a system that often conflates the disqualifications with the SEC's current remedial and punitive enforcement authorities, which was not Congress's original intent in establishing the enhanced enforcement authorities. These disqualifications were never meant to be enforcement enhancements and even SEC Chair Mary Jo White has acknowledged that the actions subject to automatic disqualifications "very often involve a relatively limited number of a firm's employees or a specific business line, and [are] wholly unrelated to the activities that would be the subject of the disqualification." When the actions of individuals, corporations, or other entities warrant putting them out of business to protect investors, the SEC has sufficient authority to do so.

Finally, there has been increasing concern with the SEC's growing practice of "rulemaking by enforcement." In settlements, the Enforcement Division has mandated that settling defendants agree to "undertakings," or remedial measures. These "undertakings" effectively have the force of new regulations because they put other market participants on notice that similar activities, even if not inconsistent with current regulations, could result in SEC enforce-

ment actions. These undertakings essentially amount to new compliance obligations imposed on corporations and individuals outside of the predictable regulatory process and the mandates of the Administrative Procedure Act, including the right of public notice and comment. As a result, rulemaking by enforcement has the potential to create greater uncertainty for market participants and deprive companies and individuals of essential due process protections.

These issues and others related to the SEC's sprawling enforcement program raise a number of important questions—not all of which can be resolved within the scope of the Financial CHOICE Act. In the past, the SEC has taken it upon itself to engage in a review of its policies and procedures. In 1972, then-SEC Chairman William Casey announced the creation of an advisory committee to "review and evaluate the Commission's enforcement policies and practices and to make such recommendations as they deemed appropriate." While the official name of the committee was the "Advisory Committee on Enforcement and Practices," but it is best known as the "Wells Committee," after its chairman, John Wells.

It has been 45 years since the Wells Committee engaged in a holistic review of the SEC's enforcement program and the significant changes—in terms of the SEC's mission, its authorities, and the markets and its participants—necessitate another introspective to modernize the SEC's Enforcement program and policies. The Financial CHOICE Act will require that the SEC Chairman convene a new Committee, with the same mission as the original Wells Committee, to holistically review the Enforcement program to ensure it comports with both with the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation and our constitutional due process rights.

Overall, Republicans support the vigorous enforcement of the federal securities laws and believe that the SEC must have the tools it needs to deter and punish wrongdoing and, whenever possible, to make defrauded investors whole. But the SEC must strike the right balance between deterring and punishing securities fraud and protecting shareholders ultimately responsible for paying large civil penalties for violations they did not commit and that may further harm a public company.

To help the SEC and the Enforcement Division strike this balance, the Financial CHOICE Act requires the SEC to implement policies consistent with the principles of predictability, fairness, and transparency. For example, to better protect innocent shareholders from further monetary harm, the legislation requires the SEC, when issuing a civil penalty against an issuer, to include findings, supported by the SEC Chief Economist, whether the alleged violations resulted in direct economic benefit to the issuer and the penalties do not harm the issuer's shareholders.

The Financial CHOICE Act addresses constitutional concerns with the SEC's enforcement program by giving respondents in SEC administrative proceedings the right to remove their enforcement action to federal court to ensure that the respondents' due process rights are protected. It also requires the SEC to allow respondents to appear before the Commission prior to the initiation of a formal enforcement action, and establishes an Enforcement Ombudsman to review complaints about the Enforcement program. Further, the SEC will be required to approve and publish an Enforcement Man-

ual to ensure transparency and uniform application of its procedures. It comports certain private claims under the Investment Company Act with prior securities litigation reform efforts. Finally, the Financial CHOICE Act eliminates the system of automatic disqualifications and makes such disqualifications subject to the Commission's discretion, thereby ensuring that the worst offenders can be barred from certain business activities and, if necessary, the industry.

Finally, the Financial CHOICE Act brings additionally accountability to the Public Company Accounting Oversight Board (PCAOB). "Sunlight is said to be the best of disinfectants," wrote U.S. Supreme Court Justice Louis Brandeis in 1913. But in creating the PCAOB, Congress did not adhere to Justice Brandeis's famous axiom. The Sarbanes-Oxley Act omits Congress from the class of entities that can receive confidential information from the PCAOB, which creates statutory ambiguity and could allow the PCAOB to deny congressional requests for information. To ensure that the PCAOB follows its congressionally mandated mission, Congress must have full and complete access to PCAOB documents. The Financial CHOICE Act will ensure that the PCAOB cannot deny Congress access to information.

TITLE IX—REPEAL OF THE VOLCKER RULE AND OTHER PROVISIONS

Section 619 of the Dodd-Frank Act—popularly known as the "Volcker Rule" after its chief proponent, former Federal Reserve Chairman Paul Volcker—prohibits U.S. bank holding companies and their affiliates from engaging in "proprietary trading" and from sponsoring hedge funds and private equity funds. Chairman Volcker has argued that such activities should not be conducted by firms that benefit from a federal safety net, such as deposit insurance or access to the Federal Reserve's discount window. From its inception, the Volcker Rule has been a solution in search of a problem—it seeks to address activities that had nothing to do with the financial crisis, and its practical effect has been to undermine financial stability rather than preserve it.

The Volcker Rule does not address any of the problems that led to the financial crisis, and it has significantly harmed the economy and inhibited economic growth. Former Obama Treasury Secretary Tim Geithner put it bluntly: "if you look at this crisis . . . most of the losses that were material for both the weak and strong institutions did not come from those [proprietary trading] activities. They came overwhelmingly from what I think you can fairly describe as classic extensions of credit." Even Paul Volcker himself has admitted that proprietary trading did not lead to the crisis: "proprietary trading in commercial banks . . . was not central to the crisis." Not only is the Volcker Rule completely irrelevant to the problem of financial stability—it is also affirmatively harmful. It weakens banks because it deprives them of a profitable business line stream that helps them diversify their revenue streams and better manage their risks. As banking experts Charles Calomiris, Robert Eisenbeis and Robert Litan put it, "to the extent that [proprietary] trading has been profitable for banks, denying them the ability to pursue it could detract from their safety and soundness." In other words, the Volcker Rule doesn't make the financial system safer or stronger—it makes it riskier and more fragile.

The Volcker Rule also dries up much needed liquidity in the financial markets. As researchers at the New York Federal Reserve discovered, "Our results show that bond liquidity deterioration around rating downgrades has worsened following the implementation of the Volcker Rule . . . [W]e find that the relative deterioration in liquidity around these stress events is as high during the post-Volcker period as during the Financial Crisis. Given how badly liquidity deteriorated during the financial crisis, this finding suggests that the Volcker Rule may have serious consequences for corporate bond market functioning in stress times." By drying up liquidity from the corporate bond market, the Volcker Rule has made the financial system more fragile. It has also made it harder for businesses to borrow, it has lowered investment returns for households saving for retirement and their children's education. And it has inhibited economic growth by constraining market-making activity.

There is further anecdotal evidence from regulators and market participants about the negative impacts of the Volcker Rule. Federal Reserve Governor Jerome Powell bluntly assessed the effect of the Volcker Rule in this way: "the Volcker Rule . . . [has] discouraged banks from holding and making markets in [corporate] debt." His conclusion: the Volcker Rule has resulted in "tremendous expense and quite marginal benefit." He urged Congress to "take another look" at the Volcker Rule.

Former Federal Reserve Governor Jeremy Stein was equally candid about the Volcker Rule's failure: "There are reasons to be skeptical about the usefulness of the Volcker Rule. By discouraging "speculation" at broker-dealer banks, the rule may dissuade dealers from providing liquidity during a market correction. Most fundamentally, market-making and proprietary trading are almost impossible to distinguish in practice, making the rule difficult to enforce, while at the same time creating large compliance and supervisory costs. . . Thus, on balance, we believe that the Volcker Rule should be repealed."

In his farewell remarks, former Federal Reserve Governor Daniel Tarullo also found the Volcker Rule's meager benefits were not justified by its costs: "the Volcker rule is too complicated. Achieving compliance under the current approach would consume too many supervisory, as well as bank, resources relative to the implementation and oversight of other prudential standards. And although the evidence is still more anecdotal than systematic, it may be having a deleterious effect on market making, particularly for some less liquid issues."

And Tobias Adrian, the former senior vice president of the New York Federal Reserve and now Director of the Monetary IMF's Monetary and Capital Markets Department offered this scathing assessment of the Volcker Rule: "It is a rule that's very difficult to enforce, because it's very difficult to distinguish between what are proprietary trades and what are client trades. So it's not clear how effective it is. . . . [R]egulations [can] make the system safer. But they can also impact the ability of institutions to supply credit, to make markets, and that trade-off has to be carefully considered."

It is long past time for Congress to "carefully consider" the trade-off between the benefits that Volcker Rule offers and the costs that it imposes. The benefits are few and the costs are enormous. The

Volcker Rule will increase borrowing costs for businesses, lower investment returns for households, and reduce economic activity overall because it constrains market-making activity and has already reduced liquidity in key fixed-income markets, including the corporate bond market. The Financial CHOICE Act's repeal of the Volcker Rule will promote more resilient capital markets and a more stable financial system.

TITLE X—FED OVERSIGHT REFORM AND MODERNIZATION

Dodd-Frank rewarded government bureaucrats who were arguably most responsible for the financial crisis—the Federal Reserve—with expansive new regulatory powers, lending credence to the adage that at least in Washington, nothing succeeds like failure. By amassing a $4.5 trillion balance sheet and stepping well outside the bound of monetary policy to engage as a fiscal principal in the most political of credit markets, the Fed erased the line between fiscal and monetary policy, and in doing so has undermined the important political independence of monetary policy.

A transparent and reliable monetary policy strategy would enhance congressional oversight—and therefore public accountability—of the Federal Reserve, helping to demystify an institution that wields enormous influence over the lives of every American but about which most Americans know very little.

Monetary policy works best when the Federal Reserve can make credible commitments to the public about its future course. Requiring the Federal Reserve to systematically explain differences between actual policy decisions and prescriptions from well-known benchmarks can help households and markets set better expectations about the future path of monetary policy, and thus make better economic decisions in the present. Accordingly, the Financial CHOICE Act seeks to improve how the Fed communicates monetary policy, by requiring it to choose a monetary policy strategy, and explain to the American people how its chosen course compares to a reference policy rule. Importantly, it is the Federal Reserve that selects the policy inputs that go into the formulation of its strategy, and the Fed retains the power to change or depart from its chosen strategy whenever it determines that economic circumstances warrant. The requirement is simply for a more clear communication of policy and not for any particular policy.

By promoting a monetary policy strategy that is both more principled and transparent, the Financial CHOICE Act finally provides a framework for monetary policy to do what it can (and only what it can) to fundamentally support a dynamic and growing economy for every American—that is, reliably produce clear price signals so that businesses and households can make better economic decisions. Leading academic and Fed economists, including several Nobel Laureates, support this important reform. However, while a decade of improvisational monetary policies consistently failed to deliver on the Fed's own benchmarks, Fed Chair Yellen continues to oppose this simple reform.

While it is understandable that the Federal Reserve wishes to avoid greater public scrutiny of its conduct of monetary policy—which many observers have likened to performing financial alchemy—that is not how open democratic societies operate. At a time when the American people's distrust of government and cyni-

cism about our public institutions has never been higher, asking the Federal Reserve to be accountable for its actions and operate with a modicum of transparency is most certainly not asking too much.

Title X also imposes new limitations on the Federal Reserve's emergency lending authority under Section 13(3) of the Federal Reserve Act. During the financial crisis, the Federal Reserve resorted several times to its emergency lending authority under Section 13(3) of the Federal Reserve Act, which allows it to make emergency loans to "any individual, partnership, or corporation" under "unusual and exigent circumstances," provided the borrower "is unable to secure adequate credit accommodations from other banking institutions."

The Financial CHOICE Act incorporates a number of reforms to 13(3) that would significantly reduce the potential use of Section 13(3) as a bailout tool. The legislation would allow the Federal Reserve to invoke its emergency lending powers only upon a finding that "unusual and exigent circumstances exist that pose a threat to the financial stability of the United States." This amendment raises the bar from the current trigger, which permits the Fed to utilize 13(3) in "unusual and exigent circumstances," defined however the Fed sees fit. The bill also mandates that in addition to the current requirement that five of seven Fed Board Governors approve of a 13(3) facility, nine of the twelve District Fed Bank Presidents must also approve—increasing the confidence and competence with which a lack of liquidity can be distinguished from a lack of solvency in times of panic. It limits eligible recipients of 13(3) assistance to financial institutions, defined as those entities that derive 85 percent or more of their annual gross revenues from activities that are "financial in nature." The Financial CHOICE Act also restricts the use of 13(3) to those instances that meet the specific criteria of Bagehot's Dictum, named after the noted British financial journalist Walter Bagehot, which stipulates that a central bank should lend freely in a financial crisis, but only to solvent borrowers, against good collateral, and at penalty rates.

TITLE XI—IMPROVING INSURANCE COORDINATION THROUGH AN INDEPENDENT ADVOCATE

The Dodd-Frank Act made two notable changes to the role the federal government plays in the insurance industry. First, in Title V, the Dodd-Frank Act created a new Federal Insurance Office (FIO) within the Treasury Department to provide the federal government with information and expertise on insurance matters. Though by design FIO has no supervisory or regulatory authority, the Dodd-Frank Act charges the FIO with several mandates, including: (1) monitoring all aspects of the insurance industry; (2) recommending which insurance companies be designated for heightened prudential standards and supervision; (3) assisting in administering the Terrorism Risk Insurance Program; (4) coordinating federal involvement and policymaking on international insurance matters and in negotiations of international insurance agreements; and (5) consulting with state insurance regulators on matters of national or international importance. The Dodd-Frank Act also charged the FIO Director with producing several one-time and annual reports on matters relating to the insurance industry.

The FIO Director is a non-voting member of the FSOC, the 15-member inter-agency group comprising federal and state regulators and other financial regulatory experts that Dodd-Frank charges with identifying risks to the financial stability of the United States and promoting market discipline. The Dodd-Frank Act mandates that one of the FSOC's members—this one with voting powers—be an Independent Member with Insurance Expertise, with no other federal supervisory or regulatory duties. The Independent Member is the sole source of expertise among the FSOC's ten voting members.

This fragmented approach—featuring one insurance bureaucrat who monitors the insurance industry, advises federal officials, and participates in international insurance negotiations but cannot vote on FSOC macroprudential matters, and another insurance bureaucrat who does vote on FSOC macroprudential matters but has no other substantive policy responsibilities—has proved unwieldy. In theory, on matters relating to an insurance company, other FSOC voting members might be expected to defer to the professional judgment of the FSOC's dedicated insurance expert in evaluating the potential systemic risk posed by an insurer. But in practice, the opposite has occurred. For example, when the FSOC voted in 2013 to designate the insurance conglomerate Prudential Financial as "systemically important," the Independent Member with Insurance Expertise strongly dissented, but only one of the eight other voting members that day sided with him. This scenario repeated itself in the 2014 designation of MetLife, when the Independent Member with Insurance Expertise filed the lone dissent to the FSOC's determination.

Similarly, FIO has been criticized by some for not using its position to champion the best interests of the U.S. domestic insurance industry in insurance matters and in negotiations of international insurance agreements. Other critics have lamented that FIO lacks a unified voice in speaking with state regulators on matters of national or international importance, further fragmenting our unique system of domestic insurance regulation.

To address these overlapping and conflicting authorities, the Financial CHOICE Act consolidates the federal insurance bureaucracy by merging and reforming FIO and the Independent Member with Insurance Expertise into one unified Independent Insurance Advocate (IIA). Appointed by the President, subject to the advice and consent of the Senate, for a six-year term, the IIA will be housed as an independent Office of the Independent Insurance Advocate within the Treasury Department.

The IIA will replace the Independent Member with Insurance Expertise as the voting FSOC member and will coordinate federal efforts on the prudential aspects of international insurance matters, including representing the U.S. in the International Association of Insurance Supervisors (IAIS) and assisting in the negotiations of covered agreements. Also the IIA will consult with state insurance regulators regarding insurance matters of national importance and prudential insurance matters of international importance and will assist Treasury in administering TRIA.

To promote accountability and transparency in the new office, the IIA will be required to testify before Congress twice a year on the activities and objectives of the Office, any actions taken by the

Office pursuant to covered agreements, the state of the insurance industry, and the scope of global insurance and reinsurance markets and the role such markets play in supporting insurance in the U.S.

TITLE XII—TECHNICAL CORRECTIONS

Title XII makes numerous technical and grammatical changes to many of the titles of the Dodd-Frank Act and other statutes within the jurisdiction of the Committee on Financial Services.

HEARINGS

The Committee on Financial Services held a hearing examining a discussion draft of H.R. 10 entitled "A Legislative Proposal to Create Hope and Opportunity for Investors, Consumers, and Entrepreneurs" on April 26 and April 28, 2017. In addition to this hearing, the Committee and its subcommittees held a substantial number of hearings in the 112th, 113th, 114th, and 115th Congresses that examined the impact and effect of the Dodd-Frank Wall Street Reform and Consumer Protection Act and potential legislative alternatives.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 2, 2017, May 3, 2017, and May 4, 2017, to consider H.R. 10. Sundry amendments were considered and adopted as described below. The Committee ordered H.R. 10 to be reported favorably to the House as amended by a recorded vote of 34 yeas to 26 nays (recorded vote no. FC–57), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A question of consideration offered by Mr. Kildee was agreed to in the affirmative by a recorded vote of 29 yeas to 23 nays (FC–37). During consideration of the bill, Chairman Hensarling offered an amendment in the nature of a substitute. Amendments to the amendment in the nature of a substitute were disposed of as follows:

Velázquez Amendment (no. 1a) was not agreed to by a recorded vote of 24 yeas to 32 nays (Recorded vote no. FC–38)

Maloney Amendment (no. 1b) was not agreed to by a recorded vote of 24 yeas to 32 nays (Recorded vote no. FC–39)

Scott Amendment (no. 1c) was not agreed to by a recorded vote of 24 yeas to 31 nays (Recorded vote no. FC–40)

Kildee Amendment (no. 1d) was not agreed to by a recorded vote of 25 yeas to 32 nays (Recorded vote no. FC–41)

Gottheimer Amendment (no. 1e) was not agreed to by a recorded vote of 25 yeas to 32 nays (Recorded vote no. FC–42)

Kihuen Amendment (no. 1f) was not agreed to by a recorded vote of 25 yeas to 33 nays (Recorded vote no. FC–43)

Lynch Amendment (no. 1g) was not agreed to by a recorded vote of 24 yeas to 34 nays (Recorded vote no. FC–44)

Capuano Amendment (no. 1h) was not agreed to by a recorded vote of 26 yeas to 33 nays (Recorded vote no. FC–45)

Perlmutter Amendment (no. 1i) was not agreed to by a recorded vote of 26 yeas to 32 nays (Recorded vote no. FC–46)

Moore Amendment (no. 1j) was not agreed to by a recorded vote of 26 yeas to 32 nays (Recorded vote no. FC–47)

Foster Amendment (no. 1k) was not agreed to by a recorded vote of 26 yeas to 33 nays (Recorded vote no. FC–48)

Himes Amendment (no. 1l) was not agreed to by a recorded vote of 26 yeas to 33 nays (Recorded vote no. FC–49)

Heck Amendment (no. 1m) was not agreed to by a recorded vote of 26 yeas to 33 nays (Recorded vote no. FC–50)

Sherman Amendment (no. 1n) was not agreed to by a recorded vote of 26 yeas to 33 nays (Recorded vote no. FC–51)

Meeks Amendment (no. 1o) was not agreed to by a recorded vote of 26 yeas to 33 nays (Recorded vote no. FC–52)

Crist Amendment (no. 1p) was not agreed to by a recorded vote of 26 yeas to 33 nays (Recorded vote no. FC–53)

Maloney Amendment (no. 1q) was not agreed to by a recorded vote of 26 yeas to 33 nays (Recorded vote no. FC–54)

Maloney Amendment (no. 1r) was not agreed to by a recorded vote of 26 yeas to 33 nays (Recorded vote no. FC–55)

Gottheimer Amendment (no. 1s) was not agreed to by a recorded vote of 26 yeas to 34 nays (Recorded vote no. FC–56).

The amendment in the nature of a substitute was then adopted by voice vote. The bill as amended was ordered favorably reported to the House by a recorded vote of 34 yeas to 26 nays (Recorded vote no. FC–57), a quorum being present.

Record vote no. FC-37

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)		X	
Mr. King	X			Ms. Velázquez			
Mr. Royce (CA)	X			Mr. Sherman		X	
Mr. Lucas				Mr. Meeks		X	
Mr. Pearce	X			Mr. Capuano		X	
Mr. Posey	X			Mr. Clay			
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)		X	
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers				Mr. Cleaver		X	
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross				Mr. Ellison		X	
Mr. Pittenger	X			Mr. Perlmutter		X	
Mrs. Wagner	X			Mr. Himes		X	
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee		X	
Mr. Messer				Mr. Delaney		X	
Mr. Tipton	X			Ms. Sinema		X	
Mr. Williams	X			Mrs. Beatty		X	
Mr. Poliquin	X			Mr. Heck		X	
Mrs. Love	X			Mr. Vargas		X	
Mr. Hill	X			Mr. Gottheimer		X	
Mr. Emmer	X			Mr. Gonzalez (TX)			
Mr. Zeldin	X			Mr. Crist		X	
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

Record vote no. FC-38

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY)	X		
Mr. King				Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin				Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)			
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen			
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-39

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY)	X		
Mr. King				Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin				Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)			
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen			
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-40

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY)	X		
Mr. King				Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin				Mr. Heck	X		
Mrs. Love				Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)			
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen			
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-41

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY)	X		
Mr. King				Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin				Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)			
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-42

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY)	X		
Mr. King				Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin				Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)			
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-43

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin				Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)			
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-44

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay			
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)		X	
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-45

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-46

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King				Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-47

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King				Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-48

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-49

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-50

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-51

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-52

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-53

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-54

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY)	X		
Mr. King				Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-55

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY)	X		
Mr. King				Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-56

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Maxine Waters (CA)	X		
Mr. McHenry		X		Mrs. Carolyn B. Maloney (NY)	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas		X		Mr. Meeks	X		
Mr. Pearce		X		Mr. Capuano	X		
Mr. Posey		X		Mr. Clay	X		
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. David Scott (GA)	X		
Mr. Duffy		X		Mr. Al Green (TX)	X		
Mr. Stivers		X		Mr. Cleaver	X		
Mr. Hultgren		X		Ms. Moore	X		
Mr. Ross		X		Mr. Ellison	X		
Mr. Pittenger		X		Mr. Perlmutter	X		
Mrs. Wagner		X		Mr. Himes	X		
Mr. Barr		X		Mr. Foster	X		
Mr. Rothfus		X		Mr. Kildee	X		
Mr. Messer		X		Mr. Delaney	X		
Mr. Tipton		X		Ms. Sinema	X		
Mr. Williams		X		Mrs. Beatty	X		
Mr. Poliquin		X		Mr. Heck	X		
Mrs. Love		X		Mr. Vargas	X		
Mr. Hill		X		Mr. Gottheimer	X		
Mr. Emmer		X		Mr. Gonzalez (TX)	X		
Mr. Zeldin		X		Mr. Crist	X		
Mr. Trott		X		Mr. Kihuen	X		
Mr. Loudermilk		X					
Mr. Mooney (WV)		X					
Mr. MacArthur		X					
Mr. Davidson		X					
Mr. Budd		X					
Mr. Kustoff (TN)		X					
Ms. Tenney		X					
Mr. Hollingsworth		X					

Record vote no. FC-57

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)		X	
Mr. King	X			Ms. Velázquez		X	
Mr. Royce (CA)	X			Mr. Sherman		X	
Mr. Lucas	X			Mr. Meeks		X	
Mr. Pearce	X			Mr. Capuano		X	
Mr. Posey	X			Mr. Clay		X	
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)		X	
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers	X			Mr. Cleaver		X	
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross	X			Mr. Ellison		X	
Mr. Pittenger	X			Mr. Perlmutter		X	
Mrs. Wagner	X			Mr. Himes		X	
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee		X	
Mr. Messer	X			Mr. Delaney		X	
Mr. Tipton	X			Ms. Sinema		X	
Mr. Williams	X			Mrs. Beatty		X	
Mr. Poliquin	X			Mr. Heck		X	
Mrs. Love	X			Mr. Vargas		X	
Mr. Hill	X			Mr. Gottheimer		X	
Mr. Emmer	X			Mr. Gonzalez (TX)		X	
Mr. Zeldin	X			Mr. Crist		X	
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 10 will, among other things, end taxpayer-funded bailouts of too-big-to-fail financial institutions, reduce regulatory burdens on community financial institutions, lower costs and increase financial services for consumers, encourage new entrants into the market for financial services, improve the conduct of monetary policy, promote capital formation, and reform and reauthorize the Securities and Exchange Commission.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 18, 2017.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 10, the Financial CHOICE Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro, who can be reached at 226–2860.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 10—Financial CHOICE Act of 2017

Summary: H.R. 10 would amend the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and other laws governing regulation of the financial industry. The bill also would repeal the Federal Deposit Insurance Corporation's (FDIC) authority to use the Orderly Liquidation Fund (OLF) and would allow financial institutions, under certain circumstances, to be exempt from a variety of regulations. H.R. 10 would make numerous other changes to the authorities of the agencies that regulate the financial industry, and it would change how the operations of the National Credit Union Administration (NCUA) and Consumer Financial Protection Bureau (CFPB) are funded.

CBO estimates that enacting the legislation would reduce federal deficits by $24.1 billion over the 2017–2027 period. Direct spending would be reduced by $30.1 billion, and revenues would be reduced by $5.9 billion. Most of the budgetary savings would come from eliminating the OLF and changing how the CFPB is funded.

CBO also estimates that, over the 2017–2027 period, and assuming appropriation of the necessary amounts, implementing the bill would cost $1.8 billion.

Those estimates are subject to considerable uncertainty, in part because they depend on the probability in any year that a systemically important firm will fail. That probability is small under both current law and under the legislation, but it is hard to predict. Despite those and other uncertainties, CBO has endeavored to develop estimates that are in the middle of the distribution of possible outcomes.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 10 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates the aggregate costs of the mandates on public entities would fall well below the annual threshold established in UMRA for intergovernmental mandates ($78 million in 2017, adjusted annually for inflation). However, in aggregate, CBO estimates the net cost of the mandates on private entities would exceed the annual threshold established in UMRA for private-sector mandates ($156 million in 2017, adjusted annually for inflation) in 2018 and 2019, primarily because of increases in fees and assessments.

List of Acronyms: As a reference, these acronyms are used throughout this cost estimate:

- Commodity Futures Trading Commission (CFTC),
- Consumer Financial Protection Bureau (CFPB),
- Consumer Law Enforcement Agency (CLEA),
- Deposit Insurance Fund (DIF),
- Federal Deposit Insurance Corporation (FDIC),
- Federal Financial Institutions Examination Council (FFIEC),
- Federal Housing Finance Agency (FHFA),
- Federal Open Market Committee (FOMC),

- Financial Research Fund (FRF),
- Financial Stability Oversight Council (FSOC),
- Government Accountability Office (GAO),
- Globally systemic important bank (G–SIB),
- National Credit Union Administration (NCUA),
- Office of Financial Research (OFR),
- Office of the Comptroller of the Currency (OCC),
- Orderly Liquidation Fund (OLF),
- Securities and Exchange Commission (SEC),
- Share Insurance Fund (SIF),
- Supplementary Leverage Ratio (SLR), and
- Unfunded Mandates Reform Act (UMRA).

Estimated Cost to the Federal Government: The estimated budgetary effect of H.R. 10 is shown in the upcoming table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017–2022	2017–2027
NET INCREASES AND DECREASES (-) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES													
Eliminating the Orderly Liquidation Fund	0	−700	−1,200	−1,750	−2,450	−1,850	−1,450	−1,300	−1,300	−1,250	−1,250	−7,950	−14,500
Allowing Capital Election and Making Other Changes to Financial Regulations [a]	0	0	30	40	40	40	40	30	20	30	30	150	300
Amending Responsibilities and Operations	0	35	60	65	40	50	45	30	35	35	25	250	420
Modifying Agency Funding	0	−615	−865	−880	−910	−925	−950	−980	−1,005	−1,030	−1,055	−4,195	−9,215
Transferring Responsibilities and Eliminating Agencies	0	5	−65	−55	−60	−60	−60	−70	−65	−65	−65	−235	−560
Penalties	0	40	75	−60	−75	−90	−85	−90	−90	−90	−95	−110	−560
Total Decrease in the Deficit	0	−1,235	−1,965	−2,640	−3,415	−2,835	−2,460	−2,380	−2,405	−2,370	−2,410	−12,090	−24,115
INCREASES OR DECREASES (-) IN SPENDING SUBJECT TO APPROPRIATION													
SEC													
Net Authorization Level	0	179	202	225	246	265	0	0	0	0	0	1,116	1,116
Net Estimated Outlays	40	−174	191	214	235	254	397	0	0	0	0	719	1,116
CLEA[b] Authorization Level	0	485	0	0	0	0	0	0	0	0	0	485	485
Estimated Outlays	0	315	170	0	0	0	0	0	0	0	0	485	485
CFTC													
Estimated Authorization Level	0	14	14	14	11	11	10	9	9	9	9	64	110
Estimated Outlays	0	13	14	14	11	11	9	9	9	9	9	62	107
Other													
Net Estimated Authorization Level	0	7	7	7	7	7	7	7	7	7	7	34	69
Net Estimated Outlays	0	6	7	7	7	7	7	7	7	7	7	33	68
Total Changes.													
Net Estimated.													
Authorization Level	0	685	223	246	263	283	16	16	16	16	16	1,699	1,781
Net Estimated Outlays	0	159	382	234	252	272	414	16	16	16	16	1,299	1,777
Memorandum: Components of the Net Increase in the Deficit													
DECREASES IN DIRECT SPENDING													
Total Changes in Direct Spending.													
Estimated Budget Authority	0	−1,670	−2,165	−2,830	−3,680	−3,210	−3,035	−3,040	−3,175	−3,350	−3,485	−13,555	−29,640
Estimated Outlays	0	−1,515	−2,260	−2,885	−3,745	−3,265	−3,090	−3,105	−3,240	−3,405	−3,550	−13,670	−30,060

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017–2022	2017–2027
DECREASES IN REVENUES													
Total Changes in Revenues	0	−280	−295	−245	−330	−430	−630	−725	−835	−1,035	−1,140	−1,580	−5,945

Source: Congressional Budget Office and the staff of the Joint Committee on Taxation.

Notes: Amounts may not sum to totals because of rounding; SEC = Securities and Exchange Commission, CLEA = Consumer Law Enforcement Agency, CFTC = Commodity Futures Trading Commission.

[a] The capital election would permit some banks to maintain a 10 percent leverage ratio and then be subject to reduced regulatory oversight.

[b] Under the bill the Consumer Financial Protection Bureau would be renamed CLEA. In addition, H.R. 10 would not authorize appropriations for the agency after 2018, but CBO estimates that its operations would cost about $5 billion over the 2019–2027 period, assuming appropriations were provided in those years that were equal to the amount authorized for 2018, adjusted for anticipated inflation.

Basis of Estimate: For this estimate, CBO assumes that H.R. 10 will be enacted late in 2017, that the specified and estimated amounts will be appropriated each year, and that outlays will follow historical spending patterns for the affected agencies.

Changes in the Deficit From Changes in Direct Spending and Revenues: Many of the agencies that would be affected by the bill have both the authority to spend funds without annual appropriations (known as direct spending) and the authority to offset such spending with collections; some of those collections are classified as offsetting receipts, which are treated as reductions in direct spending, and the remainder are classified as revenues. Because proposed changes to the operations of those agencies would affect both direct spending and revenues, this estimate shows the budgetary effects of most provisions in terms of their net effect on the deficit.

Eliminating the Orderly Liquidation Fund

Title I would repeal the FDIC's authority to use the OLF to resolve large, systemically important financial firms (including banks and nonbank firms) that become or are in danger of becoming insolvent, subject to certain conditions. CBO estimates that ending that authority would reduce deficits by $14.5 billion over the 2018–2027 period. That change reflects estimated reductions in both direct spending and revenues of $18.8 billion and $4.3 billion, respectively. The overall reduction incorporates an estimated increase in net costs to the FDIC's Deposit Insurance Fund of $1 billion to address failures of federally insured depositary institutions that would result from eliminating the OLF.

The Orderly Liquidation Fund. Current law provides the FDIC with the authority and funding to address the failure—or possible failure—of large, systemically important banks and other financial firms. Use of that authority is contingent on certain conditions being met, including a finding by the Secretary of the Treasury that the bankruptcy process is not appropriate for resolving a firm's financial difficulties and that the firm's failure would threaten the stability of the nation's financial system.

If the necessary conditions were met, the FDIC would be authorized under current law to borrow funds from the Treasury and implement alternative legal arrangements to resolve a firm's financial problems. The FDIC would be required to collect fees from other large financial firms to offset the cost of any losses resulting from those activities. The net outlays for any financial transactions stemming from the use of this authority would be recorded in the budget on a cash basis, and any income from fees would be recorded as revenues as the payments were received.

Although the probability that the FDIC would have to liquidate a systemically important firm in any year is small, the potential associated cash flows would probably be large. On an expected-value basis, CBO estimates that the potential use of OLF authorities under current law will increase the deficit by $15.5 billion over the 2018–2027 period, reflecting net direct spending of $19.8 billion (which includes recoveries from the sale of assets) and revenues from fees of $4.3 billion (net of effects on income and payroll taxes). CBO estimates that repealing the authorities as specified in title I would reduce deficits by a corresponding amount.

CBO's baseline projections reflect the estimated probability of various scenarios regarding the frequency and magnitude of systemic problems that could trigger spending by the OLF. Because future economic and financial events are inherently unpredictable, CBO assumes (on the basis of recent and historical trends) there is a chance of such an event in each of the 10 years of the projection period. The estimated effects on the deficit also account for differences in the timing between the expected values of spending by the OLF to resolve insolvent firms and assessments collected by the OLF to recover any costs. It might take several years, for example, to recoup the funds spent to liquidate a complex financial institution. As a result, CBO expects some of the proceeds from asset sales or cost recovery fees related to financial problems emerging in any particular year would be collected beyond the 10-year budget window. CBO estimates, however, that over time net revenues collected from assessments would be lower than projected outlays, because the assessments would reduce the base for income and payroll taxes.

The Deposit Insurance Fund. Repealing the FDIC's orderly liquidation authority could change how large, systemically important firms that fail would be resolved in the future and who would bear the costs. Without the OLF, CBO expects that any future defaults of such firms would have to be addressed through bankruptcy courts using financial resources available from the private sector. After considering the possibility of different outcomes, as detailed below, CBO estimates that without the OLF, the FDIC would realize additional net costs of about $1 billion through the DIF over the next 10 years.

CBO expects that if a systemically important financial firm failed, some federally insured depository institutions would be among its creditors, increasing the probability of losses to the DIF. CBO also expects that creditors' losses would be larger under a bankruptcy proceeding than they would be under a resolution using the OLF because the timing and mechanisms of the bankruptcy process would probably place additional stress on the firm's creditors and other financial institutions.

The legislation's potential effects on the DIF would depend on many legal, financial, and economic factors that are uncertain and difficult to quantify. For example, the risk to the DIF of additional bank failures would depend on the extent of the exposure of insured depository institutions to higher costs and whether they could remain financially solvent after absorbing those costs. To calculate the additional costs to the DIF, CBO considered the estimated cash flows of the OLF and interrelated financial institutions (known as counterparties) that would accrue losses; only insured depository institutions that fail would be resolved by the DIF.

In its baseline, CBO projects that, on average under current law, the DIF will reduce the deficit by about $6 billion per year. That projection includes income to the fund from insurance premiums and recoveries totaling, on average, about $10 billion per year and costs to resolve failed institutions totaling between $2 billion and $5 billion per year (excluding the DIF's operating costs). Those projections reflect a very small chance that a large, financially complex institution will fail and that the DIF will resolve the insured deposits at that institution.

CBO estimates that under title I, the value of assets of failed institutions requiring resolution by the FDIC and the NCUA would increase by more than 5 percent above the amounts included in CBO's baseline projections. (The overwhelming majority of that increase would be resolved by additional spending through the DIF, although CBO estimates that insurance funds administered by the NCUA would also be needed to resolve some institutions.) To calculate the net effect on the federal budget, CBO considered the FDIC's loss ratio, which is the net cost of resolving the failure of an institution before changes in insurance assessments are made. For this estimate, CBO calculated variations in the loss ratio from the average of 18 percent to as high as 30 percent, because in times when the financial sector has been under stress, the loss ratio for the DIF has typically been higher than average. Although, in CBO's estimation, the FDIC would eventually recover the cost of any additional losses by raising assessments on insured depository institutions, such recoveries would occur over many years.

Allowing Capital Election and Making Other Changes to Financial Regulations

Title VI would permit financial institutions to opt out of a number of financial rules and regulations, including all of those related to capital and liquidity standards if they choose to maintain a ratio of capital to assets as defined in the bill—a leverage ratio—that exceeds 10 percent.[1] Some institutions would have to raise more capital to meet such a ratio. All of the financial institutions that opted into the new regulatory framework under the bill, in an action CBO has termed capital election, would receive less oversight from federal regulators. Other provisions of H.R. 10 would reduce regulatory oversight of some financial institutions by reducing the frequency of stress tests and reviews of resolution plans (known as living wills). Also, the bill would make changes to the authority of regulators to oversee certain banking activities and would allow institutions to change their operations in ways that could affect the DIF's losses.

CBO estimates that, on balance, those changes would result in higher losses by the DIF. Losses by the DIF are recovered by increasing assessments on banking institutions, which are recorded as reductions in direct spending. However, not all of the additional costs stemming from H.R. 10 would be recovered over the next 10 years. Thus, CBO estimates that enacting those provisions would increase net direct spending by about $300 million over the 2018–2027 period.

CBO's estimates for H.R. 10 are based on the analysis underlying the projections for deposit insurance in its January 2017 baseline. Those projections incorporate the small probability that there is a financial crisis in any given year during the projection period and the more likely scenario of an average number of bank and credit union failures in any given year. As a result, the estimated cost represents a weighted probability of outcomes—including some cases, for which the probability is very low, but the losses by the DIF are much larger.

[1] Under that definition of leverage ratio, a firm with a higher ratio has lower leverage.

In order to estimate the effects of the title VI provisions, CBO first considered which financial institutions might choose to make the capital election and the effect of that choice on the DIF.[2] Financial institutions that currently maintain or exceed a leverage ratio of 10 percent and opt into the new framework would be subject to less regulatory oversight. That decline in oversight would tend to increase the losses those institutions impose on the DIF if they fail. The case is not as clear-cut for financial institutions that would need to increase their capital to meet the 10 percent threshold for making the capital election because increases in capital would typically decrease the risk of failure.

However, under the bill, the calculation of the leverage ratio would not consider the riskiness of the assets. (Under current regulations, financial institutions must meet both risk-weighted and non-risk-weighted capital ratios.) As a result, an institution that met the 10 percent leverage ratio and made the capital election would probably have a somewhat riskier portfolio of assets and would impose somewhat higher costs on the DIF, on average, than financial institutions with similar ratios that did not make the election.

CBO analyzed financial institutions on the basis of the size of their assets and the concentration of certain types of assets within their balance sheet portfolios. Financial institutions in the United States hold a total of about $18 trillion in assets (about $17 trillion at banks and $1 trillion at credit unions). Roughly 70 percent of the assets in the banking sector are held in banks with assets over $50 billion. Financial institutions would decide whether or not to make the capital election allowed by H.R. 10 on the basis of their specific financial and strategic goals. Some firms that currently have a leverage ratio of 10 percent could make that election without needing to significantly change their business models. Firms currently below that threshold would have to assess the trade-offs between the costs of raising capital and the benefits of less regulation.

Choices for Financial Institutions With Assets of Less Than $50 Billion. CBO expects that most of the financial institutions that chose to maintain a leverage ratio at 10 percent would be those with assets below $10 billion, commonly known as community banks. CBO estimates that more than one-half of banks with assets of less than $50 billion have a 10 percent capital ratio and that those institutions hold roughly 15 percent of the total assets held by banks. (About two-thirds of credit unions holding about two-thirds of credit union assets also have leverage ratios of 10 percent or more). However, CBO does not expect that all of those institutions would make the capital election because they would have to maintain that ratio over time, as well as their return on equity. CBO assigned an initial probability of 50 percent that those institutions would choose to make the capital election. Those firms account for about 7 percent of all bank assets. CBO expects that both the number of institutions making the election and the percentage of total assets would grow over time.

[2] The Share Insurance Fund (SIF), administered by the NCUA, would experience effects similar to those for the DIF, as discussed in this section.

Choices for Financial Institutions With Assets of More Than $50 Billion. Under H.R. 10, most larger financial institutions with more diverse portfolios and trading assets would be subject to a different leverage ratio known as the supplementary leverage ratio (SLR). The bill defines the SLR to include derivatives and other commitments that are not typically included in the leverage ratio calculation. As a result, the banks subject to the SLR would need to raise significantly more capital to qualify for reduced regulation and would probably have to make costly changes to internal processes that already comply with current regulations. CBO anticipates that, for example, the eight large banks headquartered in the United States that are characterized as globally systemic important banks (G–SIBs) would not make the election because they would have to raise much more capital.[3] Further, the G–SIBs would still need to comply with a variety of regulations because of international rules. As a result, CBO expects that the G–SIBs would be unlikely to choose the alternative regulatory regime authorized by the bill. Those eight banks have about half of the assets of the U.S. banking industry.

CBO estimates that fewer than 10 financial institutions in this cohort would meet the criteria to use the leverage ratio of 10 percent that would apply to smaller financial institutions. For those institutions that would be eligible and already have a 10 percent leverage ratio, CBO assigned the same 50 percent probability discussed above. For those banks with less than a 10 percent ratio, CBO estimated a small probability that they would raise sufficient capital to reach that threshold. As a result, CBO estimates that roughly 2 percent of the assets at banks with assets over $50 billion would be at institutions that make the capital election.

Estimating the Budgetary Effects of the Capital Election. CBO used a simulation model that draws on academic and financial industry research to estimate the cost of allowing financial institutions to make the capital election in exchange for regulatory relief.[4] Using bank call reports, as well as historical banking and market data as a starting point, CBO simulated the changes that financial institutions might make to their assets, liabilities, and capital structure under current law and under the provisions of H.R. 10. Those simulations generated a wide range of possible future outcomes for each institution's leverage ratio and also projected the probability that institutions making the capital election would fail. On average, those simulations indicated that financial institutions would be slightly more likely to fail under the regulatory and capital framework proposed in H.R. 10 than would be expected under current law. The increase in the probability of failure primarily stems from the increased riskiness of the assets taken on by institutions that would choose to make the capital election. (As noted,

[3] The G–SIBS are JPMorgan Chase, Citigroup, Bank of America, Goldman Sachs, Morgan Stanley, Bank of New York Mellon, State Street, and Wells Fargo.

[4] Federal Reserve Board of Minneapolis, "The Minneapolis Plan to End Too Big to Fail" (January 17, 2017), *https://tinyurl.com/zgmas54*; Simon Firestone, Amy Lorenc, and Ben Ranish, *An Empirical Economic Assessment of the Costs and Benefits of Bank Capital in the U.S.,* Finance and Economics Discussion Series Paper 2017–034 (Board of Governors of the Federal Reserve System, 2017), *https://doi.org/10.17016/FEDS.2017.034*; Kevin Jacques and Peter Nigro, "Risk-Based Capital, Portfolio Risk, and Bank Capital: A Simultaneous Equations Approach," E&PA Working Paper 94–6 (Office of the Comptroller of the Currency, September 1994), *https://go.usa.gov/xNWYW*; Fitch Ratings, "Leverage Ratio Hurdle Not a Cure-All for Bank Failures" (February 28, 2017), *www.fitchratings.com/site/pr/1019822*.

for financial institutions that must increase capital to make the capital election, the increased capital would partially offset that increase in risk.)

Other Changes to Regulatory Standards. H.R. 10 would reduce, from annually to biennially, the frequency of the requirement that larger financial institutions complete stress tests administered by the Federal Reserve and submit to the FDIC plans for resolution in the event of a financial crisis. Because less frequent testing and reporting would allow risk to accumulate for a longer period without corrective measures, CBO estimates a very small increase in losses by the DIF, incorporating a probability that reflects the unlikely failure of a large bank or the failure of a series of large financial institutions. That estimate is based on information from national credit rating agencies and other industry experts.[5]

In addition, the bill would prohibit financial regulators from classifying certain commercial loans as nonperforming and from requiring certain banks to raise more capital to cover the potential losses that could stem from those loans. CBO expects that those prohibitions would primarily affect loans for commercial real estate.[6] Some banks and credit unions with holdings that are primarily concentrated in the commercial real estate sector could experience a reduction in their capital reserves, which would lead to a higher probability of a failure and would increase the probability of additional federal spending to resolve the liabilities of failed institutions.

Net Budgetary Effect of Changes to Regulatory Standards and Oversight. CBO anticipates that failures of financial institutions resulting from the combination of reduced regulatory oversight and increased risk would increase losses by the DIF by about 1 percent to 2 percent and would total about $600 million over the 2018–2027 period.[7] CBO expects that the FDIC would assess fees to recoup any additional costs to the DIF of resolving failed institutions in order to restore the fund's balance to its target level of the designated reserve ratio. Over the 2018–2027 period, those fees would total about $200 million, CBO estimates.

FDIC's Risk-Based Premiums. Under current law, the FDIC charges banks premiums based on their risk profile. Those premiums are recorded as offsetting receipts in the budget. Under H.R. 10, the FDIC would continue to assess risk-based premiums on all banks, CBO anticipates. By CBO's estimates, those premiums would slightly increase for some of the banks that chose to meet the 10 percent leverage ratio, and the additional premiums would total about $100 million over the next 10 years.

Changes to Financial Regulatory Agencies

Changes in H.R. 10 to the financial regulatory agencies primarily consist of:

- Amending the underlying responsibilities and operations for the agencies,

[5] S&P Global Market Intelligence, "What Financial Regulations May Be Affected by the Trump Administration, and How They Can Affect Ratings" (March 20, 2017), *https://tinyurl.com/k2dwxws*.

[6] For more information on those provisions, contained in section 546 of H.R. 10, see Congressional Budget Office, cost estimate for H.R. 1941, the Financial Institutions Examination Fairness and Reform Act (February 11, 2016), *www.cbo.gov/publication/51243*.

[7] That total also includes about $20 million from the SIF.

- Modifying the way in which the agencies are funded, and
- Transferring responsibilities and eliminating agencies.

Amending Responsibilities and Operations. Numerous provisions of H.R. 10 would affect the administrative costs of the FDIC, the Treasury Department's Office of Comptroller of the Currency (OCC), the NCUA, the Federal Housing Finance Agency (FHFA), and the Federal Reserve by changing procedures for rulemaking, examinations, and enforcement. CBO estimates that implementing those changes would increase deficits by $420 million over the 2018–2027 period.

Changes in Administrative Costs. Several provisions, such as the requirements under title III to perform additional analyses for proposed and final rules and the establishment of an Office of Independent Examination Review within the Federal Financial Institutions Council, would increase administrative costs, while other provisions could decrease costs. On the basis of an analysis of information from the affected agencies, CBO estimates that, on net, enacting those changes would increase the deficit by $440 million over the 2018–2027 period, reflecting estimated increases in direct spending of $220 million and estimated decreases in revenues of $220 million.

Some financial regulators (for example, the FDIC) can eventually recover additional costs through assessments on the industry, but because there is a lag between the time costs are incurred and when additional assessments would be imposed, not all additional costs would be recovered within the next 10 years. In contrast, the Federal Reserve would be able to recover only a portion of its additional costs because it assesses fees to cover only the costs associated with its role as the primary regulator of systemically important financial institutions (certain nonbanks and large banks).

Changes to the Federal Reserve. Title I would remove certain authorities the Dodd-Frank Act provided to the Federal Reserve that require it to supervise and regulate systemically important nonbank financial institutions and financial market utilities. Those changes would reduce operating costs of the Federal Reserve and raise remittances to the Treasury by $589 million over the 2018–2027 period. However, the Federal Reserve also would stop collecting assessments on institutions it would no longer regulate, reducing revenues by $371 million over the 2018–2027 period, net of income and payroll tax effects, CBO estimates. On net, those changes would increase revenues by $218 million over the same period.

Title I also would require the Federal Reserve to perform new analysis and to undertake new regulatory actions related to stress tests and resolution plans, increasing costs to the system. Title VII would split the current Office of the Inspector General of the Federal Reserve and CFPB into two separate offices, lowering costs to the Federal Reserve. Title X would make a number of other changes to the operations of the Federal Reserve System. CBO estimates that, in total, those provisions would reduce revenues by $40 million over the 2018–2027 period.

Provisions in Title X with the most significant effects include:

- Employees and members of the Board of Governors would become subject to additional ethics standards and financial disclo-

sure rules. The ethics standards would follow those that apply to employees of the SEC.

• The Federal Open Market Committee (FOMC) would be required to develop a monetary policy rule that specifies an interest rate target and explains how that target rate would be adjusted for changes in certain economic variables. The rule would be provided to the Government Accountability Office (GAO), which would assess the rule and any subsequent changes to the rule for compliance with the requirements of the bill.

• Other changes include requiring GAO to prepare, within 12 months of enactment, an audit of the Board of Governors of the Federal Reserve System and the Federal Reserve banks, including the conduct of monetary policy; restricting certain public communications by the FOMC; and changing the membership of the FOMC.

Other Changes. CBO and the staff of the Joint Committee on Taxation (JCT) estimate that implementing several other provisions of H.R. 10 would increase deficits by $159 million over the 2018–2027 period, reflecting increases in direct spending of $8 million and decreases in revenues of $151 million. CBO estimates that implementing those provisions also would cost $146 million over the 2018–2027 period, subject to the availability of appropriated funds. Specifically:

• Title IV would authorize the SEC to refund the overpayment of certain fees by lowering future collections by the corresponding amount. CBO estimates that implementing the provision would increase direct spending by $8 million over the 2018–2027 period.

• Title IV would amend regulations such that it would expand allowable activities of business development companies. JCT estimates that in response to those changes, income would be shifted from C corporations to business development companies, reducing tax revenues by $151 million over the 2018–2027 period.

• Title I would authorize the appropriation of $4 million each year for the operations of the Financial Stability Oversight Council (FSOC). CBO estimates that implementing the provision would cost $39 million over the 2018–2027 period, subject to the availability of appropriated funds.

• H.R. 10 would require the CFTC to perform additional analyses of rules and regulations. On the basis of an analysis of information from the agency, CBO estimates that implementing the provisions would cost $107 million over the 2018–2027 period, subject to the availability of appropriated funds.

Modifying Agency Funding. Under current law, spending by the financial regulators is often covered by fees or other sources of income that usually offset spending by those agencies. Some agencies charge fees that are subject to the annual appropriation process, some agencies charge fees under permanent authority, and the CFPB receives funds from the Federal Reserve.

The bill would attempt to make the operating costs and collection of fees of the financial regulators subject to annual appropriations. However, in most cases, the changes specified would not become effective until 90 days after the enactment of an appropriation bill that provided the funding specified in H.R. 10. Because subsequent legislation would be necessary to make the changes effective, the current funding arrangements for the SEC, OCC, FDIC, the FHFA,

and the Federal Reserve would not change following enactment of H.R. 10. Therefore, those changes in funding are not reflected in CBO's cost estimate for this legislation.

In contrast, the bill would effectively make spending for the CFPB and the collections and spending for the NCUA's administrative costs subject to annual appropriation. Under current law those expenses are covered by permanent (mandatory) appropriations. Because CBO expects that the level of spending for the CFPB and the NCUA under H.R. 10 would be similar to the amount of spending for such activities under current law, the reductions in direct spending by the CFPB and the NCUA would increase the need for future appropriations for those agencies by a similar amount.

CBO estimates that enacting those provisions, over the 2018–2027 period, would reduce direct spending by $9.2 billion and would cost $1.6 billion, assuming appropriation of the necessary amounts.

Consumer Financial Protection Board. Under current law, the CFPB is funded by transfers from the Federal Reserve and the agency's spending is recorded as direct spending. Title VII would amend current law to make spending for the CFPB (renamed the Consumer Law Enforcement Agency) subject to annual appropriations. The bill would authorize the appropriation of $485 million for fiscal year 2018, an amount equal to the amount transferred from the Federal Reserve to the CFPB in 2015. CBO estimates that enacting this provision would reduce direct spending by $6.9 billion over the 2018–2027 period and cost $485 million over the 2018–2022 period, subject to appropriation of the authorized amounts. H.R. 10 would not authorize appropriations for the agency after 2018, but CBO estimates that its operations would cost about $5 billion over the 2019–2027 period, assuming appropriations were provided in those years that were equal to the amount authorized for 2018, adjusted for anticipated inflation.

National Credit Union Administration. Under current law, the NCUA imposes fees on all federally chartered credit unions to pay for its operations. Under H.R. 10, the NCUA would instead impose a fee on all credit unions, including those chartered by states, to offset the costs of an annual appropriation for the agency's administrative operating costs. Under the bill, the total collections from credit unions would be higher than under current law because the bill would not reduce current assessments as much as current spending for administrative costs. By making the NCUA's administrative costs subject to annual appropriation, this provision would, by CBO's estimates, decrease the deficit by $2.3 billion over the 2018–2027 period, reflecting decreases in direct spending of $3.4 billion and reductions in offsetting receipts of $1.1 billion over the 2018–2027 period. Because the NCUA would collect fees to offset any spending of appropriated funds, implementing the provisions regarding the NCUA would have no net effect on spending that is subject to annual appropriations.

Securities Exchange Commission. H.R. 10 also would change the level of certain fees collected by the SEC that, under current law, are intended to fully offset its annual appropriation. The bill would create a target collection amount for those fees that would increase annually at the rate of inflation to partially offset the agency's appropriation.

H.R. 10 also would authorize the appropriation of $8.5 billion over the 2018–2022 period for the SEC. Assuming appropriation of the specified amounts, CBO estimates that implementing this provision would cost $8.5 billion over the 2018–2022 period. However, under the bill, the SEC would be authorized to collect $1.4 billion, annually adjusted for inflation, in fees intended to partially offset its annual appropriation; therefore, CBO estimates that the net effect would increase discretionary appropriations by $1.1 billion over the 2018–2022 period.

Public Company Accounting Oversight Board. The bill would require the Public Company Accounting Oversight Board to deposit civil penalties it collects in the Treasury, rather than spending them. On the basis of an analysis of information from the board, CBO estimates that enacting the provision would decrease direct spending by $28 million over the 2018–2027 period.

Transferring Responsibilities and Eliminating Agencies. H.R. 10 would transfer certain responsibilities away from the CFPB, eliminate the Financial Research Fund (FRF), and eliminate the SEC's authority to spend certain collections. CBO estimates that enacting these provisions would reduce deficits by $560 million.

Consumer Financial Protection Bureau. Under current law, the CFPB has the authority to supervise and examine certain financial institutions and nonbank companies and to require those entities to comply with certain consumer financial laws. Under H.R. 10, the agency's supervision and examination authority and its authority to enforce consumer financial laws for insured financial institutions with over $10 billion in total assets would be eliminated. Under the bill, some of those authorities would be transferred to other financial regulators. On the basis of an analysis of information from the affected agencies, CBO estimates that enacting those provisions would increase the deficit by $230 million over the 2018–2027 period, reflecting an estimated increase in direct spending of $30 million and a decrease in revenues of $200 million over the 2018–2027 period for the Federal Reserve, the FDIC, the OCC, and the NCUA to collectively hire approximately 150 additional staff.

Financial Research Fund. H.R. 10 would eliminate the FRF. Under current law, the costs of operating the Office of Financial Research (OFR), the Financial Stability Oversight Council (FSOC), and some administrative expenses of the OLF are offset by fees collected from certain bank holding companies and nonbank financial companies. Those fees are deposited into the FRF. Those fees are recorded in the budget as revenues when they are collected and as direct spending when spent. In 2016, the FRF spent $99 million. On the basis of an analysis of information from the OFR and the FSOC, CBO estimates that eliminating FRF would reduce deficits by $300 million over the 2018–2027 period, reflecting an estimated reduction in direct spending of $1.4 billion and an estimated loss in revenues of $1.1 billion, net of income and payroll tax effects. The total includes the costs of shutting down the OFR (for closing contracts, staff severance, and leave payments) and the costs of providing pensions and health benefits to federal retirees.

CBO estimates that implementing this provision would increase costs at the Department of the Treasury by $30 million over the 2018–2027 period for administrative costs currently shared by the

OFR and the department; such spending would be subject to the availability of appropriated funds.

Securities and Exchange Commission. Under current law, the SEC may deposit a portion of the revenues it collects into a reserve fund and spend up to $100 million annually from that fund without further appropriation. Under the bill, the SEC Reserve Fund would be abolished, reducing direct spending by $490 million over the 2018–2027 period, CBO estimates.

Penalties. Provisions in H.R. 10 would change the maximum penalties for certain violations of securities laws enforced by the SEC and change how the cases are administered. The bill also would change how the CFPB administers civil penalty cases and would eliminate the Volcker rule.[8] CBO estimates that the provisions would reduce the deficit by $560 million over the 2018–2027 period, reflecting an estimated reduction in direct spending of $710 million and reduction in revenues of $150 million.

Changes in Penalties by the SEC. Title II would amend various securities and financial laws to increase the maximum penalty that agencies may assess for certain violations. Under the bill, various civil penalties authorized to be levied by the SEC and other federal financial regulatory agencies would increase. The bill also would add a new tier of penalties for individuals previously convicted of securities fraud.

Title VIII would allow parties to administrative proceedings brought by the SEC to file to terminate them. The SEC would then have the option to bring civil actions in a federal district court against parties that terminate their administrative proceedings. On the basis of an analysis of information from the SEC regarding current civil penalty collections, CBO estimates that enacting the provisions would decrease revenues by $80 million over the 2018–2027 period. The change would result from increases in collections resulting from higher maximum penalties as well as decreases resulting from delays, as some collections would arise from civil rather than administrative proceedings.

Changes to Penalties by the CFPB. Title VII would change the operation of the civil penalty fund of the CFPB. Under current law, the CFPB collects civil penalties that result from its enforcement actions and deposits them into a civil penalty fund. The agency is authorized to use those funds to pay victims of activities for which civil penalties have been imposed as well as for certain consumer education and financial literacy programs. Allocations are made to eligible victims from the pooled amount in the fund; classes of victims are not limited to receiving only the amount the civil penalty paid for their case.

Under the bill, the CLEA would be required to maintain a separate account for each civil penalty award. The payments to victims would be limited to the amount of the civil penalty paid for that specific case. If at the end of two years, any amounts remained in a segregated civil penalty account, those amounts would be deposited into the general fund of the Treasury. Amounts currently in the fund would be required to be segregated into discrete accounts

[8] The Volcker rule, section 619 of the Dodd-Frank Act, restricts FDIC-insured institutions from engaging in certain proprietary trading of securities, derivatives, commodity futures, and options on those instruments. With certain exceptions, the rule also prohibits banks from owning, sponsoring, or having certain relationships with hedge funds and private equity funds.

by civil penalty action and be subject to the same requirements as any new civil penalty awards. Using information from the CFPB about the amounts currently in the fund, CBO estimates that enacting the provisions would decrease direct spending by $710 million over the 2018–2027 period.

Volcker Rule. By eliminating the Volcker rule and the corresponding penalties for noncompliance, H.R. 10 would reduce revenues by an estimated $70 million over the 2018–2027 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO's ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 10, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON MAY 4, 2017

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017–2022	2017–2027
NET DECREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	−1,235	−1,965	−2,640	−3,415	−2,835	−2,460	−2,380	−2,405	−2,370	−2,410	−12,090	−24,115
Memorandum:													
Changes in Outlays	0	−1,515	−2,260	−2,885	−3,745	−3,265	−3,090	−3,105	−3,240	−3,405	−3,550	−13,670	−30,060
Changes in Revenues	0	−280	−295	−245	−330	−430	−630	−725	−835	−1,035	−1,140	−1,580	−5,945

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: The bill contains a number of mandates, some that fall on entities in both the public and private sectors, and others that fall on one sector or the other. In the aggregate, CBO estimates, the costs of mandates on public entities would fall below the annual threshold established in UMRA for intergovernmental mandates ($78 million in 2017, adjusted annually for inflation). However, CBO estimates that the net costs of mandates on private-sector entities would exceed the annual threshold for private-sector mandates ($156 million in 2017, adjusted annually for inflation) in at least two of the first five years the mandates were in effect, primarily because of new and increased fees and assessments.

Mandates That Apply to Both Public and Private Entities

The bill would eliminate a right of action that allows public and private investors to pursue damage claims against broker-dealers who issue research reports on exchange-traded funds. Under current law, the SEC's rules generally prohibit an issuer from offering securities for sale without filing a registration statement with the agency. Section 421 of title IV of H.R. 10 would establish a safe harbor allowing broker-dealers to issue research reports about certain investment funds without such reports being considered an offering for sale of shares of those funds. In so doing, it would protect broker-dealers from being sued on the basis that such a report constituted an offering for sale. By providing the safe harbor and eliminating the existing right of action, the bill would impose a mandate on public and private entities that might otherwise have a cause of action. The cost of the mandate would be the forgone value of the awards and settlements in such cases. To date, CBO has found no cases successfully establishing liability for information contained in or missing from such research reports and expects few, if any, in the future.

Mandates That Apply to State Governments Only

The bill would impose mandates on states by preempting their laws in a number of areas. Preemptions of state law are mandates as defined in UMRA because they limit the authority of states to apply their own laws and regulations. However, CBO estimates that none of the preemptions in the bill would impose on states duties resulting in additional spending or a loss of revenues.

Various provisions of titles IV, V, and XI of the bill would preempt state laws, as follows:

- Section 461 would exempt some security offerings from state registration and regulation. Issuers would be exempt from registering such a security if each purchaser had a preexisting relationship with the officer of the issuer, the offering had 35 or fewer purchasers, and the aggregate amount of securities sold by the issuer did not exceed $500,000 in a 12-month period.
- Section 478 would exempt some security offerings from state registration, documentation, and other requirements. Issuers would

be exempt from such state regulations if security offerings were small transactions.

• Sections 491 through 493 would exempt from state laws that provide a lower level of liability protection than the bill does those financial institutions and their employees who have received training on the financial exploitation of senior citizens when those employees file a report to a government authority about the potential exploitation of a senior citizen.

• Section 496 would exempt issuers of securities from registering a security with a state if the security was listed on a national exchange approved by the SEC.

• Section 556 would grant a temporary license to some loan originators who became employed by a state-licensed mortgage company in one state, enabling them to issue loans in other states.

• Section 581 would preempt state usury laws regulating the validity of loans that are sold, assigned, or transferred to a third party. Such loans would retain their maximum rate of interest as set by the loan's originator regardless of whether the loan was sold, assigned, or transferred to a third party located in a different state.

• Section 1101 would allow the independent insurance advocate (a role created by the bill) to preempt state insurance measures that are inconsistent with bilateral or multilateral insurance measures between the United States and a foreign government.

Mandates That Apply to Private Entities Only

H.R. 10 would impose private-sector mandates on individuals and businesses in the financial services industry. The bill would affect certain fees and assessments on financial institutions, limit certain contractual rights, eliminate existing rights of action, require additional registration and reporting for proxy advisers, and apply standards for processing funds in two American territories. Although the incremental changes required to comply with some of the mandates would be small relative to existing practices, CBO estimates that the net increase in fees and assessments would exceed $200 million in the first two years the mandates were in effect.

Increased Fees and Assessments. CBO expects some of the financial regulatory agencies to increase fees and assessments to offset the costs related to implementing the bill. For example, under the bill, the NCUA would assess fees on both federal and state-chartered credit unions insured by the Share Insurance Fund to offset costs associated with changing the agency's funding structure. CBO estimates that the incremental cost of the new fees would total about $200 million annually. Further, the bill's repeal of the Orderly Liquidation Fund might cause the FDIC to increase assessments on insured deposits to offset the cost of higher losses in the Deposit Insurance Fund. In each case, those higher fees would increase the cost of an existing mandate on institutions responsible for paying those assessments. At the same time, the elimination of the OLF would result in savings for some large financial institutions in the unlikely event of the failure of a systemically important financial institution, as the bill would eliminate assessments associated with the fund. Those savings are not estimated to begin until 2020. There is virtually no overlap between the institutions that would be subject to increased credit union and DIF assessments under the bill and those that would realize sav-

ings resulting from the elimination of the OLF. In the aggregate, CBO estimates, incremental costs associated with the changes in fees and assessments across the financial industry would total more than $210 million in 2018 and 2019 and would fall in subsequent years, netting to a savings after five years.

Temporary Limit on Contractual Rights. The bill would establish a new bankruptcy process for certain financial institutions with assets of more than $50 billion. The bill would impose a mandate by establishing a temporary stay on actions to terminate or modify certain nonfinancial contracts, such as derivatives contracts, for 48 hours after a bankruptcy petition was filed under the bankruptcy process established in the bill. The temporary stay would limit the contractual rights that entities have under current law. Limiting the ability of those entities to take actions such as collecting collateral or accelerating debt during that two-day period could cause them to incur losses. The cost of the mandate would total any losses the parties sustained as a result of the stay. Because of uncertainty about both the number and size of contracts that would be affected and the amount of losses that would occur as a result of this provision, CBO cannot estimate the cost of the mandate. However, on the basis of historical data, the likelihood that a large financial institution would fail in any one year is very low, and many experts believe that a stay in such circumstances would probably occur over a single weekend, potentially minimizing losses.

Other Mandates on Private Entities. The bill would impose other private-sector mandates with small costs in a number of areas.

Safe Harbor for Portfolio Lending. Section 516 would eliminate an existing right of action against lenders that hold mortgages on their balance sheets. Under current law, lenders that meet the standards for qualified mortgages are granted legal protection from civil actions based on a claim that they failed to comply with ability-to-repay requirements. By broadening the definition of qualified mortgages to include mortgages that lenders hold on their balance sheets, the bill would limit borrowers' right to file claims against them.

Safe Harbor for Reporting Exploitation of a Senior Citizen. Section 491 would eliminate the right of plaintiffs to file a civil action against financial institutions and their employees who have received training on the financial exploitation of senior citizens when those employees file a report to a government authority about the potential exploitation of a senior citizen.

Requirements on Proxy Advisory Firms. Section 482 would impose a mandate on proxy advisory firms (which can provide voting recommendations to investment advisers who have the authority to proxy vote for their clients) by requiring them to register with the SEC and subjecting them to new personnel and reporting requirements.

Extended Application of the Expedited Funds Availability Act. Section 521 would require accounts at and checks drawn on commercial banks in American Samoa and the Northern Mariana Islands to meet standards required under the Expedited Funds Availability Act. The standards would require those banks to proc-

ess such accounts and checks sooner than is their current business practice.

Uncertainty: These estimates are subject to considerable uncertainty. For example, they depend in part on the probability of failure of a systemically important firm in any year. Although that probability is small both under current law and under the legislation, it is hard to predict. In addition, budgetary effects depend in part on how financial institutions would respond to changes in regulation. Projecting such responses is particularly difficult given that some proposed changes have little historical precedent. Although those and other aspects of the estimate are uncertain, CBO and JCT have endeavored to develop estimates that fall in the middle of the distribution of possible outcomes.

Previous CBO estimates: On February 24, 2017, CBO transmitted a cost estimate for H.R. 732, the Stop Settlement Slush Funds Act of 2017, as ordered reported by the House Committee on the Judiciary on February 7, 2017. Provisions in H.R. 10 are similar to H.R. 732, and CBO's estimate of their budgetary effects is the same.

On March 22, 2017, CBO transmitted a cost estimate for H.R. 1219, the Supporting America's Innovators Act of 2017, as ordered reported by the House Committee on Financial Services on March 9, 2017. Provisions in H.R. 10 are similar to H.R. 1219, and CBO's estimate of their budgetary effects is the same.

On March 22, 2017, CBO transmitted a cost estimate for H.R. 1312, the Small Business Capital Formation Enhancement Act, as ordered reported by the House Committee on Financial Services on March 9, 2017. Provisions in H.R. 10 are similar to H.R. 1312, and CBO's estimate of their budgetary effects is the same.

On March 23, 2017, CBO transmitted a cost estimate for H.R. 1343, the Encouraging Employee Ownership Act of 2017, as ordered reported by the House Committee on Financial Services on March 9, 2017. Provisions in H.R. 10 are similar to H.R. 1343, and CBO's estimate of their budgetary effects is the same.

On March 30, 2017, CBO transmitted a cost estimate for H.R. 910, the Fair Access to Investment Research Act of 2017, as ordered reported by the House Committee on Financial Services on March 9, 2017. Provisions in H.R. 10 are similar to H.R. 910, and CBO's estimate of their budgetary effects is the same.

On March 30, 2017, CBO transmitted a cost estimate for H.R. 1667, the Financial Institution Bankruptcy Act of 2017, as ordered reported by the House Committee on the Judiciary on March 29, 2017. Provisions in H.R. 10 are similar to those in H.R. 1667, and CBO's estimate of their budgetary effects is the same.

On April 4, 2017, CBO transmitted a cost estimate for H.R. 1257, the Securities and Exchange Commission Overpayment Credit Act, as ordered reported by the House Committee on Financial Services on March 9, 2017. H.R. 10 would require the SEC to refund any overpayment of certain fees national securities exchanges pay. CBO's estimate of spending for the refund of overpayments is higher under H.R. 10 than under H.R. 1257 because H.R. 10 would apply to fees and assessments paid over a longer period of time.

Estimate prepared by: Federal Costs: Kathleen Gramp, Sarah Puro, Stephen Rabent, Jason Levine, and Jacob Fabian; Federal Revenues: Nathaniel Frentz and the staff of the Joint Committee

on Taxation; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Logan Smith.

Estimate approved by: Kim P. Cawley, Unit Chief for the Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis; Theresa Gullo, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

ADVISORY COMMITTEE STATEMENT

One advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created within this legislation. Pursuant to the Act, the Committee determines that the functions of the proposed advisory committee are not presently being performed by an agency or existing advisory committee. The Committee further determines that such functions cannot be performed by enlarging the mandate of an existing advisory committee. The advisory committee created by this legislation is as follows:

Sec. 820—Advisory Committee on Commission's Enforcement Policies and Procedures.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 10 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(c)(5) of rule XIII, the Committee states that no provision of H.R. 10 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKINGS

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee states that H.R. 10 contains the following directed rulemakings:

TITLE I—ENDING "TOO BIG TO FAIL" AND BANK BAILOUTS

Section 111 directs the Federal Reserve to issue final rules implementing Section 165 of the Dodd-Frank Act as amended by the Financial CHOICE Act.

Section 151 directs the Federal Reserve to issue regulations providing for three different sets of conditions under which the Federal Reserve will conduct stress tests required under subsection 165(i)(1) of the Financial Stability Act.

TITLE IV—UNLEASHING OPPORTUNITIES FOR SMALL BUSINESSES, INNOVATORS, AND JOB CREATORS BY FACILITATING CAPITAL FORMATION

Section 406 directs the Securities and Exchange Commission (SEC) to revise 17 CFR 230.701(e) to raise the threshold for disclosures relating to compensatory benefit plans from $5 million to $20 million.

Section 411 directs the SEC to revise 17 CFR 229, 230, 232, 239, 240 and 249 to exempt emerging growth companies and other smaller companies form the SEC's XBRL requirements.

Section 421 directs the SEC to revise 17 CFR 230.139 to expand the safe harbor for investment research.

Section 426 directs the SEC to revise Form S–3 to expand the class of registrants eligible to use Form S–3.

Section 438 directs the SEC to revise 17 CFR 230, 240 and 243, which set forth the rules relating to business development companies so that these companies can use the securities offering and proxy rules available to other issuers; and directs the SEC to revise Form N–2.

Section 446 directs the SEC to revise 17 CFR 230 to clarify circumstances in which the prohibitions against general solicitation and general advertising do not apply. Section 466 directs the SEC to revise 17 CFR 501 and Form D filing requirements for private placements.

Section 476 directs the SEC to issue or revise to implement Section 476's amendments to Section 4A of the Securities Act of 1933 regarding crowdfunding; section 476 also directs the SEC to establish by rule or regulation disqualification provisions for issuers and intermediaries.

Section 482 directs the SEC to require by rule or regulation application registrations for proxy advisory firms. Section 482 also directs the SEC to issue rules regarding conflicts of interest at proxy advisory firms; unfair or coercive acts or practices by proxy advisory firms; and the filing of financial statements by proxy advisory firms. Section 482 also directs the SEC to issue new provisions required by Section 482 or otherwise necessary to carry out Section 482.

TITLE V—REGULATORY RELIEF FOR MAIN STREET AND COMMUNITY FINANCIAL INSTITUTIONS

Section 526 directs the Federal Reserve to revise 12 CFR 225 appendix C to raise the consolidated asset threshold for it Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors from $1 billion to $10 billion.

Section 531 directs the Consumer Law Enforcement Agency to issue regulations exempting small servicers from Section 6 of the Real Estate Settlement Procedures Act or to issue regulations adjust Section 6 for small servicers.

Section 546 directs federal financial institutions regulatory agencies to revise regulations adopted in the seven-year period before

the Financial CHOICE Act was introduced in the House of Representatives as required by the Financial CHOICE Act. Section 551 directs the Office of the Comptroller of the Currency to issue rules to implement the Financial CHOICE Act's amendment of the Home Owner's Loan Act regarding covered savings associations. Section 566 directs the federal banking agencies to issue regulations allowing for a reduced reporting requirement for covered depository institutions.

TITLE VII—EMPOWERING AMERICANS TO ACHIEVE FINANCIAL INDEPENDENCE

Section 737 directs federal banking regulators to prescribe regulations to prevent unfair or deceptive acts or practices by depository institutions. Section 737 also directs the federal banking regulators to promulgate regulations substantially similar to those prescribed by the Federal Trade Commission under Section 18(a)(1)(B) of the Federal Trade Commission whenever the Federal Trade Commission does so.

TITLE VIII—CAPITAL MARKETS IMPROVEMENTS

Section 844 directs the SEC to revise 17 CFR section 240.14a to revise the resubmission thresholds and the holding requirements for shareholder proposals.

Section 848 directs the SEC issue rules to streamline the application process for exemptions from the Investment Company Act of 1940.

Section 858 directs the SEC to issue rules to require investment advisers to maintain records and provide annual reports to the SEC.

Section 871 directs the SEC and the Commodity Futures Trading Commission to jointly issue rules to resolve inconsistencies in their rules, orders, and interpretative guidance relating to the regulation of over-the-counter swaps markets.

TITLE X—FED OVERSIGHT REFORM AND MODERNIZATION

Section 1001 directs the Federal Open Market Committee to submit a Directive Policy Rule to the House Financial Services and Senate Banking Committees and the Government Accountability Office.

Section 1008 directs the Federal Reserve to issue a rule establishing a method for determining the sufficiency of collateral for securing an extension of credit under the Federal Reserve's authority under section 13(3) of the Federal Reserve Act, acceptable classes of collateral, the amount of any discount on collateral, and a method for obtaining independent appraisals of such collateral. Section 1008 also directs the Federal Reserve to issue a rule establishing a minimum interest rate for extensions of credit under the Federal Reserve's 13(3) lending authority.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; Table of contents.

TITLE I—ENDING "TOO BIG TO FAIL" AND BANK BAILOUTS

Subtitle A—Repeal of the Orderly Liquidation Authority

Section 111. Repeal of the orderly liquidation authority.—Repeals Title II of the Dodd-Frank Act, which allows the Federal Deposit Insurance Corporation (FDIC) to bail out the creditors and counterparties of a failing non-bank financial institution. Removes the FDIC from the process of evaluating "living wills."

Subtitle B—Financial Institution Bankruptcy

Section 121. General provisions relating to covered financial corporations.—Defines the term "covered financial corporation" and provides that title 11 of the United States Code applies to "covered financial corporations."

Section 122. Liquidation, reorganization, or recapitalization of a covered financial corporation.—Adds a new subchapter V to Chapter 11 of title 11 of the United States Code that sets forth the procedures for liquidating, reorganizing, or recapitalizing "covered financial corporations" under title 11 of the United States Code.

Section 123. Amendments to title 28, United States Code.—Provides for the appointment and assignment of bankruptcy judges to hear cases brought under subchapter V.

Subtitle C—Ending Government Guarantees

Section 131. Repeal of obligation guarantee program.—Repeals sections 1104, 1105, and 1106 of the Dodd-Frank Act, which allow the FDIC to guarantee the obligations of insured depository institutions.

Section 132. Repeal of systemic risk determination in resolutions.—Repeals the "systemic risk exception" to the FDIC's obligation to use the deposit insurance fund to resolve failing banks using the least costly method.

Section 133. Restrictions on use of the Exchange Stabilization Fund.—Prohibits the use of the Exchange Stabilization to establish guaranty programs for financial institutions.

Subtitle D—Eliminating Financial Market Utility Designations

Section 141. Repeal of title VIII.—Repeals Title VIII of the Dodd-Frank Act, which grants the Financial Stability Oversight Council (FSOC) the authority to designate "financial market utilities" as systemically important and authorizes the Federal Reserve to provide financial support to these designated "financial market utilities."

Subtitle E—Reform of the Financial Stability Act of 2010

Section 151. Repeal and modification of provisions of the Financial Stability Act of 2010.—

Changes the FSOC's authority, structure, and procedures:

- Repeals the FSOC's authority to designate non-bank financial institutions as systemically important.
- Repeals the FSOC's authority to order a bank holding company or a non-bank financial institution to sell or transfer assets upon the recommendation of the Federal Reserve.

• Provides that the commission members of multi-member regulatory agencies (in addition to the agency heads) are members of the FSOC, and sets forth procedures for voting on matters before the FSOC.

• Authorizes FSOC members to designate agency staff to attend FSOC meetings. Allows members of the House Financial Services Committee and the Senate Banking Committee to attend FSOC meetings.

• Makes the FSOC's funding subject to Congressional appropriations.

• Makes FSOC's open meetings subject to the Sunshine Act.

• Grants chairmen of the House Financial Services Committee and Senate Banking Committee the authority to request confidential congressional briefings.

Changes the Federal Reserve's authority to supervise bank holding companies and non-bank financial institutions:

• Abolishes the Federal Reserve's authority to supervise and set regulations for non-bank financial institutions.

• Repeals the Federal Reserve's authority to continue supervising entities that cease to be bank holding companies.

• Exempts "qualifying banking organizations" as defined in Section 605 from the Federal Reserve's authority to set more stringent prudential standards for bank holding companies.

• Changes the procedure for the submission and review of the so-called "living wills":

  ○ Requires bank holding companies subject to the "living wills" requirement to submit them once every two years to the Federal Reserve.

  ○ Requires the Federal Reserve to review and provide feedback within six months of receiving a "living will."

  ○ Requires the Federal Reserve to disclose the framework used to assess the adequacy of "living wills," and provide a notice-and-comment period before finalizing the assessment framework.

• Improves the stress testing process for bank holding companies:

  ○ Requiring bank holding companies subject to the Federal Reserve's more stringent standards having assets less than $10 billion to conduct company-run stress tests once a year rather than semiannually.

  ○ Requires the Federal Reserve to issue regulations subject to notice-and-comment for conducting stress tests that set forth economic conditions and methodologies, and to assess the effect of the Federal Reserve's stress-testing models and methodologies on financial stability, credit availability, model risks, and investment cycles.

  ○ Requires the Federal Reserve to issue regulations subject to notice-and-comment for its Comprehensive Capital Analysis and Review (CCAR) program, provides that the Federal Reserve may not subject a bank holding company to its CCAR program more than once every two years, prohibits the Federal Reserve from objecting to a bank holding company's capital plan based on qualitative deficiencies, directs the Federal Reserve to establish procedures for responding to inquiries from bank holding companies subject to the CCAR program.

Office of Financial Research

- Abolishes the Office of Financial Research.

Section 152. Operational risk capital requirements for banking organizations.—Requires federal banking regulators to set operational risk capital requirements based on the risks posed by an organization's current activities, using forward-looking assessments and permitting adjustments for risk mitigants.

TITLE II—DEMANDING ACCOUNTABILITY FROM WALL STREET

Subtitle A—SEC Penalties Modernization

Section 211. Enhancement of civil penalties for securities laws violations.—Increases the civil money penalties that may be sought in administrative and civil actions brought under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940; adds a new category of monetary penalties in administrative and civil actions brought under the federal securities laws for recidivists; provides that for violations of injunctions and orders issued under the federal securities laws, each day of failure to comply is a separate offense.

Section 212. Updated civil money penalties of Public Company Accounting Oversight Board.—Increases civil money penalties that the PCAOB may impose in actions brought under the Sarbanes-Oxley Act.

Section 213. Updated civil money penalty for controlling persons in connection with insider trading.—Increases the civil money penalties that the SEC may seek against controlling persons in insider trading cases brought under Section 21A(a)(3) of the Securities Exchange Act of 1934.

Section 214. Update of certain other penalties.—Increases the civil money penalties that the SEC may seek under Section 32 of the Securities Exchange Act of 1934.

Section 215. Monetary sanctions to be used for the relief of victims.—Provides that monetary sanctions collected by the SEC for a violation of the securities laws shall be added to funds established for the benefit of the victims of the violation.

Section 216. GAO report on use of civil money penalty authority by Commission.—Directs the GAO to report on the SEC's use of its authority to impose civil money penalties.

Subtitle B—FIRREA Penalties Modernization

Section 221. Increase of civil and criminal penalties originally established in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.—Increases civil and criminal penalties established in FIRREA.

TITLE III—DEMANDING ACCOUNTABILITY FROM FINANCIAL REGULATORS AND DEVOLVING POWER AWAY FROM WASHINGTON

Subtitle A—Cost-Benefit Analyses

Section 311. Definitions.—Defines terms used in Subtitle A.

Section 312. Required regulatory analysis.—Directs federal financial regulatory agencies to include in proposed rulemakings regulatory analyses that identify the need for regulation and the regu-

latory objective (including an identification of the market or regulatory failure that makes regulation necessary); identify alternatives to the proposed regulation and explain why private market or non-federal authorities cannot address the problem; assess the costs, benefits, and consequences of the proposed regulation; and describe the data relied upon in analyzing the proposed regulation. Prohibits federal financial regulatory agencies from issuing a notice of final rulemaking if costs are greater than benefits without a joint resolution from Congress directing the agency to issue a notice of final rulemaking.

Section 313. Rule of construction.—Provides that the collection of information in connection with the regulatory analysis mandated under Section 312 is not a "collection of information" under the Paperwork Reduction Act if the federal financial regulatory agency has issued an advance notice of proposed rulemaking and has informed the person from whom information is sought that the provision of information is voluntary.

Section 314. Public availability of data and regulatory analysis.—Directs federal financial regulatory agencies to disclose on their websites sufficient information about regulatory analyses conducted as part of their rulemakings so that the agencies' results can be reproduced.

Section 315. Five-year regulatory impact analysis.—Directs the chief economists at federal financial regulatory agencies to report on the economic impact of regulations that the agencies have issued within five years of the final rulemaking.

Section 316. Retrospective review of existing rules.—Directs the federal financial regulatory agencies to adopt a plan for modifying, streamlining, expanding, or repealing existing regulations to make the agencies' regulatory programs more effective or less burdensome.

Section 317. Judicial review.—Grants individuals the right to bring actions in the D.C. Circuit Court seeking review of an agency's compliance with Section 312.

Section 318. Chief Economists Council.—Establishes a council consisting of the chief economists of the federal financial regulatory agencies and directs it to report each year on the benefits and costs of regulations that the agencies have adopted in the prior year; the regulatory actions planned by the agencies in the coming year; the cumulative effect of existing agency regulations on economic activity; the training and qualifications of the persons who conducted regulatory analyses at the agencies during the prior year and the sufficiency of resources for conducting these analyses; and recommendations for legislative or regulatory action to improve financial regulation.

Section 319. Conforming amendments.—Amends the Commodity Exchange Act to conform with the requirements of this subtitle.

Section 320. Other regulatory entities.—Directs the SEC to submit a plan for subjecting the PCAOB, the Municipal Securities Rulemaking Board, and registered national securities associations to the requirements of this subtitle.

Section 321. Avoidance of duplicative or unnecessary analyses.—Provides that regulatory analyses required by this subtitle may be performed in conjunction with analyses required by any other pro-

vision of law if the analysis satisfies the requirements of this subtitle.

Subtitle B—Congressional Review of Federal Financial Agency Rulemaking

Section 331. Congressional review.—Requires federal financial agencies to report on proposed rules to Congress and the GAO before the rules take effect; requires that Congress approve rules having an annual effect on the economy of $100 million or more through a joint resolution of approval before such rules can take effect; provides that Congress may pass a joint resolution of disapproval to prevent non-major rules from taking effect.

Section 332. Congressional approval procedure for major rules.—Sets forth the procedures for Congress to approve rules having an annual effect on the economy of $100 million or more through a joint resolution of approval.

Section 333. Congressional disapproval procedure for non-major rules.—Sets forth the procedure for Congress to disapprove non-major rules.

Section 334. Definitions.—Defines terms used in Subtitle B.

Section 335. Judicial review.—Provides that determinations, findings, actions, or omissions under Subtitle B are not subject to judicial review.

Section 336. Effective date of certain rules.—Provides that rules relating to hunting, fishing, or camping and non-major rules for which notice and public comment are impracticable are effective on the date determined by the federal financial agency.

Section 337. Budgetary effects of rules subject to section 332 of the Financial CHOICE Act of 2017.—Amends the Balanced Budget and Emergency Deficit Control Act of 1985 to conform with the Financial Choice Act.

Subtitle C—Judicial Review of Agency Actions

Section 341. Scope of judicial review of agency actions.—Directs court reviewing the actions of federal financial agencies to use a de novo standard of review when deciding all questions of law relating to an agency action, including the interpretation of constitutional and statutory provisions and the rules promulgated by an agency.

Subtitle D—Leadership of Financial Regulators

Section 351. Federal Deposit Insurance Corporation.—Provides that the FDIC's board of directors is to consist of 5 members appointed by the President with the advice and consent of the Senate, one of whom must have state bank supervisory experience.

Section 352. Federal Housing Finance Agency.—Provides that the President may remove the director of the Federal Housing Finance Agency (FHFA) before the end of the director's appointed term with or without cause.

Subtitle E—Congressional Oversight of Appropriations

Section 361. Bringing the Federal Deposit Insurance Corporation into the regular appropriations process.—Makes the FDIC's funding subject to Congressional appropriations.

Section 362. Bringing the Federal Housing Finance Agency into the regular appropriations process.—Makes the FHFA's funding subject to Congressional appropriations.

Section 363. Bringing the National Credit Union Administration into the regular appropriations process.—Makes the NCUA's funding subject to Congressional appropriations.

Section 364. Bringing the Office of the Comptroller of the Currency into the regular appropriations process.—Makes the Officer of the Comptroller of the Currency's (OCC) funding subject to Congressional appropriations.

Section 365. Bringing the non-monetary policy related functions of the Board of Governors of the Federal Reserve System into the regular appropriations process.—Makes the Federal Reserve's funding for its non-monetary policy functions subject to Congressional appropriations.

Subtitle F—International Processes

Section 371. Requirements for international processes.—Requires the federal financial regulatory agencies and the Treasury Department to notify Congress and the public before participating in international standard-setting processes, publicly report on international standard-setting processes in which they have participated, and notify the House Financial Services and Senate Banking Committees of agreements that may result from international processes and consult with these Committees on these agreements and their economic effects.

Subtitle G—Unfunded Mandates Reform

Section 381. Definitions.—Defines terms used in Subtitle G.

Section 382. Statements to accompany significant regulatory actions.—Directs federal financial regulatory agencies to issue statements setting forth estimates for the compliance costs of federal mandates on particular regions of the nation, states, tribal and local governments, particular communities before promulgating notices of proposed rulemaking or final rules.

Section 383. Small government agency plan.—Directs federal financial regulatory agencies to develop plans for providing small governments with notice of proposed rulemakings that affect small governments and the opportunity to provide input on such proposed rulemakings.

Section 384. State, local, and tribal government and private sector input.—Directs federal financial regulatory agencies to develop processes for state, local, and tribal governments to provide input and consult with these agencies on proposed rulemakings that affect state, local, and tribal governments.

Section 385. Least burdensome option or explanation required.—Requires federal financial regulatory agencies to identify regulatory alternatives and select the least costly alternative for rules that impose federal mandates on state, local, and tribal governments or the private sector.

Section 386. Assistance to the Office of Information and Regulatory Affairs.—Directs the Office of Information and Regulatory Affairs (OIRA) to collect the statements required under this Subtitle and forward them to the Congressional Budget Office.

Section 387. Office of Information and Regulatory Affairs responsibilities.—Directs OIRA to oversee the statements issued by federal financial regulatory agencies under this Subtitle to ensure that these statements comply with the Subtitle's requirements.

Section 388. Judicial review.—Provides that agency compliance with the requirements of this Subtitle is subject to limited judicial review.

Subtitle H—Enforcement Coordination

Section 391. Policies to minimize duplication of enforcement efforts.—Directs federal financial regulatory agencies to implement policies that minimize duplication of enforcement actions.

Subtitle I—Penalties for Unauthorized Disclosures

Section 392. Criminal penalty for unauthorized disclosures.—Imposes criminal penalties on the employees of federal financial regulatory authorities for the unauthorized disclosure of information in "living wills" or stress tests.

Subtitle J—Stop Settlement Slush Funds

Section 393. Limitation on donations made pursuant to settlement agreements to which certain departments or agencies are a party.—Prohibits federal financial regulatory authorities from using settlement proceeds to make payments to persons who were not directly harmed by the wrongdoing that led to the settlement.

TITLE IV—UNLEASHING OPPORTUNITIES FOR SMALL BUSINESSES, INNOVATORS, AND JOB CREATORS BY FACILITATING CAPITAL FORMATION

Subtitle A—Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification

Section 401. Registration exemption for merger and acquisition brokers.—Exempts merger-and-acquisition brokers from the registration requirements of the Securities Exchange Act of 1934.

Section 402. Effective date.—Provides that Subtitle A will become effective 90 days after the enactment of the Financial CHOICE Act of 2017.

Subtitle B—Encouraging Employee Ownership

Section 406. Increased threshold for disclosures relating to compensatory benefit plans.—Directs the SEC to increase the threshold exemption from the registration requirements of the Securities Act of 1933 for certain securities offered as part of compensatory benefit plans from $5 million to $20 million.

Subtitle C—Small Company Disclosure Simplification

Section 411. Exemption from XBRL requirements for emerging growth companies and other smaller companies.—Exempts Emerging Growth Companies and other smaller companies from the SEC's eXtensible Business Reporting Language (XBRL) requirements for filing financial statements with the SEC.

Section 412. Analysis by the SEC.—Directs the SEC to study the costs and benefits to smaller companies of using XBRL to file financial statements with the SEC.

Section 413. Report to Congress.—Directs the SEC to report to the House Financial Services and Senate Banking Committees on its progress in implementing XBRL reporting and the use of XBRL data by the SEC and investors.

Section 414. Definitions.—Defines terms used in Subtitle C.

Subtitle D—Securities and Exchange Commission Overpayment Credit

Section 416. Refunding or crediting overpayment of section 31 fees.—Directs the SEC to credit overpayments made by national securities exchanges and associations against future fees and assessments.

Subtitle E—Fair Access to Investment Research

Section 421. Safe harbor for investment fund research.—Directs the SEC to issue regulations providing that a covered investment fund research report is not an offer under the Securities Act of 1933.

Subtitle F—Accelerating Access to Capital

Section 426. Expanded eligibility for use of Form S–3.—Directs the SEC to revise Form S–3 to expand the eligibility of smaller companies that may use Form S–3 for offerings.

Subtitle G—Enhancing the RAISE Act

Section 431. Certain accredited investor transactions.—Amends the Securities Act of 1933 to clarify that the resale of certain restricted securities to accredited investors are exempt from prohibitions against interstate solicitation.

Subtitle H—Small Business Credit Availability

Section 436. Business development company ownership of securities of investment advisers and certain financial companies.—Amends the Investment Company Act of 1940 to allow business development companies to own shares in registered investment advisers, up to 50 percent of their total assets. This section shall not be construed to allow a business development company to own shares of such companies in a percentage greater than 50 percent of their total assets.

Section 437. Expanding access to capital for business development companies.—Amends the asset coverage requirements in the Investment Company Act of 1940 for business development companies.

Section 438. Parity for business development companies regarding offering and proxy rules.—Directs the SEC to revise its rules to allow business development companies file offerings and proxy statements under rules available to other issuers.

Subtitle I—Fostering Innovation

Section 441. Temporary exemption for low-revenue issuers.—Grants certain low-revenue issuers a temporary exemption from Section 404(b) of the Sarbanes-Oxley Act.

Subtitle J—Small Business Capital Formation Enhancement

Section 446. Annual review of government-business forum on capital formation.—Directs the SEC to report on the findings and recommendations of the government-business forum on capital formation and the SEC's actions on these findings and recommendations.

Subtitle K—Helping Angels Lead Our Startups

Section 451. Definition of angel investor group.—Defines the term "angel investor group."

Section 452. Clarification of general solicitation.—Directs the SEC to revise its rules to clarify that the prohibition against general solicitation does not apply to certain presentations or communications made at events sponsored by institutions of higher education; nonprofit organizations; angel investor groups; venture forums, venture capital associations, or trade associations; or other groups determined by the SEC.

Subtitle L—Main Street Growth

Section 456. Venture exchanges.—Amends the Securities Exchange Act of 1934 to allow a national securities exchange to register as a venture exchange and exempts venture exchanges from certain national security exchange regulations; amends the Securities Exchange Act of 1933 to provide that "venture securities" are exempt from state regulation of securities offerings.

Subtitle M—Micro Offering Safe Harbor

Section 461. Exemptions for micro-offerings.—Amends the Securities Act of 1933 to provide that certain micro-offerings are exempt from prohibitions against interstate solicitation; amends the Securities Exchange Act of 1933 to provide that micro-offerings are exempt from state regulation of securities offerings.

Subtitle N—Private Placement Improvement

Section 466. Revisions to SEC Regulation D.—Directs the SEC to revise Regulation D to streamline and improve its filing requirements and procedures for issuers offering securities under Regulation D.

Subtitle O—Supporting America's Innovators

Section 471. Investor limitation for qualifying venture capital funds.—Amends the Investment Company Act of 1940 to exempt qualifying venture capital funds from Investment Company's Act definition of "investment company."

Subtitle P—Fix Crowdfunding

Section 476. Crowdfunding exemption.—Amends the Securities Exchange Act of 1933 to exempt from the Act's registration requirements securities offerings involving certain small transactions.

Section 477. Exclusion of crowdfunding investors from shareholder cap.—Amends the Securities Exchange Act of 1934 to provide that securities purchased under Section 476 are not "held of record" under the Securities Exchange Act of 1934.

Section 478. Preemption of State law.—Clarifies that the Subtitle P pre-empts only state registration, documentation and offering requirements for securities offered under Section 476, and that Subtitle P does not affect the states' enforcement authorities.

Section 479. Treatment of funding portals.—Excludes funding portals from the definition of "financial institution" required to submit records and report on monetary instruments transactions.

Subtitle Q—Corporate Governance Reform and Transparency

Section 481. Definitions.—Defines terms used in Subtitle Q.

Section 482. Registration of proxy advisory firms.—Requires proxy advisory firms to register with the SEC and sets forth the procedure for registration.

Section 483. Commission annual report.—Directs the SEC to report annually on proxy advisory firms.

Subtitle R—Senior Safe

Section 491. Immunity.—Grants immunity from suit to certain individuals and financial institutions for disclosing the possible exploitation of a senior citizen to a financial regulatory agency.

Section 492. Training required.—Provides that financial institutions may train certain employees on identifying and reporting the possible exploitation of senior citizens.

Section 493. Relationship to State law.—Provides that Subtitle R does not pre-empt state law, except to the extent that it provides greater protection against liability to certain individuals and financial institutions for disclosing the possible exploitation of a senior citizen to a financial regulatory agency.

Subtitle S—National Securities Exchange Regulatory Parity

Section 496. Application of exemption.—Amends the Securities Act of 1933 to strike references to specific exchanges in defining "covered securities" exempt from regulation of securities offerings.

Subtitle T—Private Company Flexibility and Growth

Section 497. Shareholder threshold for registration.—Amends the Securities Exchange Act of 1934 to raise the registration threshold for assets and shareholders.

Subtitle U—Small Company Capital Formation Enhancements

Section 498. JOBS Act-related exemption.—Amends the Securities Act of 1933 to raise the amount of securities that may be offered and sold within a 12-month period under the exemption for additional issues authorized by the JOBS Act.

Subtitle V—Encouraging Public Offerings

Section 499. Expanding testing the waters and confidential submissions.—Amends the Securities Act of 1933 to allow issuers to submit draft registration statements to the SEC for confidential, nonpublic review before an initial public offering.

TITLE V—REGULATORY RELIEF FOR MAIN STREET AND COMMUNITY FINANCIAL INSTITUTIONS

Subtitle A—Preserving Access to Manufactured Housing

Section 501. Mortgage originator definition.—Amends the definition of "mortgage originator" in the Truth in Lending Act to specify that, subject to certain exceptions, a retailer of manufactured housing or its employee is not a "mortgage originator."

Section 502. High-Cost mortgage definition.—Amends the definition of "High-Cost Mortgage" in the Truth in Lending Act to provide that a credit transaction secured by a consumer's dwelling is a "high-cost mortgage" if the dwelling is personal property, the annual percentage rate exceeds the average prime offer rate by more than 10 percentage points, and the transaction is for less than $75,000.

Subtitle B—Mortgage Choice

Section 506. Definition of points and fees.—Amends the definition of "points and fees" in the Truth in Lending Act to exclude fees paid for affiliated business arrangements.

Subtitle C—Financial Institution Customer Protection

Section 511. Requirements for deposit account termination requests and orders.—Requires federal banking regulators to have a material reason not based solely on reputation risk for requesting or ordering a depository institution to terminate a customer's account.

Section 512. Amendments to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.—Amends FIRREA to provide that FIRREA's civil penalties provisions apply to violations by a depository institution against an unaffiliated third person; requires the Attorney General for investigations of possible violations of FIRREA to request a court order to summon witnesses or compel the production of documents, or to personally or through delegation to at least a Deputy Attorney General, issue a subpoena to summon witnesses or compel the production of documents.

Subtitle D—Portfolio Lending and Mortgage Access

Section 516. Safe harbor for certain loans held on portfolio.—Amends the Truth in Lending Act to provide a safe harbor against litigation for depository institutions and mortgage originators for residential mortgage loans held on the creditor's balance sheet since the origination of the loan if the loan fails to comply with TILA's ability-to-repay requirements.

Subtitle E—Application of the Expedited Funds Availability Act

Section 521. Application of the Expedited Funds Availability Act.—Amends the Expedited Funds Availability Act to clarify that the time periods under the Act apply to institutions located in American Samoa and the Northern Marian Islands.

Subtitle F—Small Bank Holding Company Policy Statement

Section 526. Changes required to small bank holding company policy statement on assessment of financial and managerial factors.—Directs the Federal Reserve to raise the threshold for its Small Bank Holding Company Policy Statement from $1 million to $5 million.

Subtitle G—Community Institution Mortgage Relief

Section 531. Community financial institution mortgage relief.—Amends the Truth in Lending Act to exempt smaller creditors from TILA's escrow requirements.

Subtitle H—Financial Institutions Examination Fairness and Reform

Section 536. Timeliness of examination reports.—Amends the Federal Financial Institutions Examination Council Act of 1978 to require federal financial regulatory agencies to provide examined institutions with a final examination report within 60 days of an examination's exit interview; sets examination standards for agencies; creates an Office of Independent Examination Review to investigate complaints about examinations; grants financial institutions the right to seek review of supervisory determinations.

Subtitle I—National Credit Union Administration Budget Transparency

Section 541. Budget transparency for the NCUA.—Amends the Federal Credit Union Act to require the National Credit Union Administration (NCUA) to annually hold public hearings on its budget.

Subtitle J—Taking Account of Institutions with Low Operation Risk

Section 546. Regulations appropriate to business models.—Directs federal financial regulatory agencies tailor regulatory actions to an institution's risk profile and business model.

Subtitle K—Federal Savings Association Charter Flexibility

Section 551. Option for Federal savings associations to operate as a covered savings association.—Amends the Home Owners' Loan Act to allow certain federal savings associations to operate with the same rights and privileges as a national bank supervised by the OCC.

Subtitle L—SAFE Transitional Licensing

Section 556. Eliminating barriers to jobs for loan originators.—Amends the S.A.F.E. Mortgage Licensing Act of 2008 to tempo-

rarily allow loan originators to continue to act as loan originators if they move from a depository institution to a non-depository institution or if they move from one state to another while their applications to be state-licensed loan originators are pending.

Subtitle M—Right to Lend

Section 561. Small business loan data collection requirement.—Repeals Sections 704B of the Equal Credit Opportunity Act, which requires financial institutions to collect information from small businesses regarding their ownership.

Subtitle N—Community Bank Reporting Relief

Section 566. Short-form call report.—Amends the Federal Deposit Insurance Act to direct federal banking regulators to issue regulations that would allow well-capitalized depository institutions to file short-from call reports in the first and third quarters of each year.

Subtitle O—Homeowner Information Privacy Protection

Section 571. Study regarding privacy of information collected under the Home Mortgage Disclosure Act of 1975.—Directs the Government Accountability Office (GAO) to study and report on whether the collection of data mandated by the Home Mortgage Disclosure Act puts mortgage borrowers at risk of identity theft or of losing sensitive personal financial information.

Subtitle P—Home Mortgage Disclosure Adjustment

Section 576. Depository institutions subject to maintenance of records and disclosure requirements.—Amends the Home Mortgage Disclosure Act of 1975 to exempt from the Act's reporting and recordkeeping requirements those depository institutions that originate fewer than 100 closed-end mortgage loans and fewer than 200 open-end mortgage loans over two years.

Subtitle Q—Protecting Consumers Access to Credit

Section 581. Rate of interest after transfer of loan.—Amends various federal statutes to provide that a loan that is valid as to its maximum rate of interest when made remains valid if the loan is sold, assigned, or otherwise transferred to a third party.

Subtitle R—NCUA Overhead Transparency

Section 586. Fund transparency.—Amends the Federal Credit Union Act to require the NCUA to report annually on how it allocates expenses between its prudential and insurance-related activities, whether these expenses are paid from operating fees assessed by the NCUA or from the NCUA Share Insurance Fund, and the NCUA's rationale for using amounts in the Share Insurance Fund in its annual budget.

Subtitle S—Housing Opportunities Made Easier

Section 591. Clarification of donated services to non-profits.—Amends the Truth in Lending Act to state that if a fee appraiser

voluntarily donates appraisal services to an organization described in section 170(c)(2) of the Internal Revenue Code of 1986, such voluntary donation shall be deemed customary and reasonable.

TITLE VI—REGULATORY RELIEF FOR STRONGLY CAPITALIZED, WELL MANAGED BANKING ORGANIZATIONS

Section 601. Capital election.—Provides that a banking organization may elect to be treated as a "qualifying banking organization" if it maintains an average leverage ratio of at least 10 percent; sets the process for banking organizations to make such an election; sets forth consequences of failure to maintain minimum average leverage ratio.

Section 602. Regulatory relief.—Exempts qualifying banking organizations from federal laws and regulations that set capital and liquidity requirements and federal laws and regulations that permit federal banking agencies to object to capital distributions; prohibits federal banking agencies from considering a qualifying banking organization's effect on systemic risk or financial stability.

Section 603. Contingent capital study.—Directs the Federal Reserve, the FDIC, and the OCC to study requiring banking organizations to issue contingent capital with a market-based conversion trigger and to report their findings to Congress.

Section 604. Study on altering the current prompt corrective action rules.—Directs the OCC to study the feasibility of replacing the current prompt corrective action rules and Basel capital ratios with a nonperforming asset coverage ratio and to report its findings to Congress.

Section 605. Definitions.—Defines terms used in Title VI.

TITLE VII—EMPOWERING AMERICANS TO ACHIEVE FINANCIAL INDEPENDENCE

Subtitle A—Separation of Powers and Liberty Enhancements

Section 711. Consumer Law Enforcement Agency.—Renames the "Bureau of Consumer Financial Protection" as the "Consumer Law Enforcement Agency"; makes conforming amendments to various federal statutes to reflect the new name; provides that the Deputy Director of the Consumer Law Enforcement Agency is to be appointed by the president; and strikes paragraph (3) of subsection 1101(c), which provided that the Director could only be removed by the president for cause.

Section 712. Authority of the Office of Information and Regulatory Affairs.—Provides that OIRA has the same duties and authorities regarding the Consumer Law Enforcement Agency as it does for any other non-independent regulatory agency.

Section 713. Bringing the Agency into the regular appropriations process.—Makes the Consumer Law Enforcement Agency subject to Congressional appropriations.

Section 714. Consumer Law Enforcement Agency Inspector General Reform.—Provides for the appointment of an independent Inspector General for the Consumer Law Enforcement Agency and requires the Inspector General to testify at semi-annual hearings before the House Financial Services and Senate Banking Committees.

Section 715. Private parties authorized to compel the Agency to seek sanctions by filing civil actions; Adjudications deemed actions.—Authorizes private parties that are parties to administrative proceedings brought by the Consumer Law Enforcement Agency to compel the Agency to terminate the administrative proceeding; authorizes the Agency to bring a civil action seeking the same remedy if the Agency is required to terminate an administrative proceeding.

Section 716. Civil investigative demands to be appealed to courts.—Authorizes the recipients of a civil investigate demand issued by the Consumer Law Enforcement Agency to seek an order from a federal district court modifying or setting aside the demand.

Section 717. Agency dual mandate and economic analysis.—Amends the Consumer Financial Protection Act to provide that the purpose of the Consumer Law Enforcement Agency also includes strengthening consumer participation in financial markets, increasing competition, and enhancing consumer choice; establishes an Office of Economic Analysis within the Agency and directs it to review and assess regulations and administrative enforcement and civil actions.

Section 718. No deference to Agency interpretation.—Amends the Consumer Financial Protection Act to repeal the Act's provision requiring courts to defer to the determinations of the Consumer Law Enforcement Agency regarding the meaning of federal consumer financial law.

Subtitle B—Administrative Enhancements

Section 721. Advisory opinions.—Directs the Consumer Law Enforcement Agency to establish a procedure for responding to requests for advisory opinions regarding whether specific conduct conforms with federal consumer financial law.

Section 722. Reform of Consumer Financial Civil Penalty Fund.—Directs the Consumer Law Enforcement Agency to establish segregated accounts for each civil penalty collected by the Agency, to use those accounts to compensate victims of the violation for which the penalty was collected, and to credit as general revenue to the Treasury any amounts remaining in the segregated account after two years.

Section 723. Agency pay fairness.—Puts employees of the Consumer Law Enforcement Agency on the General Schedule pay scale for federal employees.

Section 724. Elimination of market monitoring functions.—Repeals the Consumer Law Enforcement Agency's responsibility for monitoring markets for consumer financial products and services.

Section 725. Reforms to mandatory functional units.—Provides that the Consumer Law Enforcement Agency may—but is not required to—establish certain offices within the Agency. Prohibits publication of information gathered for the consumer complaint database, while retaining the requirement the database be shared with other federal and state agencies.

Section 726. Repeal of mandatory advisory board.—Abolishes the mandatory Consumer Advisory Board. Does not limit the Director's discretion to establish advisory boards pursuant to the Federal Advisory Committee Act.

Section 727. Elimination of supervision authority.—Abolishes the Consumer Law Enforcement Agency's authority to supervise and examine financial institutions.

Section 728. Transfer of old OTS building from OCC to GSA.—Directs the OCC to transfer administrative jurisdiction over the former OTS headquarters at 1700 G Street, NW to the GSA.

Section 729. Limitation on Agency authority.—Provides that Consumer Law Enforcement Agency may not exercise any rulemaking, enforcement, or other authority relating to employee benefit compensation plans or persons regulated by the SEC or the Commodity Futures Trading Commission (CFTC).

Subtitle C—Policy Enhancements

Section 731. Consumer right to financial privacy.—Requires the Consumer Law Enforcement Agency to obtain a consumer's consent before collecting a consumer's nonpublic personal information.

Section 732. Repeal of Council authority to set aside Agency rules and requirement of safety and soundness considerations when issuing rules.—Repeals the FSOC's authority to set aside for safety and soundness reasons rules promulgated by the Consumer Law Enforcement Agency.

Section 733. Removal of authority to regulate small-dollar credit.—Prohibits the Consumer Law Enforcement Agency from exercising rulemaking or enforcement authority over small-dollar loans.

Section 734. Reforming indirect auto financing guidance.—Nullifies the March 2013 Auto Lending Guidance issued by the Consumer Financial Protection Bureau and sets forth procedural requirements that the Consumer Law Enforcement Agency must follow in issuing guidance relating to indirect auto financing.

Section 735. Prohibition of Government price controls for payment card transactions.—Repeals the Federal Reserve's authority to issue regulations setting interchange transaction fees and network fees.

Section 736. Removal of Agency UDAAP authority.—Repeals the Consumer Law Enforcement Agency's rulemaking and enforcement authority over unfair, deceptive, or abusive acts and practices.

Section 737. Preservation of UDAP authority for Federal banking regulators.—Directs federal banking regulators to promulgate regulations to prevent unfair or deceptive acts or practices and to enforce those regulations.

Section 738. Repeal of authority to restrict arbitration.—Repeals the Consumer Law Enforcement Agency's authority to restrict agreements requiring pre-dispute arbitration in connection with the offering or providing of consumer financial products or services.

TITLE VIII—CAPITAL MARKETS IMPROVEMENTS

Subtitle A—SEC Reform, Restructuring, and Accountability

Section 801. Authorization of appropriations.—Authorizes appropriations for the Securities and Exchange Commission (SEC) for fiscal years 2017 through 2022.

Section 802. Report on unobligated appropriations.—Directs the SEC to report to the House Financial Services and Senate Banking Committees on unobligated funds appropriated to the SEC.

Section 803. SEC Reserve Fund abolished.—Abolishes the SEC's Reserve Fund.

Section 804. Fees to offset appropriations.—Directs the SEC to collect fees and assessments to offset Congressional appropriations; provides that fees collected in excess of amounts appropriated by Congress shall be credited as general revenue to the Treasury.

Section 805. Commission relocation funding prohibition.—This section is intended to prohibit the SEC from obligating any funds to construct a new, government owned headquarters facility. This section only prohibits the obligation of funds for the purposes of federal construction and shall not be construed as prohibiting the obligation of funds associated with a replacement lease, including the construction of tenant improvements or security improvements, for a leased SEC headquarters facility.

Section 806. Implementation of recommendations.—Directs the SEC finish implementing the recommendations contained in the independent consultant's report issued on March 10, 2011.

Section 807. Office of Credit Ratings to report to the Division of Trading and Markets.—Restructures the SEC's Office of Credit Ratings to place it within the SEC's Division of Trading and Markets.

Section 808. Office of Municipal Securities to report to the Division of Trading and Markets.—Restructures the SEC's Office of Municipal Securities to place it within the SEC's Division of Trading and Markets.

Section 809. Independence of Commission Ombudsman.—Provides that the Ombudsman will be appointed by the SEC's Commissioners and reports to the Commission.

Section 810. Investor Advisory Committee improvements.—Requires the SEC's Investor Advisory Committee to consult with the SEC's Small Business Capital Formation Advisory Committee in submitting findings and recommendations to the SEC; requires the Investor Advisory Committee to include as a non-voting member a member of the Small Business Capital Formation Advisory Committee; sets term lengths for members of the Investor Advisory Committee.

Section 811. Duties of Investor Advocate.—Prohibits the Investor Advocate from taking a position on pending legislation other than legislative changes proposed by the Investor Advocate relating to retail investors; requires the Investor Advocate to consult with the Advocate for Small Business Capital formation in proposing recommendations relating to retail investors; and directs the Investor Advocate to advice the Advocate for Small Business Capital Formation on issues related to small business investors.

Section 812. Elimination of exemption of Small Business Capital Formation Advisory Committee from Federal Advisory Committee Act.—Repeals the Small Business Capital Formation Advisory Committee's exemption from the Federal Advisory Committee Act.

Section 813. Internal risk controls.—Directs the SEC and registered national security associations, in consultation with the SEC's chief economist, to develop internal risk controls to safeguard market data; requires the operator of the Consolidated Audit Trail, in consultation with the SEC's chief economist, to develop internal risk controls to safeguard market data before the SEC ap-

proves a national market system plan governing the implementation of the Consolidated Audit Trail.

Section 814. Applicability of notice and comment requirements of the Administrative Procedure Act to guidance voted on by the Commission.—Subjects SEC statements and guidance that implement, interpret, or prescribe law or policy to the notice-and-comment requirements of the Administrative Procedure Act.

Section 815. Limitation on pilot programs.—Provides that pilot programs established by self-regulatory organizations expire five years after they are approved by the SEC, unless the SEC issues a rule to permanently continue the pilot program or approves the program on a permanent basis.

Section 816. Procedure for obtaining certain intellectual property.—Requires the SEC to obtain a subpoena in order to compel the production of source code.

Section 817. Process for closing investigations.—Directs the SEC to establish procedures for closing investigations in a timely manner.

Section 818. Enforcement Ombudsman.—Directs the SEC to appoint an Enforcement Ombudsman who reports to the SEC and acts as a liaison between the SEC and any person who is the subject of an SEC investigation or an administrative or judicial action brought by the SEC.

Section 819. Adequate notice.—Provides that no person can be subject to an SEC enforcement action if that person did not have adequate notice of the law, rule, or regulation on which the action is based; provides that publication of an SEC statement or guidance constitutes adequate notice.

Section 820. Advisory committee on Commission's enforcement policies and practices.—Directs the SEC Chair to establish an advisory committee to analyze and make recommendations regarding the SEC's enforcement policies and practices.

Section 821. Process to permit recipient of Wells notification to appear before Commission staff in-person.—Directs the SEC to establish a process in which the recipient of a Wells notice can make a presentation to SEC staff regarding the staff's preliminary recommendation that the SEC bring an enforcement action against the recipient of the notice.

Section 822. Publication of enforcement manual.—Directs the SEC to publish a manual setting forth the policies and procedures the SEC follows in enforcing the securities laws; directs the SEC to publish annually an enforcement plan and report that sets forth the SEC's enforcement priorities and reports on the SEC's enforcement and examination activities for the previous year.

Section 823. Private parties authorized to compel the Securities and Exchange Commission to seek sanctions by filing civil actions.—Authorizes defendants in administrative proceedings brought by the SEC to require the SEC to terminate the administrative proceeding; authorizes the SEC to bring a civil action seeking the same remedy that it sought in the terminated administrative proceeding.

Section 824. Certain findings required to approve civil money penalties against issuers.—Requires the SEC, when imposing civil money penalties against issuers, to determine whether the violation resulted in direct economic benefit to the issuer and whether

the penalty will harm the issuer's shareholders; requires that such a finding be supported by an analysis by the division of Economic and Risk Analysis and be certified by the Chief Economist.

Section 825. Repeal of authority of the Commission to prohibit persons from serving as officers or directors.—Repeals the SEC's authority to prohibit certain persons from serving as officers and directors through administrative proceedings.

Section 826. Subpoena duration and renewal.—Prohibits the SEC from issuing omnibus orders of investigation of indefinite duration; requires SEC action to renew such an order.

Section 827. Elimination of automatic disqualifications.—Provides that entities and individuals may not be automatically disqualified from using exemptions or registration provisions as a result of having been the subject of an order, judgment, or decree arising from a governmental action.

Section 828. Denial of award to culpable whistleblowers.—Prohibits the SEC from awarding compensation to whistleblowers who are complicit in the wrongdoing for which they provided information.

Section 829. Confidentiality of records obtained from foreign securities and law enforcement authorities.—Provides that the SEC cannot be compelled to produce records obtained from foreign securities regulators or foreign law enforcement authorities.

Section 830. Clarification of authority to impose sanctions on persons associated with a broker or dealer.—Clarifies that the SEC may impose sanctions on persons associated with a broker or dealer.

Section 831. Complaint and burden of proof requirements for certain actions for breach of fiduciary duty.—Provides that in derivative actions brought under the Investment Company Act alleging a breach of fiduciary duty, the plaintiff must state with particularity all the facts establishing a breach of fiduciary duty, and that the plaintiff must prove the breach of fiduciary duty by clear and convincing evidence.

Section 832. Congressional access to information held by the Public Company Accounting Oversight Board.—Directs the PCAOB to make information the PCAOB received in connection with an inspection or an investigation available to the House Financial Services and Senate Banking Committees.

Section 833. Abolishing Investor Advisory Group.—Directs the PCAOB to abolish the Investor Advisory Group.

Section 834. Repeal of requirement for Public Company Accounting Oversight Board to use certain funds for merit scholarship program.—Repeals the requirement that the PCAOB fund a merit scholarship program and instead remit the funds to the Treasury.

Section 835. Reallocation of fines for violations of rules of municipal securities rulemaking board.—Provides that fines collected for MSRB rule violations be credited as general revenue to the Treasury.

Subtitle B—Eliminating Excessive Government Intrusion in the Capital Markets

Section 841. Repeal of Department of Labor fiduciary rule and requirements prior to rulemaking relating to standards of conduct for brokers and dealers.—Repeals the Department of Labor's final

rule titled "Definition of the Term 'Fiduciary'; Conflict of Interest Rule—Retirement Investment Advice"; provides that the Department of Labor may not issue a rule defining a "fiduciary" until 60 days after the SEC issues a rule relating to standards of conduct for brokers and dealers; provides that if the Department of Labor issues a rule defining a "fiduciary," that the Department of Labor's rule must prescribe a definition substantially similar to the SEC's and that the Department of Labor's rule must impose substantially identical standards of care as the SEC has imposed on brokers, dealers, and investment advisers; directs the SEC to report to the House Financial Services and Senate Banking Committees on the costs and benefits of proposed rules relating to standards of conduct for brokers and dealers before promulgating such a rule.

Section 842. Exemption from risk retention requirements for non-residential mortgage.—Exempts asset-backed securities made up of non-residential mortgages from the Dodd-Frank Act's risk-retention requirements.

Section 843. Frequency of shareholder approval of executive compensation.—Provides that shareholders be given the opportunity to approve executive compensation in those years in which the executive compensation of an issuer has materially changed from the previous year.

Section 844. Shareholder Proposals.—Directs the SEC to adjust the resubmission thresholds for shareholder proposals; directs the SEC to revise the holding requirements for a shareholder to submit a proposal by eliminating the option to satisfy the holding requirement by holding a certain dollar amount and by requiring a shareholder to hold 1 percent of the issuer's voting securities, and adjusting the holding period to 3 years; prohibits an issuer from including shareholder proposals by proxies in the issuer's proxy materials.

Section 845. Prohibition on requiring a single ballot.—Prohibits the SEC from requiring proxy solicitations to use a single ballot for director elections.

Section 846. Requirement for municipal advisor for issuers of municipal securities.—Provides that an issuer of municipal securities is not required to retain a municipal advisor before issuing securities.

Section 847. Small issuer exemption from internal control evaluation.—Exempts issuers with market capitalizations of less than $500 million and depository institutions with assets of less than $1 billion from having to comply with internal control evaluation requirement of the Sarbanes-Oxley Act.

Section 848. Streamlining of applications for an exemption from the Investment Company Act of 1940.—Sets forth the application process for the SEC to grant exemptions from the requirements of the Investment Company Act under the SEC's general exemptive authority.

Section 849. Restriction on recovery of erroneously awarded compensation.—Provides that the SEC's rules requiring issuers to develop policies providing for the recovery of erroneously awarded compensation to an executive officer under an accounting restatement apply only when the officer had control or authority over the financial reporting that resulted in the accounting restatement.

Section 850. Exemptive authority for certain provisions relating to registration of nationally recognized statistical rating organizations.—Grants the SEC the authority to exempt a person from provisions relating to the registration of NRSROs if the SEC finds that registration creates a barrier to entry, impedes competition, or that such an exemption is in the public interest.

Section 851. Risk-based examinations of Nationally Recognized Statistical Rating Organizations.—Directs the SEC to conduct risk-based examinations of NRSROs.

Section 852. Transparency of credit rating methodologies.—Prohibits the SEC from requiring NRSROs to include in their disclosures of rating methodologies references to statutory or regulatory requirements; prohibits the SEC from mandating the specific format of an NRSRO's disclosure of its rating methodology.

Section 853. Repeal of certain attestation requirements relating to credit ratings.—Repeals the requirement that the chief executive officer of an NRSRO attest to its internal controls over processes for determining credit ratings; repeals the requirement that an NRSRO include in its disclosures an attestation that the rating was not influenced by business activities, that the rating was based solely on the merits of the instruments being rated, and that the rating was an independent evaluation of the risks and merits of the instrument.

Section 854. Look-back review by NRSRO.—Amends the look-back requirement for NRSROs to apply only to the lead underwriter in reviewing whether conflicts of interests between employees of the NRSRO and employees of the person subject to the rating or an employee of an issuer, underwriter, or sponsor of a security subject to the rating influenced the rating.

Section 855. Approval of credit rating procedures and methodologies.—Provides that an NRSRO's Chief Credit Officer may approve an NRSRO's procedures and methodologies.

Section 856. Exception for providing certain material information relating to a credit rating.—Provides that a person who markets or sells an NRSRO's products and services may provide information to a person who determines or monitors a credit rating or who develops and approves methodologies for determining a rating as long as the information provided is not intended to influence the determination of a credit rating or the methodologies used to determine credit ratings.

Section 857. Repeals.—Repeals certain provisions of title IX of the Dodd-Frank Act. In particular:

- In Subtitle A (Increasing Investor Protection), repeals the section granting the SEC the authority to engage in investor testing; repeals the sections mandating studies on investment adviser examinations, financial literacy among investors, mutual fund advertising, conflicts of interest, access to information on investment advisers and broker-dealers, and on financial planners and the use of financial designations.
- In Subtitle B (Increasing Regulatory Enforcement and Remedies), repeals the section granting the SEC the authority to restrict mandatory pre-dispute arbitration; providing for equal treatment of self-regulatory organization rules; providing for short sale reforms; and the section mandating studies on extraterritorial private rights of action and securities litigation.

• In Subtitle C (Improvements to the Regulation of Credit Rating Agencies), repeals the sections on Congress's findings on credit ratings and NRSROs, the pleading requirements for state of mind in private actions against NRSROs, timing of regulations, the elimination of the exemption of NRSROs from the fair disclosure rule, and repeals the sections mandating studies on credit rating agency independence, alternative business models, and the creation of an independent professional analyst organization; repeals the section mandating a study and rulemaking on assigned credit ratings; repeals the section rescinding the exemption from expert liability afforded to credit rating agencies under SEC Rule 436(g); repeals the section setting forth the sense of Congress regarding the SEC's rulemaking authority over NRSROs.

• In Subtitle D (Improvements to the Asset-Backed Securitization Process), repeals the section mandating a study on the macroeconomic effects of risk retention requirements.

• In Subtitle E (Accountability and Executive Compensation), repeals the subsection requiring issuers to disclose the ratio of the median annual compensation of all employees and the compensation of the chief executive officer; repeals the sections mandating disclosure by issuers regarding employee and director hedging, enhanced disclosure by financial institutions of compensation arrangements for executives, and prohibiting certain compensation arrangements.

• In Subtitle F (Improvements to the Management of the Securities and Exchange Commission), repeals the sections mandating studies on the oversight of national securities associations and former SEC employees subsequently employed by financial institutions regulated by the SEC; repeals the section directing the SEC's Division of Trading and Markets and its Division of Investment Management to maintain a staff of compliance examiners.

• In Subtitle G (Strengthening Corporate Governance), repeals sections permitting the SEC to issue rules regarding proxy access and directing the SEC to issue rules requiring issuers to explain their chairman and chief executive officer structures.

• In Subtitle H (Municipal Securities), repeals sections mandating studies of increased disclosure to investors in municipal securities and on municipal securities markets; repeals the section permitting the SEC to require national securities associations to fund the Governmental Accounting Standards Board.

• In Subtitle I (Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters), repealing sections directing the SEC to issue regulations regarding the disclosure of securities lending; creating a program for making grants to states for the purpose of investigating and prosecuting persons selling financial products to senior citizens who are not specifically credentialed as having special training in advising senior citizens; and directing federal financial regulatory agencies to address deficiencies identified by their respective inspector general. Also repeals sections mandating studies on proprietary trading, person-to-person lending, the exemption for small issuers from Section 404(b) of the Sarbanes-Oxley Act, and the subsection mandating a study on compliance burdens from Section 404(b) of the Sarbanes-Oxley Act on companies with a market capitalization between $75 million and $250 million.

Section 858. Exemption of and reporting by private equity fund advisers.—Exempts the advisers to private equity funds from the registration and reporting requirements of the Investment Advisers Act of 1940.

Section 859. Records and reports of private funds.—Removes references to the Financial Stability Oversight Council and systemic risk from the statutory rationale for requiring registered investment advisers to maintain and produce records and reports.

Section 860. Definition of accredited investor.—Amends the definition of "accredited investor" to include natural persons whose individual or joint net worth with a spouse exceeds $1 million; a natural person having an individual income greater than $200,000 or joint income with a spouse greater than $300,000 in the two years prior; a natural person licensed as a broker or investment adviser; and any natural person the SEC determines has the education or job experience to qualify as having professional knowledge related to investment.

Section 861. Repeal of certain provisions requiring a study and report to Congress.—Repeals certain provisions of title IX of the Dodd-Frank Act. In particular, repeals sections mandating a study on custody rule costs, a study on the criteria for determining "accredited investors," a study on the feasibility of a self-regulatory organization to oversee private funds, and a study on short selling.

Section 862. Repeal.—Repeals certain provisions of title XV of the Dodd-Frank Act. In particular, repeals sections directing the SEC to promulgate regulations regarding the following: disclosures relating to conflict minerals originating in the Democratic Republic of the Congo; disclosures regarding coal or other mine safety; disclosures of payments to foreign governments by resource extraction issuers. Also repeals sections mandating studies on the effectiveness of inspectors general and on core deposits and brokered deposits.

Subtitle C—Harmonization of Derivatives Rules

Section 871. Commissions review and harmonization of rules relating to the regulation of over-the-counter swaps markets.—Directs the SEC and CFTC to review rules, orders, and guidance issued pursuant to Title VII of the Dodd-Frank Act and to resolve inconsistencies.

Section 872. Treatment of transactions between affiliates.—Exempts swap transactions between affiliated entities from the swaps rules issued by the SEC and the CFTC.

TITLE IX—REPEAL OF THE VOLCKER RULE AND OTHER PROVISIONS

Section 901. Repeals.—Repeals certain provisions of title VI of the Dodd-Frank Act, including Section 619, also known as the Volcker Rule. In particular, repeals sections imposing a moratorium on the provision of deposit insurance by the FDIC to industrial banks, credit card banks, and trust banks owned or controlled by a commercial firm; granting the Federal Reserve supervisory authority over securities holding companies; prohibiting banking entities from engaging in proprietary trading or maintaining certain relationships with hedge funds and private equity funds; and prohibiting underwriters, placement agents, initial purchasers and

sponsors of an asset-backed security engaging in transactions that give rise to a conflict of interest with an investor in the security for a one-year period. Also repeals the section mandating a study on bank investment activities.

TITLE X—FED OVERSIGHT REFORM AND MODERNIZATION

Section 1001. Requirements for policy rules of the Federal Open Market Committee.—Requires the Federal Reserve to adopt a "directive policy rule" for open market operations; directs the GAO to monitor the Federal Reserve's compliance with the directive policy rule that the Federal Reserve has adopted and report instances of non-compliance to the House Financial Services and Senate Banking Committees; authorizes the chairs of the House Financial Services and Senate Banking Committees to request the Federal Reserve Chair to testify on the Federal Reserve's failure to comply with its directive policy rule.

Section 1002. Federal Open Market Committee blackout period.—Defines the term "blackout period"; specifies the public communications that may be made by members of the Federal Open Market Committee during the blackout period; exempts the Federal Reserve Chair from the blackout period.

Section 1003. Public transcripts of FOMC meetings.—Requires the Federal Open Market Committee to record its meetings and make full transcripts of its meetings available to the public.

Section 1004. Membership of Federal Open Market Committee.—Changes the composition of the Federal Open Market Committee by adding a sixth representative from the regional Federal Reserve Banks to the Committee; changes the rotation of membership on the Federal Open Market Committee among the representatives of the regional Federal Reserve Banks so that representatives from the Federal Reserve Banks of Boston, Philadelphia, Richmond, Chicago, Minneapolis, and Dallas serve in odd-numbered calendar years, and representatives from the Federal Reserve Banks of New York, Cleveland, Atlanta, St. Louis, Kansas City, and San Francisco serve in even-numbered calendar years.

Section 1005. Frequency of testimony of the Chairman of the Board of Governors of the Federal Reserve System to Congress.—Requires the Federal Reserve Chair to testify quarterly before the House Financial Services and Senate Banking Committees on the conduct of monetary policy and economic developments and future prospects for the economy.

Section 1006. Vice Chairman for Supervision report requirement.—Requires the Federal Reserve Vice Chair for Supervision to report in the Vice Chair's written testimony on the status of pending and anticipated rulemakings by the Federal Reserve; provides that the Federal Reserve Vice Chair or the Federal Reserve Chair shall testify if the position of Vice Chair for Supervision is vacant.

Section 1007. Salaries, financial disclosures, and office staff of the Board of Governors of the Federal Reserve System.—Subjects members and employees of the Federal Reserve to the same prohibitions and restrictions on financial interests, transactions, and outside employment that employees of the SEC are subject to; requires members and employees of the Federal Reserve to disclose all brokerage accounts and authorize the sending of duplicate account statements to the Federal Reserve; requires the Federal Re-

serve to publicly disclose the names, salaries, and required financial disclosures of Federal Reserve members, officers, and employees whose annual salary exceeds the annual rate of pay for GS–15 on the General Schedule; and permits each member of the Federal Reserve Board to employ at least 2 individuals as office staff.

Section 1008. Amendments to powers of the Board of Governors of the Federal Reserve System.—Amends section 13(3) of the Federal Reserve Act to provide that the Federal Reserve may exercise its emergency lending authority only if the "unusual and exigent circumstances" identified as the basis for the exercise of such authority also "pose a threat to the financial stability of the United States"; to require the affirmative vote of at least nine presidents of the regional Federal Reserve Banks in addition to the affirmative vote of five members of the Federal Reserve Board to exercise the emergency lending authority. Directs the Federal Reserve to issue rules regarding the sufficiency and acceptability of, discounts on, and methods for appraising collateral required to secure loans made under the Federal Reserve's emergency lending authority. Provides federal banking regulators must certify that an institution is solvent before it is eligible to borrow under the Federal Reserve's emergency lending authority. Directs the Federal Reserve to issue rules regarding minimum interest rates to be charged for loans made under its emergency lending authority, and defines the minimum interest rate.

Section 1009. Interest rates on balances maintained at a Federal Reserve bank by depository institutions established by Federal Open Market Committee.—Provides that the Federal Open Market Committee establishes the rate of earnings paid on balances maintained at Federal Reserve Banks by depository institutions.

Section 1010. Audit reform and transparency for the Board of Governors of the Federal Reserve System.—Directs the GAO to annually audit the Federal Reserve Board and Federal Reserve Banks and report to Congress on the results of its audit.

Section 1011. Establishment of a Centennial Monetary Commission.—Establishes a Centennial Monetary Commission to examine the effect of monetary policy since the creation of the Federal Reserve on the U.S. economy and to evaluate the effectiveness of the regimes under which the Federal Reserve has conducted monetary policy in achieving the maximum sustainable level of output and price stability.

TITLE XI—IMPROVING INSURANCE COORDINATION THROUGH AN INDEPENDENT ADVOCATE

Section 1101. Repeal of the Federal Insurance Office; Creation of the Office of the Independent Insurance Advocate.—Abolishes the Federal Insurance Office and establishes the Office of the Independent Insurance Advocate to act as an independent advocate on behalf of U.S. policyholders on prudential aspects of insurance matters; grants the Office of the Independent Insurance Advocate the authority to coordinate federal efforts on prudential aspects of international insurance matters, consult with states regarding insurance matters of national importance, to assist the Treasury Secretary in administering the Terrorism Reinsurance Program, and to observe all aspects of the insurance industry and identify issues that could contribute to systemic crises in the insurance industry

or the U.S. financial system; provides that the Independent Insurance Advocate is a voting member of the FSOC.

Section 1102. Treatment of covered agreements.—Requires the Treasury Secretary and the U.S. Trade Representative to publish in the Federal Register and make available for public comment the proposed text of a bilateral or multilateral agreement regarding prudential measures relating to insurance or reinsurance before the agreement can become effective.

TITLE XII—TECHNICAL CORRECTIONS

Section 1201. Table of contents; Definitional corrections.—Makes technical corrections to the Table of Contents and Section 2 of the Dodd-Frank Act.

Section 1202. Antitrust savings clause corrections.—Makes technical corrections to Section 6 of the Dodd-Frank Act.

Section 1203. Title I corrections.—Makes technical corrections to Title I of the Dodd-Frank Act.

Section 1204. Title III corrections.—Makes technical corrections to Title III of the Dodd-Frank Act.

Section 1205. Title IV correction. Makes technical corrections to Title IV of the Dodd-Frank Act.

Section 1206. Title VI corrections.—Makes technical corrections to Title VI of the Dodd-Frank Act.

Section 1207. Title VII corrections.—Makes technical corrections to Title VII of the Dodd-Frank Act.

Section 1208. Title IX corrections. Makes technical corrections to Title IX of the Dodd-Frank Act.

Section 1209. Title X corrections. Makes technical corrections to Title X of the Dodd-Frank Act.

Section 1210. Title XII correction. Makes technical corrections to Title XII of the Dodd-Frank Act.

Section 1211. Title XIV correction.—Makes technical corrections to Title XIV of the Dodd-Frank Act.

Section 1212. Technical corrections to other statutes.—Makes technical corrections to various federal statutes.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Dodd-Frank Wall Street Reform and Consumer Protection Act".

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

Sec. 1. Short title; table of contents.

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TITLE I—FINANCIAL STABILITY

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Subtitle A—Financial Stability Oversight Council

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[Sec. 113. Authority to require supervision and regulation of certain nonbank financial companies.
[Sec. 114. Registration of nonbank financial companies supervised by the Board of Governors.
[Sec. 115. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies.
[Sec. 116. Reports.
[Sec. 117. Treatment of certain companies that cease to be bank holding companies.]

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[Sec. 119. Resolution of supervisory jurisdictional disputes among member agencies.
[Sec. 120. Additional standards applicable to activities or practices for financial stability purposes.
[Sec. 121. Mitigation of risks to financial stability.]

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[Subtitle B—Office of Financial Research

[Sec. 151. Definitions.
[Sec. 152. Office of Financial Research established.
[Sec. 153. Purpose and duties of the Office.
[Sec. 154. Organizational structure; responsibilities of primary programmatic units.
[Sec. 155. Funding.
[Sec. 156. Transition oversight.]

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

[Sec. 161. Reports by and examinations of nonbank financial companies by the Board of Governors.
[Sec. 162. Enforcement.]

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[Sec. 164. Prohibition against management interlocks between certain financial companies.]

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[Sec. 166. Early remediation requirements.
[Sec. 167. Affiliations.
[Sec. 168. Regulations.]

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[Sec. 170. Safe harbor.]

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[Sec. 172. Examination and enforcement actions for insurance and orderly liquidation purposes.]

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[Sec. 174. Studies and reports on holding company capital requirements.
[Sec. 175. International policy coordination.]

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[TITLE II—ORDERLY LIQUIDATION AUTHORITY

[Sec. 201. Definitions.
[Sec. 202. Judicial review.
[Sec. 203. Systemic risk determination.
[Sec. 204. Orderly liquidation of covered financial companies.
[Sec. 205. Orderly liquidation of covered brokers and dealers.
[Sec. 206. Mandatory terms and conditions for all orderly liquidation actions.
[Sec. 207. Directors not liable for acquiescing in appointment of receiver.
[Sec. 208. Dismissal and exclusion of other actions.
[Sec. 209. Rulemaking; non-conflicting law.
[Sec. 210. Powers and duties of the Corporation.

[Sec. 211. Miscellaneous provisions.
[Sec. 212. Prohibition of circumvention and prevention of conflicts of interest.
[Sec. 213. Ban on certain activities by senior executives and directors.
[Sec. 214. Prohibition on taxpayer funding.
[Sec. 215. Study on secured creditor haircuts.
[Sec. 216. Study on bankruptcy process for financial and nonbank financial institutions
[Sec. 217. Study on international coordination relating to bankruptcy process for nonbank financial institutions]

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TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

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[Sec. 407. Exemption of venture capital fund advisers.
[Sec. 408. Exemption of and record keeping by private equity fund advisers.
[Sec. 409. Family offices.
[Sec. 410. State and Federal responsibilities; asset threshold for Federal registration of investment advisers.
[Sec. 411. Custody of client assets.
[Sec. 412. Adjusting the accredited investor standard.
[Sec. 413. GAO study and report on accredited investors.
[Sec. 414. GAO study on self-regulatory organization for private funds.
[Sec. 415. Commission study and report on short selling.
[Sec. 416. Transition period.
[Sec. 417. Commission study and report on short selling.]
Sec. 407. Exemption of and reporting by venture capital fund advisers.
Sec. 408. Exemption of and reporting by certain private fund advisers.
Sec. 409. Family offices.
Sec. 410. State and Federal responsibilities; asset threshold for Federal registration of investment advisers.
Sec. 411. Custody of client assets.
Sec. 414. Rule of construction relating to the Commodity Exchange Act.
Sec. 418. Qualified client standard.
Sec. 419. Transition period.

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TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

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[Sec. 603. Moratorium and study on treatment of credit card banks, industrial loan companies, and certain other companies under the Bank Holding Company Act of 1956.]

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[Sec. 618. Securities holding companies.
[Sec. 619. Prohibitions on proprietary trading and certain relationships with hedge funds and private equity funds.
[Sec. 620. Study of bank investment activities.
[Sec. 621. Conflicts of interest.]

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[TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

[Sec. 801. Short title.
[Sec. 802. Findings and purposes.
[Sec. 803. Definitions.
[Sec. 804. Designation of systemic importance.
[Sec. 805. Standards for systemically important financial market utilities and payment, clearing, or settlement activities.
[Sec. 806. Operations of designated financial market utilities.
[Sec. 807. Examination of and enforcement actions against designated financial market utilities.
[Sec. 808. Examination of and enforcement actions against financial institutions subject to standards for designated activities.
[Sec. 809. Requests for information, reports, or records.
[Sec. 810. Rulemaking.
[Sec. 811. Other authority.
[Sec. 812. Consultation.

[Sec. 813. Common framework for designated clearing entity risk management.
[Sec. 814. Effective date.]

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

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Subtitle A—Increasing Investor Protection

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[Sec. 912. Clarification of authority of the Commission to engage in investor testing.]

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[Sec. 914. Study on enhancing investment adviser examinations.]

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[Sec. 917. Study regarding financial literacy among investors.
[Sec. 918. Study regarding mutual fund advertising.]

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[Sec. 919A. Study on conflicts of interest.
[Sec. 919B. Study on improved investor access to information on investment advisers and broker-dealers.
[Sec. 919C. Study on financial planners and the use of financial designations.]

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Subtitle B—Increasing Regulatory Enforcement and Remedies

[Sec. 921. Authority to restrict mandatory pre-dispute arbitration.]

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[Sec. 929T. Equal treatment of self-regulatory organization rules.]

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[Sec. 929X. Short sale reforms.
[Sec. 929Y. Study on extraterritorial private rights of action.
[Sec. 929Z. GAO study on securities litigation.]

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

[Sec. 931. Findings.]

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[Sec. 933. State of mind in private actions.]

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[Sec. 937. Timing of regulations.]

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[Sec. 939B. Elimination of exemption from fair disclosure rule.
[Sec. 939C. Securities and Exchange Commission study on strengthening credit rating agency independence.
[Sec. 939D. Government Accountability Office study on alternative business models.
[Sec. 939E. Government Accountability Office study on the creation of an independent professional analyst organization.
[Sec. 939F. Study and rulemaking on assigned credit ratings.
[Sec. 939G. Effect of Rule 436(g).
[Sec. 939H. Sense of Congress.]

Subtitle D—Improvements to the Asset-Backed Securitization Process

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[Sec. 946. Study on the macroeconomic effects of risk retention requirements.]

Subtitle E—Accountability and Executive Compensation

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[Sec. 955. Disclosure regarding employee and director hedging.
[Sec. 956. Enhanced compensation structure reporting.]

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Subtitle F—Improvements to the Management of the Securities and Exchange Commission

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[Sec. 964. Report on oversight of national securities associations.
[Sec. 965. Compliance examiners.]

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[Sec. 968. Study on SEC revolving door.]

Subtitle G—Strengthening Corporate Governance

[Sec. 971. Proxy access.
[Sec. 972. Disclosures regarding chairman and CEO structures.]

Subtitle H—Municipal Securities

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[Sec. 976. Government Accountability Office study of increased disclosure to investors.
[Sec. 977. Government Accountability Office study on the municipal securities markets.
[Sec. 978. Funding for Governmental Accounting Standards Board.]

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Subtitle I—Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters

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[Sec. 984. Loan or borrowing of securities.]

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[Sec. 989. Government Accountability Office study on proprietary trading.
[Sec. 989A. Senior investor protections.]

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[Sec. 989F. GAO study of person to person lending.]

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[Sec. 989I. GAO study regarding exemption for smaller issuers.]

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TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

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Subtitle A—[Bureau of Consumer Financial Protection]*Consumer Law Enforcement Agency*

Sec. 1011. Establishment of the [Bureau of Consumer Financial Protection]*Consumer Law Enforcement Agency*.

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[Sec. 1014. Consumer Advisory Board.]

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Subtitle B—General Powers of the [Bureau]*Agency*

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[Sec. 1023. Review of Bureau regulations.]
Sec. 1024. [Supervision of]*Authority with respect to certain* nondepository covered persons.
[Sec. 1025. Supervision of very large banks, savings associations, and credit unions.]

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Sec. 1027. Limitations on authorities of the [Bureau]*Agency*; preservation of authorities.
[Sec. 1028. Authority to restrict mandatory pre-dispute arbitration.]

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Subtitle C—Specific [Bureau]*Agency* Authorities

[Sec. 1031. Prohibiting unfair, deceptive, or abusive acts or practices.]

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Subtitle E—Enforcement Powers

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Sec. 1059. Consideration of cost-benefit analysis related to administrative enforcement and civil actions.

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Subtitle G—Regulatory Improvements

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[Sec. 1075. Reasonable fees and rules for payment card transactions.]

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TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

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[Sec. 1104. Liquidity event determination.
[Sec. 1105. Emergency financial stabilization.
[Sec. 1106. Additional related amendments.]

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TITLE XV—MISCELLANEOUS PROVISIONS

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[Sec. 1502. Conflict minerals.
[Sec. 1503. Reporting requirements regarding coal or other mine safety.
[Sec. 1504. Disclosure of payments by resource extraction issuers.
[Sec. 1505. Study by the Comptroller General.
[Sec. 1506. Study on core deposits and brokered deposits.]

SEC. 2. DEFINITIONS.

As used in this Act, the following definitions shall apply, except as the context otherwise requires or as otherwise specifically provided in this Act:

(1) AFFILIATE.—The term "affiliate" has the same meaning as in [section 3] *section 3(w)* of the Federal Deposit Insurance Act [(12 U.S.C. 1813)] *(12 U.S.C. 1813(w))*.

(2) APPROPRIATE FEDERAL BANKING AGENCY.—On and after the transfer date, the term "appropriate Federal banking agency" has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), as amended by title III.

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

[(4) BUREAU.—The term "Bureau" means the Bureau of Consumer Financial Protection established under title X.]

(4) AGENCY.—The term "Agency" means the Consumer Law Enforcement Agency established under title X.

(5) COMMISSION.—The term "Commission" means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

(6) COMMODITY FUTURES TERMS.—The terms "futures commission merchant", "swap", "swap dealer", "swap execution facility", "derivatives clearing organization", "board of trade", "commodity trading advisor", "commodity pool", and "commodity pool operator" have the same meanings as given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. [1 et seq.] *1a*).

(7) CORPORATION.—The term "Corporation" means the Federal Deposit Insurance Corporation.

(8) COUNCIL.—The term "Council" means the Financial Stability Oversight Council established under title I.

(9) CREDIT UNION.—The term "credit union" means a Federal credit union, State credit union, or State-chartered credit

union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(10) FEDERAL BANKING AGENCY.—The term—

(A) "Federal banking agency" means, individually, the Board of Governors, the Office of the Comptroller of the Currency, and the Corporation; and

(B) "Federal banking agencies" means all of the agencies referred to in subparagraph (A), collectively.

(11) FUNCTIONALLY REGULATED SUBSIDIARY.—The term "functionally regulated subsidiary" has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).

(12) PRIMARY FINANCIAL REGULATORY AGENCY.—The term "primary financial regulatory agency" means—

(A) the appropriate Federal banking agency, with respect to institutions described in section 3(q) of the Federal Deposit Insurance Act, except to the extent that an institution is or the activities of an institution are otherwise described in subparagraph (B), (C), (D), or (E);

(B) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the broker or dealer that require the broker or dealer to be registered under that Act;

(ii) any investment company that is registered with the Commission under the Investment Company Act of 1940, with respect to the activities of the investment company that require the investment company to be registered under that Act;

(iii) any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities;

(iv) any clearing agency registered with the Commission under the Securities Exchange Act of 1934, with respect to the activities of the clearing agency that require the agency to be registered under such Act;

(v) any nationally recognized statistical rating organization registered with the Commission under the Securities Exchange Act of 1934;

(vi) any transfer agent registered with the Commission under the Securities Exchange Act of 1934;

(vii) any exchange registered as a national securities exchange with the Commission under the Securities Exchange Act of 1934;

(viii) any national securities association registered with the Commission under the Securities Exchange Act of 1934;

(ix) any securities information processor registered with the Commission under the Securities Exchange Act of 1934;

(x) the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934;

(xi) the Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.);

(xii) the Securities Investor Protection Corporation established under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(xiii) any security-based swap execution facility, security-based swap data repository, security-based swap dealer or major security-based swap participant registered with the Commission under the Securities Exchange Act of 1934, with respect to the security-based swap activities of the person that require such person to be registered under such Act;

(C) the Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the futures commission merchant that require the futures commission merchant to be registered under that Act;

(ii) any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity pool operator that require the commodity pool operator to be registered under that Act, or a commodity pool, as defined in that Act;

(iii) any commodity trading advisor or introducing broker registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the commodity trading advisor or introducing broker that require the commodity trading adviser or introducing broker to be registered under that Act;

(iv) any derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the derivatives clearing organization that require the derivatives clearing organization to be registered under that Act;

(v) any board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vi) any futures association registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(vii) any retail foreign exchange dealer registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the retail foreign

exchange dealer that require the retail foreign exchange dealer to be registered under that Act;

(viii) any swap execution facility, swap data repository, swap dealer, or major swap participant registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the swap activities of the person that require such person to be registered under that Act; and

(ix) any registered entity under the Commodity Exchange Act (7 U.S.C. 1 et seq.), with respect to the activities of the registered entity that require the registered entity to be registered under that Act;

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

(E) the Federal Housing Finance Agency, with respect to Federal Home Loan Banks or the Federal Home Loan Bank System, and with respect to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(13) PRUDENTIAL STANDARDS.—The term "prudential standards" means enhanced supervision and regulatory standards developed by the Board of Governors under section 165.

(14) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(15) SECURITIES TERMS.—The—

(A) terms "broker", "dealer", "issuer", "nationally recognized statistical rating organization", "security", and "securities laws" have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(B) term "investment adviser" has the same meaning as in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and

(C) term "investment company" has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3).

(16) STATE.—The term "State" means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(17) TRANSFER DATE.—The term "transfer date" means the date established under section 311.

(18) OTHER INCORPORATED DEFINITIONS.—

(A) FEDERAL DEPOSIT INSURANCE ACT.—The terms "bank", [“bank holding company",] "control", "deposit", "depository institution", "Federal depository institution", "Federal savings association", "foreign bank", *"includes"*, "including", "insured branch", "insured depository institution", "national member bank", "national nonmember bank", "savings association", "State bank", "State deposi-

tory institution", "State member bank", "State nonmember bank", "State savings association", and "subsidiary" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) HOLDING COMPANIES.—The term—

(i) "bank holding company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);

(ii) "financial holding company" has the same meaning as in section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)); and

(iii) "savings and loan holding company" has the same meaning as in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

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SEC. 6. ANTITRUST SAVINGS CLAUSE.

Nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws, unless otherwise specified. For purposes of this section, the term "antitrust laws" has the same meaning as in subsection (a) of the first section of the Clayton Act *(15 U.S.C. 12(a))*, except that such term includes section 5 of the Federal Trade Commission ⟦Act, to⟧ *Act (15 U.S.C. 45) to* the extent that such section 5 applies to unfair methods of competition.

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the "Financial Stability Act of 2010".

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—For purposes of this title, unless the context otherwise requires, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term "bank holding company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), shall be treated as a bank holding company for purposes of this title.

(2) CHAIRPERSON.—The term "Chairperson" means the Chairperson of the Council.

(3) MEMBER AGENCY.—The term "member agency" means an agency represented by a voting member of the Council.

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

(A) FOREIGN NONBANK FINANCIAL COMPANY.—The term "foreign nonbank financial company" means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

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

(ii) predominantly engaged in, including through a branch in the United States, financial activities, as defined in paragraph (6).

(B) U.S. NONBANK FINANCIAL COMPANY.—The term "U.S. nonbank financial company" means a company (other than a bank holding company, a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), or a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission, or a board of trade designated as a contract market (or parent thereof), or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility or a swap data repository registered with the Commodity Futures Trading Commission), that is—

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

(ii) predominantly engaged in financial activities, as defined in paragraph (6).

(C) NONBANK FINANCIAL COMPANY.—The term "nonbank financial company" means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term "nonbank financial company supervised by the Board of Governors" means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

[(5) OFFICE OF FINANCIAL RESEARCH.—The term "Office of Financial Research" means the office established under section 152.]

(6) PREDOMINANTLY ENGAGED.—A company is "predominantly engaged in financial activities" if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 *(12 U.S.C. 1843(k))*) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 *(12 U.S.C. 1843(k))*) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7) SIGNIFICANT INSTITUTIONS.—The terms "significant nonbank financial company" and "significant bank holding company" have the meanings given those terms by rule of the Board of Governors, but in no instance shall the term "signifi-

cant nonbank financial company" include those entities that are excluded under paragraph (4)(B).

(b) DEFINITIONAL CRITERIA.—The Board of Governors shall establish, by regulation, the requirements for determining if a company is predominantly engaged in financial activities, as defined in subsection (a)(6).

(c) FOREIGN NONBANK FINANCIAL COMPANIES.—For purposes of the application of subtitles A and C (other than section 113(b)) with respect to a foreign nonbank financial company, references in this title to "company" or "subsidiary" include only the United States activities and subsidiaries of such foreign company, except as otherwise provided.

Subtitle A—Financial Stability Oversight Council

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

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

(1) VOTING MEMBERS.—The voting members, [who shall each] *who shall, except as provided below, each* have 1 vote on the Council shall be—

(A) the Secretary of the Treasury, who shall serve as Chairperson of the Council;

[(B) the Chairman of the Board of Governors;

[(C) the Comptroller of the Currency;

[(D) the Director of the Bureau;

[(E) the Chairman of the Commission;

[(F) the Chairperson of the Corporation;

[(G) the Chairperson of the Commodity Futures Trading Commission;

[(H) the Director of the Federal Housing Finance Agency;

[(I) the Chairman of the National Credit Union Administration Board; and

[(J) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.]

(B) each member of the Board of Governors, who shall collectively have 1 vote on the Council;

(C) the Comptroller of the Currency;

(D) the Director of the Consumer Law Enforcement Agency;

(E) each member of the Commission, who shall collectively have 1 vote on the Council;

(F) each member of the Corporation, who shall collectively have 1 vote on the Council;

(G) each member of the Commodity Futures Trading Commission, who shall collectively have 1 vote on the Council;

(H) the Director of the Federal Housing Finance Agency;

(I) each member of the National Credit Union Administration Board, who shall collectively have 1 vote on the Council; and

(J) the Independent Insurance Advocate.

(2) NONVOTING MEMBERS.—The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council, shall be—

[(A) the Director of the Office of Financial Research;

[(B) the Director of the Federal Insurance Office;]

[(C)] *(A)* a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners;

[(D)] *(B)* a State banking supervisor, to be designated by a selection process determined by the State banking supervisors; and

[(E)] *(C)* a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(4) VOTING BY MULTI-PERSON ENTITY.—

(A) VOTING WITHIN THE ENTITY.—An entity described under subparagraph (B), (E), (F), (G), or (I) of paragraph (1) shall determine the entity's Council vote by using the voting process normally applicable to votes by the entity's members.

(B) CASTING OF ENTITY VOTE.—The 1 collective Council vote of an entity described under subparagraph (A) shall be cast by the head of such agency or, in the event such head is unable to cast such vote, the next most senior member of the entity available.

(c) TERMS; VACANCY.—

(1) TERMS.—The independent member of the Council shall serve for a term of 6 years, and each nonvoting member described in [subparagraphs (C), (D), and (E)] *subparagraphs (B), (C), and (D)* of subsection (b)(2) shall serve for a term of 2 years.

(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of [that agency or department head] *the head of that member agency or department*.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or profes-

sional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—

(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(3) STAFF ACCESS.—Any member of the Council may select to have one or more individuals on the member's staff attend a meeting of the Council, including any meeting of representatives of the member agencies other than the members themselves.

(4) CONGRESSIONAL OVERSIGHT.—All meetings of the Council, whether or not open to the public, shall be open to the attendance by members of the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(5) MEMBER AGENCY MEETINGS.—Any meeting of representatives of the member agencies other than the members themselves shall be open to attendance by staff of the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the voting members then serving.

[(g) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.**]**

(g) OPEN MEETING REQUIREMENT.—The Council shall be an agency for purposes of section 552b of title 5, United States Code (commonly referred to as the "Government in the Sunshine Act").

(h) CONFIDENTIAL CONGRESSIONAL BRIEFINGS.—At the request of the Chairman of the Committee on Financial Services of the House of Representatives or the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate, the Chairperson shall appear before Congress to provide a confidential briefing.

[(h)**]** *(i)* ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

[(i)**]** *(j)* COMPENSATION OF MEMBERS.—

(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:"Independent Member of the Financial Stability Oversight Council (1).".

[(j)] *(k)* DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

SEC. 112. COUNCIL AUTHORITY.

(a) PURPOSES AND DUTIES OF THE COUNCIL.—

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

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial system.

(2) DUTIES.—The Council shall, in accordance with this title—

(A) collect information from member agencies, other Federal and State financial regulatory agencies, [the Federal Insurance Office and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to] *and, if necessary to assess risks to the United States financial system,* collect information from bank holding companies and nonbank financial companies;

[(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;]

[(C)] *(B)* monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

[(D) to] *(C)* monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and advise Congress and make recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;

[(E)] *(D)* facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

[(F)] *(E)* recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

[(G)] *(F)* identify gaps in regulation that could pose risks to the financial stability of the United States;

[(H) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities pursuant to section 113;

[(I) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

[(J) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII);]

[(K)] *(G)* make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

[(L)] *(H)* review and, as appropriate, [may] submit comments to the Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure;

[(M)] *(I)* provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

[(N)] *(J)* annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market and regulatory developments, including insurance and accounting regulations and standards, along with an assessment of those developments on the stability of the financial system;

(iii) potential emerging threats to the financial stability of the United States; *and*

[(iv) all determinations made under section 113 or title VIII, and the basis for such determinations;

[(v) all recommendations made under section 119 and the result of such recommendations; and]

[(vi)] *(iv)* recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

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

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to mitigate systemic risk that would negatively affect the economy, submit a signed statement to Congress stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to Congress stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(c) TESTIMONY BY THE CHAIRPERSON.—The Chairperson shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at an annual hearing, after the report is submitted under subsection (a)—

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

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

(d) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from **[**the Office of Financial Research, member agencies, and the Federal Insurance Office**]** *member agencies*, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

(B) to otherwise carry out any of the provisions of this title.

(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law, **[**the Office of Financial Research, any member agency, and the Federal Insurance Office,**]** *member agencies* are authorized to submit information to the Council.

(3) FINANCIAL DATA COLLECTION.—

(A) IN GENERAL.—The Council**[**, acting through the Office of Financial Research,**]** may require the submission of periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or the nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.

(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council**[**, acting through the Office of Financial Research,**]** shall coordinate with such agencies and shall,

whenever possible, rely on information available from [the Office of Financial Research or] such agencies.

(C) MITIGATION IN CASE OF FOREIGN FINANCIAL COMPANIES.—Before requiring the submission of reports from a company that is a foreign nonbank financial company or foreign-based bank holding company, the Council shall[, acting through the Office of Financial Research,] to the extent appropriate, consult with the appropriate foreign regulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraphs (1) and (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(5) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council[, the Office of Financial Research,] and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this title.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information under this [subsection and subtitle B] *subtitle* shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any data or information submitted under this [subsection and subtitle B] *subtitle*.

[SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

[(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

[(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States.

[(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider—

[(A) the extent of the leverage of the company;

[(B) the extent and nature of the off-balance-sheet exposures of the company;

[(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

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

[(E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

[(F) the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

[(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

[(H) the degree to which the company is already regulated by 1 or more primary financial regulatory agencies;

[(I) the amount and nature of the financial assets of the company;

[(J) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and

[(K) any other risk-related factors that the Council deems appropriate.

[(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

[(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the foreign nonbank financial company, could pose a threat to the financial stability of the United States.

[(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider—

[(A) the extent of the leverage of the company;

[(B) the extent and nature of the United States related off-balance-sheet exposures of the company;

[(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

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

[(E) the importance of the company as a source of credit for low-income, minority, or underserved communities in

the United States, and the impact that the failure of such company would have on the availability of credit in such communities;

[(F) the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse;

[(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

[(H) the extent to which the company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority;

[(I) the amount and nature of the United States financial assets of the company;

[(J) the amount and nature of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

[(K) any other risk-related factors that the Council deems appropriate.

[(c) ANTIEVASION.—

[(1) DETERMINATIONS.—In order to avoid evasion of this title, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, that—

[(A) material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in subsection (a)(2) or (b)(2), as applicable;

[(B) the company is organized or operates in such a manner as to evade the application of this title; and

[(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this title, consistent with paragraph (3).

[(2) REPORT.—Upon making a determination under paragraph (1), the Council shall submit a report to the appropriate committees of Congress detailing the reasons for making such determination.

[(3) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES; ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—

[(A) ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—Upon a determination under paragraph (1), the company that is the subject of the determination may establish an intermediate holding company in which the financial activities of such company and its subsidiaries

shall be conducted (other than the activities described in section 167(b)(2)) in compliance with any regulations or guidance provided by the Board of Governors. Such intermediate holding company shall be subject to the supervision of the Board of Governors and to prudential standards under this title as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

[(B) ACTION OF THE BOARD OF GOVERNORS.—To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 167, which would be subject to the supervision of the Board of Governors and to prudential standards under this title, as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

[(4) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION; JUDICIAL REVIEW.—Subsections (d) through (h) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

[(5) COVERED FINANCIAL ACTIVITIES.—For purposes of this subsection, the term "financial activities"—

[(A) means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956);

[(B) includes the ownership or control of one or more insured depository institutions; and

[(C) does not include internal financial activities conducted for the company or any affiliate thereof, including internal treasury, investment, and employee benefit functions.

[(6) ONLY FINANCIAL ACTIVITIES SUBJECT TO PRUDENTIAL SUPERVISION.—Nonfinancial activities of the company shall not be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company supervised by the Board of Governors. Nothing in this paragraph shall prohibit or limit the authority of the Board of Governors to apply prudential standards under this title to the financial activities that are subject to the determination in paragraph (1).

[(d) REEVALUATION AND RESCISSION.—The Council shall—

[(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to such nonbank financial company supervised by the Board of Governors; and

[(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

[(e) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

[(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

[(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

[(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

[(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

[(f) EMERGENCY EXCEPTION.—

[(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (e) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

[(2) NOTICE.—The Council shall provide notice of a waiver or modification under this subsection to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

[(3) INTERNATIONAL COORDINATION.—In making a determination under paragraph (1), the Council shall consult with the appropriate home country supervisor, if any, of the foreign nonbank financial company that is being considered for such a determination.

[(4) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this subsection, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after

the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

[(5) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (4), the Council shall notify the subject nonbank financial company of the final determination of the Council under this subsection, which shall contain a statement of the basis for the decision of the Council.

[(g) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

[(h) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(2), (e)(3), or (f)(5), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

[(i) INTERNATIONAL COORDINATION.—In exercising its duties under this title with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, the Council shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

[SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

[Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

[SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

[(a) IN GENERAL.—

[(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress, failure, or ongoing activities of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and

reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

[(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

[(B) increase in stringency, based on the considerations identified in subsection (b)(3).

[(2) RECOMMENDED APPLICATION OF REQUIRED STANDARDS.—In making recommendations under this section, the Council may—

[(A) differentiate among companies that are subject to heightened standards on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Council deems appropriate; or

[(B) recommend an asset threshold that is higher than $50,000,000,000 for the application of any standard described in subsections (c) through (g).

[(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

[(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

[(A) risk-based capital requirements;

[(B) leverage limits;

[(C) liquidity requirements;

[(D) resolution plan and credit exposure report requirements;

[(E) concentration limits;

[(F) a contingent capital requirement;

[(G) enhanced public disclosures;

[(H) short-term debt limits; and

[(I) overall risk management requirements.

[(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall—

[(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

[(B) take into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

[(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

[(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

[(i) the factors described in subsections (a) and (b) of section 113;

[(ii) whether the company owns an insured depository institution;

[(iii) nonfinancial activities and affiliations of the company; and

[(iv) any other factors that the Council determines appropriate;

[(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under section 165; and

[(C) adapt its recommendations as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

[(c) CONTINGENT CAPITAL.—

[(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

[(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

[(B) an evaluation of the characteristics and amounts of contingent capital that should be required;

[(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

[(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

[(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

[(F) recommendations for implementing regulations.

[(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

[(3) RECOMMENDATIONS.—

[(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

[(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

[(i) an appropriate transition period for implementation of a conversion under this subsection;

[(ii) the factors described in subsection (b)(3);

[(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

[(iv) results of the study required by paragraph (1); and

[(v) any other factor that the Council deems appropriate.

[(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

[(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

[(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

[(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

[(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

[(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

[(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

[(g) SHORT-TERM DEBT LIMITS.—The Council may make recommendations to the Board of Governors to require short-term debt limits to mitigate the risks that an over-accumulation of such debt could pose to bank holding companies described in subsection (a), nonbank financial companies supervised by the Board of Governors, or the financial system.

[SEC. 116. REPORTS.

[(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or

greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

[(1) the financial condition of the company;

[(2) systems for monitoring and controlling financial, operating, and other risks;

[(3) transactions with any subsidiary that is a depository institution; and

[(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

[(b) USE OF EXISTING REPORTS.—

[(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

[(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies or to a relevant foreign supervisory authority;

[(B) information that is otherwise required to be reported publicly; and

[(C) externally audited financial statements.

[(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

[(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

[SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

[(a) APPLICABILITY.—This section shall apply to—

[(1) any entity that—

[(A) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

[(B) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008; and

[(2) any successor entity (as defined by the Board of Governors, in consultation with the Council) to an entity described in paragraph (1).

[(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

[(c) APPEAL.—

[(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the

Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

[(2) DECISION.—

[(A) PROPOSED DECISION.—A Council decision to grant an appeal under this subsection shall be made by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson. Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

[(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

[(i) the date of the submission of the report under subparagraph (A); or

[(ii) if, not later than 1 year after the date of submission of the report under subparagraph (A), the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

[(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term "nonbank financial company" under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

[(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

[SEC. 118. COUNCIL FUNDING.

[Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

[SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

[(a) REQUEST FOR COUNCIL RECOMMENDATION.—The Council shall seek to resolve a dispute among 2 or more member agencies, if—

[(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank

holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under title X);

[(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

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

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

[(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council seek to resolve the dispute.

[(b) COUNCIL RECOMMENDATION.—The Council shall seek to resolve each dispute described in subsection (a)—

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

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

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

[(c) FORM OF RECOMMENDATION.—Any Council recommendation under this section shall—

[(1) be in writing;

[(2) include an explanation of the reasons therefor; and

[(3) be approved by the affirmative vote of ⅔ of the voting members of the Council then serving.

[(d) NONBINDING EFFECT.—Any recommendation made by the Council under subsection (c) shall not be binding on the Federal agencies that are parties to the dispute.

[SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

[(a) IN GENERAL.—The Council may provide for more stringent regulation of a financial activity by issuing recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, financial markets of the United States, or low-income, minority, or underserved communities.

[(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

[(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

[(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

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

[(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

[(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

[(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

[(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

[(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

[(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

[(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

[(1) any recommendations issued by the Council under this section;

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

[(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

[(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

[(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

[(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

[(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether such standards should remain in effect.

[(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

[SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

[(a) MITIGATORY ACTIONS.—If the Board of Governors determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than ⅔ of the voting members of the Council then serving, shall—

[(1) limit the ability of the company to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

[(2) restrict the ability of the company to offer a financial product or products;

[(3) require the company to terminate one or more activities;

[(4) impose conditions on the manner in which the company conducts 1 or more activities; or

[(5) if the Board of Governors determines that the actions described in paragraphs (1) through (4) are inadequate to mitigate a threat to the financial stability of the United States in its recommendation, require the company to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

[(b) NOTICE AND HEARING.—

[(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

[(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

[(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

[(c) FACTORS FOR CONSIDERATION.—The Board of Governors and the Council shall take into consideration the factors set forth in

subsection (a) or (b) of section 113, as applicable, in making any determination under subsection (a).

[(d) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies—

[(1) giving due regard to the principle of national treatment and equality of competitive opportunity; and

[(2) taking into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.]

SEC. 118. COUNCIL FUNDING.

There is authorized to be appropriated to the Council $4,000,000 for fiscal year 2017 and each fiscal year thereafter to carry out the duties of the Council.

* * * * * * *

[Subtitle B—Office of Financial Research

[SEC. 151. DEFINITIONS.

[For purposes of this subtitle—

[(1) the terms "Office" and "Director" mean the Office of Financial Research established under this subtitle and the Director thereof, respectively;

[(2) the term "financial company" has the same meaning as in title II, and includes an insured depository institution and an insurance company;

[(3) the term "Data Center" means the data center established under section 154;

[(4) the term "Research and Analysis Center" means the research and analysis center established under section 154;

[(5) the term "financial transaction data" means the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation;

[(6) the term "position data"—

[(A) means data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

[(B) includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position;

[(7) the term "financial contract" means a legally binding agreement between 2 or more counterparties, describing rights and obligations relating to the future delivery of items of intrinsic or extrinsic value among the counterparties; and

[(8) the term "financial instrument" means a financial contract in which the terms and conditions are publicly available,

and the roles of one or more of the counterparties are assignable without the consent of any of the other counterparties (including common stock of a publicly traded company, government bonds, or exchange traded futures and options contracts).

[SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.

[(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of Financial Research.

[(b) DIRECTOR.—

[(1) IN GENERAL.—The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

[(2) TERM OF SERVICE.—The Director shall serve for a term of 6 years, except that, in the event that a successor is not nominated and confirmed by the end of the term of service of a Director, the Director may continue to serve until such time as the next Director is appointed and confirmed.

[(3) EXECUTIVE LEVEL.—The Director shall be compensated at Level III of the Executive Schedule.

[(4) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of Director may not, during such service, also serve as the head of any financial regulatory agency.

[(5) RESPONSIBILITIES, DUTIES, AND AUTHORITY.—The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercises the authorities described in this subtitle.

[(c) BUDGET.—The Director, in consultation with the Chairperson, shall establish the annual budget of the Office.

[(d) OFFICE PERSONNEL.—

[(1) IN GENERAL.—The Director, in consultation with the Chairperson, may fix the number of, and appoint and direct, all employees of the Office.

[(2) COMPENSATION.—The Director, in consultation with the Chairperson, shall fix, adjust, and administer the pay for all employees of the Office, without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

[(3) COMPARABILITY.—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—

[(A) by striking "Finance Board," and inserting "Finance Board, the Office of Financial Research, and the Bureau of Consumer Financial Protection"; and

[(B) by striking "and the Office of Thrift Supervision,".

[(4) SENIOR EXECUTIVES.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by striking "and the National Credit Union Administration;" and inserting "the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;".

[(e) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimburse-

ment, and such detail shall be without interruption or loss of civil service status or privilege.

[(f) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.

[(g) POST-EMPLOYMENT PROHIBITIONS.—The Secretary, with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the Director and any employee of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office. For employees whose access to business confidential information was limited, the regulations may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

[(h) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Office, in consultation with the Chairperson, may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office, and the members of such committees may be staff of the Office, or other persons, or both.

[(i) FELLOWSHIP PROGRAM.—The Office, in consultation with the Chairperson, may establish and maintain an academic and professional fellowship program, under which qualified academics and professionals shall be invited to spend not longer than 2 years at the Office, to perform research and to provide advanced training for Office personnel.

[(j) EXECUTIVE SCHEDULE COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:Director of the Office of Financial Research.".

[SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.

[(a) PURPOSE AND DUTIES.—The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council, as set forth in subtitle A, and to support member agencies, by—

[(1) collecting data on behalf of the Council, and providing such data to the Council and member agencies;

[(2) standardizing the types and formats of data reported and collected;

[(3) performing applied research and essential long-term research;

[(4) developing tools for risk measurement and monitoring;

[(5) performing other related services;

[(6) making the results of the activities of the Office available to financial regulatory agencies; and

[(7) assisting such member agencies in determining the types and formats of data authorized by this Act to be collected by such member agencies.

[(b) ADMINISTRATIVE AUTHORITY.—The Office may—

[(1) share data and information, including software developed by the Office, with the Council, member agencies, and the Bureau of Economic Analysis, which shared data, information, and software—

[(A) shall be maintained with at least the same level of security as is used by the Office; and

[(B) may not be shared with any individual or entity without the permission of the Council;

[(2) sponsor and conduct research projects; and

[(3) assist, on a reimbursable basis, with financial analyses undertaken at the request of other Federal agencies that are not member agencies.

[(c) RULEMAKING AUTHORITY.—

[(1) SCOPE.—The Office, in consultation with the Chairperson, shall issue rules, regulations, and orders only to the extent necessary to carry out the purposes and duties described in paragraphs (1), (2), and (7) of subsection (a).

[(2) STANDARDIZATION.—Member agencies, in consultation with the Office, shall implement regulations promulgated by the Office under paragraph (1) to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2). If a member agency fails to implement such regulations prior to the expiration of the 3-year period following the date of publication of final regulations, the Office, in consultation with the Chairperson, may implement such regulations with respect to the financial entities under the jurisdiction of the member agency. This paragraph shall not supersede or interfere with the independent authority of a member agency under other law to collect data, in such format and manner as the member agency requires.

[(d) TESTIMONY.—

[(1) IN GENERAL.—The Director of the Office shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives annually on the activities of the Office, including the work of the Data Center and the Research and Analysis Center, and the assessment of the Office of significant financial market developments and potential emerging threats to the financial stability of the United States.

[(2) NO PRIOR REVIEW.—No officer or agency of the United States shall have any authority to require the Director to submit the testimony required under paragraph (1) or other congressional testimony to any officer or agency of the United States for approval, comment, or review prior to the submission of such testimony. Any such testimony to Congress shall include a statement that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

[(e) ADDITIONAL REPORTS.—The Director may provide additional reports to Congress concerning the financial stability of the United States. The Director shall notify the Council of any such additional reports provided to Congress.

[(f) SUBPOENA.—

[(1) IN GENERAL.—The Director may require from a financial company, by subpoena, the production of the data requested under subsection (a)(1) and section 154(b)(1), but only upon a written finding by the Director that—

[(A) such data is required to carry out the functions described under this subtitle; and

[(B) the Office has coordinated with the relevant primary financial regulatory agency, as required under section 154(b)(1)(B)(ii).

[(2) FORMAT.—Subpoenas under paragraph (1) shall bear the signature of the Director, and shall be served by any person or class of persons designated by the Director for that purpose.

[(3) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

[SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBILITIES OF PRIMARY PROGRAMMATIC UNITS.

[(a) IN GENERAL.—There are established within the Office, to carry out the programmatic responsibilities of the Office—

[(1) the Data Center; and

[(2) the Research and Analysis Center.

[(b) DATA CENTER.—

[(1) GENERAL DUTIES.—

[(A) DATA COLLECTION.—The Data Center, on behalf of the Council, shall collect, validate, and maintain all data necessary to carry out the duties of the Data Center, as described in this subtitle. The data assembled shall be obtained from member agencies, commercial data providers, publicly available data sources, and financial entities under subparagraph (B).

[(B) AUTHORITY.—

[(i) IN GENERAL.—The Office may, as determined by the Council or by the Director in consultation with the Council, require the submission of periodic and other reports from any financial company for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the financial company itself, poses a threat to the financial stability of the United States.

[(ii) MITIGATION OF REPORT BURDEN.—Before requiring the submission of a report from any financial company that is regulated by a member agency, any primary financial regulatory agency, a foreign supervisory authority, or the Office shall coordinate with such agencies or authority, and shall, whenever possible, rely on information available from such agencies or authority.

[(iii) COLLECTION OF FINANCIAL TRANSACTION AND POSITION DATA.—The Office shall collect, on a schedule determined by the Director, in consultation with the Council, financial transaction data and position data from financial companies.

[(C) RULEMAKING.—The Office shall promulgate regulations pursuant to subsections (a)(1), (a)(2), (a)(7), and (c)(1) of section 153 regarding the type and scope of the data to be collected by the Data Center under this paragraph.

[(2) RESPONSIBILITIES.—

[(A) PUBLICATION.—The Data Center shall prepare and publish, in a manner that is easily accessible to the public—

[(i) a financial company reference database;

[(ii) a financial instrument reference database; and

[(iii) formats and standards for Office data, including standards for reporting financial transaction and position data to the Office.

[(B) CONFIDENTIALITY.—The Data Center shall not publish any confidential data under subparagraph (A).

[(3) INFORMATION SECURITY.—The Director shall ensure that data collected and maintained by the Data Center are kept secure and protected against unauthorized disclosure.

[(4) CATALOG OF FINANCIAL ENTITIES AND INSTRUMENTS.—The Data Center shall maintain a catalog of the financial entities and instruments reported to the Office.

[(5) AVAILABILITY TO THE COUNCIL AND MEMBER AGENCIES.—The Data Center shall make data collected and maintained by the Data Center available to the Council and member agencies, as necessary to support their regulatory responsibilities.

[(6) OTHER AUTHORITY.—The Office shall, after consultation with the member agencies, provide certain data to financial industry participants and to the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, business confidential information is properly protected, and the sharing of such information poses no significant threats to the financial system of the United States.

[(c) RESEARCH AND ANALYSIS CENTER.—

[(1) GENERAL DUTIES.—The Research and Analysis Center, on behalf of the Council, shall develop and maintain independent analytical capabilities and computing resources—

[(A) to develop and maintain metrics and reporting systems for risks to the financial stability of the United States;

[(B) to monitor, investigate, and report on changes in systemwide risk levels and patterns to the Council and Congress;

[(C) to conduct, coordinate, and sponsor research to support and improve regulation of financial entities and markets;

[(D) to evaluate and report on stress tests or other stability-related evaluations of financial entities overseen by the member agencies;

[(E) to maintain expertise in such areas as may be necessary to support specific requests for advice and assistance from financial regulators;

[(F) to investigate disruptions and failures in the financial markets, report findings, and make recommendations to the Council based on those findings;

[(G) to conduct studies and provide advice on the impact of policies related to systemic risk; and

[(H) to promote best practices for financial risk management.

[(d) REPORTING RESPONSIBILITIES.—

[(1) REQUIRED REPORTS.—Not later than 2 years after the date of enactment of this Act, and not later than 120 days after the end of each fiscal year thereafter, the Office shall prepare and submit a report to Congress.

[(2) CONTENT.—Each report required by this subsection shall assess the state of the United States financial system, including—

[(A) an analysis of any threats to the financial stability of the United States;

[(B) the status of the efforts of the Office in meeting the mission of the Office; and

[(C) key findings from the research and analysis of the financial system by the Office.

[SEC. 155. FUNDING.

[(a) FINANCIAL RESEARCH FUND.—

[(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund to be known as the "Financial Research Fund".

[(2) FUND RECEIPTS.—All amounts provided to the Office under subsection (c), and all assessments that the Office receives under subsection (d) shall be deposited into the Financial Research Fund.

[(3) INVESTMENTS AUTHORIZED.—

[(A) AMOUNTS IN FUND MAY BE INVESTED.—The Director may request the Secretary to invest the portion of the Financial Research Fund that is not, in the judgment of the Director, required to meet the needs of the Office.

[(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Financial Research Fund, as determined by the Director.

[(4) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Financial Research Fund shall be credited to and form a part of the Financial Research Fund.

[(b) USE OF FUNDS.—

[(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall be immediately available to the Office, and shall remain available until expended, to pay the expenses of the Office in carrying out the duties and responsibilities of the Office.

[(2) FEES, ASSESSMENTS, AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall not be construed to be Government funds or appropriated moneys.

[(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Financial Research Fund shall not be subject to apportionment for pur-

poses of chapter 15 of title 31, United States Code, or under any other authority, or for any other purpose.

[(c) INTERIM FUNDING.—During the 2-year period following the date of enactment of this Act, the Board of Governors shall provide to the Office an amount sufficient to cover the expenses of the Office.

[(d) PERMANENT SELF-FUNDING.—Beginning 2 years after the date of enactment of this Act, the Secretary shall establish, by regulation, and with the approval of the Council, an assessment schedule, including the assessment base and rates, applicable to bank holding companies with total consolidated assets of 50,000,000,000 or greater and nonbank financial companies supervised by the Board of Governors, that takes into account differences among such companies, based on the considerations for establishing the prudential standards under section 115, to collect assessments equal to the total expenses of the Office.

[SEC. 156. TRANSITION OVERSIGHT.

[(a) PURPOSE.—The purpose of this section is to ensure that the Office—

[(1) has an orderly and organized startup;

[(2) attracts and retains a qualified workforce; and

[(3) establishes comprehensive employee training and benefits programs.

[(b) REPORTING REQUIREMENT.—

[(1) IN GENERAL.—The Office shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

[(2) PLANS.—The plans described in this paragraph are as follows:

[(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Office shall submit a training and workforce development plan that includes, to the extent practicable—

[(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

[(ii) steps taken to foster innovation and creativity;

[(iii) leadership development and succession planning; and

[(iv) effective use of technology by employees.

[(B) WORKPLACE FLEXIBILITY PLAN.—The Office shall submit a workforce flexibility plan that includes, to the extent practicable—

[(i) telework;

[(ii) flexible work schedules;

[(iii) phased retirement;

[(iv) reemployed annuitants;

[(v) part-time work;

[(vi) job sharing;

[(vii) parental leave benefits and childcare assistance;

[(viii) domestic partner benefits;

[(ix) other workplace flexibilities; or

[(x) any combination of the items described in clauses (i) through (ix).

[(C) RECRUITMENT AND RETENTION PLAN.—The Office shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

[(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

[(ii) streamlined employment application processes;

[(iii) the provision of timely notification of the status of employment applications to applicants; and

[(iv) the collection of information to measure indicators of hiring effectiveness.

[(c) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

[(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

[(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or

[(2) the rights of employees under chapter 71 of title 5, United States Code.]

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

[SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK FINANCIAL COMPANIES BY THE BOARD OF GOVERNORS.

[(a) REPORTS.—

[(1) IN GENERAL.—The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

[(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and

[(B) compliance by the company or subsidiary with the requirements of this title.

[(2) USE OF EXISTING REPORTS AND INFORMATION.—In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

[(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

[(B) information otherwise obtainable from Federal or State regulatory agencies;

[(C) information that is otherwise required to be reported publicly; and

[(D) externally audited financial statements of such company or subsidiary.

[(3) AVAILABILITY.—Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to

the Board of Governors any information described in paragraph (2).

[(b) EXAMINATIONS.—

[(1) IN GENERAL.—Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to inform the Board of Governors of—

[(A) the nature of the operations and financial condition of the company and such subsidiary;

[(B) the financial, operational, and other risks of the company or such subsidiary that may pose a threat to the safety and soundness of such company or subsidiary or to the financial stability of the United States;

[(C) the systems for monitoring and controlling such risks; and

[(D) compliance by the company or such subsidiary with the requirements of this title.

[(2) USE OF EXAMINATION REPORTS AND INFORMATION.—For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any subsidiary depository institution or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

[(c) COORDINATION WITH PRIMARY FINANCIAL REGULATORY AGENCY.—The Board of Governors shall—

[(1) provide reasonable notice to, and consult with, the primary financial regulatory agency for any subsidiary before requiring a report or commencing an examination of such subsidiary under this section; and

[(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the fullest extent possible.

[SEC. 162. ENFORCEMENT.

[(a) IN GENERAL.—Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company, as provided in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

[(b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

[(1) REFERRAL.—If the Board of Governors determines that a condition, practice, or activity of a depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommenda-

tion shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

[(2) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.]

SEC. 163. ACQUISITIONS.

[(a) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For purposes of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.]

[(b)] *(a)* ACQUISITION OF NONBANK COMPANIES.—

(1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 [or a nonbank financial company supervised by the Board of Governors] shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 4(k) of the Bank Holding Company Act of 1956 having total consolidated assets of $10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 [or a nonbank financial company supervised by the Board of Governors], as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

(4) STANDARDS FOR REVIEW.—[In addition]

(A) IN GENERAL.—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

(B) EXCEPTION FOR QUALIFYING BANKING ORGANIZATION.—Subparagraph (A) shall not apply to a proposed acquisition by a qualifying banking organization, as defined under section 605 of the Financial CHOICE Act of 2017.

(5) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.

[SEC. 164. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL COMPANIES.

[A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $50,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).]

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards for [nonbank financial companies supervised by the Board of Governors and] bank holding companies with total consolidated assets equal to or greater than $50,000,000,000 that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

[(2) TAILORED APPLICATION.—

[(A) IN GENERAL.—In prescribing more stringent prudential standards under this section, the Board of Governors may, on its own or pursuant to a recommendation by the Council in accordance with section 115, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

[(B) ADJUSTMENT OF THRESHOLD FOR APPLICATION OF CERTAIN STANDARDS.—The Board of Governors may, pursuant to a recommendation by the Council in accordance with section 115, establish an asset threshold above $50,000,000,000 for the application of any standard established under subsections (c) through (g).]

(2) TAILORED APPLICATION.—In prescribing more stringent prudential standards under this section, the Board of Governors may differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall establish prudential standards for [nonbank financial companies supervised by the Board of Governors and] bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case, the Board of Governors shall apply other standards that result in similarly stringent risk controls;

(ii) liquidity requirements;

(iii) overall risk management requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may establish additional prudential standards for [nonbank financial companies supervised by the Board of Governors and] bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures;

(iii) short-term debt limits; and

(iv) such other prudential standards as the Board or Governors[, on its own or pursuant to a recommendation made by the Council in accordance with section 115,] determines are appropriate.

(2) STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to any [foreign nonbank financial company supervised by the Board of Governors or] foreign-based bank holding company, the Board of Governors [shall—]

[(A)] [give due] *shall give due* regard to the principle of national treatment and equality of competitive opportunity[; and].

[(B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.]

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among [nonbank financial companies supervised by the Board of Governors and] bank holding companies described in subsection (a), based on—

[(i) the factors described in subsections (a) and (b) of section 113;]

[(ii)] *(i)* whether the company owns an insured depository institution;

[(iii)] *(ii)* nonfinancial activities and affiliations of the company; and

[(iv)] *(iii)* any other risk-related factors that the Board of Governors determines appropriate; *and*

[(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection;

[(C) take into account any recommendations of the Council under section 115; and]

[(D)] *(B)* adapt the required standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(4) CONSULTATION.—Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of [a nonbank financial company supervised by the Board of Governors or] a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

(5) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress [under section 115(c)], the Board of Governors may issue regulations that require each [nonbank financial company supervised by the Board of Governors and] bank holding companies described in subsection (a) to maintain

a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In issuing regulations under this subsection, the Board of Governors shall consider—

[(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);]

(A) any recommendations of the Council;

(B) an appropriate transition period for implementation of contingent capital under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the [nonbank financial company supervised by the Board of Governors or] a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each [nonbank financial company supervised by the Board of Governors and] bank holding companies described in subsection (a) to report [periodically] *not more often than every 2 years* to the Board of Governors[, the Council, and the Corporation] *and the Council* the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, which shall include—

(A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;

(B) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company;

(C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and

(D) any other information that the Board of Governors and the Corporation jointly require by rule or order.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each [nonbank financial company supervised by the Board of Governors and] bank holding companies described in subsection (a) to report periodically to the Board of Governors[, the Council, and the Corporation] *and the Council* on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) REVIEW.—[The Board]

(A) IN GENERAL.—The Board of Governors [and the Corporation shall review] *shall—*

(i) review the information provided in accordance with this subsection by each [nonbank financial com-

pany supervised by the Board of Governors and] bank holding company described in subsection (a)[.]*; and*

(ii) not later than the end of the 6-month period beginning on the date the bank holding company submits the resolution plan, provide feedback to the bank holding company on such plan.

(B) DISCLOSURE OF ASSESSMENT FRAMEWORK.—The Board of Governors shall publicly disclose the assessment framework that is used to review information under this paragraph and shall provide the public with a notice and comment period before finalizing such assessment framework.

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors [and the Corporation jointly determine] *determines*, based on [their] *its* review under paragraph (3), that the resolution plan of [a nonbank financial company supervised by the Board of Governors or] a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors [and the Corporation] shall notify the company of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a timeframe determined by the Board of Governors [and the Corporation], with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If [a nonbank financial company supervised by the Board of Governors or] a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors [and the Corporation may jointly] *may* impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors [and the Corporation], in consultation with the Council, [may jointly] *may* direct [a nonbank financial company supervised by the Board of Governors or] a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors [and the Corporation], to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors [and the Corporation] [have jointly] *has* imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) NO LIMITING EFFECT.—A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court[, a receiver appointed under title II,] or any other authority that is authorized or required to resolve the [nonbank financial company supervised by the Board, any bank holding company,] *bank holding company* or any subsidiary or affiliate of the foregoing.

(7) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted in accordance with this subsection.

[(8) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.]

(8) RULES.—Not later than 12 months after enactment of this paragraph, the Board of Governors shall issue final rules implementing this section.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to [a nonbank financial company supervised by the Board of Governors or] a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each [nonbank financial company supervised by the Board of Governors and] bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), "credit exposure" to a company means—

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

(B) all repurchase agreements and reverse repurchase agreements with the company, and all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for [the nonbank financial company supervised by the Board of Governors or] a bank holding company described in subsection (a);

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

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

(E) counterparty credit exposure to the company in connection with a derivative transaction between [the nonbank financial company supervised by the Board of Governors or] a bank holding company described in subsection (a) and the company; and

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

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by [a nonbank financial company supervised by the Board of Governors or] a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

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

(6) EXEMPTIONS.—This subsection shall not apply to any Federal home loan bank. The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term "credit exposure" for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by [nonbank financial companies supervised by the Board of Governors and] bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) SHORT-TERM DEBT LIMITS.—

(1) IN GENERAL.—In order to mitigate the risks that an overaccumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) [and any nonbank financial company supervised by the Board of Governors].

(2) BASIS OF LIMIT.—Any limit prescribed under paragraph (1) shall be based on the short-term debt of the company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term "short-term debt" means such liabilities with

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

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

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

(h) RISK COMMITTEE.—

[(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(e)(3) with respect to such nonbank financial company supervised by the Board of Governors.**]**

[(2)**]** *(1)* CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in **[**paragraph (3)**]** *paragraph (2)*.

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in **[**paragraph (3)**]** *paragraph (2)*, as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

[(3)**]** *(2)* RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of **[**the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable**]** *a bank holding company described in subsection (a)*;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to **[**the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable**]** *a bank holding company described in subsection (a)*; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

[(4)] *(3)* RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) STRESS TESTS.—

(1) BY THE BOARD OF GOVERNORS.—

(A) ANNUAL TESTS REQUIRED.—The Board of Governors[, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office,] shall conduct annual analyses in which [nonbank financial companies supervised by the Board of Governors and] bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) TEST PARAMETERS AND CONSEQUENCES.—The Board of Governors—

[(i) shall provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse;]

(i) shall—

(I) issue regulations, after providing for public notice and comment, that provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse, and methodologies, including models used to estimate losses on certain assets, and the Board of Governors shall not carry out any such evaluation until 60 days after such regulations are issued; and

(II) provide copies of such regulations to the Comptroller General of the United States and the Panel of Economic Advisors of the Congressional Budget Office before publishing such regulations;

(ii) may require the tests described in subparagraph (A) at bank holding companies [and nonbank financial companies], in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; [and]

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of

this subparagraph[.], *including any results of a resubmitted test;*

(vi) shall, in establishing the severely adverse condition under clause (i), provide detailed consideration of the model's effects on financial stability and the cost and availability of credit;

(vii) shall, in developing the models and methodologies and providing them for notice and comment under this subparagraph, publish a process to test the models and methodologies for their potential to magnify systemic and institutional risks instead of facilitating increased resiliency;

(viii) shall design and publish a process to test and document the sensitivity and uncertainty associated with the model system's data quality, specifications, and assumptions; and

(ix) shall communicate the range and sources of uncertainty surrounding the models and methodologies.

(C) CCAR REQUIREMENTS.—

(i) PARAMETERS AND CONSEQUENCES APPLICABLE TO CCAR.—The requirements of subparagraph (B) shall apply to CCAR.

(ii) TWO-YEAR LIMITATION.—The Board of Governors may not subject a company to CCAR more than once every two years.

(iii) MID-CYCLE RESUBMISSION.—If a company receives a quantitative objection to, or otherwise desires to amend the company's capital plan, the company may file a new streamlined plan at any time after a capital planning exercise has been completed and before a subsequent capital planning exercise.

(iv) LIMITATION ON QUALITATIVE CAPITAL PLANNING OBJECTIONS.—In carrying out CCAR, the Board of Governors may not object to a company's capital plan on the basis of qualitative deficiencies in the company's capital planning process.

(v) COMPANY INQUIRIES.—The Board of Governors shall establish and publish procedures for responding to inquiries from companies subject to CCAR, including establishing the time frame in which such responses will be made, and make such procedures publicly available.

(vi) CCAR DEFINED.—For purposes of this subparagraph and subparagraph (E), the term "CCAR" means the Comprehensive Capital Analysis and Review established by the Board of Governors.

(2) BY THE COMPANY.—

(A) REQUIREMENT.—A [nonbank financial company supervised by the Board of Governors and] [a bank holding company] *bank holding company* described in subsection (a) shall conduct [semiannual] *annual* stress tests. [All other financial companies] *All other bank holding companies* that have total consolidated assets of more than $10,000,000,000 [and are regulated by a primary Federal financial regulatory agency] shall conduct annual stress

tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) REPORT.—A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors [and to its primary financial regulatory agency] at such time, in such form, and containing such information as the [primary financial regulatory agency] *Board of Governors* shall require.

(C) REGULATIONS.—[Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office,] *The Board of Governors* shall issue [consistent and comparable] regulations to implement this paragraph that shall—

(i) define the term "stress test" for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least 3 different sets of conditions, including baseline, adverse, and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

(j) LEVERAGE LIMITATION.—

(1) REQUIREMENT.—The Board of Governors shall require a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 [or a nonbank financial company supervised by the Board of Governors] to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States. Nothing in this paragraph shall apply to a Federal home loan bank.

(2) CONSIDERATIONS.—In making a determination under this subsection, the Council shall consider [the factors described in subsections (a) and (b) of section 113 and any other] *any* risk-related factors that the Council deems appropriate.

(3) REGULATIONS.—The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

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

(1) IN GENERAL.—In the case of any bank holding company described in subsection (a) [or nonbank financial company supervised by the Board of Governors], the computation of capital for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.

(2) EXEMPTIONS.—If the Board of Governors determines that an exemption from the requirement under paragraph (1) is appropriate, the Board of Governors may exempt a company, or

any transaction or transactions engaged in by such company, from the requirements of paragraph (1).

(3) OFF-BALANCE-SHEET ACTIVITIES DEFINED.—For purposes of this subsection, the term "off-balance-sheet activities" means an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event, including the following transactions, to the extent that they may create a liability:

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

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

(C) Risk participations in bankers' acceptances.

(D) Sale and repurchase agreements.

(E) Asset sales with recourse against the seller.

(F) Interest rate swaps.

(G) Credit swaps.

(H) Commodities contracts.

(I) Forward contracts.

(J) Securities contracts.

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

(l) EXEMPTION FOR QUALIFYING BANKING ORGANIZATIONS.—This section shall not apply to a proposed acquisition by a qualifying banking organization, as defined under section 605 of the Financial CHOICE Act of 2017.

(m) CRIMINAL PENALTY FOR UNAUTHORIZED DISCLOSURES.—

(1) IN GENERAL.—Any officer or employee of a Federal department or agency, who by virtue of such officer or employee's employment or official position, has possession of, or access to, agency records which contain individually identifiable information submitted pursuant to the requirements of this section, the disclosure of which is prohibited by Federal statute, rule, or regulation, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) OBTAINING RECORDS UNDER FALSE PRETENSES.—Any person who knowingly and willfully requests or obtains information described under paragraph (1) from a Federal department or agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(3) TREATMENT OF DETERMINATIONS.—For purposes of this subsection, a determination made under subsection (d) or (i) based on individually identifiable information submitted pursuant to the requirements of this section shall be deemed individually identifiable information, the disclosure of which is prohibited by Federal statute.

[SEC. 166. EARLY REMEDIATION REQUIREMENTS.

[(a) IN GENERAL.—The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section

165(a), except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

[(b) PURPOSE OF THE EARLY REMEDIATION REQUIREMENTS.—The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

[(c) REMEDIATION REQUIREMENTS.—The regulations prescribed by the Board of Governors under subsection (a) shall—

[(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

[(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

[(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

[(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

[SEC. 167. AFFILIATIONS.

[(a) AFFILIATIONS.—Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

[(b) REQUIREMENT.—

[(1) IN GENERAL.—

[(A) BOARD AUTHORITY.—If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, the Board of Governors may require such company to establish and conduct all or a portion of such activities that are determined to be financial in nature or incidental thereto in or through an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days (or such longer period as the Board of Governors may deem appropriate) after the date on which the nonbank financial company supervised by the Board of Governors is notified of the determination of the Board of Governors under this section.

[(B) NECESSARY ACTIONS.—Notwithstanding subparagraph (A), the Board of Governors shall require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company if the Board of Governors makes a determination that the establishment of such intermediate holding company is necessary to—

[(i) appropriately supervise activities that are determined to be financial in nature or incidental thereto; or

[(ii) to ensure that supervision by the Board of Governors does not extend to the commercial activities of such nonbank financial company.

[(2) INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate of such company during the year prior to the date of enactment of this Act, such company (or an affiliate that is not an intermediate holding company or subsidiary of an intermediate holding company) may continue to engage in such activity, as long as not less than 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to such company or an affiliate, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

[(3) SOURCE OF STRENGTH.—A company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

[(4) PARENT COMPANY REPORTS.—The Board of Governors may, from time to time, require reports under oath from a company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company pursuant to paragraph (3) and enforcing such compliance.

[(5) LIMITED PARENT COMPANY ENFORCEMENT.—

[(A) IN GENERAL.—In addition to any other authority of the Board of Governors, the Board of Governors may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act, and such company shall be subject to such section (solely for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

[(B) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

[(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Board of Governors or any other Federal agency under any other provision of law.

[(c) REGULATIONS.—The Board of Governors—

[(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (b); and

[(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

[SEC. 168. REGULATIONS.

[The Board of Governors shall have authority to issue regulations to implement subtitles A and C and the amendments made thereunder. Except as otherwise specified in subtitle A or C, not later than 18 months after the effective date of this Act, the Board of Governors shall issue final regulations to implement subtitles A and C, and the amendments made thereunder.]

* * * * * * *

[SEC. 170. SAFE HARBOR.

[(a) REGULATIONS.—The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

[(b) CONSIDERATIONS.—In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 113 in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

[(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require supervision by the Board of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

[(d) REVISIONS.—

[(1) IN GENERAL.—The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

[(2) TRANSITION PERIOD.—No revisions under paragraph (1) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

[(e) REPORT.—The Chairman of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and

the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.]

SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIREMENTS.

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

(1) GENERALLY APPLICABLE LEVERAGE CAPITAL REQUIREMENTS.—The term "generally applicable leverage capital requirements" means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) GENERALLY APPLICABLE RISK-BASED CAPITAL REQUIREMENTS.—The term "generally applicable risk-based capital requirements" means—

(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

(3) DEFINITION OF DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" means a bank holding company or a savings and loan holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization.

(4) BUSINESS OF INSURANCE.—The term "business of insurance" has the same meaning as in section 1002(3).

(5) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term "person regulated by a State insurance regulator" has the same meaning as in section 1002(22).

(6) REGULATED FOREIGN SUBSIDIARY AND REGULATED FOREIGN AFFILIATE.—The terms "regulated foreign subsidiary" and "regulated foreign affiliate" mean a person engaged in the business of insurance in a foreign country that is regulated by a foreign insurance regulatory authority that is a member of the

International Association of Insurance Supervisors or other comparable foreign insurance regulatory authority as determined by the Board of Governors following consultation with the State insurance regulators, including the lead State insurance commissioner (or similar State official) of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, where the person, or its principal United States insurance affiliate, has its principal place of business or is domiciled, but only to the extent that—

(A) such person acts in its capacity as a regulated insurance entity; and

(B) the Board of Governors does not determine that the capital requirements in a specific foreign jurisdiction are inadequate.

(7) CAPACITY AS A REGULATED INSURANCE ENTITY.—The term "capacity as a regulated insurance entity"—

(A) includes any action or activity undertaken by a person regulated by a State insurance regulator or a regulated foreign subsidiary or regulated foreign affiliate of such person, as those actions relate to the provision of insurance, or other activities necessary to engage in the business of insurance; and

(B) does not include any action or activity, including any financial activity, that is not regulated by a State insurance regulator or a foreign agency or authority and subject to State insurance capital requirements or, in the case of a regulated foreign subsidiary or regulated foreign affiliate, capital requirements imposed by a foreign insurance regulatory authority.

(b) MINIMUM CAPITAL REQUIREMENTS.—

(1) MINIMUM LEVERAGE CAPITAL REQUIREMENTS.—The appropriate Federal banking agencies shall establish minimum leverage capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum leverage capital requirements established under this paragraph shall not be less than the generally applicable leverage capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(2) MINIMUM RISK-BASED CAPITAL REQUIREMENTS.—The appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the gen-

erally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(3) INVESTMENTS IN FINANCIAL SUBSIDIARIES.—For purposes of this section, investments in financial subsidiaries that insured depository institutions are required to deduct from regulatory capital under section 5136A of the Revised Statutes of the United States or section 46(a)(2) of the Federal Deposit Insurance Act need not be deducted from regulatory capital by depository institution holding companies or nonbank financial companies supervised by the Board of Governors, unless such capital deduction is required by the Board of Governors or the primary financial regulatory agency in the case of nonbank financial companies supervised by the Board of Governors.

(4) EFFECTIVE DATES AND PHASE-IN PERIODS.—

(A) DEBT OR EQUITY INSTRUMENTS ON OR AFTER MAY 19, 2010.—For debt or equity instruments issued on or after May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, this section shall be deemed to have become effective as of May 19, 2010.

(B) DEBT OR EQUITY INSTRUMENTS ISSUED BEFORE MAY 19, 2010.—For debt or equity instruments issued before May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, any regulatory capital deductions required under this section shall be phased in incrementally over a period of 3 years, with the phase-in period to begin on January 1, 2013, except as set forth in subparagraph (C).

(C) DEBT OR EQUITY INSTRUMENTS OF SMALLER INSTITUTIONS.—For debt or equity instruments issued before May 19, 2010, by depository institution holding companies with total consolidated assets of less than $15,000,000,000 as of December 31, 2009, or March 31, 2010, and by organizations that were mutual holding companies on May 19, 2010, the capital deductions that would be required for other institutions under this section are not required as a result of this section.

(D) DEPOSITORY INSTITUTION HOLDING COMPANIES NOT PREVIOUSLY SUPERVISED BY THE BOARD OF GOVERNORS.—For any depository institution holding company that was not supervised by the Board of Governors as of May 19, 2010, the requirements of this section, except as set forth in subparagraphs (A) and (B), shall be effective 5 years after the date of enactment of this Act.

(E) CERTAIN BANK HOLDING COMPANY SUBSIDIARIES OF FOREIGN BANKING ORGANIZATIONS.—For bank holding company subsidiaries of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the Board of Governors (as in effect on May 19, 2010), the requirements of this section, except as set forth in subparagraph (A), shall be effective 5 years after the date of enactment of this Act.

(5) EXCEPTIONS.—This section shall not apply to—

(A) debt or equity instruments issued to the United States or any agency or instrumentality thereof pursuant to the Emergency Economic Stabilization Act of 2008, and prior to October 4, 2010;

(B) any Federal home loan bank; or

[(C) any bank holding company or savings and loan holding company having less than $1,000,000,000 in total consolidated assets that complies with the requirements of the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors of the Board of Governors (12 CFR part 225 appendix C), as the requirements of such Policy Statement are amended pursuant to section 1 of an Act entitled "To enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes".]

(C) any bank holding company or savings and loan holding company that is subject to the application of the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors of the Board of Governors (12 C.F.R. part 225—appendix C).

(6) STUDY AND REPORT ON SMALL INSTITUTION ACCESS TO CAPITAL.—

(A) STUDY REQUIRED.—The Comptroller General of the United States, after consultation with the Federal banking agencies, shall conduct a study of access to capital by smaller insured depository institutions.

(B) SCOPE.—For purposes of this study required by subparagraph (A), the term "smaller insured depository institution" means an insured depository institution with total consolidated assets of $5,000,000,000 or less.

(C) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report summarizing the results of the study conducted under subparagraph (A), together with any recommendations for legislative or regulatory action that would enhance the access to capital of smaller insured depository institutions, in a manner that is consistent with safe and sound banking operations.

(7) CAPITAL REQUIREMENTS TO ADDRESS ACTIVITIES THAT POSE RISKS TO THE FINANCIAL SYSTEM.—

(A) IN GENERAL.—Subject to the recommendations of the Council, in accordance with section 120, the Federal banking agencies shall develop capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that address the risks that the activities of such institutions pose, not only to the institution engaging in the activity, but to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

(B) CONTENT.—Such rules shall address, at a minimum, the risks arising from—

(i) significant volumes of activity in derivatives, securitized products purchased and sold, financial guarantees purchased and sold, securities borrowing and lending, and repurchase agreements and reverse repurchase agreements;

(ii) concentrations in assets for which the values presented in financial reports are based on models rather than historical cost or prices deriving from deep and liquid 2-way markets; and

(iii) concentrations in market share for any activity that would substantially disrupt financial markets if the institution is forced to unexpectedly cease the activity.

(c) CLARIFICATION.—

(1) IN GENERAL.—In establishing the minimum leverage capital requirements and minimum risk-based capital requirements on a consolidated basis for a depository institution holding company or a nonbank financial company supervised by the Board of Governors as required under paragraphs (1) and (2) of subsection (b), the appropriate Federal banking agencies shall not be required to include, for any purpose of this section (including in any determination of consolidation), a person regulated by a State insurance regulator or a regulated foreign subsidiary or a regulated foreign affiliate of such person engaged in the business of insurance, to the extent that such person acts in its capacity as a regulated insurance entity.

(2) RULE OF CONSTRUCTION ON BOARD'S AUTHORITY.—This subsection shall not be construed to prohibit, modify, limit, or otherwise supersede any other provision of Federal law that provides the Board of Governors authority to issue regulations and orders relating to capital requirements for depository institution holding companies or nonbank financial companies supervised by the Board of Governors.

(3) RULE OF CONSTRUCTION ON ACCOUNTING PRINCIPLES.—

(A) IN GENERAL.—A depository institution holding company or nonbank financial company supervised by the Board of Governors of the Federal Reserve that is also a person regulated by a State insurance regulator that is engaged in the business of insurance that files financial statements with a State insurance regulator or the National Association of Insurance Commissioners utilizing only Statutory Accounting Principles in accordance with State law, shall not be required by the Board under the authority of this section or the authority of the Home Owners' Loan Act to prepare such financial statements in accordance with Generally Accepted Accounting Principles.

(B) PRESERVATION OF AUTHORITY.—Nothing in subparagraph (A) shall limit the authority of the Board under any other applicable provision of law to conduct any regulatory or supervisory activity of a depository institution holding company or non-bank financial company supervised by the Board of Governors, including the collection or reporting of any information on an entity or group-wide basis. Nothing

in this paragraph shall excuse the Board from its obligations to comply with section 161(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5361(a)) and section 10(b)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2)), as appropriate.

[SEC. 172. EXAMINATION AND ENFORCEMENT ACTIONS FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.

[(a) EXAMINATIONS FOR INSURANCE AND RESOLUTION PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended—

[(1) by striking "In addition" and inserting the following:

["(A) IN GENERAL.—In addition"; and

[(2) by striking "whenever the board of directors determines" and all that follows through the period and inserting the following:or nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, whenever the Board of Directors determines that a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010, for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act, provided that such authority may not be used with respect to any such company that is in a generally sound condition.

["(B) LIMITATION.—Before conducting a special examination of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, the Corporation shall review any available and acceptable resolution plan that the company has submitted in accordance with section 165(d) of that Act, consistent with the nonbinding effect of such plan, and available reports of examination, and shall coordinate to the maximum extent practicable with the Board of Governors, in order to minimize duplicative or conflicting examinations.".

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

[(1) in paragraph (1), by inserting ", any depository institution holding company," before "or any institution-affiliated party";

[(2) in paragraph (2)—

[(A) by striking "or" at the end of subparagraph (B);

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

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

["(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund, provided that such authority may not be used with respect to a depository institution holding company that is in generally sound condition and whose conduct does not pose a

foreseeable and material risk of loss to the Deposit Insurance Fund;"; and

[(3) by adding at the end the following:

["(6) POWERS AND DUTIES WITH RESPECT TO DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of exercising the backup authority provided in this subsection—

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

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

[(c) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to limit or curtail the Corporation's current authority to examine or bring enforcement actions with respect to any insured depository institution or institution-affiliated party.]

* * * * * * *

[SEC. 174. STUDIES AND REPORTS ON HOLDING COMPANY CAPITAL REQUIREMENTS.

[(a) STUDY OF HYBRID CAPITAL INSTRUMENTS.—The Comptroller General of the United States, in consultation with the Board of Governors, the Comptroller of the Currency, and the Corporation, shall conduct a study of the use of hybrid capital instruments as a component of Tier 1 capital for banking institutions and bank holding companies. The study shall consider—

[(1) the current use of hybrid capital instruments, such as trust preferred shares, as a component of Tier 1 capital;

[(2) the differences between the components of capital permitted for insured depository institutions and those permitted for companies that control insured depository institutions;

[(3) the benefits and risks of allowing such instruments to be used to comply with Tier 1 capital requirements;

[(4) the economic impact of prohibiting the use of such capital instruments for Tier 1;

[(5) a review of the consequences of disqualifying trust preferred instruments, and whether it could lead to the failure or undercapitalization of existing banking organizations;

[(6) the international competitive implications prohibiting hybrid capital instruments for Tier 1;

[(7) the impact on the cost and availability of credit in the United States from such a prohibition;

[(8) the availability of capital for financial institutions with less than $10,000,000,000 in total assets; and

[(9) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

[(b) STUDY OF FOREIGN BANK INTERMEDIATE HOLDING COMPANY CAPITAL REQUIREMENTS.—The Comptroller General of the United States, in consultation with the Secretary, the Board of Governors, the Comptroller of the Currency, and the Corporation, shall conduct a study of capital requirements applicable to United States intermediate holding companies of foreign banks that are bank hold-

ing companies or savings and loan holding companies. The study shall consider—

[(1) current Board of Governors policy regarding the treatment of intermediate holding companies;

[(2) the principle of national treatment and equality of competitive opportunity for foreign banks operating in the United States;

[(3) the extent to which foreign banks are subject on a consolidated basis to home country capital standards comparable to United States capital standards;

[(4) potential effects on United States banking organizations operating abroad of changes to United States policy regarding intermediate holding companies;

[(5) the impact on the cost and availability of credit in the United States from a change in United States policy regarding intermediate holding companies; and

[(6) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

[(c) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives summarizing the results of the studies required under subsection (a). The reports shall include specific recommendations for legislative or regulatory action regarding the treatment of hybrid capital instruments, including trust preferred shares, and shall explain the basis for such recommendations.

[SEC. 175. INTERNATIONAL POLICY COORDINATION.

[(a) BY THE PRESIDENT.—The President, or a designee of the President, may coordinate through all available international policy channels, similar policies as those found in United States law relating to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies, in order to protect financial stability and the global economy.

[(b) BY THE COUNCIL.—The Chairperson of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

[(c) BY THE BOARD OF GOVERNORS AND THE SECRETARY.—The Board of Governors and the Secretary shall consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation for all highly leveraged and interconnected financial companies.]

[TITLE II—ORDERLY LIQUIDATION AUTHORITY

[SEC. 201. DEFINITIONS.

[(a) IN GENERAL.—In this title, the following definitions shall apply:

[(1) ADMINISTRATIVE EXPENSES OF THE RECEIVER.—The term "administrative expenses of the receiver" includes—

[(A) the actual, necessary costs and expenses incurred by the Corporation as receiver for a covered financial company in liquidating a covered financial company; and

[(B) any obligations that the Corporation as receiver for a covered financial company determines are necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company.

[(2) BANKRUPTCY CODE.—The term "Bankruptcy Code" means title 11, United States Code.

[(3) BRIDGE FINANCIAL COMPANY.—The term "bridge financial company" means a new financial company organized by the Corporation in accordance with section 210(h) for the purpose of resolving a covered financial company.

[(4) CLAIM.—The term "claim" means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

[(5) COMPANY.—The term "company" has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)), except that such term includes any company described in paragraph (11), the majority of the securities of which are owned by the United States or any State.

[(6) COURT.—The term "Court" means the United States District Court for the District of Columbia, unless the context otherwise requires.

[(7) COVERED BROKER OR DEALER.—The term "covered broker or dealer" means a covered financial company that is a broker or dealer that—

[(A) is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)); and

[(B) is a member of SIPC.

[(8) COVERED FINANCIAL COMPANY.—The term "covered financial company"—

[(A) means a financial company for which a determination has been made under section 203(b); and

[(B) does not include an insured depository institution.

[(9) COVERED SUBSIDIARY.—The term "covered subsidiary" means a subsidiary of a covered financial company, other than—

[(A) an insured depository institution;

[(B) an insurance company; or

[(C) a covered broker or dealer.

[(10) DEFINITIONS RELATING TO COVERED BROKERS AND DEALERS.—The terms "customer", "customer name securities", "customer property", and "net equity" in the context of a covered

broker or dealer, have the same meanings as in section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll).

[(11) FINANCIAL COMPANY.—The term "financial company" means any company that—

[(A) is incorporated or organized under any provision of Federal law or the laws of any State;

[(B) is—

[(i) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

[(ii) a nonbank financial company supervised by the Board of Governors;

[(iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) other than a company described in clause (i) or (ii); or

[(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) (other than a subsidiary that is an insured depository institution or an insurance company); and

[(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), a governmental entity, or a regulated entity, as defined under section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)).

[(12) FUND.—The term "Fund" means the Orderly Liquidation Fund established under section 210(n).

[(13) INSURANCE COMPANY.—The term "insurance company" means any entity that is—

[(A) engaged in the business of insurance;

[(B) subject to regulation by a State insurance regulator; and

[(C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.

[(14) NONBANK FINANCIAL COMPANY.—The term "nonbank financial company" has the same meaning as in section 102(a)(4)(C).

[(15) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term "nonbank financial company supervised by the Board of Governors" has the same meaning as in section 102(a)(4)(D).

[(16) SIPC.—The term "SIPC" means the Securities Investor Protection Corporation.

[(b) DEFINITIONAL CRITERIA.—For purpose of the definition of the term "financial company" under subsection (a)(11), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or inci-

dental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

[SEC. 202. JUDICIAL REVIEW.

[(a) COMMENCEMENT OF ORDERLY LIQUIDATION.—

[(1) PETITION TO DISTRICT COURT.—

[(A) DISTRICT COURT REVIEW.—

[(i) PETITION TO DISTRICT COURT.—Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary shall notify the Corporation and the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as receiver, the Secretary shall appoint the Corporation as receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as receiver.

[(ii) FORM AND CONTENT OF ORDER.—The Secretary shall present all relevant findings and the recommendation made pursuant to section 203(a) to the Court. The petition shall be filed under seal.

[(iii) DETERMINATION.—On a strictly confidential basis, and without any prior public disclosure, the Court, after notice to the covered financial company and a hearing in which the covered financial company may oppose the petition, shall determine whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

[(iv) ISSUANCE OF ORDER.—If the Court determines that the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11)—

[(I) is not arbitrary and capricious, the Court shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company; or

[(II) is arbitrary and capricious, the Court shall immediately provide to the Secretary a written statement of each reason supporting its determination, and afford the Secretary an immediate

opportunity to amend and refile the petition under clause (i).

[(v) PETITION GRANTED BY OPERATION OF LAW.—If the Court does not make a determination within 24 hours of receipt of the petition—

[(I) the petition shall be granted by operation of law;

[(II) the Secretary shall appoint the Corporation as receiver; and

[(III) liquidation under this title shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this title.

[(B) EFFECT OF DETERMINATION.—The determination of the Court under subparagraph (A) shall be final, and shall be subject to appeal only in accordance with paragraph (2). The decision shall not be subject to any stay or injunction pending appeal. Upon conclusion of its proceedings under subparagraph (A), the Court shall provide immediately for the record a written statement of each reason supporting the decision of the Court, and shall provide copies thereof to the Secretary and the covered financial company.

[(C) CRIMINAL PENALTIES.—A person who recklessly discloses a determination of the Secretary under section 203(b) or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for under subparagraph (A), shall be fined not more than 250,000, or imprisoned for not more than 5 years, or both.

[(2) APPEAL OF DECISIONS OF THE DISTRICT COURT.—

[(A) APPEAL TO COURT OF APPEALS.—

[(i) IN GENERAL.—Subject to clause (ii), the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction of an appeal of a final decision of the Court filed by the Secretary or a covered financial company, through its board of directors, notwithstanding section 210(a)(1)(A)(i), not later than 30 days after the date on which the decision of the Court is rendered or deemed rendered under this subsection.

[(ii) CONDITION OF JURISDICTION.—The Court of Appeals shall have jurisdiction of an appeal by a covered financial company only if the covered financial company did not acquiesce or consent to the appointment of a receiver by the Secretary under paragraph (1)(A).

[(iii) EXPEDITION.—The Court of Appeals shall consider any appeal under this subparagraph on an expedited basis.

[(iv) SCOPE OF REVIEW.—For an appeal taken under this subparagraph, review shall be limited to whether the determination of the Secretary that a covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

[(B) APPEAL TO THE SUPREME COURT.—

[(i) IN GENERAL.—A petition for a writ of certiorari to review a decision of the Court of Appeals under subparagraph (A) may be filed by the Secretary or the covered financial company, through its board of directors, notwithstanding section 210(a)(1)(A)(i), with the Supreme Court of the United States, not later than 30 days after the date of the final decision of the Court of Appeals, and the Supreme Court shall have discretionary jurisdiction to review such decision.

[(ii) WRITTEN STATEMENT.—In the event of a petition under clause (i), the Court of Appeals shall immediately provide for the record a written statement of each reason for its decision.

[(iii) EXPEDITION.—The Supreme Court shall consider any petition under this subparagraph on an expedited basis.

[(iv) SCOPE OF REVIEW.—Review by the Supreme Court under this subparagraph shall be limited to whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious.

[(b) ESTABLISHMENT AND TRANSMITTAL OF RULES AND PROCEDURES.—

[(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Court shall establish such rules and procedures as may be necessary to ensure the orderly conduct of proceedings, including rules and procedures to ensure that the 24-hour deadline is met and that the Secretary shall have an ongoing opportunity to amend and refile petitions under subsection (a)(1).

[(2) PUBLICATION OF RULES.—The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded and shall be transmitted to—

[(A) the Committee on the Judiciary of the Senate;

[(B) the Committee on Banking, Housing, and Urban Affairs of the Senate;

[(C) the Committee on the Judiciary of the House of Representatives; and

[(D) the Committee on Financial Services of the House of Representatives.

[(c) PROVISIONS APPLICABLE TO FINANCIAL COMPANIES.—

[(1) BANKRUPTCY CODE.—Except as provided in this subsection, the provisions of the Bankruptcy Code and rules issued thereunder or otherwise applicable insolvency law, and not the provisions of this title, shall apply to financial companies that are not covered financial companies for which the Corporation has been appointed as receiver.

[(2) THIS TITLE.—The provisions of this title shall exclusively apply to and govern all matters relating to covered financial companies for which the Corporation is appointed as receiver, and no provisions of the Bankruptcy Code or the rules issued

thereunder shall apply in such cases, except as expressly provided in this title.

[(d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

[(1) BASELINE PERIOD.—Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

[(2) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

[(A) to—

[(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

[(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

[(B) to protect the stability of the financial system of the United States.

[(3) SECOND EXTENSION OF TIME LIMIT.—

[(A) IN GENERAL.—The time limit under this subsection, as extended under paragraph (2), may be extended for up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

[(B) ADDITIONAL REPORT REQUIRED.—Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

[(4) ONGOING LITIGATION.—The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

[(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

[(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

[(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B)

to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

[(i) the ongoing litigation justifying the need for an extension; and

[(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

[(5) REGULATIONS.—The Corporation may issue regulations governing the termination of receiverships under this title.

[(6) NO LIABILITY.—The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

[(e) STUDY OF BANKRUPTCY AND ORDERLY LIQUIDATION PROCESS FOR FINANCIAL COMPANIES.—

[(1) STUDY.—

[(A) IN GENERAL.—The Administrative Office of the United States Courts and the Comptroller General of the United States shall each monitor the activities of the Court, and each such Office shall conduct separate studies regarding the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code.

[(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Administrative Office of the United States Courts and the Comptroller General of the United States each shall evaluate—

[(i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;

[(ii) ways to maximize the efficiency and effectiveness of the Court; and

[(iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

[(2) REPORTS.—Not later than 1 year after the date of enactment of this Act, in each successive year until the third year, and every fifth year after that date of enactment, the Administrative Office of the United States Courts and the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives separate reports summarizing the results of the studies conducted under paragraph (1).

[(f) STUDY OF INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR FINANCIAL COMPANIES.—

[(1) STUDY.—

[(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code.

[(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Comptroller General of the United States shall evaluate, with respect to the bankruptcy process for financial companies—

[(i) the extent to which international coordination currently exists;

[(ii) current mechanisms and structures for facilitating international cooperation;

[(iii) barriers to effective international coordination; and

[(iv) ways to increase and make more effective international coordination.

[(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Secretary a report summarizing the results of the study conducted under paragraph (1).

[(g) STUDY OF PROMPT CORRECTIVE ACTION IMPLEMENTATION BY THE APPROPRIATE FEDERAL AGENCIES.—

[(1) STUDY.—The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

[(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

[(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

[(B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

[(3) REPORT TO COUNCIL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

[(4) COUNCIL REPORT OF ACTION.—Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 120.

[SEC. 203. SYSTEMIC RISK DETERMINATION.

[(a) WRITTEN RECOMMENDATION AND DETERMINATION.—

[(1) VOTE REQUIRED.—

[(A) IN GENERAL.—On their own initiative, or at the request of the Secretary, the Corporation and the Board of Governors shall consider whether to make a written recommendation described in paragraph (2) with respect to whether the Secretary should appoint the Corporation as receiver for a financial company. Such recommendation shall be made upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving and ⅔ of

the members of the board of directors of the Corporation then serving.

[(B) CASES INVOLVING BROKERS OR DEALERS.—In the case of a broker or dealer, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is a broker or dealer, the Commission and the Board of Governors, at the request of the Secretary, or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving and ⅔ of the members of the Commission then serving, and in consultation with the Corporation.

[(C) CASES INVOLVING INSURANCE COMPANIES.—In the case of an insurance company, or in which the largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) of a financial company is an insurance company, the Director of the Federal Insurance Office and the Board of Governors, at the request of the Secretary or on their own initiative, shall consider whether to make the written recommendation described in paragraph (2) with respect to the financial company. Subject to the requirements in paragraph (2), such recommendation shall be made upon a vote of not fewer than ⅔ of the Board of Governors then serving and the affirmative approval of the Director of the Federal Insurance Office, and in consultation with the Corporation.

[(2) RECOMMENDATION REQUIRED.—Any written recommendation pursuant to paragraph (1) shall contain—

[(A) an evaluation of whether the financial company is in default or in danger of default;

[(B) a description of the effect that the default of the financial company would have on financial stability in the United States;

[(C) a description of the effect that the default of the financial company would have on economic conditions or financial stability for low income, minority, or underserved communities;

[(D) a recommendation regarding the nature and the extent of actions to be taken under this title regarding the financial company;

[(E) an evaluation of the likelihood of a private sector alternative to prevent the default of the financial company;

[(F) an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company;

[(G) an evaluation of the effects on creditors, counterparties, and shareholders of the financial company and other market participants; and

[(H) an evaluation of whether the company satisfies the definition of a financial company under section 201.

[(b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal or State law, the Secretary shall take ac-

tion in accordance with section 202(a)(1)(A), if, upon the written recommendation under subsection (a), the Secretary (in consultation with the President) determines that—

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

[(2) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States;

[(3) no viable private sector alternative is available to prevent the default of the financial company;

[(4) any effect on the claims or interests of creditors, counterparties, and shareholders of the financial company and other market participants as a result of actions to be taken under this title is appropriate, given the impact that any action taken under this title would have on financial stability in the United States;

[(5) any action under section 204 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the cost to the general fund of the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the financial company;

[(6) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the regulatory order; and

[(7) the company satisfies the definition of a financial company under section 201.

[(c) DOCUMENTATION AND REVIEW.—

[(1) IN GENERAL.—The Secretary shall—

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

[(B) retain the documentation for review under paragraph (2); and

[(C) notify the covered financial company and the Corporation of such determination.

[(2) REPORT TO CONGRESS.—Not later than 24 hours after the date of appointment of the Corporation as receiver for a covered financial company, the Secretary shall provide written notice of the recommendations and determinations reached in accordance with subsections (a) and (b) to the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, which shall consist of a summary of the basis for the determination, including, to the extent available at the time of the determination—

[(A) the size and financial condition of the covered financial company;

[(B) the sources of capital and credit support that were available to the covered financial company;

[(C) the operations of the covered financial company that could have had a significant impact on financial stability, markets, or both;

[(D) identification of the banks and financial companies which may be able to provide the services offered by the covered financial company;

[(E) any potential international ramifications of resolution of the covered financial company under other applicable insolvency law;

[(F) an estimate of the potential effect of the resolution of the covered financial company under other applicable insolvency law on the financial stability of the United States;

[(G) the potential effect of the appointment of a receiver by the Secretary on consumers;

[(H) the potential effect of the appointment of a receiver by the Secretary on the financial system, financial markets, and banks and other financial companies; and

[(I) whether resolution of the covered financial company under other applicable insolvency law would cause banks or other financial companies to experience severe liquidity distress.

[(3) REPORTS TO CONGRESS AND THE PUBLIC.—

[(A) IN GENERAL.—Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

[(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

[(ii) describing the plan of, and actions taken by, the Corporation to wind down the covered financial company;

[(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366 of title 12, Code of Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

[(iv) describing the reasons for the provision of any funding to the receivership out of the Fund;

[(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

[(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

[(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

[(B) AMENDMENTS.—The Corporation shall, on a timely basis, not less frequently than quarterly, amend or revise

and resubmit the reports prepared under this paragraph, as necessary.

[(C) CONGRESSIONAL TESTIMONY.—The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this title shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

[(4) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of this title, a financial company shall be considered to be in default or in danger of default if, as determined in accordance with subsection (b)—

[(A) a case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code;

[(B) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

[(C) the assets of the financial company are, or are likely to be, less than its obligations to creditors and others; or

[(D) the financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

[(5) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination under subsection (b), that results in the appointment of the Corporation as receiver, including—

[(A) the basis for the determination;

[(B) the purpose for which any action was taken pursuant thereto;

[(C) the likely effect of the determination and such action on the incentives and conduct of financial companies and their creditors, counterparties, and shareholders; and

[(D) the likely disruptive effect of the determination and such action on the reasonable expectations of creditors, counterparties, and shareholders, taking into account the impact any action under this title would have on financial stability in the United States, including whether the rights of such parties will be disrupted.

[(d) CORPORATION POLICIES AND PROCEDURES.—As soon as is practicable after the date of enactment of this Act, the Corporation shall establish policies and procedures that are acceptable to the Secretary governing the use of funds available to the Corporation to carry out this title, including the terms and conditions for the provision and use of funds under sections 204(d), 210(h)(2)(G)(iv), and 210(h)(9).

[(e) TREATMENT OF INSURANCE COMPANIES AND INSURANCE COMPANY SUBSIDIARIES.—

[(1) IN GENERAL.—Notwithstanding subsection (b), if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any sub-

sidiary or affiliate of such company that is not excepted under paragraph (2), shall be conducted as provided under applicable State law.

[(2) EXCEPTION FOR SUBSIDIARIES AND AFFILIATES.—The requirement of paragraph (1) shall not apply with respect to any subsidiary or affiliate of an insurance company that is not itself an insurance company.

[(3) BACKUP AUTHORITY.—Notwithstanding paragraph (1), with respect to a covered financial company described in paragraph (1), if, after the end of the 60-day period beginning on the date on which a determination is made under section 202(a) with respect to such company, the appropriate regulatory agency has not filed the appropriate judicial action in the appropriate State court to place such company into orderly liquidation or rehabilitation under the laws and requirements of the State, the Corporation shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action in the appropriate State court to place such company into orderly liquidation or rehabilitation under the laws and requirements of the State.

[SEC. 204. ORDERLY LIQUIDATION OF COVERED FINANCIAL COMPANIES.

[(a) PURPOSE OF ORDERLY LIQUIDATION AUTHORITY.—It is the purpose of this title to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. The authority provided in this title shall be exercised in the manner that best fulfills such purpose, so that—

[(1) creditors and shareholders will bear the losses of the financial company;

[(2) management responsible for the condition of the financial company will not be retained; and

[(3) the Corporation and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.

[(b) CORPORATION AS RECEIVER.—Upon the appointment of the Corporation under section 202, the Corporation shall act as the receiver for the covered financial company, with all of the rights and obligations set forth in this title.

[(c) CONSULTATION.—The Corporation, as receiver—

[(1) shall consult with the primary financial regulatory agency or agencies of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly liquidation of the covered financial company;

[(2) may consult with, or under subsection (a)(1)(B)(v) or (a)(1)(L) of section 210, acquire the services of, any outside experts, as appropriate to inform and aid the Corporation in the orderly liquidation process;

[(3) shall consult with the primary financial regulatory agency or agencies of any subsidiaries of the covered financial com-

pany that are not covered subsidiaries, and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate; and

[(4) shall consult with the Commission and the Securities Investor Protection Corporation in the case of any covered financial company for which the Corporation has been appointed as receiver that is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) and is a member of the Securities Investor Protection Corporation, for the purpose of determining whether to transfer to a bridge financial company organized by the Corporation as receiver, without consent of any customer, customer accounts of the covered financial company.

[(d) FUNDING FOR ORDERLY LIQUIDATION.—Upon its appointment as receiver for a covered financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or appropriate, the Corporation may make available to the receivership, subject to the conditions set forth in section 206 and subject to the plan described in section 210(n)(9), funds for the orderly liquidation of the covered financial company. All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for—

[(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

[(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

[(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

[(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection, except that, if the covered financial company or covered subsidiary is an insurance company or a subsidiary of an insurance company, the Corporation—

[(A) shall promptly notify the State insurance authority for the insurance company of the intention to take such lien; and

[(B) may only take such lien—

[(i) to secure repayment of funds made available to such covered financial company or covered subsidiary; and

[(ii) if the Corporation determines, after consultation with the State insurance authority, that such lien will not unduly impede or delay the liquidation or rehabilitation of the insurance company, or the recovery by its policyholders;

[(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

[(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 210.

[SEC. 205. ORDERLY LIQUIDATION OF COVERED BROKERS AND DEALERS.

[(a) APPOINTMENT OF SIPC AS TRUSTEE.—

[(1) APPOINTMENT.—Upon the appointment of the Corporation as receiver for any covered broker or dealer, the Corporation shall appoint, without any need for court approval, the Securities Investor Protection Corporation to act as trustee for the liquidation under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) of the covered broker or dealer.

[(2) ACTIONS BY SIPC.—

[(A) FILING.—Upon appointment of SIPC under paragraph (1), SIPC shall promptly file with any Federal district court of competent jurisdiction specified in section 21 or 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78u, 78aa), an application for a protective decree under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) as to the covered broker or dealer. The Federal district court shall accept and approve the filing, including outside of normal business hours, and shall immediately issue the protective decree as to the covered broker or dealer.

[(B) ADMINISTRATION BY SIPC.—Following entry of the protective decree, and except as otherwise provided in this section, the determination of claims and the liquidation of assets retained in the receivership of the covered broker or dealer and not transferred to the bridge financial company shall be administered under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) by SIPC, as trustee for the covered broker or dealer.

[(C) DEFINITION OF FILING DATE.—For purposes of the liquidation proceeding, the term "filing date" means the date on which the Corporation is appointed as receiver of the covered broker or dealer.

[(D) DETERMINATION OF CLAIMS.—As trustee for the covered broker or dealer, SIPC shall determine and satisfy, consistent with this title and with the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), all claims against the covered broker or dealer arising on or before the filing date.

[(b) POWERS AND DUTIES OF SIPC.—

[(1) IN GENERAL.—Except as provided in this section, upon its appointment as trustee for the liquidation of a covered broker or dealer, SIPC shall have all of the powers and duties provided by the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), including, without limitation, all rights of action against third parties, and shall conduct such liquidation in accordance with the terms of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), except that SIPC shall have no powers or duties with respect to assets and liabilities transferred by the Corporation from the covered

broker or dealer to any bridge financial company established in accordance with this title.

[(2) LIMITATION OF POWERS.—The exercise by SIPC of powers and functions as trustee under subsection (a) shall not impair or impede the exercise of the powers and duties of the Corporation with regard to—

[(A) any action, except as otherwise provided in this title—

[(i) to make funds available under section 204(d);

[(ii) to organize, establish, operate, or terminate any bridge financial company;

[(iii) to transfer assets and liabilities;

[(iv) to enforce or repudiate contracts; or

[(v) to take any other action relating to such bridge financial company under section 210; or

[(B) determining claims under subsection (e).

[(3) PROTECTIVE DECREE.—SIPC and the Corporation, in consultation with the Commission, shall jointly determine the terms of the protective decree to be filed by SIPC with any court of competent jurisdiction under section 21 or 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78u, 78aa), as required by subsection (a).

[(4) QUALIFIED FINANCIAL CONTRACTS.—Notwithstanding any provision of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) to the contrary (including section 5(b)(2)(C) of that Act (15 U.S.C. 78eee(b)(2)(C))), the rights and obligations of any party to a qualified financial contract (as that term is defined in section 210(c)(8)) to which a covered broker or dealer for which the Corporation has been appointed receiver is a party shall be governed exclusively by section 210, including the limitations and restrictions contained in section 210(c)(10)(B).

[(c) LIMITATION ON COURT ACTION.—Except as otherwise provided in this title, no court may take any action, including any action pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or the Bankruptcy Code, to restrain or affect the exercise of powers or functions of the Corporation as receiver for a covered broker or dealer and any claims against the Corporation as such receiver shall be determined in accordance with subsection (e) and such claims shall be limited to money damages.

[(d) ACTIONS BY CORPORATION AS RECEIVER.—

[(1) IN GENERAL.—Notwithstanding any other provision of this title, no action taken by the Corporation as receiver with respect to a covered broker or dealer shall—

[(A) adversely affect the rights of a customer to customer property or customer name securities;

[(B) diminish the amount or timely payment of net equity claims of customers; or

[(C) otherwise impair the recoveries provided to a customer under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

[(2) NET PROCEEDS.—The net proceeds from any transfer, sale, or disposition of assets of the covered broker or dealer, or proceeds thereof by the Corporation as receiver for the covered

broker or dealer shall be for the benefit of the estate of the covered broker or dealer, as provided in this title.

[(e) CLAIMS AGAINST THE CORPORATION AS RECEIVER.—Any claim against the Corporation as receiver for a covered broker or dealer for assets transferred to a bridge financial company established with respect to such covered broker or dealer—

[(1) shall be determined in accordance with section 210(a)(2); and

[(2) may be reviewed by the appropriate district or territorial court of the United States in accordance with section 210(a)(5).

[(f) SATISFACTION OF CUSTOMER CLAIMS.—

[(1) OBLIGATIONS TO CUSTOMERS.—Notwithstanding any other provision of this title, all obligations of a covered broker or dealer or of any bridge financial company established with respect to such covered broker or dealer to a customer relating to, or net equity claims based upon, customer property or customer name securities shall be promptly discharged by SIPC, the Corporation, or the bridge financial company, as applicable, by the delivery of securities or the making of payments to or for the account of such customer, in a manner and in an amount at least as beneficial to the customer as would have been the case had the actual proceeds realized from the liquidation of the covered broker or dealer under this title been distributed in a proceeding under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver and without any transfer of assets or liabilities to a bridge financial company, and with a filing date as of the date on which the Corporation is appointed as receiver.

[(2) SATISFACTION OF CLAIMS BY SIPC.—SIPC, as trustee for a covered broker or dealer, shall satisfy customer claims in the manner and amount provided under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), as if the appointment of the Corporation as receiver had not occurred, and with a filing date as of the date on which the Corporation is appointed as receiver. The Corporation shall satisfy customer claims, to the extent that a customer would have received more securities or cash with respect to the allocation of customer property had the covered financial company been subject to a proceeding under the Securities Investor Protection Act (15 U.S.C. 78aaa et seq.) without the appointment of the Corporation as receiver, and with a filing date as of the date on which the Corporation is appointed as receiver.

[(g) PRIORITIES.—

[(1) CUSTOMER PROPERTY.—As trustee for a covered broker or dealer, SIPC shall allocate customer property and deliver customer name securities in accordance with section 8(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff-2(c)).

[(2) OTHER CLAIMS.—All claims other than those described in paragraph (1) (including any unpaid claim by a customer for the allowed net equity claim of such customer from customer property) shall be paid in accordance with the priorities in section 210(b).

[(h) RULEMAKING.—The Commission and the Corporation, after consultation with SIPC, shall jointly issue rules to implement this section.

[SEC. 206. MANDATORY TERMS AND CONDITIONS FOR ALL ORDERLY LIQUIDATION ACTIONS.

[In taking action under this title, the Corporation shall—

[(1) determine that such action is necessary for purposes of the financial stability of the United States, and not for the purpose of preserving the covered financial company;

[(2) ensure that the shareholders of a covered financial company do not receive payment until after all other claims and the Fund are fully paid;

[(3) ensure that unsecured creditors bear losses in accordance with the priority of claim provisions in section 210;

[(4) ensure that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time at which the Corporation is appointed receiver);

[(5) ensure that the members of the board of directors (or body performing similar functions) responsible for the failed condition of the covered financial company are removed, if such members have not already been removed at the time the Corporation is appointed as receiver; and

[(6) not take an equity interest in or become a shareholder of any covered financial company or any covered subsidiary.

[SEC. 207. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER.

[The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the shareholders or creditors thereof for acquiescing in or consenting in good faith to the appointment of the Corporation as receiver for the covered financial company under section 203.

[SEC. 208. DISMISSAL AND EXCLUSION OF OTHER ACTIONS.

[(a) IN GENERAL.—Effective as of the date of the appointment of the Corporation as receiver for the covered financial company under section 202 or the appointment of SIPC as trustee for a covered broker or dealer under section 205, as applicable, any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code or the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) shall be dismissed, upon notice to the bankruptcy court (with respect to a case commenced under the Bankruptcy Code), and upon notice to SIPC (with respect to a covered broker or dealer) and no such case or proceeding may be commenced with respect to a covered financial company at any time while the orderly liquidation is pending.

[(b) REVESTING OF ASSETS.—Effective as of the date of appointment of the Corporation as receiver, the assets of a covered financial company shall, to the extent they have vested in any entity other than the covered financial company as a result of any case or proceeding commenced with respect to the covered financial company under the Bankruptcy Code, the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), or any similar provision of State liquidation or insolvency law applicable to the covered financial company, revest in the covered financial company.

[(c) LIMITATION.—Notwithstanding subsections (a) and (b), any order entered or other relief granted by a bankruptcy court prior to the date of appointment of the Corporation as receiver shall continue with the same validity as if an orderly liquidation had not been commenced.

[SEC. 209. RULEMAKING; NON-CONFLICTING LAW.

[The Corporation shall, in consultation with the Council, prescribe such rules or regulations as the Corporation considers necessary or appropriate to implement this title, including rules and regulations with respect to the rights, interests, and priorities of creditors, counterparties, security entitlement holders, or other persons with respect to any covered financial company or any assets or other property of or held by such covered financial company, and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act. To the extent possible, the Corporation shall seek to harmonize applicable rules and regulations promulgated under this section with the insolvency laws that would otherwise apply to a covered financial company.

[SEC. 210. POWERS AND DUTIES OF THE CORPORATION.

[(a) POWERS AND AUTHORITIES.—

[(1) GENERAL POWERS.—

[(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as receiver for a covered financial company under this title, succeed to—

[(i) all rights, titles, powers, and privileges of the covered financial company and its assets, and of any stockholder, member, officer, or director of such company; and

[(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

[(B) OPERATION OF THE COVERED FINANCIAL COMPANY DURING THE PERIOD OF ORDERLY LIQUIDATION.—The Corporation, as receiver for a covered financial company, may—

[(i) take over the assets of and operate the covered financial company with all of the powers of the members or shareholders, the directors, and the officers of the covered financial company, and conduct all business of the covered financial company;

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

[(iii) perform all functions of the covered financial company, in the name of the covered financial company;

[(iv) manage the assets and property of the covered financial company, consistent with maximization of the value of the assets in the context of the orderly liquidation; and

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

[(C) FUNCTIONS OF COVERED FINANCIAL COMPANY OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this title.

[(D) ADDITIONAL POWERS AS RECEIVER.—The Corporation shall, as receiver for a covered financial company, and subject to all legally enforceable and perfected security interests and all legally enforceable security entitlements in respect of assets held by the covered financial company, liquidate, and wind-up the affairs of a covered financial company, including taking steps to realize upon the assets of the covered financial company, in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

[(E) ADDITIONAL POWERS WITH RESPECT TO FAILING SUBSIDIARIES OF A COVERED FINANCIAL COMPANY.—

[(i) IN GENERAL.—In any case in which a receiver is appointed for a covered financial company under section 202, the Corporation may appoint itself as receiver of any covered subsidiary of the covered financial company that is organized under Federal law or the laws of any State, if the Corporation and the Secretary jointly determine that—

[(I) the covered subsidiary is in default or in danger of default;

[(II) such action would avoid or mitigate serious adverse effects on the financial stability or economic conditions of the United States; and

[(III) such action would facilitate the orderly liquidation of the covered financial company.

[(ii) TREATMENT AS COVERED FINANCIAL COMPANY.—If the Corporation is appointed as receiver of a covered subsidiary of a covered financial company under clause (i), the covered subsidiary shall thereafter be considered a covered financial company under this title, and the Corporation shall thereafter have all the powers and rights with respect to that covered subsidiary as it has with respect to a covered financial company under this title.

[(F) ORGANIZATION OF BRIDGE COMPANIES.—The Corporation, as receiver for a covered financial company, may organize a bridge financial company under subsection (h).

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

[(i) IN GENERAL.—Subject to clauses (ii) and (iii), the Corporation, as receiver for a covered financial company, may—

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

[(II) transfer any asset or liability of the covered financial company (including any assets and

liabilities held by the covered financial company for security entitlement holders, any customer property, or any assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

[(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—With respect to a transaction described in clause (i)(I) that requires approval by a Federal agency—

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

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

[(III) if notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section 7A, or is extended pursuant to subsection (e)(2) of such section 7A.

[(iii) SETOFF.—Subject to the other provisions of this title, any transferee of assets from a receiver, including a bridge financial company, shall be subject to such claims or rights as would prevail over the rights of such transferee in such assets under applicable noninsolvency law.

[(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver for a covered financial company, shall, to the extent that funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver, in accordance with the prescriptions and limitations of this title.

[(I) APPLICABLE NONINSOLVENCY LAW.—Except as may otherwise be provided in this title, the applicable noninsolvency law shall be determined by the noninsolvency choice of law rules otherwise applicable to the claims, rights, titles, persons, or entities at issue.

[(J) SUBPOENA AUTHORITY.—

[(i) IN GENERAL.—The Corporation, as receiver for a covered financial company, may, for purposes of carrying out any power, authority, or duty with respect to the covered financial company (including determining any claim against the covered financial company and

determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act, as if the Corporation were the appropriate Federal banking agency for the covered financial company, and the covered financial company were an insured depository institution.

[(ii) RULE OF CONSTRUCTION.—This subparagraph may not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) or under any other provision of law.

[(K) INCIDENTAL POWERS.—The Corporation, as receiver for a covered financial company, may exercise all powers and authorities specifically granted to receivers under this title, and such incidental powers as shall be necessary to carry out such powers under this title.

[(L) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from the covered financial company, the Corporation, as receiver for a covered financial company, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector, and the Corporation determines that utilization of such services is practicable, efficient, and cost effective.

[(M) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation, as receiver for a covered financial company, shall succeed by operation of law to the rights, titles, powers, and privileges described in subparagraph (A), and shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims provisions under this section.

[(N) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation, as receiver for a covered financial company, shall coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the orderly liquidation of any covered financial company that has assets or operations in a country other than the United States.

[(O) RESTRICTION ON TRANSFERS.—

[(i) SELECTION OF ACCOUNTS FOR TRANSFER.—If the Corporation establishes one or more bridge financial companies with respect to a covered broker or dealer, the Corporation shall transfer to one of such bridge fi-

nancial companies, all customer accounts of the covered broker or dealer, and all associated customer name securities and customer property, unless the Corporation, after consulting with the Commission and SIPC, determines that—

[(I) the customer accounts, customer name securities, and customer property are likely to be promptly transferred to another broker or dealer that is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 73o(b)) and is a member of SIPC; or

[(II) the transfer of the accounts to a bridge financial company would materially interfere with the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

[(ii) TRANSFER OF PROPERTY.—SIPC, as trustee for the liquidation of the covered broker or dealer, and the Commission shall provide any and all reasonable assistance necessary to complete such transfers by the Corporation.

[(iii) CUSTOMER CONSENT AND COURT APPROVAL NOT REQUIRED.—Neither customer consent nor court approval shall be required to transfer any customer accounts or associated customer name securities or customer property to a bridge financial company in accordance with this section.

[(iv) NOTIFICATION OF SIPC AND SHARING OF INFORMATION.—The Corporation shall identify to SIPC the customer accounts and associated customer name securities and customer property transferred to the bridge financial company. The Corporation and SIPC shall cooperate in the sharing of any information necessary for each entity to discharge its obligations under this title and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) including by providing access to the books and records of the covered financial company and any bridge financial company established in accordance with this title.

[(2) DETERMINATION OF CLAIMS.—

[(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, shall report on claims, as set forth in section 203(c)(3). Subject to paragraph (4) of this subsection, the Corporation, as receiver for a covered financial company, shall determine claims in accordance with the requirements of this subsection and regulations prescribed under section 209.

[(B) NOTICE REQUIREMENTS.—The Corporation, as receiver for a covered financial company, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

[(i) promptly publish a notice to the creditors of the covered financial company to present their claims, together with proof, to the receiver by a date specified

in the notice, which shall be not earlier than 90 days after the date of publication of such notice; and

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

[(C) MAILING REQUIRED.—The Corporation as receiver shall mail a notice similar to the notice published under clause (i) or (ii) of subparagraph (B), at the time of such publication, to any creditor shown on the books and records of the covered financial company—

[(i) at the last address of the creditor appearing in such books;

[(ii) in any claim filed by the claimant; or

[(iii) upon discovery of the name and address of a claimant not appearing on the books and records of the covered financial company, not later than 30 days after the date of the discovery of such name and address.

[(3) PROCEDURES FOR RESOLUTION OF CLAIMS.—

[(A) DECISION PERIOD.—

[(i) IN GENERAL.—Prior to the 180th day after the date on which a claim against a covered financial company is filed with the Corporation as receiver, or such later date as may be agreed as provided in clause (ii), the Corporation shall notify the claimant whether it allows or disallows the claim, in accordance with subparagraphs (B), (C), and (D).

[(ii) EXTENSION OF TIME.—By written agreement executed not later than 180 days after the date on which a claim against a covered financial company is filed with the Corporation, the period described in clause (i) may be extended by written agreement between the claimant and the Corporation. Failure to notify the claimant of any disallowance within the time period set forth in clause (i), as it may be extended by agreement under this clause, shall be deemed to be a disallowance of such claim, and the claimant may file or continue an action in court, as provided in paragraph (4).

[(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any decision with respect to any claim is mailed to the last address of the claimant which appears—

[(I) on the books, records, or both of the covered financial company;

[(II) in the claim filed by the claimant; or

[(III) in documents submitted in proof of the claim.

[(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If the Corporation as receiver disallows any claim filed under clause (i), the notice to the claimant shall contain—

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

[(II) the procedures required to file or continue an action in court, as provided in paragraph (4).

[(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received by the receiver on or before the date specified in the notice under paragraph (2)(B)(i), which is proved to the satisfaction of the receiver.

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

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

[(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by a claimant after the date specified in the notice published under paragraph (2)(B)(i), and such claim may be considered by the receiver under subparagraph (B), if—

[(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

[(II) such claim is filed in time to permit payment of such claim.

[(D) AUTHORITY TO DISALLOW CLAIMS.—

[(i) IN GENERAL.—The Corporation may disallow any portion of any claim by a creditor or claim of a security, preference, setoff, or priority which is not proved to the satisfaction of the Corporation.

[(ii) PAYMENTS TO UNDERSECURED CREDITORS.—In the case of a claim against a covered financial company that is secured by any property or other asset of such covered financial company, the receiver—

[(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim; and

[(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

[(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

[(I) any extension of credit from any Federal reserve bank, or the Corporation, to any covered financial company; or

[(II) subject to clause (ii), any legally enforceable and perfected security interest in the assets of the covered financial company securing any such extension of credit.

[(E) LEGAL EFFECT OF FILING.—

[(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

[(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of appointment of the receiver for the covered financial company.

[(4) JUDICIAL DETERMINATION OF CLAIMS.—

[(A) IN GENERAL.—Subject to subparagraph (B), a claimant may file suit on a claim (or continue an action commenced before the date of appointment of the Corporation as receiver) in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located (and such court shall have jurisdiction to hear such claim).

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

[(i) the end of the period described in paragraph (3)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (3)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

[(ii) the date of any notice of disallowance of such claim pursuant to paragraph (3)(A)(i).

[(C) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such claim (or to continue an action on such claim commenced before the date of appointment of the Corporation as receiver) prior to the end of the 60-day period described in subparagraph (B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

[(5) EXPEDITED DETERMINATION OF CLAIMS.—

[(A) PROCEDURE REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the claims process established under paragraph (3), for any claimant that alleges—

[(i) having a legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver; and

[(ii) that irreparable injury will occur if the claims procedure established under paragraph (3) is followed.

[(B) DETERMINATION PERIOD.—Prior to the end of the 90-day period beginning on the date on which a claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

[(i) determine—

[(I) whether to allow or disallow such claim, or any portion thereof; or

[(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (3);

[(ii) notify the claimant of the determination; and

[(iii) if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

[(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file suit (or continue a suit filed before the date of appointment of the Corporation as receiver seeking a determination of the rights of the claimant with respect to such security interest (or such security entitlement) after the earlier of—

[(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

[(ii) the date on which the Corporation denies the claim or a portion thereof.

[(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (C), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

[(E) LEGAL EFFECT OF FILING.—

[(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

[(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

[(6) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver, unless such agreement—

[(A) is in writing;

[(B) was executed by an authorized officer or representative of the covered financial company, or confirmed in the ordinary course of business by the covered financial company; and

[(C) has been, since the time of its execution, an official record of the company or the party claiming under the agreement provides documentation, acceptable to the receiver, of such agreement and its authorized execution or confirmation by the covered financial company.

[(7) PAYMENT OF CLAIMS.—

[(A) IN GENERAL.—Subject to subparagraph (B), the Corporation as receiver may, in its discretion and to the extent that funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

[(i) allowed by the receiver;

[(ii) approved by the receiver pursuant to a final determination pursuant to paragraph (3) or (5), as applicable; or

[(iii) determined by the final judgment of a court of competent jurisdiction.

[(B) LIMITATION.—A creditor shall, in no event, receive less than the amount that the creditor is entitled to receive under paragraphs (2) and (3) of subsection (d), as applicable.

[(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The Corporation as receiver may, in its sole discretion, and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation as receiver, by reason of any such payment or for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

[(D) RULEMAKING BY THE CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as the Corporation deems appropriate to establish an interest rate for or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estate of a covered financial company, except that no such interest shall be paid until the Corporation as receiver has satisfied the principal amount of all creditor claims.

[(8) SUSPENSION OF LEGAL ACTIONS.—

[(A) IN GENERAL.—After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay in any judicial action or proceeding in which such covered financial company is or becomes a party, for a period of not to exceed 90 days.

[(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A), the court shall grant such stay as to all parties.

[(9) ADDITIONAL RIGHTS AND DUTIES.—

[(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final, non-appealable judgment of any court of competent jurisdiction that was rendered before the appointment of the Corporation as receiver.

[(B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable judgment, the Corporation as receiver shall—

[(i) have all the rights and remedies available to the covered financial company (before the date of appointment of the Corporation as receiver under section 202) and the Corporation, including removal to Federal court and all appellate rights; and

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

[(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may be issued by any court upon assets in the possession of the Corporation as receiver for a covered financial company.

[(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this title, no court shall have jurisdiction over—

[(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

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

[(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as receiver in connection with any covered financial company for which the Corporation is acting as receiver under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner that—

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

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

[(iii) mitigates the potential for serious adverse effects to the financial system;

[(iv) ensures timely and adequate competition and fair and consistent treatment of offerors; and

[(v) prohibits discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers.

[(10) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

[(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver for a covered financial company shall be—

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

[(I) the 6-year period beginning on the date on which the claim accrues; or

[(II) the period applicable under State law; and

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

[(I) the 3-year period beginning on the date on which the claim accrues; or

[(II) the period applicable under State law.

[(B) DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in subparagraph (A) shall be the later of—

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

[(ii) the date on which the cause of action accrues.

[(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

[(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the applicable statute of limitations under State law has expired not more than 5 years before the date of appointment of the Corporation as receiver for a covered financial company, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitations.

[(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

[(11) AVOIDABLE TRANSFERS.—

[(A) FRAUDULENT TRANSFERS.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of the covered financial company in property, or any obligation incurred by the covered financial company, that was made or incurred at or within 2 years before the date on which the Corporation was appointed receiver, if—

[(i) the covered financial company voluntarily or involuntarily—

[(I) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the covered financial company was or became, on or after the date on which such transfer was made or such obligation was incurred, indebted; or

[(II) received less than a reasonably equivalent value in exchange for such transferor obligation; and

[(ii) the covered financial company voluntarily or involuntarily—

[(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

[(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the covered financial company was an unreasonably small capital;

[(III) intended to incur, or believed that the covered financial company would incur, debts that would be beyond the ability of the covered financial company to pay as such debts matured; or

[(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

[(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property—

[(i) to or for the benefit of a creditor;

[(ii) for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

[(iii) that was made while the covered financial company was insolvent;

[(iv) that was made—

[(I) 90 days or less before the date on which the Corporation was appointed receiver; or

[(II) more than 90 days, but less than 1 year before the date on which the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider; and

[(v) that enables the creditor to receive more than the creditor would receive if—

[(I) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code;

[(II) the transfer had not been made; and

[(III) the creditor received payment of such debt to the extent provided by the provisions of chapter 7 of the Bankruptcy Code.

[(C) POST-RECEIVERSHIP TRANSACTIONS.—The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that was not authorized under this title by the Corporation as receiver.

[(D) RIGHT OF RECOVERY.—To the extent that a transfer is avoided under subparagraph (A), (B), or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

[(i) the initial transferee of such transfer or the person for whose benefit such transfer was made; or

[(ii) any immediate or mediate transferee of any such initial transferee.

[(E) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (D)(ii) from—

[(i) any transferee that takes for value, including in satisfaction of or to secure a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

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

[(F) DEFENSES.—Subject to the other provisions of this title—

[(i) a transferee or obligee from which the Corporation seeks to recover a transfer or to avoid an obligation under subparagraph (A), (B), (C), or (D) shall have the same defenses available to a transferee or ob-

ligee from which a trustee seeks to recover a transfer or avoid an obligation under sections 547, 548, and 549 of the Bankruptcy Code; and

[(ii) the authority of the Corporation to recover a transfer or avoid an obligation shall be subject to subsections (b) and (c) of section 546, section 547(c), and section 548(c) of the Bankruptcy Code.

[(G) RIGHTS UNDER THIS SECTION.—The rights of the Corporation as receiver under this section shall be superior to any rights of a trustee or any other party (other than a Federal agency) under the Bankruptcy Code.

[(H) RULES OF CONSTRUCTION; DEFINITIONS.—For purposes of—

[(i) subparagraphs (A) and (B)—

[(I) the term "insider" has the same meaning as in section 101(31) of the Bankruptcy Code;

[(II) a transfer is made when such transfer is so perfected that a bona fide purchaser from the covered financial company against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the date on which the Corporation is appointed as receiver for the covered financial company, such transfer is made immediately before the date of such appointment; and

[(III) the term "value" means property, or satisfaction or securing of a present or antecedent debt of the covered financial company, but does not include an unperformed promise to furnish support to the covered financial company; and

[(ii) subparagraph (B)—

[(I) the covered financial company is presumed to have been insolvent on and during the 90-day period immediately preceding the date of appointment of the Corporation as receiver; and

[(II) the term "insolvent" has the same meaning as in section 101(32) of the Bankruptcy Code.

[(12) SETOFF.—

[(A) GENERALLY.—Except as otherwise provided in this title, any right of a creditor to offset a mutual debt owed by the creditor to any covered financial company that arose before the Corporation was appointed as receiver for the covered financial company against a claim of such creditor may be asserted if enforceable under applicable noninsolvency law, except to the extent that—

[(i) the claim of the creditor against the covered financial company is disallowed;

[(ii) the claim was transferred, by an entity other than the covered financial company, to the creditor—

[(I) after the Corporation was appointed as receiver of the covered financial company; or

[(II)(aa) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company; and

[(bb) while the covered financial company was insolvent (except for a setoff in connection with a qualified financial contract); or

[(iii) the debt owed to the covered financial company was incurred by the covered financial company—

[(I) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company;

[(II) while the covered financial company was insolvent; and

[(III) for the purpose of obtaining a right of setoff against the covered financial company (except for a setoff in connection with a qualified financial contract).

[(B) INSUFFICIENCY.—

[(i) IN GENERAL.—Except with respect to a setoff in connection with a qualified financial contract, if a creditor offsets a mutual debt owed to the covered financial company against a claim of the covered financial company on or within the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company, the Corporation may recover from the creditor the amount so offset, to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

[(I) the date that is 90 days before the date on which the Corporation is appointed as receiver for the covered financial company; or

[(II) the first day on which there is an insufficiency during the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company.

[(ii) DEFINITION OF INSUFFICIENCY.—In this subparagraph, the term "insufficiency" means the amount, if any, by which a claim against the covered financial company exceeds a mutual debt owed to the covered financial company by the holder of such claim.

[(C) INSOLVENCY.—The term "insolvent" has the same meaning as in section 101(32) of the Bankruptcy Code.

[(D) PRESUMPTION OF INSOLVENCY.—For purposes of this paragraph, the covered financial company is presumed to have been insolvent on and during the 90-day period preceding the date of appointment of the Corporation as receiver.

[(E) LIMITATION.—Nothing in this paragraph (12) shall be the basis for any right of setoff where no such right exists under applicable noninsolvency law.

[(F) PRIORITY CLAIM.—Except as otherwise provided in this title, the Corporation as receiver for the covered financial company may sell or transfer any assets free and clear of the setoff rights of any party, except that such party

shall be entitled to a claim, subordinate to the claims payable under subparagraphs (A), (B), (C), and (D) of subsection (b)(1), but senior to all other unsecured liabilities defined in subsection (b)(1)(E), in an amount equal to the value of such setoff rights.

[(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation as receiver for a covered financial company, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

[(14) STANDARDS.—

[(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13), without regard to the requirement that the applicant show that the injury, loss, or damage is irreparable and immediate.

[(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of the State provide substantially similar protections of the right of the parties to due process as provided under Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

[(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this title, any final and non-appealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

[(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

[(A) IN GENERAL.—The Corporation as receiver for a covered financial company shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

[(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation is appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

[(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) and section 203(c)(3) shall be made available to the public by the Corporation.

[(D) RECORDKEEPING REQUIREMENT.—

[(i) IN GENERAL.—The Corporation shall prescribe such regulations and establish such retention schedules as are necessary to maintain the documents and records of the Corporation generated in exercising the authorities of this title and the records of a covered financial company for which the Corporation is appointed receiver, with due regard for—

[(I) the avoidance of duplicative record retention; and

[(II) the expected evidentiary needs of the Corporation as receiver for a covered financial company and the public regarding the records of covered financial companies.

[(ii) RETENTION OF RECORDS.—Unless otherwise required by applicable Federal law or court order, the Corporation may not, at any time, destroy any records that are subject to clause (i).

[(iii) RECORDS DEFINED.—As used in this subparagraph, the terms "records" and "records of a covered financial company" mean any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by the covered financial company in the course of and necessary to its transaction of business.

[(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

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

[(A) Administrative expenses of the receiver.

[(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

[(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of 11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

[(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by 11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

[(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F), (G), or (H)).

[(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G) or (H)).

[(G) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

[(H) Any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company.

[(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation, as receiver for a covered financial company, is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company, which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

[(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

[(4) CREDITORS SIMILARLY SITUATED.—All claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subsection, if—

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

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

[(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

[(iii) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

[(iv) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

[(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in paragraphs (2) and (3) of subsection (d).

[(5) SECURED CLAIMS UNAFFECTED.—This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security.

[(6) PRIORITY OF EXPENSES AND UNSECURED CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC MEMBER.—Where the Corporation is appointed as receiver for a covered broker or dealer, unsecured claims against such covered broker or dealer, or the Corporation as receiver for such covered broker or dealer under

this section, that are proven to the satisfaction of the receiver under section 205(e), shall have the priority prescribed in paragraph (1), except that—

[(A) SIPC shall be entitled to recover administrative expenses incurred in performing its responsibilities under section 205 on an equal basis with the Corporation, in accordance with paragraph (1)(A);

[(B) the Corporation shall be entitled to recover any amounts paid to customers or to SIPC pursuant to section 205(f), in accordance with paragraph (1)(B);

[(C) SIPC shall be entitled to recover any amounts paid out of the SIPC Fund to meet its obligations under section 205 and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), which claim shall be subordinate to the claims payable under subparagraphs (A) and (B) of paragraph (1), but senior to all other claims; and

[(D) the Corporation may, after paying any proven claims to customers under section 205 and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), and as provided above, pay dividends on other proven claims, in its discretion, and to the extent that funds are available, in accordance with the priorities set forth in paragraph (1).

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

[(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights that a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

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

[(B) the performance of which the Corporation as receiver, in the discretion of the Corporation, determines to be burdensome; and

[(C) the disaffirmance or repudiation of which the Corporation as receiver determines, in the discretion of the Corporation, will promote the orderly administration of the affairs of the covered financial company.

[(2) TIMING OF REPUDIATION.—The Corporation, as receiver for any covered financial company, shall determine whether or not to exercise the rights of repudiation under this section within a reasonable period of time.

[(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

[(A) IN GENERAL.—Except as provided in paragraphs (4), (5), and (6) and in subparagraphs (C), (D), and (E) of this paragraph, the liability of the Corporation as receiver for a covered financial company for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

[(i) limited to actual direct compensatory damages; and

[(ii) determined as of—

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

[(II) in the case of any contract or agreement referred to in paragraph (8), the date of the

disaffirmance or repudiation of such contract or agreement.

[(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term "actual direct compensatory damages" does not include—

[(i) punitive or exemplary damages;

[(ii) damages for lost profits or opportunity; or

[(iii) damages for pain and suffering.

[(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

[(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

[(ii) paid in accordance with this paragraph and subsection (d), except as otherwise specifically provided in this subsection.

[(D) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF DEBT OBLIGATION.—In the case of any debt for borrowed money or evidenced by a security, actual direct compensatory damages shall be no less than the amount lent plus accrued interest plus any accreted original issue discount as of the date the Corporation was appointed receiver of the covered financial company and, to the extent that an allowed secured claim is secured by property the value of which is greater than the amount of such claim and any accrued interest through the date of repudiation or disaffirmance, such accrued interest pursuant to paragraph (1).

[(E) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF CONTINGENT OBLIGATION.—In the case of any contingent obligation of a covered financial company consisting of any obligation under a guarantee, letter of credit, loan commitment, or similar credit obligation, the Corporation may, by rule or regulation, prescribe that actual direct compensatory damages shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based on the likelihood that such contingent claim would become fixed and the probable magnitude thereof.

[(4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

[(A) IN GENERAL.—If the Corporation as receiver disaffirms or repudiates a lease under which the covered financial company is the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

[(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which subparagraph (A) would otherwise apply shall—

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

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

[(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

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

[(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this paragraph and subsection (d).

[(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

[(A) IN GENERAL.—If the Corporation as receiver for a covered financial company repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

[(i) treat the lease as terminated by such repudiation; or

[(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

[(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of subparagraph (A)—

[(i) the lessee—

[(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

[(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

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

[(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

[(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(6)) for the sale of real property, and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

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

[(ii) remain in possession of such real property.

[(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of subparagraph (A)—

[(i) the purchaser—

[(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

[(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

[(ii) the Corporation as receiver shall—

[(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

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

[(III) have no obligation under the contract other than the performance required under subclause (II).

[(C) ASSIGNMENT AND SALE ALLOWED.—

[(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the Corporation as receiver to assign the contract described in subparagraph (A) and sell the property, subject to the contract and the provisions of this paragraph.

[(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the Corporation as receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

[(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

[(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the date of appointment shall be—

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

[(ii) deemed to have arisen as of the date on which the receiver was appointed.

[(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the Corporation as receiver accepts performance by the other person before making any determination to exercise the right of repudiation of such contract under this section—

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

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

[(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the Corporation as receiver for services referred to in subparagraph (B) in connection with a contract described in subparagraph (B) shall not affect the right of the Corporation as receiver to repudiate such contract under this section at any time after such performance.

[(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

[(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to subsection (a)(8) and paragraphs (9) and (10) of this subsection, and notwithstanding any other provision of this section, any other provision of Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

[(i) any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the date of appointment of the Corporation as receiver for such covered financial company or at any time after such appointment;

[(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

[(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts or agreements described in clause (i), including any master agreement for such contracts or agreements.

[(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(8) shall apply in the case of any judicial action or proceeding brought against the Corporation as receiver referred to in subparagraph (A), or the subject covered financial company, by any party to a contract or agreement described in subparagraph (A)(i) with such covered financial company.

[(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

[(i) IN GENERAL.—Notwithstanding subsection (a)(11), (a)(12), or (c)(12), section 5242 of the Revised Statutes of the United States, or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as the Corporation or as receiver for a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

[(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the transferee had actual intent to hinder, delay, or defraud such com-

pany, the creditors of such company, or the Corporation as receiver appointed for such company.

[(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

[(i) QUALIFIED FINANCIAL CONTRACT.—The term "qualified financial contract" means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

[(ii) SECURITIES CONTRACT.—The term "securities contract"—

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

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

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

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

[(V) means any margin loan;

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

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

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

[(IX) means any combination of the agreements or transactions referred to in this clause;

[(X) means any option to enter into any agreement or transaction referred to in this clause;

[(XI) means a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (X), other than subclause (II), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (X), other than subclause (II); and

[(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

[(iii) COMMODITY CONTRACT.—The term "commodity contract" means—

[(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

[(II) with respect to a foreign futures commission merchant, a foreign future;

[(III) with respect to a leverage transaction merchant, a leverage transaction;

[(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

[(V) with respect to a commodity options dealer, a commodity option;

[(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

[(VII) any combination of the agreements or transactions referred to in this clause;

[(VIII) any option to enter into any agreement or transaction referred to in this clause;

[(IX) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (VIII); or

[(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

[(iv) FORWARD CONTRACT.—The term "forward contract" means—

[(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date that is more than 2 days after the date on which the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

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

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

[(IV) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to

each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

[(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

[(v) REPURCHASE AGREEMENT.—The term "repurchase agreement" (which definition also applies to a reverse repurchase agreement)—

[(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (which, for purposes of this clause, means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the Board of Governors), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

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

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

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

[(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a re-

purchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

[(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

[(vi) SWAP AGREEMENT.—The term "swap agreement" means—

[(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

[(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

[(III) any combination of agreements or transactions referred to in this clause;

[(IV) any option to enter into any agreement or transaction referred to in this clause;

[(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

[(VI) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in any of subclauses (I) through (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such clause.

[(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraphs (9) and (10)—

[(I) the term "default" means, with respect to a covered financial company, any adjudication or other official decision by any court of competent jurisdiction, or other public authority pursuant to which the Corporation has been appointed receiver; and

[(II) the term "in danger of default" means a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

[(aa) in the opinion of the Corporation or such authority—

[(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

[(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

[(bb) in the opinion of the Corporation or such authority—

[(AA) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

[(BB) there is no reasonable prospect that the capital will be replenished without Federal assistance.

[(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any of clauses (i) through (vi) (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single

agreement and a single qualified financial contact. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

[(ix) TRANSFER.—The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the covered financial company.

[(x) PERSON.—The term "person" includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

[(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract or to disaffirm or repudiate any such contract in accordance with this subsection.

[(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

[(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

[(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

[(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

[(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

[(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term "walkaway clause" means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of the status of such party as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by the Corporation as receiver for

such covered financial company, and not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

[(G) CERTAIN OBLIGATIONS TO CLEARING ORGANIZATIONS.—In the event that the Corporation has been appointed as receiver for a covered financial company which is a party to any qualified financial contract cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D)), the receiver shall use its best efforts to meet all margin, collateral, and settlement obligations of the covered financial company that arise under qualified financial contracts (other than any margin, collateral, or settlement obligation that is not enforceable against the receiver under paragraph (8)(F)(i) or paragraph (10)(B)), as required by the rules of the clearing organization when due. Notwithstanding any other provision of this title, if the receiver fails to satisfy any such margin, collateral, or settlement obligations under the rules of the clearing organization, the clearing organization shall have the immediate right to exercise, and shall not be stayed from exercising, all of its rights and remedies under its rules and applicable law with respect to any qualified financial contract of the covered financial company, including, without limitation, the right to liquidate all positions and collateral of such covered financial company under the company's qualified financial contracts, and suspend or cease to act for such covered financial company, all in accordance with the rules of the clearing organization.

[(H) RECORDKEEPING.—

[(i) JOINT RULEMAKING.—The Federal primary financial regulatory agencies shall jointly prescribe regulations requiring that financial companies maintain such records with respect to qualified financial contracts (including market valuations) that the Federal primary financial regulatory agencies determine to be necessary or appropriate in order to assist the Corporation as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

[(ii) TIME FRAME.—The Federal primary financial regulatory agencies shall prescribe joint final or interim final regulations not later than 24 months after the date of enactment of this Act.

[(iii) BACK-UP RULEMAKING AUTHORITY.—If the Federal primary financial regulatory agencies do not prescribe joint final or interim final regulations within the time frame in clause (ii), the Chairperson of the Council shall prescribe, in consultation with the Corporation, the regulations required by clause (i).

[(iv) CATEGORIZATION AND TIERING.—The joint regulations prescribed under clause (i) shall, as appropriate, differentiate among financial companies by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of qualified fi-

nancial contracts, interconnectedness to the financial system, and any other factors deemed appropriate.

[(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

[(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default, which includes any qualified financial contract, the Corporation as receiver for such covered financial company shall either—

[(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

[(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

[(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

[(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

[(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

[(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

[(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the Corporation as receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

[(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that the Corporation as receiver for a financial institution transfers any qualified financial contract and related claims, property, or credit enhancement pursuant to subparagraph (A)(i) and

such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

[(D) DEFINITIONS.—For purposes of this paragraph—

[(i) the term "financial institution" means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation, by regulation, to be a financial institution; and

[(ii) the term "clearing organization" has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

[(10) NOTIFICATION OF TRANSFER.—

[(A) IN GENERAL.—

[(i) NOTICE.—The Corporation shall provide notice in accordance with clause (ii), if—

[(I) the Corporation as receiver for a covered financial company in default or in danger of default transfers any assets or liabilities of the covered financial company; and

[(II) the transfer includes any qualified financial contract.

[(ii) TIMING.—The Corporation as receiver for a covered financial company shall notify any person who is a party to any contract described in clause (i) of such transfer not later than 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

[(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

[(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) solely by reason of or incidental to the appointment under this section of the Corporation as receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the Corporation has been appointed as receiver)—

[(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment; or

[(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

[(ii) NOTICE.—For purposes of this paragraph, the Corporation as receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company, if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

[(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for

which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

[(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term "business day" means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

[(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of the Corporation as receiver with respect to any qualified financial contract to which a covered financial company is a party, the Corporation shall either—

[(A) disaffirm or repudiate all qualified financial contracts between—

[(i) any person or any affiliate of such person; and

[(ii) the covered financial company in default; or

[(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

[(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

[(A) legally enforceable or perfected security interest in any of the assets of any covered financial company, except in accordance with subsection (a)(11); or

[(B) legally enforceable interest in customer property, security entitlements in respect of assets or property held by the covered financial company for any security entitlement holder.

[(13) AUTHORITY TO ENFORCE CONTRACTS.—

[(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, may enforce any contract, other than a liability insurance contract of a director or officer, a financial institution bond entered into by the covered financial company, notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency, the appointment of or the exercise of rights or powers by the Corporation as receiver, the filing of the petition pursuant to section 202(a)(1), or the issuance of the recommendations or determination, or any actions or events occurring in connection therewith or as a result thereof, pursuant to section 203.

[(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the Corporation as receiver to enforce or recover under a liability insurance contract of a director or officer or financial institution bond under other applicable law.

[(C) CONSENT REQUIREMENT AND IPSO FACTO CLAUSES.—

[(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default

under any contract to which the covered financial company is a party (and no provision in any such contract providing for such default, termination, or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the Corporation as receiver for the covered financial company during the 90 day period beginning from the appointment of the Corporation as receiver.

[(ii) EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the Corporation as receiver to fail to comply with otherwise enforceable provisions of such contract.

[(D) CONTRACTS TO EXTEND CREDIT.—Notwithstanding any other provision in this title, if the Corporation as receiver enforces any contract to extend credit to the covered financial company or bridge financial company, any valid and enforceable obligation to repay such debt shall be paid by the Corporation as receiver, as an administrative expense of the receivership.

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

[(A) any extension of credit from any Federal reserve bank or the Corporation to any covered financial company; or

[(B) any security interest in the assets of the covered financial company securing any such extension of credit.

[(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

[(16) ENFORCEMENT OF CONTRACTS GUARANTEED BY THE COVERED FINANCIAL COMPANY.—

[(A) IN GENERAL.—The Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution) shall have the power to enforce contracts of subsidiaries or affiliates of the covered financial company, the obligations under which are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause

the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of the covered financial company, if—

[(i) such guaranty or other support and all related assets and liabilities are transferred to and assumed by a bridge financial company or a third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding) within the same period of time as the Corporation is entitled to transfer the qualified financial contracts of such covered financial company; or

[(ii) the Corporation, as receiver, otherwise provides adequate protection with respect to such obligations.

[(B) RULE OF CONSTRUCTION.—For purposes of this paragraph, a bridge financial company shall not be considered to be a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

[(d) VALUATION OF CLAIMS IN DEFAULT.—

[(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method utilized by the Corporation for a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of any such covered financial company.

[(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver for a covered financial company or in any other capacity, to any person having a claim against the Corporation as receiver or the covered financial company for which the Corporation is appointed shall equal the amount that such claimant would have received if—

[(A) the Corporation had not been appointed receiver with respect to the covered financial company; and

[(B) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code, or any similar provision of State insolvency law applicable to the covered financial company.

[(3) SPECIAL PROVISION FOR ORDERLY LIQUIDATION BY SIPC.—The maximum liability of the Corporation, acting as receiver or in its corporate capacity for any covered broker or dealer to any customer of such covered broker or dealer, with respect to customer property of such customer, shall be—

[(A) equal to the amount that such customer would have received with respect to such customer property in a case initiated by SIPC under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

[(B) determined as of the close of business on the date on which the Corporation is appointed as receiver.

[(4) ADDITIONAL PAYMENTS AUTHORIZED.—

[(A) IN GENERAL.—Subject to subsection (o)(1)(D)(i), the Corporation, with the approval of the Secretary, may make additional payments or credit additional amounts to or

with respect to or for the account of any claimant or category of claimants of the covered financial company, if the Corporation determines that such payments or credits are necessary or appropriate to minimize losses to the Corporation as receiver from the orderly liquidation of the covered financial company under this section.

[(B) LIMITATIONS.—

[(i) PROHIBITION.—The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any claim that is proven to the satisfaction of the Corporation.

[(ii) NO OBLIGATION.—Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

[(C) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

[(e) LIMITATION ON COURT ACTION.—Except as provided in this title, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder, and any remedy against the Corporation or receiver shall be limited to money damages determined in accordance with this title.

[(f) LIABILITY OF DIRECTORS AND OFFICERS.—

[(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

[(A) acting as receiver for such covered financial company;

[(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by the Corporation as receiver; or

[(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under this title.

[(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional

tortious conduct, as such terms are defined and determined under applicable State law.

[(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

[(g) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the covered financial company shall include principal losses and appropriate interest.

[(h) BRIDGE FINANCIAL COMPANIES.—

[(1) ORGANIZATION.—

[(A) PURPOSE.—The Corporation, as receiver for one or more covered financial companies or in anticipation of being appointed receiver for one or more covered financial companies, may organize one or more bridge financial companies in accordance with this subsection.

[(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

[(i) assume such liabilities (including liabilities associated with any trust or custody business, but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

[(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

[(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

[(2) CHARTER AND ESTABLISHMENT.—

[(A) ESTABLISHMENT.—Except as provided in subparagraph (H), where the covered financial company is a covered broker or dealer, the Corporation, as receiver for a covered financial company, may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies, with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

[(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

[(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may pro-

vide, and shall be executed by such representatives as the Corporation may designate.

[(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—

[(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities, and privileges of a bridge financial company granted by the charter or as an incident thereto; and

[(ii) provide for, and establish the terms and conditions governing, the management (including the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

[(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

[(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities, or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities, and privileges.

[(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities, or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

[(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations, or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures that are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

[(G) CAPITAL.—

[(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

[(ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any

capital stock on behalf of a bridge financial company established under this subsection.

[(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

[(iv) OPERATING FUNDS IN LIEU OF CAPITAL AND IMPLEMENTATION PLAN.—Upon the organization of a bridge financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge financial company, subject to the plan described in subsection (n)(9), funds for the operation of the bridge financial company in lieu of capital.

[(H) BRIDGE BROKERS OR DEALERS.—

[(i) IN GENERAL.—The Corporation, as receiver for a covered broker or dealer, may approve articles of association for one or more bridge financial companies with respect to such covered broker or dealer, which bridge financial company or companies shall, by operation of law and immediately upon approval of its articles of association—

[(I) be established and deemed registered with the Commission under the Securities Exchange Act of 1934 and a member of SIPC;

[(II) operate in accordance with such articles and this section; and

[(III) succeed to any and all registrations and memberships of the covered financial company with or in any self-regulatory organizations.

[(ii) OTHER REQUIREMENTS.—Except as provided in clause (i), and notwithstanding any other provision of this section, the bridge financial company shall be subject to the Federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission, as is necessary or appropriate in the public interest or for the protection of investors.

[(iii) TREATMENT OF CUSTOMERS.—Except as otherwise provided by this title, any customer of the covered broker or dealer whose account is transferred to a bridge financial company shall have all the rights, privileges, and protections under section 205(f) and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), that such customer would have had if the account were not transferred from the covered financial company under this subparagraph.

[(iv) OPERATION OF BRIDGE BROKERS OR DEALERS.—Notwithstanding any other provision of this title, the Corporation shall not operate any bridge financial company created by the Corporation under this title

with respect to a covered broker or dealer in such a manner as to adversely affect the ability of customers to promptly access their customer property in accordance with applicable law.

[(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraph (1) or (2) or any other provision of law—

[(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

[(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which the Corporation has been appointed receiver may have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

[(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

[(5) TRANSFER OF ASSETS AND LIABILITIES.—

[(A) AUTHORITY OF CORPORATION.—The Corporation, as receiver for a covered financial company, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies, in accordance with and subject to the restrictions of paragraph (1).

[(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

[(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

[(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company, to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

[(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a

covered financial company that are similarly situated under subsection (b)(1), in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subparagraph, if—

[(i) the Corporation determines that such action is necessary—

[(I) to maximize the value of the assets of the covered financial company;

[(II) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

[(III) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

[(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided under paragraphs (2) and (3) of subsection (d).

[(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

[(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of not longer than 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

[(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company, unless such agreement—

[(A) is in writing;

[(B) was executed by an authorized officer or representative of the covered financial company or confirmed in the ordinary course of business by the covered financial company; and

[(C) has been on the official record of the company, since the time of its execution, or with which, the party claiming under the agreement provides documentation of such agreement and its authorized execution or confirmation by the covered financial company that is acceptable to the receiver.

[(8) NO FEDERAL STATUS.—

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

[(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

[(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

[(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

[(9) FUNDING AUTHORIZED.—The Corporation may, subject to the plan described in subsection (n)(9), provide funding to facilitate any transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13) with respect to any bridge financial company, or facilitate the acquisition by a bridge financial company of any assets, or the assumption of any liabilities, of a covered financial company for which the Corporation has been appointed receiver.

[(10) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

[(11) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a notification is required under section 7A of the Clayton Act with respect to such transaction, the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under section 7A(b)(2) of the Clayton Act, or extended under section 7A(e)(2) of that Act.

[(12) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge financial com-

pany as such shall terminate at the end of the 2-year period following the date on which it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for no more than 3 additional 1-year periods.

[(13) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

[(A) the date of the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

[(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

[(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

[(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

[(E) the expiration of the period provided in paragraph (12), or the earlier dissolution of the bridge financial company, as provided in paragraph (15).

[(14) EFFECT OF TERMINATION EVENTS.—

[(A) MERGER OR CONSOLIDATION.—A merger or consolidation, described in paragraph (13)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

[(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company, as provided in paragraph (13)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, such State-chartered corporation shall be deemed to succeed by

operation of law to such rights, titles, powers, and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

[(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company, as provided in paragraph (13)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

[(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (13)(D), at the election of the Corporation, the bridge financial company may retain its status as such for the period provided in paragraph (12) or may be dissolved at the election of the Corporation.

[(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

[(15) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

[(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if the status of a bridge financial company as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (13)—

[(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

[(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date on which the bridge financial company was chartered, or any extension thereof, as provided in paragraph (12).

[(B) PROCEDURES.—The Corporation shall remain the receiver for a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as receiver for a bridge financial company shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of

covered financial companies under this title. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to the Corporation as receiver for a covered financial company under this title and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

[(16) AUTHORITY TO OBTAIN CREDIT.—

[(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

[(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

[(i) with priority over any or all of the obligations of the bridge financial company;

[(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

[(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

[(C) LIMITATIONS.—

[(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien, only if—

[(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

[(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

[(ii) HEARING.—The hearing required pursuant to this subparagraph shall be before a court of the United States, which shall have jurisdiction to conduct such hearing and to authorize a bridge financial company to obtain secured credit under clause (i).

[(D) BURDEN OF PROOF.—In any hearing under this paragraph, the Corporation has the burden of proof on the issue of adequate protection.

[(E) QUALIFIED FINANCIAL CONTRACTS.—No credit or debt obtained or issued by a bridge financial company may contain terms that impair the rights of a counterparty to a qualified financial contract upon a default by the bridge financial company, other than the priority of such counterparty's unsecured claim (after the exercise of rights) relative to the priority of the bridge financial company's obli-

gations in respect of such credit or debt, unless such counterparty consents in writing to any such impairment.

[(17) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

[(i) SHARING RECORDS.—If the Corporation has been appointed as receiver for a covered financial company, other Federal regulators shall make all records relating to the covered financial company available to the Corporation, which may be used by the Corporation in any manner that the Corporation determines to be appropriate.

[(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

[(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of the covered financial company, or any other person employed by or providing services to a covered financial company, shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

[(2) SCHEDULING.—The court shall expedite the consideration of any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

[(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

[(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver for any covered financial company, and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

[(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act, as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company, and any foreign financial authority were the foreign banking authority; and

[(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

[(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

[(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

[(1) IN GENERAL.—Except as specifically provided in this section, and notwithstanding any other provision of law, the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

[(A) in the case of any covered financial company or bridge financial company that is a stockbroker, but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of the Bankruptcy Code, in respect of the distribution to any customer of all customer name security and customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

[(B) in the case of any covered financial company or bridge financial company that is a commodity broker, apply the provisions of subchapter IV of chapter 7 the Bankruptcy Code, in respect of the distribution to any customer of all customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

[(2) DEFINITIONS.—For purposes of this subsection—

[(A) the terms "customer", "customer name security", and "customer property and member property" have the same meanings as in sections 741 and 761 of title 11, United States Code; and

[(B) the terms "commodity broker" and "stockbroker" have the same meanings as in section 101 of the Bankruptcy Code.

[(n) ORDERLY LIQUIDATION FUND.—

[(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate fund to be known as the "Orderly Liquidation Fund", which shall be available to the Corporation to carry out the authorities contained in this title, for the cost of actions authorized by this title, including the orderly liquidation of covered financial companies, payment of administrative expenses, the payment of principal and interest by the Corporation on obligations issued under paragraph (5), and the exercise of the authorities of the Corporation under this title.

[(2) PROCEEDS.—Amounts received by the Corporation, including assessments received under subsection (o), proceeds of obligations issued under paragraph (5), interest and other earnings from investments, and repayments to the Corporation

by covered financial companies, shall be deposited into the Fund.

[(3) MANAGEMENT.—The Corporation shall manage the Fund in accordance with this subsection and the policies and procedures established under section 203(d).

[(4) INVESTMENTS.—At the request of the Corporation, the Secretary may invest such portion of amounts held in the Fund that are not, in the judgment of the Corporation, required to meet the current needs of the Corporation, in obligations of the United States having suitable maturities, as determined by the Corporation. The interest on and the proceeds from the sale or redemption of such obligations shall be credited to the Fund.

[(5) AUTHORITY TO ISSUE OBLIGATIONS.—

[(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—Upon appointment by the Secretary of the Corporation as receiver for a covered financial company, the Corporation is authorized to issue obligations to the Secretary.

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

[(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus an interest rate surcharge to be determined by the Secretary, which shall be greater than the difference between—

[(i) the current average rate on an index of corporate obligations of comparable maturity; and

[(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.

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

[(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

[(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of

such obligations outstanding under this subsection for each covered financial company would exceed—

[(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

[(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

[(7) RULEMAKING.—The Corporation and the Secretary shall jointly, in consultation with the Council, prescribe regulations governing the calculation of the maximum obligation limitation defined in this paragraph.

[(8) RULE OF CONSTRUCTION.—

[(A) IN GENERAL.—Nothing in this section shall be construed to affect the authority of the Corporation under subsection (a) or (b) of section 14 or section 15(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1824, 1825(c)(5)), the management of the Deposit Insurance Fund by the Corporation, or the resolution of insured depository institutions, provided that—

[(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

[(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

[(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

[(B) VALUATION.—For purposes of determining the amount of obligations under this subsection—

[(i) the Corporation shall include as an obligation any contingent liability of the Corporation pursuant to this title; and

[(ii) the Corporation shall value any contingent liability at its expected cost to the Corporation.

[(9) ORDERLY LIQUIDATION AND REPAYMENT PLANS.—

[(A) ORDERLY LIQUIDATION PLAN.—Amounts in the Fund shall be available to the Corporation with regard to a covered financial company for which the Corporation is appointed receiver after the Corporation has developed an orderly liquidation plan that is acceptable to the Secretary with regard to such covered financial company, including the provision and use of funds, including taking any actions specified under section 204(d) and subsection (h)(2)(G)(iv) and (h)(9) of this section, and payments to third parties. The orderly liquidation plan shall take into

account actions to avoid or mitigate potential adverse effects on low income, minority, or underserved communities affected by the failure of the covered financial company, and shall provide for coordination with the primary financial regulatory agencies, as appropriate, to ensure that such actions are taken. The Corporation may, at any time, amend any orderly liquidation plan approved by the Secretary with the concurrence of the Secretary.

[(B) MANDATORY REPAYMENT PLAN.—

[(i) IN GENERAL.—No amount authorized under paragraph (6)(B) may be provided by the Secretary to the Corporation under paragraph (5), unless an agreement is in effect between the Secretary and the Corporation that—

[(I) provides a specific plan and schedule to achieve the repayment of the outstanding amount of any borrowing under paragraph (5); and

[(II) demonstrates that income to the Corporation from the liquidated assets of the covered financial company and assessments under subsection (o) will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance within the time provided in subsection (o)(1)(B).

[(ii) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary and the Corporation shall—

[(I) consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the terms of any repayment schedule agreement; and

[(II) submit a copy of the repayment schedule agreement to the Committees described in subclause (I) before the end of the 30-day period beginning on the date on which any amount is provided by the Secretary to the Corporation under paragraph (5).

[(10) IMPLEMENTATION EXPENSES.—

[(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

[(B) REQUESTS FOR REIMBURSEMENT.—The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

[(C) DEFINITION.—As used in this paragraph, the term "implementation expenses"—

[(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

[(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and reg-

ulations and other planning activities of the Corporation consistent with carrying out this title.

[(o) ASSESSMENTS.—

[(1) RISK-BASED ASSESSMENTS.—

[(A) ELIGIBLE FINANCIAL COMPANIES DEFINED.—For purposes of this subsection, the term "eligible financial company" means any bank holding company with total consolidated assets equal to or greater than $50,000,000,000 and any nonbank financial company supervised by the Board of Governors.

[(B) ASSESSMENTS.—The Corporation shall charge one or more risk-based assessments in accordance with the provisions of subparagraph (D), if such assessments are necessary to pay in full the obligations issued by the Corporation to the Secretary under this title within 60 months of the date of issuance of such obligations.

[(C) EXTENSIONS AUTHORIZED.—The Corporation may, with the approval of the Secretary, extend the time period under subparagraph (B), if the Corporation determines that an extension is necessary to avoid a serious adverse effect on the financial system of the United States.

[(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (B), the Corporation shall—

[(i) impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

[(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

[(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

[(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (B), after taking into account the considerations set forth in paragraph (4), impose assessments on—

[(I) eligible financial companies; and

[(II) financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies.

[(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (D)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

[(2) GRADUATED ASSESSMENT RATE.—The Corporation shall impose assessments on a graduated basis, with financial companies having greater assets and risk being assessed at a higher rate.

[(3) NOTIFICATION AND PAYMENT.—The Corporation shall notify each financial company of that company's assessment under this subsection. Any financial company subject to assessment under this subsection shall pay such assessment in accordance with the regulations prescribed pursuant to paragraph (6).

[(4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under paragraph (1)(D)(ii), the Corporation shall use a risk matrix. The Council shall make a recommendation to the Corporation on the risk matrix to be used in imposing such assessments, and the Corporation shall take into account any such recommendation in the establishment of the risk matrix to be used to impose such assessments. In recommending or establishing such risk matrix, the Council and the Corporation, respectively, shall take into account—

[(A) economic conditions generally affecting financial companies so as to allow assessments to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

[(B) any assessments imposed on a financial company or an affiliate of a financial company that—

[(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

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

[(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1782(c)(1)(A)(i)); or

[(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation, or other State insolvency proceeding with respect to 1 or more insurance companies;

[(C) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the orderly liquidation of a financial company under this title, including—

[(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

[(ii) the activities of the financial company and its affiliates;

[(iii) the relevant market share of the financial company and its affiliates;

[(iv) the extent to which the financial company is leveraged;

[(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

[(vi) the amount, maturity, volatility, and stability of the company's financial obligations to, and relationship with, other financial companies;

[(vii) the amount, maturity, volatility, and stability of the liabilities of the company, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company's risk-based capital;

[(viii) the stability and variety of the company's sources of funding;

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

[(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and

[(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance sheet and off-balance sheet liabilities, of the financial company and its affiliates;

[(D) any risks presented by the financial company during the 10-year period immediately prior to the appointment of the Corporation as receiver for the covered financial company that contributed to the failure of the covered financial company; and

[(E) such other risk-related factors as the Corporation, or the Council, as applicable, may determine to be appropriate.

[(5) COLLECTION OF INFORMATION.—The Corporation may impose on covered financial companies such collection of information requirements as the Corporation deems necessary to carry out this subsection after the appointment of the Corporation as receiver under this title.

[(6) RULEMAKING.—

[(A) IN GENERAL.—The Corporation shall prescribe regulations to carry out this subsection. The Corporation shall consult with the Secretary in the development and finalization of such regulations.

[(B) EQUITABLE TREATMENT.—The regulations prescribed under subparagraph (A) shall take into account the differences in risks posed to the financial stability of the United States by financial companies, the differences in the liability structures of financial companies, and the different bases for other assessments that such financial companies may be required to pay, to ensure that assessed financial companies are treated equitably and that assessments under this subsection reflect such differences.

[(p) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

[(1) IN GENERAL.—No provision described in paragraph (2) shall be enforceable against or impose any liability on any per-

son, as such enforcement or liability shall be contrary to public policy.

[(2) PROHIBITED PROVISIONS.—A provision described in this paragraph is any term contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

[(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire;

[(B) prohibits any person from offering to acquire or acquiring; or

[(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any covered financial company, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under this title.

[(q) OTHER EXEMPTIONS.—

[(1) IN GENERAL.—When acting as a receiver under this title—

[(A) the Corporation, including its franchise, its capital, reserves and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed;

[(B) no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation; and

[(C) the Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due; and

[(D) the Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by the covered financial company, or persons acting on behalf of the covered financial company, prior to the appointment of the Corporation as receiver.

[(2) LIMITATION.—Paragraph (1) shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

[(r) CERTAIN SALES OF ASSETS PROHIBITED.—

[(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, COVERED FINANCIAL COMPANIES.—The Corporation shall prescribe regulations which, at a minimum,

shall prohibit the sale of assets of a covered financial company by the Corporation to—

[(A) any person who—

[(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations, the aggregate amount of which exceeds $1,000,000, to such covered financial company;

[(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

[(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any covered financial company;

[(B) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or

[(C) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company.

[(2) CONVICTED DEBTORS.—Except as provided in paragraph (3), a person may not purchase any asset of such institution from the receiver, if that person—

[(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit such an offense, affecting any covered financial company; and

[(B) is in default on any loan or other extension of credit from such covered financial company which, if not paid, will cause substantial loss to the Fund or the Corporation.

[(3) SETTLEMENT OF CLAIMS.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any covered financial company to any person, if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of 1 or more claims that have been, or could have been, asserted by the Corporation against the person.

[(4) DEFINITION OF DEFAULT.—For purposes of this subsection, the term "default" means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

[(s) RECOUPMENT OF COMPENSATION FROM SENIOR EXECUTIVES AND DIRECTORS.—

[(1) IN GENERAL.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

[(2) COST CONSIDERATIONS.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

[(3) RULEMAKING.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term "compensation" to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

[SEC. 211. MISCELLANEOUS PROVISIONS.

[(a) CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING AGENT.—Section 1032(1) of title 18, United States Code, is amended by inserting "the Federal Deposit Insurance Corporation acting as receiver for a covered financial company, in accordance with title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act," before "or the National Credit".

[(b) CONFORMING AMENDMENT.—Section 1032 of title 18, United States Code, is amended in the section heading, by striking "OF FINANCIAL INSTITUTION".

[(c) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting "section 210(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d))," after "section 11(e) of the Federal Deposit Insurance Act,".

[(d) FDIC INSPECTOR GENERAL REVIEWS.—

[(1) SCOPE.—The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing—

[(A) a description of actions taken by the Corporation as receiver;

[(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

[(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 203(d) and orderly liquidation plan under section 210(n)(14);

[(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

[(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

[(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Cor-

poration shall conduct the audit and investigation described in paragraph (1).

[(3) REPORTS AND TESTIMONY.—The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

[(4) FUNDING.—

[(A) INITIAL FUNDING.—The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

[(B) ADDITIONAL FUNDING.—If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

[(5) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

[(e) TREASURY INSPECTOR GENERAL REVIEWS.—

[(1) SCOPE.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this title, including collecting and summarizing—

[(A) a description of actions taken by the Secretary under this title;

[(B) an analysis of the approval by the Secretary of the policies and procedures of the Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

[(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

[(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

[(3) REPORTS AND TESTIMONY.—The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

[(4) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 210 are fully redeemed.

[(f) PRIMARY FINANCIAL REGULATORY AGENCY INSPECTOR GENERAL REVIEWS.—

[(1) SCOPE.—Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 165, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

[(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

[(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

[(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

[(D) recommend appropriate administrative or legislative action.

[(2) REPORTS AND TESTIMONY.—Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

[SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

[(a) NO OTHER FUNDING.—Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

[(b) LIMIT ON GOVERNMENTAL ACTIONS.—No governmental entity may take any action to circumvent the purposes of this title.

[(c) CONFLICT OF INTEREST.—In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

[SEC. 213. BAN ON CERTAIN ACTIVITIES BY SENIOR EXECUTIVES AND DIRECTORS.

[(a) PROHIBITION AUTHORITY.—The Board of Governors or, if the covered financial company was not supervised by the Board of Gov-

ernors, the Corporation, may exercise the authority provided by this section.

[(b) AUTHORITY TO ISSUE ORDER.—The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

[(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

[(A) violated—

[(i) any law or regulation;

[(ii) any cease-and-desist order which has become final;

[(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

[(iv) any written agreement between such company and such agency;

[(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

[(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

[(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

[(3) such violation, practice, or breach—

[(A) involves personal dishonesty on the part of such senior executive or director; or

[(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

[(c) AUTHORIZED ACTIONS.—

[(1) IN GENERAL.—The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

[(2) PROCEDURES.—The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

[(d) REGULATIONS.—The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

[SEC. 214. PROHIBITION ON TAXPAYER FUNDING.

[(a) LIQUIDATION REQUIRED.—All financial companies put into receivership under this title shall be liquidated. No taxpayer funds shall be used to prevent the liquidation of any financial company under this title.

[(b) RECOVERY OF FUNDS.—All funds expended in the liquidation of a financial company under this title shall be recovered from the disposition of assets of such financial company, or shall be the responsibility of the financial sector, through assessments.

[(c) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear no losses from the exercise of any authority under this title.

[SEC. 215. STUDY ON SECURED CREDITOR HAIRCUTS.

[(a) STUDY REQUIRED.—The Council shall conduct a study evaluating the importance of maximizing United States taxpayer protections and promoting market discipline with respect to the treatment of fully secured creditors in the utilization of the orderly liquidation authority authorized by this Act. In carrying out such study, the Council shall—

[(1) not be prejudicial to current or past laws or regulations with respect to secured creditor treatment in a resolution process;

[(2) study the similarities and differences between the resolution mechanisms authorized by the Bankruptcy Code, the Federal Deposit Insurance Corporation Improvement Act of 1991, and the orderly liquidation authority authorized by this Act;

[(3) determine how various secured creditors are treated in such resolution mechanisms and examine how a haircut (of various degrees) on secured creditors could improve market discipline and protect taxpayers;

[(4) compare the benefits and dynamics of prudent lending practices by depository institutions in secured loans for consumers and small businesses to the lending practices of secured creditors to large, interconnected financial firms;

[(5) consider whether credit differs according to different types of collateral and different terms and timing of the extension of credit; amd

[(6) include an examination of stakeholders who were unsecured or under-collateralized and seek collateral when a firm is failing, and the impact that such behavior has on financial stability and an orderly resolution that protects taxpayers if the firm fails.

[(b) REPORT.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Council shall issue a report to the Congress containing all findings and conclusions made by the Council in carrying out the study required under subsection (a).

[SEC. 216. STUDY ON BANKRUPTCY PROCESS FOR FINANCIAL AND NONBANK FINANCIAL INSTITUTIONS.

[(a) STUDY.—

[(1) IN GENERAL.—Upon enactment of this Act, the Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding the resolution of financial companies under the Bankruptcy Code, under chapter 7 or 11 thereof.

[(2) ISSUES TO BE STUDIED.—Issues to be studied under this section include—

[(A) the effectiveness of chapter 7 and chapter 11 of the Bankruptcy Code in facilitating the orderly resolution or reorganization of systemic financial companies;

[(B) whether a special financial resolution court or panel of special masters or judges should be established to oversee cases involving financial companies to provide for the resolution of such companies under the Bankruptcy Code, in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

[(C) whether amendments to the Bankruptcy Code should be adopted to enhance the ability of the Code to resolve financial companies in a manner that minimizes adverse impacts on financial markets without creating moral hazard;

[(D) whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to address the manner in which qualified financial contracts of financial companies are treated; and

[(E) the implications, challenges, and benefits to creating a new chapter or subchapter of the Bankruptcy Code to deal with financial companies.

[(b) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and in each successive year until the fifth year after the date of enactment of this Act, the Administrative Office of the United States courts shall submit to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).

[SEC. 217. STUDY ON INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR NONBANK FINANCIAL INSTITUTIONS.

[(a) STUDY.—

[(1) IN GENERAL.—The Board of Governors, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding international coordination relating to the resolution of systemic financial companies under the United States Bankruptcy Code and applicable foreign law.

[(2) ISSUES TO BE STUDIED.—With respect to the bankruptcy process for financial companies, issues to be studied under this section include—

[(A) the extent to which international coordination currently exists;

[(B) current mechanisms and structures for facilitating international cooperation;

[(C) barriers to effective international coordination; and

[(D) ways to increase and make more effective international coordination of the resolution of financial companies, so as to minimize the impact on the financial system without creating moral hazard.

[(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Administrative office of the United States Courts shall submit to the Committees on Banking, Hous-

ing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).]

TITLE III—TRANSFER OF POWERS TO THE COMPTROLLER OF THE CURRENCY, THE CORPORATION, AND THE BOARD OF GOVERNORS

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Subtitle B—Transitional Provisions

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SEC. 327. IMPLEMENTATION PLAN AND REPORTS.

(a) PLAN SUBMISSION.—Within 180 days of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, shall jointly submit a plan to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors detailing the steps the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision will take to implement the provisions of sections 301 through 326, and the provisions of the amendments made by such sections.

(b) INSPECTORS GENERAL REVIEW OF THE PLAN.—Within 60 days of receiving the plan required under subsection (a), the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives detailing whether the plan conforms with the provisions of sections 301 through 326, and the provisions of the amendments made by such sections, including—

(1) whether the plan sufficiently takes into consideration the orderly transfer of personnel;

(2) whether the plan describes procedures and safeguards to ensure that the Office of Thrift Supervision employees are not unfairly disadvantaged relative to employees of the Office of the Comptroller of the Currency and the Corporation;

(3) whether the plan sufficiently takes into consideration the orderly transfer of authority and responsibilities;

(4) whether the plan sufficiently takes into consideration the effective transfer of funds;

(5) whether the plan sufficiently takes [in] *into* consideration the orderly transfer of property; and

(6) any additional recommendations for an orderly and effective process.

(c) IMPLEMENTATION REPORTS.—Not later than 6 months after the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives receives the report required under subsection (b), and every 6 months thereafter until all aspects of the plan have been implemented, the Inspectors General of the Department of the Treasury, the Corporation, and the Board of Governors shall jointly provide a written report on the status of the implementation of the plan to the Board of Governors, the Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and shall submit a copy to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

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SEC. 333. ENHANCED ACCESS TO INFORMATION FOR DEPOSIT INSURANCE PURPOSES.

(a) Section 7(a)(2)(B) of the Federal Deposit Insurance Act is amended by striking "agreement" and inserting "consultation".

(b) Section 7(b)(1)(E) of the Federal Deposit Insurance Act is amended—

(1) in clause (i), by striking "such as" and inserting "including"; and

(2) in clause (iii), by striking "Corporation" *the second place that term appears* and inserting "Corporation, except as provided in section 7(a)(2)(B)".

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Subtitle D—Other Matters

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SEC. 342. OFFICE OF MINORITY AND WOMEN INCLUSION.

(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 6 months after the date of enactment of this Act, each agency shall establish an Office of Minority and Women Inclusion that shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities.

(B) [BUREAU] *AGENCY*.—The [Bureau] *Agency* shall establish an Office of Minority and Women Inclusion not later than 6 months after the designated transfer date established under section 1062.

(2) TRANSFER OF RESPONSIBILITIES.—Each agency that, on the day before the date of enactment of this Act, assigned the responsibilities described in paragraph (1) (or comparable responsibilities) to another office of the agency shall ensure that such responsibilities are transferred to the Office.

(3) DUTIES WITH RESPECT TO CIVIL RIGHTS LAWS.—The responsibilities described in paragraph (1) do not include enforcement of statutes, regulations, or executive orders pertaining to

civil rights, except each Director shall coordinate with the agency administrator, or the designee of the agency administrator, regarding the design and implementation of any remedies resulting from violations of such statutes, regulations, or executive orders.

(b) DIRECTOR.—

(1) IN GENERAL.—The Director of each Office shall be appointed by, and shall report to, the agency administrator. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, United States Code, or an equivalent designation.

(2) DUTIES.—Each Director shall develop standards for—

(A) equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency;

(B) increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to such businesses; and

(C) assessing the diversity policies and practices of entities regulated by the agency.

(3) OTHER DUTIES.—Each Director shall advise the agency administrator on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses.

(4) RULE OF CONSTRUCTION.—Nothing in paragraph (2)(C) may be construed to mandate any requirement on or otherwise affect the lending policies and practices of any regulated entity, or to require any specific action based on the findings of the assessment.

(c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.—

(1) IN GENERAL.—The Director of each Office shall develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts.

(2) CONTRACTS.—The procedures established by each agency for review and evaluation of contract proposals and for hiring service providers shall include, to the extent consistent with applicable law, a component that gives consideration to the diversity of the applicant. Such procedure shall include a written statement, in a form and with such content as the Director shall prescribe, that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

(3) TERMINATION.—

(A) DETERMINATION.—The standards and procedures developed and implemented under this subsection shall include a procedure for the Director to make a determination whether an agency contractor, and, as applicable, a subcontractor has failed to make a good faith effort to include minorities and women in their workforce.

(B) EFFECT OF DETERMINATION.—

(i) RECOMMENDATION TO AGENCY ADMINISTRATOR.—Upon a determination described in subparagraph (A), the Director shall make a recommendation to the agency administrator that the contract be terminated.

(ii) ACTION BY AGENCY ADMINISTRATOR.—Upon receipt of a recommendation under clause (i), the agency administrator may—

(I) terminate the contract;

(II) make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor; or

(III) take other appropriate action.

(d) APPLICABILITY.—This section shall apply to all contracts of an agency for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. The contracts referred to in this subsection include all contracts for all business and activities of an agency, at all levels, including contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of the assets of the agency, the making of equity investments by the agency, and the implementation by the agency of programs to address economic recovery.

(e) REPORTS.—Each Office shall submit to Congress an annual report regarding the actions taken by the agency and the Office pursuant to this section, which shall include—

(1) a statement of the total amounts paid by the agency to contractors since the previous report;

(2) the percentage of the amounts described in paragraph (1) that were paid to contractors described in subsection (c)(1);

(3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs;

(4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and

(5) any other information, findings, conclusions, and recommendations for legislative or agency action, as the Director determines appropriate.

(f) DIVERSITY IN AGENCY WORKFORCE.—Each agency shall take affirmative steps to seek diversity in the workforce of the agency at all levels of the agency in a manner consistent with applicable law. Such steps shall include—

(1) recruiting at historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities;

(3) placing employment advertisements in newspapers and magazines oriented toward minorities and women;

(4) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;

(5) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and

(6) any other mass media communications that the Office determines necessary.

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

(1) AGENCY.—The term "agency" means—

(A) the Departmental Offices of the Department of the Treasury;

(B) the Corporation;

(C) the Federal Housing Finance Agency;

(D) each of the Federal reserve banks;

(E) the Board;

(F) the National Credit Union Administration;

(G) the Office of the Comptroller of the Currency;

(H) the Commission; and

(I) the [Bureau] *Agency*.

(2) AGENCY ADMINISTRATOR.—The term "agency administrator" means the head of an agency.

(3) MINORITY.—The term "minority" has the same meaning as in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note).

(4) MINORITY-OWNED BUSINESS.—The term "minority-owned business" has the same meaning as in section 21A(r)(4)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)(A)), as in effect on the day before the transfer date.

(5) OFFICE.—The term "Office" means the Office of Minority and Women Inclusion established by an agency under subsection (a).

(6) WOMEN-OWNED BUSINESS.—The term "women-owned business" has the meaning given the term "women's business" in section 21A(r)(4)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)(B)), as in effect on the day before the transfer date.

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Subtitle E—Technical and Conforming Amendments

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SEC. 369. HOME OWNERS' LOAN ACT.

The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended—

(1) [Omitted—Amendatory]

* * * * * * *

(5) in section 5 (12 U.S.C. 1464)—

(A) in subsection (a), by striking "Director", each place such term appears and inserting "Comptroller of the Currency";

(B) in subsection (b), by striking "Director", each place such term appears and inserting "Comptroller of the Currency";

(C) in subsection (c)—

(i) in paragraph (5)—

(I) in subparagraph (A), by striking "Director" and inserting "appropriate Federal banking agency"; and

(II) in subparagraph (B)—

(aa) by striking "The Director" and inserting "The appropriate Federal banking agency"; and

(bb) by striking "the Director" and inserting "the appropriate Federal banking agency";

(D) in subsection (d)—

(i) in paragraph (1)—

(I) in subparagraph (A)—

(aa) in the first sentence, by striking "Director" and inserting "appropriate Federal banking agency";

(bb) in the second sentence—

(AA) by striking "Director's own name and through the Director's own attorneys" and inserting "name of the appropriate Federal banking agency and through the attorneys of the appropriate Federal banking agency"; and

(BB) by striking "Director" each place that term appears and inserting "appropriate Federal banking agency"; and

(cc) in the third sentence, by striking "Director" each place that term appears and inserting "Comptroller";

(II) in subparagraph (B)—

(aa) in clauses (i) through (iv), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

[(III)**]** *(bb)* in clause (v)—

[(aa)**]** *(AA)* in the matter preceding subclause (I), by striking "Director" and inserting "appropriate Federal banking agency";

[(bb)**]** *(BB)* in subclause (II), by striking "subpenas" and inserting "subpoenas"; and

[(cc)**]** *(CC)* in the matter following subclause (II), by striking "subpena" and inserting "subpoena";

[(IV)**]** *(cc)* in clause (vi)—

[(aa)**]** *(AA)* in the first sentence, by striking "Director" and inserting "appropriate Federal banking agency"; and

[(bb)] *(BB)* in the second sentence, by striking "Director" and inserting "Comptroller";

[(V)] *(dd)* in clause (vii)—

[(aa)] *(AA)* in the first sentence, by striking "subpena" and inserting "subpoena";

[(bb)] *(BB)* in the second sentence, by striking "subpenaed" and inserting "subpoenaed"; and

[(cc)] *(CC)* in the third sentence, by striking "Director" and inserting "appropriate Federal banking agency";

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) by striking "Director of the Office of Thrift Supervision" and inserting "appropriate Federal banking agency";

(bb) by striking "any insured savings association" and inserting "an insured savings association"; and

(cc) by striking "Director determines, in the Director's discretion" and inserting "appropriate Federal banking agency determines, in the discretion of the appropriate Federal banking agency";

(II) in subparagraph (B), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(III) in subparagraphs (C) and (D), by striking "Director" and inserting "appropriate Federal banking agency";

(IV) in subparagraph (E)—

(aa) in clause (ii)—

(AA) in the clause heading, by striking "or rtc"; and

(BB) by striking "or the Resolution Trust Corporation, as appropriate," each place that term appears; and

(bb) by striking "Director" each place that term appears and inserting "appropriate Federal banking agency"; and

(iii) in paragraph (3)—

(I) in subparagraph (A), by striking "Director" each place that term appears and inserting "Comptroller"; and

(II) in subparagraph (B)—

(aa) in the subparagraph heading, by striking "or rtc";

(bb) by striking "Corporation or the Resolution Trust"; and

(cc) by striking "Director" and inserting "Comptroller";

(iv) in paragraph (4), by striking "Director" and inserting "appropriate Federal banking agency";

(v) in paragraph (6)—

(I) in subparagraph (A), by striking "Director" and inserting "Comptroller"; and

(II) in subparagraphs (B) and (C), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(vi) in paragraph (7)—

(I) in subparagraphs (A), (B), and (D), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(II) in subparagraph (C), by striking "Director" and inserting "Federal Deposit Insurance Corporation or the Comptroller, as appropriate,"; and

(III) by striking subparagraph (E) and inserting the following:

"(E) ADMINISTRATION BY THE COMPTROLLER AND THE CORPORATION.—The Comptroller may issue such regulations, and the appropriate Federal banking agency may issue such orders, including those issued pursuant to section 8 of the Federal Deposit Insurance Act, as may be necessary to administer and carry out this paragraph and to prevent evasion of this paragraph.";

(E) in subsection (e)(2), strike "Director" and insert "Comptroller";

(F) in subsection (i)—

(i) by striking "Director", each place such term appears, and inserting "Comptroller";

(ii) in paragraph (2), in the heading, by striking "**director**" and inserting "Comptroller"; *and*

(iii) in paragraph (5)(A), by striking "of the Currency"**[**; and**]**.

[(iv) except as provided in clauses (i) through (iii), by striking "Director" each place such term appears and inserting "Comptroller";**]**

(G) in subsection (o)—

(i) in paragraph (1), by striking "Director" *each place such term appears* and inserting "Comptroller"; and

(ii) in paragraph (2)(B), by striking "Director's determination" and inserting "determination of the Comptroller";

(H) in subsections (m), (n), (o), and (p), by striking "Director", each place such term appears, and inserting "Comptroller";

(I) in subsection (q)—

(i) in paragraph (6), by striking "of Governors of the Federal Reserve System";

(ii) by striking "Director" each place that term appears and inserting "Board"; and

(iii) by inserting "in consultation with the Comptroller and the Corporation," before "considers";

(J) in subsection (r)(3), by striking "Director" and inserting "Comptroller of the Currency";

(K) in subsection (s)—

(i) in paragraph (1), strike "Director" and insert "Comptroller of the Currency";

(ii) in paragraph (2), strike "Director" and insert "Comptroller of the Currency";

(iii) in paragraph (3), by striking "Director's discretion, the Director" and inserting "discretion of the appropriate Federal banking agency, the appropriate Federal banking agency,";

(iv) in paragraph (4), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency"; and

(v) in paragraph (5)—

(I) by striking "Director", each place such term appears, and inserting "appropriate Federal banking agency"; and

(II) by striking "Director's approval" and inserting "approval of the appropriate Federal banking agency";

(L) in subsection (t)—

(i) in paragraph (1), by striking subparagraph (D);

(ii) by striking paragraph (3) and inserting the following:

"(3) [Repealed].";

(iii) in paragraph (5)—

(I) in subparagraph (B), by striking "Corporation, in its sole discretion" and inserting "appropriate Federal banking agency, in the sole discretion of the appropriate Federal banking agency"; and

(II) by striking subparagraph (D);

(iv) in paragraph (6)—

(I) by striking subparagraph (A) and inserting the following:

"(A) [Reserved].";

(II) in subparagraph (B), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(III) in subparagraph (C)—

(aa) in clause (i), by striking "Director's prior approval" and inserting "prior approval of the appropriate Federal banking agency";

(bb) in clause (ii), by striking "Director's discretion" and inserting "discretion of the appropriate Federal banking agency"; and

(cc) by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(IV) in subparagraph (E), by striking "Director shall" and inserting "appropriate Federal banking agency may"; and

(V) in subparagraph (F), by striking "Director" and all that follows through the end of the subparagraph and inserting "appropriate Federal banking agency under this Act or any other provision of law.";

(v) in paragraph (7), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(vi) by striking paragraph (8) and inserting the following:

"(8) [Repealed].";

(vii) in paragraph (9)—

(I) in subparagraph (A), by striking "Director" and inserting "Comptroller";

(II) in subparagraph (C), by striking "of the Currency"; and

(III) by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(viii) except as provided in clauses (i) through (vii), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(M) in subsection (u), by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(N) in subsection (v)—

(i) in paragraph (2), by striking "Director's determinations" and inserting "determinations of the appropriate Federal banking agency"; and

(ii) by striking "Director" each place that term appears and inserting "appropriate Federal banking agency";

(O) in subsection (w)(1)—

(i) in subparagraph (A)(II), by striking "Director's intention" and inserting "intention of the Comptroller"; and

(ii) in subparagraph (B), by striking "Director's intention" and inserting "intention of the Comptroller"; and

(P) except as provided in subparagraphs (A) through (J), by striking "Director" each place that term appears and inserting "Comptroller";

TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

* * * * * * *

[SEC. 412. COMPTROLLER GENERAL STUDY ON CUSTODY RULE COSTS.

[The Comptroller General of the United States shall—

[(1) conduct a study of—

[(A) the compliance costs associated with the current Securities and Exchange Commission rules 204-2 (17 C.F.R. Parts 275.204-2) and rule 206(4)-2 (17 C.F.R. 275.206(4)-2) under the Investment Advisers Act of 1940 regarding custody of funds or securities of clients by investment advisers; and

[(B) the additional costs if subsection (b)(6) of rule 206(4)-2 (17 C.F.R. 275.206(4)-2(b)(6)) relating to operational independence were eliminated; and

[(2) submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study, not later than 3 years after the date of enactment of this Act.

[SEC. 413. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

[(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, any net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.

[(b) REVIEW AND ADJUSTMENT.—

[(1) INITIAL REVIEW AND ADJUSTMENT.—

[(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term "accredited investor", as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

[(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term "accredited investor", excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

[(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

[(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term "accredited investor", as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

[(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term "accredited investor", as defined in section 230.215 of title 17, Code of Federal

Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.]

SEC. 414. RULE OF CONSTRUCTION RELATING TO THE [COMMODITIES] *COMMODITY* EXCHANGE ACT

The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is further amended by adding at the end the following new section:

"SEC. 224. RULE OF CONSTRUCTION RELATING TO THE COMMODITIES EXCHANGE ACT

"Nothing in this title shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Commodity Futures Trading Commission or any private party, arising under the Commodity Exchange Act (7 U.S.C. 1 et seq.) governing commodity pools, commodity pool operators, or commodity trading advisors.".

[SEC. 415. GAO STUDY AND REPORT ON ACCREDITED INVESTORS.

[The Comptroller General of the United States shall conduct a study on the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in private funds, and shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study not later than 3 years after the date of enactment of this Act.

[SEC. 416. GAO STUDY ON SELF-REGULATORY ORGANIZATION FOR PRIVATE FUNDS.

[The Comptroller General of the United States shall—

[(1) conduct a study of the feasibility of forming a self-regulatory organization to oversee private funds; and

[(2) submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of such study, not later than 1 year after the date of enactment of this Act.

[SEC. 417. COMMISSION STUDY AND REPORT ON SHORT SELLING.

[(a) STUDIES.— The Division of Risk, Strategy, and Financial Innovation of the Commission shall conduct—

[(1) a study, taking into account current scholarship, on the state of short selling on national securities exchanges and in the over-the-counter markets, with particular attention to the impact of recent rule changes and the incidence of—

[(A) the failure to deliver shares sold short; or

[(B) delivery of shares on the fourth day following the short sale transaction; and

[(2) a study of—

[(A) the feasibility, benefits, and costs of requiring reporting publicly, in real time short sale positions of publicly listed securities, or, in the alternative, reporting such short positions in real time only to the Commission and the Financial Industry Regulatory Authority; and

[(B) the feasibility, benefits, and costs of conducting a voluntary pilot program in which public companies will agree to have all trades of their shares marked "short",

"market maker short", "buy", "buy-to-cover", or "long", and reported in real time through the Consolidated Tape.

[(b) REPORTS.— The Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.—

[(1) on the results of the study required under subsection (a)(1), including recommendations for market improvements, not later than 2 years after the date of enactment of this Act; and

[(2) on the results of the study required under subsection (a)(2), not later than 1 year after the date of enactment of this Act.]

* * * * * * *

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

* * * * * * *

[SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT OF 1956.

[(a) MORATORIUM.—

[(1) DEFINITIONS.—In this subsection—

[(A) the term "credit card bank" means an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

[(B) the term "industrial bank" means an institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

[(C) the term "trust bank" means an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)).

[(2) MORATORIUM ON PROVISION OF DEPOSIT INSURANCE.— The Corporation may not approve an application for deposit insurance under section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) that is received after November 23, 2009, for an industrial bank, a credit card bank, or a trust bank that is directly or indirectly owned or controlled by a commercial firm.

[(3) CHANGE IN CONTROL.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the appropriate Federal banking agency shall disapprove a change in control, as provided in section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), of an industrial bank, a credit card bank, or a trust bank if the change in control would result in direct or indirect control of the industrial bank, credit card bank, or trust bank by a commercial firm.

[(B) EXCEPTIONS.—Subparagraph (A) shall not apply to a change in control of an industrial bank, credit card bank, or trust bank—

[(i) that—

[(I) is in danger of default, as determined by the appropriate Federal banking agency;

[(II) results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency; or

[(III) results from an acquisition of voting shares of a publicly traded company that controls an industrial bank, credit card bank, or trust bank, if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the company; and

[(ii) that has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or State law, including section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

[(4) SUNSET.—This subsection shall cease to have effect 3 years after the date of enactment of this Act.

[(b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY ACT OF 1956.—

[(1) STUDY REQUIRED.—The Comptroller General of the United States shall carry out a study to determine whether it is necessary, in order to strengthen the safety and soundness of institutions or the stability of the financial system, to eliminate the exceptions under section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) for institutions described in—

[(A) section 2(a)(5)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(E));

[(B) section 2(a)(5)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(F));

[(C) section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

[(D) section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

[(E) section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

[(F) section 2(c)(2)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(B)).

[(2) CONTENT OF STUDY.—

[(A) IN GENERAL.—The study required under paragraph (1), with respect to the institutions referenced in each of subparagraphs (A) through (E) of paragraph (1), shall, to the extent feasible be based on information provided to the Comptroller General by the appropriate Federal or State regulator, and shall—

[(i) identify the types and number of institutions excepted from section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) under each of the subparagraphs described in subparagraphs (A) through (E) of paragraph (1);

[(ii) generally describe the size and geographic locations of the institutions described in clause (i);

[(iii) determine the extent to which the institutions described in clause (i) are held by holding companies that are commercial firms;

[(iv) determine whether the institutions described in clause (i) have any affiliates that are commercial firms;

[(v) identify the Federal banking agency responsible for the supervision of the institutions described in clause (i) on and after the transfer date;

[(vi) determine the adequacy of the Federal bank regulatory framework applicable to each category of institution described in clause (i), including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between an institution, the holding company of the institution, and any other affiliate of the institution; and

[(vii) evaluate the potential consequences of subjecting the institutions described in clause (i) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe and sound operation of each category of institution, and the impact on the types of activities in which such institutions, and the holding companies of such institutions, may engage.

[(B) SAVINGS ASSOCIATIONS.—With respect to institutions described in paragraph (1)(F), the study required under paragraph (1) shall—

[(i) determine the adequacy of the Federal bank regulatory framework applicable to such institutions, including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between an institution, the holding company of the institution, and any other affiliate of the institution; and

[(ii) evaluate the potential consequences of subjecting the institutions described in paragraph (1)(F) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability and allocation of credit, the stability of the financial system and the economy, the safe and sound operation of such institutions, and the impact on the types of activities in which such institutions, and the holding companies of such institutions, may engage.

[(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House

of Representatives a report on the study required under paragraph (1).]

* * * * * * *

SEC. 610. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

(a) NATIONAL BANKS.—Section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)) is amended—

(1) in paragraph (1), by striking "shall include" and all that follows through the end of the paragraph and inserting the following:" shall include—

"(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

"(B) to the extent specified by the Comptroller of the Currency, any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

"(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;";

(2) in paragraph (2), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(3) the term 'derivative transaction' includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.".

[(b) SAVINGS ASSOCIATIONS.—Section 5(u)(3) of the Home Owners' Loan Act (12 U.S.C. 1464(u)(3)) is amended by striking "Director" each place that term appears and inserting "Comptroller of the Currency".]

[(c)] *(b)* EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.

* * * * * * *

[SEC. 618. SECURITIES HOLDING COMPANIES.

[(a) DEFINITIONS.—In this section—

[(1) the term "associated person of a securities holding company" means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;

[(2) the term "foreign bank" has the same meaning as in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7));

[(3) the term "insured bank" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

[(4) the term "securities holding company"—

[(A) means—

[(i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and

[(ii) the associated persons of a person described in clause (i); and

[(B) does not include a person that is—

[(i) a nonbank financial company supervised by the Board under title I;

[(ii) an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or a savings association;

[(iii) an affiliate of an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or an affiliate of a savings association;

[(iv) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a));

[(v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

[(vi) subject to comprehensive consolidated supervision by a foreign regulator;

[(5) the term "supervised securities holding company" means a securities holding company that is supervised by the Board of Governors under this section; and

[(6) the terms "affiliate", "bank", "bank holding company", "company", "control", "savings association", and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

[(b) SUPERVISION OF A SECURITIES HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

[(1) IN GENERAL.—A securities holding company that is required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision may register with the Board of Governors under paragraph (2) to become a supervised securities holding company. Any securities holding company filing such a registration shall be supervised in accordance with this section, and shall comply with the rules and orders prescribed by the Board of Governors applicable to supervised securities holding companies.

[(2) REGISTRATION AS A SUPERVISED SECURITIES HOLDING COMPANY.—

[(A) REGISTRATION.—A securities holding company that elects to be subject to comprehensive consolidated supervision shall register by filing with the Board of Governors such information and documents as the Board of Governors, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

[(B) EFFECTIVE DATE.—A securities holding company that registers under subparagraph (A) shall be deemed to be a supervised securities holding company, effective on

the date that is 45 days after the date of receipt of the registration information and documents under subparagraph (A) by the Board of Governors, or within such shorter period as the Board of Governors, by rule or order, may determine.

[(c) SUPERVISION OF SECURITIES HOLDING COMPANIES.—

[(1) RECORDKEEPING AND REPORTING.—

[(A) RECORDKEEPING AND REPORTING REQUIRED.—Each supervised securities holding company and each affiliate of a supervised securities holding company shall make and keep for periods determined by the Board of Governors such records, furnish copies of such records, and make such reports, as the Board of Governors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

[(B) FORM AND CONTENTS.—

[(i) IN GENERAL.—Any record or report required to be made, furnished, or kept under this paragraph shall—

[(I) be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board of Governors may require; and

[(II) be provided promptly to the Board of Governors at any time, upon request by the Board of Governors.

[(ii) CONTENTS.—Records and reports required to be made, furnished, or kept under this paragraph may include—

[(I) a balance sheet or income statement of the supervised securities holding company or an affiliate of a supervised securities holding company;

[(II) an assessment of the consolidated capital and liquidity of the supervised securities holding company;

[(III) a report by an independent auditor attesting to the compliance of the supervised securities holding company with the internal risk management and internal control objectives of the supervised securities holding company; and

[(IV) a report concerning the extent to which the supervised securities holding company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

[(2) USE OF EXISTING REPORTS.—

[(A) IN GENERAL.—The Board of Governors shall, to the fullest extent possible, accept reports in fulfillment of the requirements of this paragraph that a supervised securities holding company or an affiliate of a supervised securities holding company has been required to provide to another regulatory agency or a self-regulatory organization.

[(B) AVAILABILITY.—A supervised securities holding company or an affiliate of a supervised securities holding company shall promptly provide to the Board of Governors, at the request of the Board of Governors, any report described in subparagraph (A), as permitted by law.

[(3) EXAMINATION AUTHORITY.—

[(A) FOCUS OF EXAMINATION AUTHORITY.—The Board of Governors may make examinations of any supervised securities holding company and any affiliate of a supervised securities holding company to carry out this subsection, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

[(B) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Board of Governors shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary or any institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

[(d) CAPITAL AND RISK MANAGEMENT.—

[(1) IN GENERAL.—The Board of Governors shall, by regulation or order, prescribe capital adequacy and other risk management standards for supervised securities holding companies that are appropriate to protect the safety and soundness of the supervised securities holding companies and address the risks posed to financial stability by supervised securities holding companies.

[(2) DIFFERENTIATION.—In imposing standards under this subsection, the Board of Governors may differentiate among supervised securities holding companies on an individual basis, or by category, taking into consideration the requirements under paragraph (3).

[(3) CONTENT.—Any standards imposed on a supervised securities holding company under this subsection shall take into account—

[(A) the differences among types of business activities carried out by the supervised securities holding company;

[(B) the amount and nature of the financial assets of the supervised securities holding company;

[(C) the amount and nature of the liabilities of the supervised securities holding company, including the degree of reliance on short-term funding;

[(D) the extent and nature of the off-balance sheet exposures of the supervised securities holding company;

[(E) the extent and nature of the transactions and relationships of the supervised securities holding company with other financial companies;

[(F) the importance of the supervised securities holding company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the financial system; and

[(G) the nature, scope, and mix of the activities of the supervised securities holding company.

[(4) NOTICE.—A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital requirement.

[(e) OTHER PROVISIONS OF LAW APPLICABLE TO SUPERVISED SECURITIES HOLDING COMPANIES.—

[(1) FEDERAL DEPOSIT INSURANCE ACT.—Subsections (b), (c) through (s), and (u) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

[(2) BANK HOLDING COMPANY ACT OF 1956.—Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

[SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS

[The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

["SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS

["(a) IN GENERAL.—

["(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

["(A) engage in proprietary trading; or

["(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

["(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits with regards

to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

[“(b) STUDY AND RULEMAKING.—

[“(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

[“(A) promote and enhance the safety and soundness of banking entities;

[“(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

[“(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

[“(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

[“(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

[“(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

[“(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

[“(2) RULEMAKING.—

[“(A) IN GENERAL.—Unless otherwise provided in this section, not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

[“(B) COORDINATED RULEMAKING.—

[“(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph shall be issued by—

[“(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

[“(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an agency described in subclause (I), (III), or (IV) is the primary financial regulatory agency);

[“(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

[“(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[“(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

[“(iii) COUNCIL ROLE.—The Chairperson of the Financial Stability Oversight Council shall be responsible for coordination of the regulations issued under this section.

[“(c) EFFECTIVE DATE.—

[“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

[“(A) 12 months after the date of the issuance of final rules under subsection (b); or

[“(B) 2 years after the date of enactment of this section.

[“(2) CONFORMANCE PERIOD FOR DIVESTITURE.—A banking entity or nonbank financial company supervised by the Board shall bring its activities and investments into compliance with the requirements of this section not later than 2 years after the date on which the requirements become effective pursuant to this section or 2 years after the date on which the entity or

company becomes a nonbank financial company supervised by the Board. The Board may, by rule or order, extend this two-year period for not more than one year at a time, if, in the judgment of the Board, such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. The extensions made by the Board under the preceding sentence may not exceed an aggregate of 3 years.

[“(3) EXTENDED TRANSITION FOR ILLIQUID FUNDS.—

[“(A) APPLICATION.—The Board may, upon the application of a banking entity, extend the period during which the banking entity, to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010, may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund.

[“(B) TIME LIMIT ON APPROVAL.—The Board may grant 1 extension under subparagraph (A), which may not exceed 5 years.

[“(4) DIVESTITURE REQUIRED.—Except as otherwise provided in subsection (d)(1)(G), a banking entity may not engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

[“(A) the date on which the contractual obligation to invest in the illiquid fund terminates; and

[“(B) the date on which any extensions granted by the Board under paragraph (3) expire.

[“(5) ADDITIONAL CAPITAL DURING TRANSITION PERIOD.—Notwithstanding paragraph (2), on the date on which the rules are issued under subsection (b)(2), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue rules, as provided in subsection (b)(2), to impose additional capital requirements, and any other restrictions, as appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity.

[“(6) SPECIAL RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2) and (3).

[“(d) PERMITTED ACTIVITIES.—

[“(1) IN GENERAL.—Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as ‘permitted activities’) are permitted:

[“(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof, obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to

the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

[“(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting or market-making-related activities, to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

[“(C) Risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.

[“(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

[“(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), investments designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), or investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of the Internal Revenue Code of 1986 or a similar State historic tax credit program.

[“(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

[“(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

[“(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States.

[“(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner select-

ing or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

[“(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

[“(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

[“(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);

[“(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f);

[“(v) the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;

[“(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

[“(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in the hedge fund or private equity fund, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

[“(viii) the banking entity discloses to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity, and otherwise complies with any additional rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as provided in subsection (b)(2), designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

[“(H) Proprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

[“(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of,

a hedge fund or a private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

[“(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine, by rule, as provided in subsection (b)(2), would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.

[“(2) LIMITATION ON PERMITTED ACTIVITIES.—

[“(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if the transaction, class of transactions, or activity—

[“(i) would involve or result in a material conflict of interest (as such term shall be defined by rule as provided in subsection (b)(2)) between the banking entity and its clients, customers, or counterparties;

[“(ii) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms shall be defined by rule as provided in subsection (b)(2));

[“(iii) would pose a threat to the safety and soundness of such banking entity; or

[“(iv) would pose a threat to the financial stability of the United States.

[“(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

[“(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall, as provided in subsection (b)(2), adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding the activities permitted under this section if the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.

[“(4) DE MINIMIS INVESTMENT.—

[“(A) IN GENERAL.—A banking entity may make and retain an investment in a hedge fund or private equity fund that the banking entity organizes and offers, subject to the limitations and restrictions in subparagraph (B) for the purposes of—

[“(i) establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors; or

[“(ii) making a de minimis investment.

[“(B) LIMITATIONS AND RESTRICTIONS ON INVESTMENTS.—

[“(i) REQUIREMENT TO SEEK OTHER INVESTORS.—A banking entity shall actively seek unaffiliated investors to reduce or dilute the investment of the banking entity to the amount permitted under clause (ii).

[“(ii) LIMITATIONS ON SIZE OF INVESTMENTS.—Notwithstanding any other provision of law, investments by a banking entity in a hedge fund or private equity fund shall—

[“(I) not later than 1 year after the date of establishment of the fund, be reduced through redemption, sale, or dilution to an amount that is not more than 3 percent of the total ownership interests of the fund;

[“(II) be immaterial to the banking entity, as defined, by rule, pursuant to subsection (b)(2), but in no case may the aggregate of all of the interests of the banking entity in all such funds exceed 3 percent of the Tier 1 capital of the banking entity.

[“(iii) CAPITAL.—For purposes of determining compliance with applicable capital standards under paragraph (3), the aggregate amount of the outstanding investments by a banking entity under this paragraph, including retained earnings, shall be deducted from the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.

[“(C) EXTENSION.—Upon an application by a banking entity, the Board may extend the period of time to meet the requirements under subparagraph (B)(ii)(I) for 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and in the public interest.

[“(e) ANTI-EVASION.—

[“(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations, as part of the rulemaking provided for in subsection (b)(2), regarding internal controls and recordkeeping, in order to insure compliance with this section.

[“(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise vio-

lates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this paragraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

[“(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

[“(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), and no affiliate of such entity, may enter into a transaction with the fund, or with any other hedge fund or private equity fund that is controlled by such fund, that would be a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with the hedge fund or private equity fund, as if such banking entity and the affiliate thereof were a member bank and the hedge fund or private equity fund were an affiliate thereof.

[“(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c-1), as if such banking entity were a member bank and such hedge fund or private equity fund were an affiliate thereof.

[“(3) PERMITTED SERVICES.—

[“(A) IN GENERAL.—Notwithstanding paragraph (1), the Board may permit a banking entity to enter into any prime brokerage transaction with any hedge fund or private equity fund in which a hedge fund or private equity fund managed, sponsored, or advised by such banking entity has taken an equity, partnership, or other ownership interest, if—

[“(i) the banking entity is in compliance with each of the limitations set forth in subsection (d)(1)(G) with regard to a hedge fund or private equity fund organized and offered by such banking entity;

[“(ii) the chief executive officer (or equivalent officer) of the banking entity certifies in writing annually (with a duty to update the certification if the information in the certification materially changes) that the conditions specified in subsection (d)(1)(g)(v) are satisfied; and

[“(iii) the Board has determined that such transaction is consistent with the safe and sound operation and condition of the banking entity.

[“(B) TREATMENT OF PRIME BROKERAGE TRANSACTIONS.—For purposes of subparagraph (A), a prime brokerage transaction described in subparagraph (A) shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c-1) as if the counterparty were an affiliate of the banking entity.

[“(4) APPLICATION TO NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall adopt rules, as provided in subsection (b)(2), imposing additional capital charges or other restrictions for nonbank financial companies supervised by the Board to address the risks to and conflicts of interest of banking entities described in paragraphs (1), (2), and (3) of this subsection.

[“(g) RULES OF CONSTRUCTION.—

[“(1) LIMITATION ON CONTRARY AUTHORITY.—Except as provided in this section, notwithstanding any other provision of law, the prohibitions and restrictions under this section shall apply to activities of a banking entity or nonbank financial company supervised by the Board, even if such activities are authorized for a banking entity or nonbank financial company supervised by the Board.

[“(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

[“(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

[“(h) DEFINITIONS.—In this section, the following definitions shall apply:

[“(1) BANKING ENTITY.—The term ‘banking entity’ means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term ‘insured depository institution’ does not include an institution that functions solely in a trust or fiduciary capacity, if—

[“(A) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

[“(B) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

[“(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

[“(D) such institution does not—

[“(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act (12 U.S.C. 248a); or

[“(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

[“(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms ‘hedge fund’ and ‘private equity fund’ mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

[“(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term ‘nonbank financial company supervised by the Board’ means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

[“(4) PROPRIETARY TRADING.—The term ‘proprietary trading’, when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

[“(5) SPONSOR.—The term to ‘sponsor’ a fund means—

[“(A) to serve as a general partner, managing member, or trustee of a fund;

[“(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

[“(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

[“(6) TRADING ACCOUNT.—The term ‘trading account’ means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

[“(7) ILLIQUID FUND.—

[“(A) IN GENERAL.—The term ‘illiquid fund’ means a hedge fund or private equity fund that—

[“(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

[“(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

[“(B) HEDGE FUND.—For the purposes of this paragraph, the term ‘hedge fund’ means any fund identified under subsection (h)(2), and does not include a private equity fund, as such term is used in section 203(m) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(m)).”.

[SEC. 620. STUDY OF BANK INVESTMENT ACTIVITIES

[(a) STUDY.—

[(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the appropriate Federal banking agencies shall jointly review and prepare a report on the activities that a banking entity, as such term is defined in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et. seq.), may engage in under Federal and State law, including activities authorized by statute and by order, interpretation and guidance.

[(2) CONTENT.—In carrying out the study under paragraph (1), the appropriate Federal banking agencies shall review and consider—

[(A) the type of activities or investments;

[(B) any financial, operational, managerial, or reputation risks associated with or presented as a result of the banking entity engaged in the activity or making the investment; and

[(C) risk mitigation activities undertaken by the banking entity with regard to the risks.

[(b) REPORT AND RECOMMENDATIONS TO THE COUNCIL AND TO CONGRESS.—The appropriate Federal banking agencies shall submit to the Council, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate the study conducted pursuant to subsection (a) no later than 2 months after its completion. In addition to the information described in subsection (a), the report shall include recommendations regarding—

[(1) whether each activity or investment has or could have a negative effect on the safety and soundness of the banking entity or the United States financial system;

[(2) the appropriateness of the conduct of each activity or type of investment by banking entities; and

[(3) additional restrictions as may be necessary to address risks to safety and soundness arising from the activities or types of investments described in subsection (a).

[SEC. 621. CONFLICTS OF INTEREST

[(a) IN GENERAL.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

["SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS

["(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, at any time for a period ending on the date that is one year after the date of the first closing of the sale of the asset-backed security, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

["(b) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a).

["(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to—

["(1) risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship; or

["(2) purchases or sales of asset-backed securities made pursuant to and consistent with—

["(A) commitments of the underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, to provide liquidity for the asset-backed security, or

["(B) bona fide market-making in the asset backed security.

["(d) RULE OF CONSTRUCTION.—This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.".

[(b) EFFECTIVE DATE.—Section 27B of the Securities Act of 1933, as added by this section, shall take effect on the effective date of final rules issued by the Commission under subsection (b) of such section 27B, except that subsections (b) and (d) of such section 27B shall take effect on the date of enactment of this Act.]

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TITLE VII—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

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Subtitle A—Regulation of Over-the-Counter Swaps Markets

PART I—REGULATORY AUTHORITY

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SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT BAILOUTS OF SWAPS ENTITIES.

(a) PROHIBITION ON FEDERAL ASSISTANCE.—Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.

(b) DEFINITIONS.—In this section:

(1) FEDERAL ASSISTANCE.—The term "Federal assistance" means the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act, Federal Deposit Insurance Corporation insurance or guarantees for the purpose of—

(A) making any loan to, or purchasing any stock, equity interest, or debt obligation of, any swaps entity;

(B) purchasing the assets of any swaps entity;

(C) guaranteeing any loan or debt issuance of any swaps entity; or

(D) entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity.

(2) SWAPS ENTITY.—

(A) IN GENERAL.—The term "swaps entity" means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, that is registered under—

(i) the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(ii) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(B) EXCLUSION.—The term "swaps entity" does not include any major swap participant or major security-based swap participant that is an covered depository institution.

(3) COVERED DEPOSITORY INSTITUTION.—The term "covered depository institution" means—

(A) an insured depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) a United States uninsured branch or agency of a foreign bank.

(c) AFFILIATES OF COVERED DEPOSITORY INSTITUTIONS.—The prohibition on Federal assistance contained in subsection (a) does not apply to and shall not prevent a covered depository institution from having or establishing an affiliate which is a swaps entity, as long as such covered depository institution is part of a bank holding company, savings and loan holding company, or foreign banking organization (as such term is defined under Regulation K of the Board of Governors of the Federal Reserve System (12 CFR

211.21(o))), that is supervised by the Federal Reserve and such swaps entity affiliate complies with sections 23A and 23B of the Federal Reserve Act and such other requirements as the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, and the Board of Governors of the Federal Reserve System, may determine to be necessary and appropriate.

(d) ONLY BONA FIDE HEDGING AND TRADITIONAL BANK ACTIVITIES PERMITTED.—

(1) IN GENERAL.—The prohibition in subsection (a) shall not apply to any covered depository institution that limits its swap and security-based swap activities to the following:

(A) HEDGING AND OTHER SIMILAR RISK MITIGATION ACTIVITIES.—Hedging and other similar risk mitigating activities directly related to the covered depository institution's activities.

(B) NON-STRUCTURED FINANCE SWAP ACTIVITIES.—Acting as a swaps entity for swaps or security-based swaps other than a structured finance swap.

(C) CERTAIN STRUCTURED FINANCE SWAP ACTIVITIES.—Acting as a swaps entity for swaps or security-based swaps that are structured finance swaps, if—

(i) such structured finance swaps are undertaken for hedging or risk management purposes; or

(ii) each asset-backed security underlying such structured finance swaps is of a credit quality and of a type or category with respect to which the prudential regulators have jointly adopted rules authorizing swap or security-based swap activity by covered depository institutions.

(2) DEFINITIONS.—For purposes of this subsection:

(A) STRUCTURED FINANCE SWAP.—The term "structured finance swap" means a swap or security-based swap based on an asset-backed security (or group or index primarily comprised of asset-backed securities).

(B) ASSET-BACKED SECURITY.—The term "asset-backed security" has the meaning given such term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(e) EXISTING SWAPS AND SECURITY-BASED SWAPS.—The prohibition in subsection (a) shall only apply to swaps or security-based swaps entered into by a covered depository institution after the end of the transition period described in subsection (f).

(f) TRANSITION PERIOD.—To the extent a covered depository institution qualifies as a "swaps entity" and would be subject to the Federal assistance prohibition in subsection (a), the appropriate Federal banking agency, after consulting with and considering the views of the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, shall permit the covered depository institution up to 24 months to divest the swaps entity or cease the activities that require registration as a swaps entity. In establishing the appropriate transition period to effect such divestiture or cessation of activities, which may include making the swaps entity an affiliate of the covered depository institution, the appropriate Federal banking agency shall take into account and

make written findings regarding the potential impact of such divestiture or cessation of activities on the covered depository institution's (1) mortgage lending, (2) small business lending, (3) job creation, and (4) capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the Federal Deposit Insurance Corporation. The appropriate Federal banking agency may consider such other factors as may be appropriate. The appropriate Federal banking agency may place such conditions on the covered depository institution's divestiture or ceasing of activities of the swaps entity as it deems necessary and appropriate. The transition period under this subsection may be extended by the appropriate Federal banking agency, after consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, for a period of up to 1 additional year.

(g) EXCLUDED ENTITIES.—For purposes of this section, the term "swaps entity" shall not include any insured depository institution under the Federal Deposit Insurance Act [or a covered financial company under title II] which is in a conservatorship, receivership, or a bridge bank operated by the Federal Deposit Insurance Corporation.

(h) EFFECTIVE DATE.—The prohibition in subsection (a) shall be effective 2 years following the date on which this Act is effective.

(i) LIQUIDATION REQUIRED.—

(1) IN GENERAL.—

(A) FDIC INSURED INSTITUTIONS.—All swaps entities that are FDIC insured institutions that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(B) INSTITUTIONS THAT POSE A SYSTEMIC RISK AND ARE SUBJECT TO HEIGHTENED PRUDENTIAL SUPERVISION AS REGULATED UNDER SECTION 113.—All swaps entities that are institutions that pose a systemic risk and are subject to heightened prudential supervision as regulated under section 113, that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(C) NON-FDIC INSURED, NON-SYSTEMICALLY SIGNIFICANT INSTITUTIONS NOT SUBJECT TO HEIGHTENED PRUDENTIAL SUPERVISION AS REGULATED UNDER SECTION 113.—No taxpayer resources shall be used for the orderly liquidation of any swaps entities that are non-FDIC insured, non-systemically significant institutions not subject to heightened prudential supervision as regulated under section 113.

(2) RECOVERY OF FUNDS.—All funds expended on the termination or transfer of the swap or security-based swap activity of the swaps entity shall be recovered in accordance with applicable law from the disposition of assets of such swap entity or through assessments, including on the financial sector as provided under applicable law.

(3) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear no losses from the exercise of any authority under this title.

(j) PROHIBITION ON UNREGULATED COMBINATION OF SWAPS ENTITIES AND BANKING.—At no time following adoption of the rules in subsection (k) may a bank or bank holding company be permitted to be or become a swap entity unless it conducts its swap or security-based swap activity in compliance with such minimum standards set by its prudential regulator as are reasonably calculated to permit the swaps entity to conduct its swap or security-based swap activities in a safe and sound manner and mitigate systemic risk.

(k) RULES.—In prescribing rules, the prudential regulator for a swaps entity shall consider the following factors:

(1) The expertise and managerial strength of the swaps entity, including systems for effective oversight.

(2) The financial strength of the swaps entity.

(3) Systems for identifying, measuring and controlling risks arising from the swaps entity's operations.

(4) Systems for identifying, measuring and controlling the swaps entity's participation in existing markets.

(5) Systems for controlling the swaps entity's participation or entry into in new markets and products.

(l) AUTHORITY OF THE FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Financial Stability Oversight Council may determine that, when other provisions established by this Act are insufficient to effectively mitigate systemic risk and protect taxpayers, that swaps entities may no longer access Federal assistance with respect to any swap, security-based swap, or other activity of the swaps entity. Any such determination by the Financial Stability Oversight Council of a prohibition of federal assistance shall be made on an institution-by-institution basis, and shall require the vote of not fewer than two-thirds of the members of the Financial Stability Oversight Council, which must include the vote by the Chairman of the Council, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the Federal Deposit Insurance Corporation. Notice and hearing requirements for such determinations shall be consistent with the standards provided in title I.

(m) BAN ON PROPRIETARY TRADING IN DERIVATIVES.—An insured depository institution shall comply with the prohibition on proprietary trading in derivatives as required by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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SEC. 719. STUDIES.

(a) STUDY ON EFFECTS OF POSITION LIMITS ON TRADING ON EXCHANGES IN THE UNITED STATES.—

(1) STUDY.—The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a

study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) REPORT TO THE CONGRESS.—Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) REQUIRED HEARING.—Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) BIENNIAL REPORTING.—In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by—

(A) commercial users and traders of derivatives;

(B) derivative clearing houses, exchanges and electronic trading platforms;

(C) trade repositories and regulator investigations of market activities; and

(D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descrip-

tions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) REPORT.—Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) INTERNATIONAL SWAP REGULATION.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study—

(A) relating to—

(i) swap regulation in the United States, Asia, and Europe; and

(ii) clearing house and clearing agency regulation in the United States, Asia, and Europe; and

(B) that identifies areas of regulation that are similar in the United States, Asia and Europe and other areas of regulation that could be harmonized.

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives a report that includes a description of the results of the study under subsection (a), including—

(A) identification of the major exchanges and their regulator in each geographic area for the trading of swaps and security-based swaps including a listing of the major contracts and their trading volumes and notional values as well as identification of the major swap dealers participating in such markets;

(B) identification of the major clearing houses and clearing agencies and their regulator in each geographic area for the clearing of swaps and security-based swaps, including a listing of the major contracts and the clearing volumes and notional values as well as identification of the major clearing members of such clearing houses and clearing agencies in such markets;

(C) a description of the comparative methods of clearing swaps in the United States, Asia, and Europe; and

(D) a description of the various systems used for establishing margin on individual swaps, security-based swaps, and swap portfolios.

(d) STABLE VALUE CONTRACTS.—

(1) DETERMINATION.—

(A) STATUS.—Not later than 15 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall, jointly, conduct a study to determine whether stable value contracts fall within the definition of a swap. In making the determination required under this subparagraph, the Commissions jointly shall consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of stable value contracts.

(B) REGULATIONS.—If the Commissions determine that stable value contracts fall within the definition of a swap, the Commissions jointly shall determine if an exemption for stable value contracts from the definition of swap is appropriate and in the public interest. The Commissions shall issue regulations implementing the determinations required under this paragraph. Until the effective date of such regulations, and notwithstanding any other provision of this title, the requirements of this title shall not apply to stable value contracts.

(C) LEGAL CERTAINTY.—Stable value contracts in effect prior to the effective date of the regulations described in subparagraph (B) shall not be considered swaps.

(2) DEFINITION.—For purposes of this subsection, the term "stable value contract" means any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in an employee benefit plan (as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, including plans described in section 3(32) of such Act) subject to participant direction, an eligible deferred compensation plan (as defined in section 457(b) of the Internal Revenue Code of 1986) that is maintained by an eligible employer described in section 457(e)(1)(A) of such Code, an arrangement described in section 403(b) of such Code, or a qualified tuition program (as defined in section 529 of such Code).

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SEC. 723. CLEARING

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) by striking subsections (d), (e), (g), and (h); and

(B) by redesignating subsection (i)*, as added by section 107 of the Commodity Futures Modernization Act of 2000 (Appendix E of Public Law 106–554; 114 Stat. 2763A–382),* as subsection (g).

(2) SWAPS; LIMITATION ON PARTICIPATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:

"(d) SWAPS.—Nothing in this Act (other than subparagraphs (A), (B), (C), (D), (G), and (H) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(a)(13), 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b-1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2), (f), and (h) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities or Commission registrants) governs or applies to a swap.

"(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.".

(3) MANDATORY CLEARING OF SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

"(h) CLEARING REQUIREMENT.—

"(1) IN GENERAL.—

"(A) STANDARD FOR CLEARING.—It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.

"(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

"(i) prescribe that all swaps (but not contracts of sale of a commodity for future delivery or options on such contracts) submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

"(ii) provide for non-discriminatory clearing of a swap (but not a contract of sale of a commodity for future delivery or option on such contract) executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

"(2) COMMISSION REVIEW.—

"(A) COMMISSION-INITIATED REVIEW.—

"(i) The Commission on an ongoing basis shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

"(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

"(B) SWAP SUBMISSIONS.—

"(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

"(ii) Any swap or group, category, type, or class of swaps listed for clearing by a derivative clearing organization as of the date of enactment of this subsection shall be considered submitted to the Commission.

"(iii) The Commission shall—

"(I) make available to the public submissions received under clauses (i) and (ii);

"(II) review each submission made under clauses (i) and (ii), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

"(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

"(C) DEADLINE.—The Commission shall make its determination under subparagraph (B)(iii) not later than 90 days after receiving a submission made under subparagraphs (B)(i) and (B)(ii), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

"(D) DETERMINATION.—

"(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2).

"(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

"(I) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data.

"(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

"(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

"(IV) The effect on competition, including appropriate fees and charges applied to clearing.

"(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its

clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

"(iii) In making a determination under subparagraph (A) or (B)(iii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

"(E) RULES.—Not later than 1 year after the date of the enactment of this subsection, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type, or class of swaps, that it seeks to accept for clearing. Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii).

"(3) STAY OF CLEARING REQUIREMENT.—

"(A) IN GENERAL.—After making a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

"(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type, or class of swaps agrees to an extension of the time limitation established under this subparagraph.

"(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

"(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

"(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps.

"(D) RULES.—Not later than 1 year after the date of the enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type, or class of swaps, that it has accepted for clearing.

"(4) PREVENTION OF EVASION.—

"(A) IN GENERAL.—The Commission shall prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.

"(B) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall—

"(i) investigate the relevant facts and circumstances;

"(ii) within 30 days issue a public report containing the results of the investigation; and

"(iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

"(C) EFFECT ON AUTHORITY.—Nothing in this paragraph—

"(i) authorizes the Commission to adopt rules requiring a derivatives clearing organization to list for clearing a swap, group, category, type, or class of swaps if the clearing of the swap, group, category, type, or class of swaps would threaten the financial integrity of the derivatives clearing organization; and

"(ii) affects the authority of the Commission to enforce the open access provisions of paragraph (1)(B) with respect to a swap, group, category, type, or class of swaps that is listed for clearing by a derivatives clearing organization.

"(5) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap data repository or the Commission no later than 180 days after the effective date of this subsection.

"(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap data repository or the Commission no later than the later of—

"(i) 90 days after such effective date; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(6) CLEARING TRANSITION RULES.—

"(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(A).

"(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(B).

"(7) EXCEPTIONS.—

"(A) IN GENERAL.—The requirements of paragraph (1)(A) shall not apply to a swap if 1 of the counterparties to the swap—

"(i) is not a financial entity;

"(ii) is using swaps to hedge or mitigate commercial risk; and

"(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

"(B) OPTION TO CLEAR.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

"(C) FINANCIAL ENTITY DEFINITION.—

"(i) IN GENERAL.—For the purposes of this paragraph, the term 'financial entity' means—

"(I) a swap dealer;

"(II) a security-based swap dealer;

"(III) a major swap participant;

"(IV) a major security-based swap participant;

"(V) a commodity pool;

"(VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));

"(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

"(VIII) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956.

"(ii) EXCLUSION.—The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

"(I) depository institutions with total assets of $10,000,000,000 or less;

"(II) farm credit system institutions with total assets of $10,000,000,000 or less; or

"(III) credit unions with total assets of $10,000,000,000 or less.

"(iii) LIMITATION.—Such definition shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.

"(D) TREATMENT OF AFFILIATES.—

"(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for

the exception only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

"(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—The exception in clause (i) shall not apply if the affiliate is—

"(I) a swap dealer;

"(II) a security-based swap dealer;

"(III) a major swap participant;

"(IV) a major security-based swap participant;

"(V) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a-3(c));

"(VI) a commodity pool; or

"(VII) a bank holding company with over $50,000,000,000 in consolidated assets.

"(iii) TRANSITION RULE FOR AFFILIATES.—An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 4s(e) and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on the date of enactment of this clause.

"(E) ELECTION OF COUNTERPARTY.—

"(i) SWAPS REQUIRED TO BE CLEARED.—With respect to any swap that is subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

"(ii) SWAPS NOT REQUIRED TO BE CLEARED.—With respect to any swap that is not subject to the mandatory clearing requirement under this subsection and entered into by a swap dealer or a major swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

"(I) may elect to require clearing of the swap; and

"(II) shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

"(F) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as

the Commission determines to be necessary to prevent abuse of the exceptions described in this paragraph. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this paragraph.

"(8) TRADE EXECUTION.—

"(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

"(i) execute the transaction on a board of trade designated as a contract market under section 5; or

"(ii) execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(f) of this Act.

"(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or for swap transactions subject to the clearing exception under paragraph (7).".

(b) COMMODITY EXCHANGE ACT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by adding at the end the following:

"(j) COMMITTEE APPROVAL BY BOARD.—Exemptions from the requirements of subsection (h)(1) to clear a swap and subsection (h)(8) to execute a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) only if an appropriate committee of the issuer's board or governing body has reviewed and approved its decision to enter into swaps that are subject to such exemptions.".

(c) GRANDFATHER PROVISIONS.—

(1) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—Not later than 60 days after the date of enactment of this Act, a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).

(2) CONSIDERATION; AUTHORITY OF COMMODITY FUTURES TRADING COMMISSION.—The Commodity Futures Trading Commission—

(A) shall consider any petition submitted under subparagraph (A) in a prompt manner; and

(B) may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period.

(3) AGRICULTURAL SWAPS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).

(B) EXCEPTION.—Notwithstanding subparagraph (A), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.

(4) REQUIRED REPORTING.—If the exception described in section 2(h)(8)(B) of the Commodity Exchange Act applies, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to section 2(h)(8)(B) of the Commodity Exchange Act.

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SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE

(a) IN GENERAL.—Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a, 7a-3) are repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) **[**is amended—**]**

[(A) in subsection (a)(1)(A), in the first sentence, by striking "or 5a"; and

[(B) in**]** *is amended in* paragraph (2) of subsection (g) (as redesignated by section 723(a)(1)(B)), by striking "section 5a of this Act" and all that follows through "5d of this Act" and inserting "section 5b of this Act".

(2) Section 6(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is amended—

(A) by striking "that—" and all that follows through "(i) has been designated" and inserting "that has been designated";

(B) by striking "; or" and inserting "; and" and

(C) by striking clause (ii).

(c) ABILITY TO PETITION COMMISSION.—

(1) IN GENERAL.—Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.

(2) CONSIDERATION OF PETITION.—The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.

* * * * * * *

SEC. 741. ENFORCEMENT.

(a) ENFORCEMENT AUTHORITY.—The Commodity Exchange Act is amended by inserting after section 4b (7 U.S.C. 6b) the following:

"SEC. 4b-1. ENFORCEMENT AUTHORITY

"(a) COMMODITY FUTURES TRADING COMMISSION.—Except as provided in subsections (b), (c), and (d), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Wall Street Transparency and Accountability Act of 2010 with respect to any person.

"(b) PRUDENTIAL REGULATORS.—The prudential regulators shall have exclusive authority to enforce the provisions of section 4s(e) with respect to swap dealers or major swap participants for which they are the prudential regulator.

"(c) REFERRALS.—

"(1) PRUDENTIAL REGULATORS.—If the prudential regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant, or any affiliate or division of the swap dealer or major swap participant, may have engaged in conduct that constitutes a violation of the nonprudential requirements of this Act (including section 4s or rules adopted by the Commission under that section), the prudential regulator may promptly notify the Commission in a written report that includes—

"(A) a request that the Commission initiate an enforcement proceeding under this Act; and

"(B) an explanation of the facts and circumstances that led to the preparation of the written report.

"(2) COMMISSION.—If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 4s or rules adopted by the Commission under that section, the Commission may notify the prudential regulator of the conduct in a written report that includes—

"(A) a request that the prudential regulator initiate an enforcement proceeding under this Act or any other Federal law (including regulations); and

"(B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.

"(d) BACKSTOP ENFORCEMENT AUTHORITY.—

"(1) INITIATION OF ENFORCEMENT PROCEEDING BY PRUDENTIAL REGULATOR.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.

"(2) INITIATION OF ENFORCEMENT PROCEEDING BY COMMISSION.—If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (c)(2), the Commission may initiate an enforcement proceeding.".

(b) CONFORMING AMENDMENTS.—

(1) Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(A) in subsection (a)(2), by striking "or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g)," and inserting "or swap,";

(B) in subsection (b), by striking "or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g)," and inserting "or swap,"; and

(C) by adding at the end the following:

"(e) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value thereof)—

"(1) to employ any device, scheme, or artifice to defraud;

"(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

"(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.".

(2) Section 4c(a)(1) of the Commodity Exchange Act (7 U.S.C. 6c(a)(1)) is amended by inserting "or swap" before "if the transaction is used or may be used".

(3) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended in the first sentence by inserting "or of any swap," before "or has willfully made".

(4) Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence, in the matter preceding the proviso, by inserting "or of any swap," before "or otherwise is violating".

(5) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a-1(a)) is amended in the matter preceding the proviso by inserting "or any swap" after "commodity for future delivery".

(6) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended—

(A) in subsection (a)—

(i) in paragraph (2), by inserting "or of any swap," before "or to corner"; and

(ii) in paragraph (4), by inserting "swap data repository," before "or futures association" and

(B) in subsection (e)(1)—

(i) by inserting "swap data repository," before "or registered futures association"; and

(ii) by inserting ", or swaps," before "on the basis".

(7) Section 9(a) of the Commodity Exchange Act (7 U.S.C. 13(a)) is amended by adding at the end the following:

"(6) Any person to abuse the end user clearing exemption under section 2(h)(4), as determined by the Commission.".

(8) Section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)) is amended—

(A) by striking "(dd)," each place it appears;

(B) in clause (iii), by inserting ", and accounts or pooled investment vehicles described in clause (vi)," before "shall be subject to"; and

(C) by adding at the end the following:

"(vi) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).".

(9) Section 2(c)(2)(C) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)) is amended—

(A) by striking "(dd)," each place it appears;

(B) in clause (ii)(I), by inserting ", and accounts or pooled investment vehicles described in clause (vii)," before "shall be subject to"; and

(C) by adding at the end the following:

"(vii) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).".

(10) Section [1a(19)(A)(iv)(II)] *1a(18)(A)(iv)(II)* of the Commodity Exchange Act (7 U.S.C. [1a(19)(A)(iv)(II)] *1a(18)(A)(iv)(II)*) (as redesignated by section 721(a)(1)) is amended by inserting before the semicolon at the end the following: "provided, however, that for purposes of section 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the term 'eligible contract participant' shall not include a commodity pool in which any participant is not otherwise an eligible contract participant".

(11) Section 6(e) of the Commodity Exchange Act (7 U.S.C. 9a) is amended by adding at the end the following:

"(4) Any designated clearing organization that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).

"(5) Any swap dealer or major swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h).".

(c) SAVINGS CLAUSE.—Notwithstanding any other provision of this title, nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority granted by Federal law other than this title.

* * * * * * *

SEC. 749. CONFORMING AMENDMENTS.

(a) Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 724) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking "engage as" and inserting "be a"; and

(ii) by striking "or introducing broker" and all that follows through "or derivatives transaction execution facility";

(B) in paragraph (1), by striking "or introducing broker"; and

(C) in paragraph (2), by striking "if a futures commission merchant,"; and

(2) by [adding at the end] *inserting after subsection (f)* the following:

"(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.".

(b) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended—

(1) by striking "(3) Subsection (1) of this section" and inserting the following:

"(3) EXCEPTION.—

"(A) IN GENERAL.—Paragraph (1)"; and

(2) by striking "to any investment trust" and all that follows through the period at the end and inserting the following:" to any commodity pool that is engaged primarily in trading commodity interests.

"(B) ENGAGED PRIMARILY.—For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be 'engaged primarily' in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.

"(C) COMMODITY INTERESTS.—For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on physical commodities, and any monies held in an account used for trading commodity interests.".

(c) Section 5c of the Commodity Exchange Act (7 U.S.C. 7a-2) is amended—

(1) in subsection (a)(1)—

(A) by striking ", 5a(d),"; and

(B) by striking "and section (2)(h)(7) with respect to significant price discovery contracts,"; and

(2) in subsection (f)(1), by striking "section 4d(c) of this Act" and inserting "section 4d(e)".

(d) Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) is amended by striking "or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,".

(e) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking ", or to revoke the right of an electronic trading facility to rely on the exemption set

forth in section 2(h)(3) with respect to a significant price discovery contract,".

(f) Section 12(e)(2)(B) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)(B)) is amended—

(1) by striking "section 2(c), 2(d), 2(f), or 2(g) of this Act" and inserting "section 2(c) or 2(f) of this Act"; and

(2) by striking "2(h) or".

(g) Section 17(r)(1) of the Commodity Exchange Act (7 U.S.C. 21(r)(1)) is amended by striking "section 4d(c) of this Act" and inserting "section 4d(e)".

(h) Section 22 of the Commodity Exchange Act is amended—

(1) in subsection (a)(1)(B), by—

(A) inserting "or any swap" after "commodity)"; and

(B) inserting "or any swap" after "such contract" *the second place that term appears*;

(2) in subsection (a)(1)(C), by adding at the end the following: "(iv) a swap; or"; and

(3) in subsection (b)(1)(A), by striking "section 2(h)(7) or sections 5 through 5c" and inserting "section 5, 5b, 5c, 5h, or 21".

(i) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended—

(1) by striking "section 2(c), 2(d), 2(f), or (2)(g) of such Act" and inserting "section 2(c), 2(f), or 2(i) of that Act"; and

(2) by striking "2(h) or".

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[TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

[SEC. 801. SHORT TITLE.

[This title may be cited as the "Payment, Clearing, and Settlement Supervision Act of 2010".

[SEC. 802. FINDINGS AND PURPOSES.

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

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

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

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

[(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

[(A) to provide consistency;

[(B) to promote robust risk management and safety and soundness;

[(C) to reduce systemic risks; and

[(D) to support the stability of the broader financial system.

[(b) PURPOSE.—The purpose of this title is to mitigate systemic risk in the financial system and promote financial stability by—

[(1) authorizing the Board of Governors to promote uniform standards for the—

[(A) management of risks by systemically important financial market utilities; and

[(B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;

[(2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;

[(3) strengthening the liquidity of systemically important financial market utilities; and

[(4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

[SEC. 803. DEFINITIONS.

[In this title, the following definitions shall apply:

[(1) APPROPRIATE FINANCIAL REGULATOR.—The term "appropriate financial regulator" means—

[(A) the primary financial regulatory agency, as defined in section 2 of this Act;

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

[(C) the Board of Governors, with respect to organizations operating under section 25A of the Federal Reserve Act (12 U.S.C. 611), and any other financial institution engaged in a designated activity.

[(2) DESIGNATED ACTIVITY.—The term "designated activity" means a payment, clearing, or settlement activity that the Council has designated as systemically important under section 804.

[(3) DESIGNATED CLEARING ENTITY.—The term "designated clearing entity" means a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1).

[(4) DESIGNATED FINANCIAL MARKET UTILITY.—The term "designated financial market utility" means a financial market utility that the Council has designated as systemically important under section 804.

[(5) FINANCIAL INSTITUTION.—

[(A) IN GENERAL.—The term "financial institution" means—

[(i) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

[(ii) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

[(iii) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601-604a and 611 through 631);

[(iv) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

[(v) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

[(vi) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

[(vii) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2);

[(viii) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2);

[(ix) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

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

[(B) EXCLUSIONS.—The term "financial institution" does not include designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative trading systems, securities information processors solely with respect to the activities of the entity as a securities information processor, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or designated clearing entities, provided that the exclusions in this subparagraph apply only with respect to the activities that require the entity to be so registered.

[(6) FINANCIAL MARKET UTILITY.—

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

[(B) EXCLUSIONS.—The term "financial market utility" does not include—

[(i) designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or national securities exchanges, national securities associations, alternative

trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered; and

[(ii) any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

[(7) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

[(A) IN GENERAL.—The term "payment, clearing, or settlement activity" means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions, but shall not include any offer or sale of a security under the Securities Act of 1933 (15 U.S.C. 77a et seq.), or any quotation, order entry, negotiation, or other pre-trade activity or execution activity.

[(B) FINANCIAL TRANSACTION.—For the purposes of subparagraph (A), the term "financial transaction" includes—

[(i) funds transfers;

[(ii) securities contracts;

[(iii) contracts of sale of a commodity for future delivery;

[(iv) forward contracts;

[(v) repurchase agreements;

[(vi) swaps;

[(vii) security-based swaps;

[(viii) swap agreements;

[(ix) security-based swap agreements;

[(x) foreign exchange contracts;

[(xi) financial derivatives contracts; and

[(xii) any similar transaction that the Council determines to be a financial transaction for purposes of this title.

[(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

[(i) the calculation and communication of unsettled financial transactions between counterparties;

[(ii) the netting of transactions;

[(iii) provision and maintenance of trade, contract, or instrument information;

[(iv) the management of risks and activities associated with continuing financial transactions;

[(v) transmittal and storage of payment instructions;

[(vi) the movement of funds;

[(vii) the final settlement of financial transactions; and

[(viii) other similar functions that the Council may determine.

[(D) EXCLUSION.—Payment, clearing, and settlement activities shall not include public reporting of swap transaction data under section 727 or 763(i) of the Wall Street Transparency and Accountability Act of 2010.

[(8) SUPERVISORY AGENCY.—

[(A) IN GENERAL.—The term "Supervisory Agency" means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, as follows:

[(i) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission.

[(ii) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission.

[(iii) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act.

[(iv) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

[(B) MULTIPLE AGENCY JURISDICTION.—If a designated financial market utility is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this title.

[(9) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms "systemically important" and "systemic importance" mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.

[SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

[(a) DESIGNATION.—

[(1) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

[(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

[(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

[(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

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

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

[(E) Any other factors that the Council deems appropriate.

[(b) RESCISSION OF DESIGNATION.—

[(1) IN GENERAL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson of the Council, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

[(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or any rules or orders prescribed under this title.

[(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

[(1) CONSULTATION.—Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency and the Board of Governors.

[(2) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

[(A) IN GENERAL.—Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

[(B) NOTICE IN FEDERAL REGISTER.—The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

[(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

[(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

[(3) EMERGENCY EXCEPTION.—

[(A) WAIVER OR MODIFICATION BY VOTE OF THE COUNCIL.—The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson of the Council, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

[(B) NOTICE OF WAIVER OR MODIFICATION.—The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

[(d) NOTIFICATION OF FINAL DETERMINATION.—

[(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

[(2) WHEN NO HEARING REQUESTED.—If the Council does not receive a timely request for a hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

[(e) EXTENSION OF TIME PERIODS.—The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

[SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

[(a) AUTHORITY TO PRESCRIBE STANDARDS.—

[(1) BOARD OF GOVERNORS.—Except as provided in paragraph (2), the Board of Governors, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

[(A) the operations related to the payment, clearing, and settlement activities of designated financial market utilities; and

[(B) the conduct of designated activities by financial institutions.

[(2) SPECIAL PROCEDURES FOR DESIGNATED CLEARING ENTITIES AND DESIGNATED ACTIVITIES OF CERTAIN FINANCIAL INSTITUTIONS.—

[(A) CFTC AND COMMISSION.—The Commodity Futures Trading Commission and the Commission may each prescribe regulations, in consultation with the Council and the Board of Governors, containing risk management standards, taking into consideration relevant international standards and existing prudential requirements, for those designated clearing entities and financial institutions engaged in designated activities for which each is the Supervisory Agency or the appropriate financial regulator, governing—

[(i) the operations related to payment, clearing, and settlement activities of such designated clearing entities; and

[(ii) the conduct of designated activities by such financial institutions.

[(B) REVIEW AND DETERMINATION.—The Board of Governors may determine that existing prudential requirements of the Commodity Futures Trading Commission, the Commission, or both (including requirements prescribed pursuant to subparagraph (A)) with respect to designated clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency or the appropriate financial regulator are insufficient to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States.

[(C) WRITTEN DETERMINATION.—Any determination by the Board of Governors under subparagraph (B) shall be provided in writing to the Commodity Futures Trading Commission or the Commission, as applicable, and the Council, and shall explain why existing prudential requirements, considered as a whole, are insufficient to ensure that the operations and activities of the designated clearing entities or the activities of financial institutions described in subparagraph (B) will not pose significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States.

The Board of Governors' determination shall contain a detailed analysis supporting its findings and identify the specific prudential requirements that are insufficient.

[(D) CFTC AND COMMISSION RESPONSE.—The Commodity Futures Trading Commission or the Commission, as applicable, shall within 60 days either object to the Board of Governors' determination with a detailed analysis as to why existing prudential requirements are sufficient, or submit an explanation to the Council and the Board of Governors describing the actions to be taken in response to the Board of Governors' determination.

[(E) AUTHORIZATION.—Upon an affirmative vote by not fewer than 2/3 of members then serving on the Council, the Council shall either find that the response submitted under subparagraph (D) is sufficient, or require the Commodity Futures Trading Commission, or the Commission, as applicable, to prescribe such risk management standards as the Council determines is necessary to address the specific prudential requirements that are determined to be insufficient."

[(b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

[(1) promote robust risk management;

[(2) promote safety and soundness;

[(3) reduce systemic risks; and

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

[(c) SCOPE.—The standards prescribed under subsection (a) may address areas such as—

[(1) risk management policies and procedures;

[(2) margin and collateral requirements;

[(3) participant or counterparty default policies and procedures;

[(4) the ability to complete timely clearing and settlement of financial transactions;

[(5) capital and financial resource requirements for designated financial market utilities; and

[(6) other areas that are necessary to achieve the objectives and principles in subsection (b).

[(d) LIMITATION ON SCOPE.—Except as provided in subsections (e) and (f) of section 807, nothing in this title shall be construed to permit the Council or the Board of Governors to take any action or exercise any authority granted to the Commodity Futures Trading Commission under section 2(h) of the Commodity Exchange Act or the Securities and Exchange Commission under section 3C(a) of the Securities Exchange Act of 1934, including—

[(1) the approval of, disapproval of, or stay of the clearing requirement for any group, category, type, or class of swaps that a designated clearing entity may accept for clearing;

[(2) the determination that any group, category, type, or class of swaps shall be subject to the mandatory clearing requirement of section 2(h)(1) of the Commodity Exchange Act or section 3C(a)(1) of the Securities Exchange Act of 1934;

[(3) the determination that any person is exempt from the mandatory clearing requirement of section 2(h)(1) of the Com-

modity Exchange Act or section 3C(a)(1) of the Securities Exchange Act of 1934; or

[(4) any authority granted to the Commodity Futures Trading Commission or the Securities and Exchange Commission with respect to transaction reporting or trade execution.

[(e) THRESHOLD LEVEL.—The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

[(f) COMPLIANCE REQUIRED.—Designated financial market utilities and financial institutions subject to the standards prescribed under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards.

[SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.

[(a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide the services listed in section 11A(b) of the Federal Reserve Act (12 U.S.C. 248a(b)) and deposit accounts under the first undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 342) to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

[(b) ADVANCES.—The Board of Governors may authorize a Federal Reserve bank under section 10B of the Federal Reserve Act (12 U.S.C. 347b) to provide to a designated financial market utility discount and borrowing privileges only in unusual or exigent circumstances, upon the affirmative vote of a majority of the Board of Governors then serving (or such other number in accordance with the provisions of section 11(r)(2) of the Federal Reserve Act (12 U.S.C. 248(r)(2)) after consultation with the Secretary, and upon a showing by the designated financial market utility that it is unable to secure adequate credit accommodations from other banking institutions. All such discounts and borrowing privileges shall be subject to such other limitations, restrictions, and regulations as the Board of Governors may prescribe. Access to discount and borrowing privileges under section 10B of the Federal Reserve Act as authorized in this section does not require a designated financial market utility to be or become a bank or bank holding company.

[(c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

[(d) RESERVE REQUIREMENTS.—The Board of Governors may exempt a designated financial market utility from, or modify any, re-

serve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

[(e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

[(1) ADVANCE NOTICE.—

[(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide notice 60 days in advance notice to its Supervisory Agency of any proposed change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect, the nature or level of risks presented by the designated financial market utility.

[(B) TERMS AND STANDARDS PRESCRIBED BY THE SUPERVISORY AGENCIES.—Each Supervisory Agency, in consultation with the Board of Governors, shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

[(C) CONTENTS OF NOTICE.—The notice of a proposed change shall describe—

[(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

[(ii) how the designated financial market utility plans to manage any identified risks.

[(D) ADDITIONAL INFORMATION.—The Supervisory Agency may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

[(E) NOTICE OF OBJECTION.—The Supervisory Agency shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

[(i) the date that the notice of the proposed change is received; or

[(ii) the date any further information requested for consideration of the notice is received.

[(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Supervisory Agency has an objection.

[(G) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

[(i) the date that the Supervisory Agency receives the notice of proposed change; or

[(ii) the date the Supervisory Agency receives any further information it requests for consideration of the notice.

[(H) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex

issues, subject to the Supervisory Agency providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (E) and (G).

[(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency, or the date the Supervisory Agency receives any further information it requested, if the Supervisory Agency notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency.

[(2) EMERGENCY CHANGES.—

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

[(i) an emergency exists; and

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

[(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

[(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

[(i) the nature of the emergency; and

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

[(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any applicable rules, orders, or standards prescribed under section 805(a).

[(3) COPYING THE BOARD OF GOVERNORS.—The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

[(4) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

[SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

[(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct

examinations of a designated financial market utility at least once annually in order to determine the following:

[(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

[(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

[(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

[(4) The safety and soundness of the designated financial market utility.

[(5) The designated financial market utility's compliance with—

[(A) this title; and

[(B) the rules and orders prescribed under this title.

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

[(c) ENFORCEMENT.—For purposes of enforcing the provisions of this title, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

[(d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMINATIONS.—

[(1) BOARD OF GOVERNORS CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult annually with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b). The Supervisory Agency shall lead all examinations conducted under subsections (a) and (b)

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

[(e) BOARD OF GOVERNORS ENFORCEMENT RECOMMENDATIONS.—

[(1) RECOMMENDATION.—The Board of Governors may, after consulting with the Council and the Supervisory Agency, at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility in order to prevent or mitigate significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

[(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

[(3) BINDING ARBITRATION.—If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may refer the recommendation to the Council for a binding decision on whether an enforcement action is warranted.

[(4) ENFORCEMENT ACTION.—Upon an affirmative vote by a majority of the Council in favor of the Board of Governors' recommendation under paragraph (3), the Council may require the Supervisory Agency to—

[(A) exercise the enforcement authority referenced in subsection (c); and

[(B) take enforcement action against the designated financial market utility.

[(f) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—

[(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board of Governors may, after consulting with the Supervisory Agency and upon an affirmative vote by a majority the Council, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to conclude that—

[(A) either—

[(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system of the United States; or

[(ii) the condition of a designated financial market utility poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

[(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

[(2) ENFORCEMENT AUTHORITY.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

[SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

[(a) EXAMINATION.—The appropriate financial regulator is authorized to examine a financial institution subject to the standards

prescribed under section 805(a) for a designated activity in order to determine the following:

[(1) The nature and scope of the designated activities engaged in by the financial institution.

[(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

[(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

[(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

[(5) The financial institution's compliance with this title and the rules and orders prescribed under section 805(a).

[(b) ENFORCEMENT.—For purposes of enforcing the provisions of this title, and the rules and orders prescribed under this section, a financial institution subject to the standards prescribed under section 805(a) for a designated activity shall be subject to, and the appropriate financial regulator shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the appropriate financial regulator was the appropriate Federal banking agency for such insured depository institution.

[(c) TECHNICAL ASSISTANCE.—The Board of Governors shall consult with and provide such technical assistance as may be required by the appropriate financial regulators to ensure that the rules and orders prescribed under this title are interpreted and applied in as consistent and uniform a manner as practicable.

[(d) DELEGATION.—

[(1) EXAMINATION.—

[(A) REQUEST TO BOARD OF GOVERNORS.—The appropriate financial regulator may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed under section 805(a) for a designated activity in order to assess the compliance of such financial institution with—

[(i) this title; or

[(ii) the rules or orders prescribed under this title.

[(B) EXAMINATION BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the appropriate financial regulator mutually agree.

[(2) ENFORCEMENT.—

[(A) REQUEST TO BOARD OF GOVERNORS.—The appropriate financial regulator may request the Board of Governors to enforce this title or the rules or orders prescribed under this title against a financial institution that is subject to the standards prescribed under section 805(a) for a designated activity.

[(B) ENFORCEMENT BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

[(e) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—

[(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board of Governors may—

[(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed under section 805(a) for a designated activity; and

[(B) enforce the provisions of this title or any rules or orders prescribed under this title against any financial institution that is subject to the standards prescribed under section 805(a) for a designated activity.

[(2) LIMITATIONS.—

[(A) EXAMINATION.—The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

[(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed under this title with respect to a designated activity;

[(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included;

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

[(iv) either—

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

[(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the appropriate financial regulator a reasonable opportunity to participate in the examination; and

[(v) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

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

[(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed under this title with respect to a designated activity;

[(ii) notified, in writing, the appropriate financial regulator and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the appropriate financial regulator take 1 or more specific enforcement actions against the financial institution;

[(iii) either—

[(I) not been notified, in writing, by the appropriate financial regulator of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

[(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed under this title poses significant liquidity, credit, operational, or other risks to the financial markets or to the financial stability of the United States, subject to the Board of Governors notifying the appropriate financial regulator of the Board's enforcement action; and

[(iv) obtained the approval of the Council upon an affirmative vote by a majority of the Council.

[(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

[SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

[(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

[(1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

[(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Council is authorized to require any financial institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically impor-

tant, but only if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set forth in section 804.

[(b) REPORTING AFTER DESIGNATION.—

[(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board of Governors and the Council may each require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors or the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

[(2) FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.—The Board of Governors and the Council may each require 1 or more financial institutions subject to the standards prescribed under section 805(a) for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors or the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

[(A) the rules, orders, or standards prescribed under section 805(a) with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

[(B) the financial institutions are in compliance with this title and the rules and orders prescribed under section 805(a) with respect to the designated activity.

[(3) LIMITATION.—The Board of Governors may, upon an affirmative vote by a majority of the Council, prescribe regulations under this section that impose a recordkeeping or reporting requirement on designated clearing entities or financial institutions engaged in designated activities that are subject to standards that have been prescribed under section 805(a)(2).

[(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

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

[(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agency, the appropriate financial regulator, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

[(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the information, report, records, or data re-

quested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

[(e) SHARING OF INFORMATION.—

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

[(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

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

[(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Council, the appropriate financial regulator, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to each other, and to the Secretary, Federal Reserve Banks, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality, provided, however, that no person or entity receiving information pursuant to this section may disseminate such information to entities or persons other than those listed in this paragraph without complying with applicable law, including section 8 of the Commodity Exchange Act (7 U.S.C. 12).

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

[(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors, the Supervisory Agencies, or the Council under this section and any materials prepared by the Board of Governors, the Supervisory Agencies, or the Council regarding their assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with their supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

[SEC. 810. RULEMAKING.

[The Board of Governors, the Supervisory Agencies, and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out their respec-

tive authorities and duties granted under this title and prevent evasions thereof.

[SEC. 811. OTHER AUTHORITY.

[Unless otherwise provided by its terms, this title does not divest any appropriate financial regulator, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

[SEC. 812. CONSULTATION.

[(a) CFTC.—The Commodity Futures Trading Commission shall consult with the Board of Governors—

[(1) prior to exercising its authorities under sections 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A), and 2(h)(4)(B) of the Commodity Exchange Act, as amended by the Wall Street Transparency and Accountability Act of 2010;

[(2) with respect to any rule or rule amendment of a derivatives clearing organization for which a stay of certification has been issued under section 745(b)(3) of the Wall Street Transparency and Accountability Act of 2010; and

[(3) prior to exercising its rulemaking authorities under section 728 of the Wall Street Transparency and Accountability Act of 2010.

[(b) SEC.—The Commission shall consult with the Board of Governors—

[(1) prior to exercising its authorities under sections 3C(a)(2)(C), 3C(a)(3)(A), 3C(a)(3)(C), 3C(a)(4)(A), and 3C(a)(4)(B) of the Securities Exchange Act of 1934, as amended by the Wall Street Transparency and Accountability Act of 2010;

[(2) with respect to any proposed rule change of a clearing agency for which an extension of the time for review has been designated under section 19(b)(2) of the Securities Exchange Act of 1934; and

[(3) prior to exercising its rulemaking authorities under section 13(n) of the Securities Exchange Act of 1934, as added by section 763(i) of the Wall Street Transparency and Accountability Act of 2010.

[SEC. 813. COMMON FRAMEWORK FOR DESIGNATED CLEARING ENTITY RISK MANAGEMENT.

[The Commodity Futures Trading Commission and the Commission shall coordinate with the Board of Governors to jointly develop risk management supervision programs for designated clearing entities. Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission, the Commission, and the Board of Governors shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives recommendations for—

[(1) improving consistency in the designated clearing entity oversight programs of the Commission and the Commodity Futures Trading Commission;

[(2) promoting robust risk management by designated clearing entities;

[(3) promoting robust risk management oversight by regulators of designated clearing entities; and

[(4) improving regulators' ability to monitor the potential effects of designated clearing entity risk management on the stability of the financial system of the United States.

[SEC. 814. EFFECTIVE DATE.

[This title is effective as of the date of enactment of this Act.]

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

SEC. 901. SHORT TITLE.

This title may be cited as the "Investor Protection and Securities Reform Act of 2010".

* * * * * * *

[SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMISSION TO ENGAGE IN INVESTOR TESTING

[Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following:

["(e) EVALUATION OF RULES OR PROGRAMS.—For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

["(1) gather information from and communicate with investors or other members of the public;

["(2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and

["(3) consult with academics and consultants, as necessary to carry out this subsection.

["(f) RULE OF CONSTRUCTION.—For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any action taken under subsection (e) shall not be construed to be a collection of information.".

[SEC. 914. STUDY ON ENHANCING INVESTMENT ADVISER EXAMINATIONS

[(a) STUDY REQUIRED.—

[(1) IN GENERAL.—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.

[(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

[(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this subtitle;

[(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory orga-

nizations to augment the Commission's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

[(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

[(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this subtitle, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.]

* * * * * * *

[SEC. 917. STUDY REGARDING FINANCIAL LITERACY AMONG INVESTORS

[(a) IN GENERAL.—The Commission shall conduct a study to identify—

[(1) the existing level of financial literacy among retail investors, including subgroups of investors identified by the Commission;

[(2) methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment services;

[(3) the most useful and understandable relevant information that retail investors need to make informed financial decisions before engaging a financial intermediary or purchasing an investment product or service that is typically sold to retail investors, including shares of open-end companies, as that term is defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a-5) that are registered under section 8 of that Act;

[(4) methods to increase the transparency of expenses and conflicts of interests in transactions involving investment services and products, including shares of open-end companies described in paragraph (3);

[(5) the most effective existing private and public efforts to educate investors; and

[(6) in consultation with the Financial Literacy and Education Commission, a strategy (including, to the extent practicable, measurable goals and objectives) to increase the financial literacy of investors in order to bring about a positive change in investor behavior.

[(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (a) to—

[(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

[(2) the Committee on Financial Services of the House of Representatives.

[SEC. 918. STUDY REGARDING MUTUAL FUND ADVERTISING

[(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

[(1) existing and proposed regulatory requirements for open-end investment company advertisements;

[(2) current marketing practices for the sale of open-end investment company shares, including the use of past performance data, funds that have merged, and incubator funds;

[(3) the impact of such advertising on consumers; and

[(4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

[(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

[(1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and

[(2) the Committee on Financial Services of the House of Representatives.]

* * * * * * *

[SEC. 919A. STUDY ON CONFLICTS OF INTEREST

[(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study—

[(1) to identify and examine potential conflicts of interest that exist between the staffs of the investment banking and equity and fixed income securities analyst functions within the same firm; and

[(2) to make recommendations to Congress designed to protect investors in light of such conflicts.

[(b) CONSIDERATIONS.—In conducting the study under subsection (a), the Comptroller General shall—

[(1) consider—

[(A) the potential for investor harm resulting from conflicts, including consideration of the forms of misconduct engaged in by the several securities firms and individuals that entered into the Global Analyst Research Settlements in 2003 (also known as the "Global Settlement");

[(B) the nature and benefits of the undertakings to which those firms agreed in enforcement proceedings, including firewalls between research and investment banking, separate reporting lines, dedicated legal and compliance staffs, allocation of budget, physical separation, compensation, employee performance evaluations, coverage decisions, limitations on soliciting investment banking business, disclosures, transparency, and other measures;

[(C) whether any such undertakings should be codified and applied permanently to securities firms, or whether the Commission should adopt rules applying any such undertakings to securities firms; and

[(D) whether to recommend regulatory or legislative measures designed to mitigate possible adverse consequences to investors arising from the conflicts of interest

or to enhance investor protection or confidence in the integrity of the securities markets; and

[(2) consult with State attorneys general, State securities officials, the Commission, the Financial Industry Regulatory Authority ("FINRA"), NYSE Regulation, investor advocates, brokers, dealers, retail investors, institutional investors, and academics.

[(c) REPORT.—The Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 18 months after the date of enactment of this Act.

[SEC. 919B. STUDY ON IMPROVED INVESTOR ACCESS TO INFORMATION ON INVESTMENT ADVISERS AND BROKER-DEALERS

[(a) STUDY.—

[(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall complete a study, including recommendations, of ways to improve the access of investors to registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information) about registered and previously registered investment advisers, associated persons of investment advisers, brokers and dealers and their associated persons on the existing Central Registration Depository and Investment Adviser Registration Depository systems, as well as identify additional information that should be made publicly available.

[(2) CONTENTS.—The study required by subsection (a) shall include an analysis of the advantages and disadvantages of further centralizing access to the information contained in the 2 systems, including—

[(A) identification of those data pertinent to investors; and

[(B) the identification of the method and format for displaying and publishing such data to enhance accessibility by and utility to investors.

[(b) IMPLEMENTATION.—Not later than 18 months after the date of completion of the study required by subsection (a), the Commission shall implement any recommendations of the study.

[SEC. 919C. STUDY ON FINANCIAL PLANNERS AND THE USE OF FINANCIAL DESIGNATIONS

[(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to evaluate—

[(1) the effectiveness of State and Federal regulations to protect investors and other consumers from individuals who hold themselves out as financial planners through the use of misleading titles, designations, or marketing materials;

[(2) current State and Federal oversight structure and regulations for financial planners; and

[(3) legal or regulatory gaps in the regulation of financial planners and other individuals who provide or offer to provide financial planning services to consumers.

[(b) CONSIDERATIONS.—In conducting the study required under subsection (a), the Comptroller General shall consider—

[(1) the role of financial planners in providing advice regarding the management of financial resources, including invest-

ment planning, income tax planning, education planning, retirement planning, estate planning, and risk management;

[(2) whether current regulations at the State and Federal level provide adequate ethical and professional standards for financial planners;

[(3) the possible risk posed to investors and other consumers by individuals who hold themselves out as financial planners or as otherwise providing financial planning services in connection with the sale of financial products, including insurance and securities;

[(4) the possible risk posed to investors and other consumers by individuals who otherwise use titles, designations, or marketing materials in a misleading way in connection with the delivery of financial advice;

[(6) the ability of investors and other consumers to understand licensing requirements and standards of care that apply to individuals who hold themselves out as financial planners or as otherwise providing financial planning services;

[(7) the possible benefits to investors and other consumers of regulation and professional oversight of financial planners; and

[(8) any other consideration that the Comptroller General deems necessary or appropriate to effectively execute the study required under subsection (a).

[(c) RECOMMENDATIONS.—In providing recommendations for the appropriate regulation of financial planners and other individuals who provide or offer to provide financial planning services, in order to protect investors and other consumers of financial planning services, the Comptroller General shall consider—

[(1) the appropriate structure for regulation of financial planners and individuals providing financial planning services; and

[(2) the appropriate scope of the regulations needed to protect investors and other consumers, including but not limited to the need to establish competency standards, practice standards, ethical guidelines, disciplinary authority, and transparency to investors and other consumers.

[(d) REPORT.—

[(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit a report on the study required under subsection (a) to—

[(A) the Committee on Banking, Housing, and Urban Affairs of the Senate;

[(B) the Special Committee on Aging of the Senate; and

[(C) the Committee on Financial Services of the House of Representatives.

[(2) CONTENT REQUIREMENTS.—The report required under paragraph (1) shall describe the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a), including a description of the considerations, analysis, and government, public, industry, nonprofit and consumer input that the Comptroller General considered to make such findings, conclusions, and legislative, regulatory, or other recommendations.]

* * * * * * *

[SEC. 921. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION

[(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by this title, is further amended by adding at the end the following new subsection:

["(o) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.".

[(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5) is amended by adding at the end the following new subsection:

["(f) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.".]

* * * * * * *

[SEC. 929T. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES

[Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking "an exchange required thereby" and inserting "a self-regulatory organization,".]

* * * * * * *

[SEC. 929X. SHORT SALE REFORMS

[(a) SHORT SALE DISCLOSURE.—Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is amended by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively, and inserting after paragraph (1) the following:

["(2) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.".

[(b) SHORT SELLING ENFORCEMENT.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended—

[(1) by redesignating subsections (d), (e), (f), (g), (h), and (i) as subsections (e), (f), (g), (h), (i), and (j), respectively; and

[(2) inserting after subsection (c), the following new subsection:

["(d) TRANSACTIONS RELATING TO SHORT SALES OF SECURITIES.—It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate com-

merce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Commission shall issue such other rules as are necessary or appropriate to ensure that the appropriate enforcement options and remedies are available for violations of this subsection in the public interest or for the protection of investors.".

[(c) INVESTOR NOTIFICATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

[(1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (g), (h), (i), and (j), respectively; and

[(2) inserting after subsection (d) the following new subsection:

["(e) NOTICES TO CUSTOMERS REGARDING SECURITIES LENDING.—Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses a customer's securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer's securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.".

[SEC. 929Y. STUDY ON EXTRATERRITORIAL PRIVATE RIGHTS OF ACTION

[(a) IN GENERAL.—The Securities and Exchange Commission of the United States shall solicit public comment and thereafter conduct a study to determine the extent to which private rights of action under the antifraud provisions of the Securities and Exchange Act of 1934 (15 U.S.C. 78u-4) should be extended to cover—

[(1) conduct within the United States that constitutes a significant step in the furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; and

[(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

[(b) CONTENTS.—The study shall consider and analyze, among other things—

[(1) the scope of such a private right of action, including whether it should extend to all private actors or whether it should be more limited to extend just to institutional investors or otherwise;

[(2) what implications such a private right of action would have on international comity;

[(3) the economic costs and benefits of extending a private right of action for transnational securities frauds; and

[(4) whether a narrower extraterritorial standard should be adopted.

[(c) REPORT.—A report of the study shall be submitted and recommendations made to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House not later than 18 months after the date of enactment of this Act.

[SEC. 929Z. GAO STUDY ON SECURITIES LITIGATION

[(a) STUDY.—The Comptroller General of the United States shall conduct a study on the impact of authorizing a private right of action against any person who aids or abets another person in violation of the securities laws. To the extent feasible, this study shall include—

[(1) a review of the role of secondary actors in companies issuance of securities;

[(2) the courts interpretation of the scope of liability for secondary actors under Federal securities laws after January 14, 2008; and

[(3) the types of lawsuits decided under the Private Securities Litigation Act of 1995.

[(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the findings of the study required under subsection (a).]

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

[SEC. 931. FINDINGS

[Congress finds the following:

[(1) Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the United States economy.

[(2) Credit rating agencies, including nationally recognized statistical rating organizations, play a critical "gatekeeper" role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.

[(3) Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial "gatekeepers" do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.

[(4) In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.

[(5) In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and

around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.]

* * * * * * *

[SEC. 933. STATE OF MIND IN PRIVATE ACTIONS

[(a) ACCOUNTABILITY.—Section 15E(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m)) is amended to read as follows:

["(m) ACCOUNTABILITY.—

["(1) IN GENERAL.—The enforcement and penalty provisions of this title shall apply to statements made by a credit rating agency in the same manner and to the same extent as such provisions apply to statements made by a registered public accounting firm or a securities analyst under the securities laws, and such statements shall not be deemed forward-looking statements for the purposes of section 21E.

["(2) RULEMAKING.—The Commission shall issue such rules as may be necessary to carry out this subsection.".

[(b) STATE OF MIND.—Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is amended—

[(1) by striking "In any" and inserting the following:

["(A) IN GENERAL.—Except as provided in subparagraph (B), in any"; and

[(2) by adding at the end the following:

["(B) EXCEPTION.—In the case of an action for money damages brought against a credit rating agency or a controlling person under this title, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed—

["(i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or

["(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.".]

* * * * * * *

[SEC. 937. TIMING OF REGULATIONS

[Unless otherwise specifically provided in this subtitle, the Commission shall issue final regulations, as required by this subtitle and the amendments made by this subtitle, not later than 1 year after the date of enactment of this Act.]

* * * * * * *

SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 7(b)(1)(E)(i), by striking "credit rating entities, and other private economic" and insert "private economic, credit,";

(2) in section 28(d)—

(A) in the subsection heading, by striking "Not of Investment Grade";

(B) in paragraph (1), by striking "not of investment grade" and inserting "that does not meet standards of credit-worthiness as established by the Corporation";

(C) in paragraph (2), by striking "not of investment grade";

(D) by striking paragraph (3);

(E) by redesignating paragraph (4) as paragraph (3); and

(F) in paragraph (3), as so redesignated—

(i) by striking subparagraph (A);

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (B), as so redesignated, by striking "not of investment grade" and inserting "that does not meet standards of credit-worthiness as established by the Corporation"; and

(3) in section 28(e)—

(A) in the subsection heading, by striking "Not of Investment Grade";

(B) in paragraph (1), by striking "not of investment grade" and inserting "that does not meet standards of credit-worthiness as established by the Corporation"; and

(C) in paragraphs (2) and (3), by striking "not of investment grade" each place that it appears and inserting "that does not meet standards of credit-worthiness established by the Corporation".

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

(c) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking "is rated investment grade by not less than 1 nationally recognized statistical rating organization" and inserting "meets such standards of credit-worthiness as the Commission shall adopt".

(d) REVISED STATUTES.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking "any applicable rating" and inserting "standards of credit-worthiness established by the Comptroller of the Currency";

(2) in the heading for subsection (a)(3) by striking "**Rating or Comparable Requirement**" and inserting "**Requirement**";

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

"(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 larg-

est insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.".

(4) in the heading for subsection (f), by striking "**Maintain Public Rating or**" and inserting "**Meet Standards of Credit-worthiness**"; and

(5) in subsection (f)(1), by striking "any applicable rating" and inserting "standards of credit-worthiness established by the Comptroller of the Currency".

(e) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking "is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization" and inserting "meets standards of credit-worthiness as established by the Commission"; and

(2) in paragraph (53)(A), by striking "is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization" and inserting "meets standards of credit-worthiness as established by the Commission".

(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking "credit rating" and inserting "credit-worthiness".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

(h) STUDY AND REPORT.—

(1) IN GENERAL.—*The* Commission shall undertake a study on the **[**feasability**]** *feasibility* and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report containing the findings of the study under paragraph (1) and the recommendations, if any, of the Commission with respect to the study.

[SEC. 939B. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.

[Not later than 90 days after the date of enactment of this subtitle, the Securities Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the exemp-

tion for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii)).

[SEC. 939C. SECURITIES AND EXCHANGE COMMISSION STUDY ON STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE

[(a) STUDY.—The Commission shall conduct a study of—

[(1) the independence of nationally recognized statistical rating organizations; and

[(2) how the independence of nationally recognized statistical rating organizations affects the ratings issued by the nationally recognized statistical rating organizations.

[(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Commission shall evaluate—

[(1) the management of conflicts of interest raised by a nationally recognized statistical rating organization providing other services, including risk management advisory services, ancillary assistance, or consulting services;

[(2) the potential impact of rules prohibiting a nationally recognized statistical rating organization that provides a rating to an issuer from providing other services to the issuer; and

[(3) any other issue relating to nationally recognized statistical rating organizations, as the Chairman of the Commission determines is appropriate.

[(c) REPORT.—Not later than 3 years after the date of enactment of this Act, the Chairman of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for improving the integrity of ratings issued by nationally recognized statistical rating organizations.

[SEC. 939D. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS

[(a) STUDY.—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

[(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process.

[SEC. 939E. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE CREATION OF AN INDEPENDENT PROFESSIONAL ANALYST ORGANIZATION

[(a) STUDY.—The Comptroller General of the United States shall conduct a study on the feasibility and merits of creating an independent professional organization for rating analysts employed by nationally recognized statistical rating organizations that would be responsible for—

[(1) establishing independent standards for governing the profession of rating analysts;

[(2) establishing a code of ethical conduct; and

[(3) overseeing the profession of rating analysts.

[(b) REPORT.—Not later than 1 year after the date of publication of the rules issued by the Commission pursuant to section 936, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a).

[SEC. 939F. STUDY AND RULEMAKING ON ASSIGNED CREDIT RATINGS.

[(a) DEFINITION.—In this section, the term "structured finance product" means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, as added by section 941, and any structured product based on an asset-backed security, as determined by the Commission, by rule.

[(b) STUDY.—The Commission shall carry out a study of—

[(1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models;

[(2) the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns nationally recognized statistical rating organizations to determine the credit ratings of structured finance products, including—

[(A) an assessment of potential mechanisms for determining fees for the nationally recognized statistical rating organizations;

[(B) appropriate methods for paying fees to the nationally recognized statistical rating organizations;

[(C) the extent to which the creation of such a system would be viewed as the creation of moral hazard by the Federal Government; and

[(D) any constitutional or other issues concerning the establishment of such a system;

[(3) the range of metrics that could be used to determine the accuracy of credit ratings; and

[(4) alternative means for compensating nationally recognized statistical rating organizations that would create incentives for accurate credit ratings.

[(c) REPORT AND RECOMMENDATION.—Not later than 24 months after the date of enactment of this Act, the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains—

[(1) the findings of the study required under subsection (b); and

[(2) any recommendations for regulatory or statutory changes that the Commission determines should be made to implement the findings of the study required under subsection (b).

[(d) RULEMAKING.—

[(1) RULEMAKING.—After submission of the report under subsection (c), the Commission shall, by rule, as the Commission determines is necessary or appropriate in the public interest or for the protection of investors, establish a system for the

assignment of nationally recognized statistical rating organizations to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the nationally recognized statistical rating organization that will determine the initial credit ratings and monitor such credit ratings. In issuing any rule under this paragraph, the Commission shall give thorough consideration to the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, and shall implement the system described in such section 939D unless the Commission determines that an alternative system would better serve the public interest and the protection of investors.

[(2) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to limit or suspend any other rulemaking authority of the Commission.

[SEC. 939G. EFFECT OF RULE 436(G).

[Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.

[SEC. 939H. SENSE OF CONGRESS.

[It is the sense of Congress that the Securities and Exchange Commission should exercise the rulemaking authority of the Commission under section 15E(h)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(h)(2)(B)) to prevent improper conflicts of interest arising from employees of nationally recognized statistical rating organizations providing services to issuers of securities that are unrelated to the issuance of credit ratings, including consulting, advisory, and other services.]

Subtitle D—Improvements to the Asset-Backed Securitization Process

SEC. 941. REGULATION OF CREDIT RISK RETENTION

(a) DEFINITION OF ASSET-BACKED SECURITY.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

"(77) ASSET-BACKED SECURITY.—The term 'asset-backed security'—

"(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

"(i) a collateralized mortgage obligation;

"(ii) a collateralized debt obligation;

"(iii) a collateralized bond obligation;

"(iv) a collateralized debt obligation of asset-backed securities;

"(v) a collateralized debt obligation of collateralized debt obligations; and

"(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

"(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.".

(b) CREDIT RISK RETENTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15F, as added by this Act, the following:

"SEC. 15G. CREDIT RISK RETENTION

"(a) DEFINITIONS.—In this section—

"(1) the term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

"(2) the term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

"(3) the term 'securitizer' means—

"(A) an issuer of an asset-backed security; or

"(B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and

"(4) the term 'originator' means a person who—

"(A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and

"(B) sells an asset directly or indirectly to a securitizer.

"(b) REGULATIONS REQUIRED.—

"(1) IN GENERAL.—Not later than 270 days after the date of enactment of this section, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

"(2) RESIDENTIAL MORTGAGES.—Not later than 270 days after the date of the enactment of this section, the Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Federal Housing Finance Agency, shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

"(c) STANDARDS FOR REGULATIONS.—

"(1) STANDARDS.—The regulations prescribed under subsection (b) shall—

"(A) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset;

"(B) require a securitizer to retain—

"(i) not less than 5 percent of the credit risk for any asset—

"(I) that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer; or

"(II) that is a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if 1 or more of the assets that collateralize the asset-backed security are not qualified residential mortgages; or

"(ii) less than 5 percent of the credit risk for an asset that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B);

"(C) specify—

"(i) the permissible forms of risk retention for purposes of this section;

"(ii) the minimum duration of the risk retention required under this section; and

"(iii) that a securitizer is not required to retain any part of the credit risk for an asset that is transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer, if all of the assets that collateralize the asset-backed security are qualified residential mortgages;

"(D) apply, regardless of whether the securitizer is an insured depository institution;

"(E) with respect to a commercial mortgage, specify the permissible types, forms, and amounts of risk retention that would meet the requirements of subparagraph (B), which in the determination of the Federal banking agencies and the Commission may include—

"(i) retention of a specified amount or percentage of the total credit risk of the asset;

"(ii) retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first loss position, holds adequate financial resources to back losses, provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities, and meets the same standards for risk retention as the Federal banking agencies and the Commission require of the securitizer;

"(iii) a determination by the Federal banking agencies and the Commission that the underwriting standards and controls for the asset are adequate; and

"(iv) provision of adequate representations and warranties and related enforcement mechanisms; and

"(F) establish appropriate standards for retention of an economic interest with respect to collateralized debt obligations, securities collateralized by collateralized debt obligations, and similar instruments collateralized by other asset-backed securities; and

"(G) provide for—

"(i) a total or partial exemption of any securitization, as may be appropriate in the public interest and for the protection of investors;

"(ii) a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, or an agency of the United States, as the Federal banking agencies and the Commission jointly determine appropriate in the public interest and for the protection of investors, except that, for purposes of this clause, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are not agencies of the United States;

"(iii) a total or partial exemption for any asset-backed security that is a security issued or guaranteed by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of a State or territory that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)), or a security defined as a qualified scholarship funding bond in section 150(d)(2) of the Internal Revenue Code of 1986, as may be appropriate in the public interest and for the protection of investors; and

"(iv) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

"(2) ASSET CLASSES.—

"(A) ASSET CLASSES.—The regulations prescribed under subsection (b) shall establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the Federal banking agencies and the Commission deem appropriate.

"(B) CONTENTS.—For each asset class established under subparagraph (A), the regulations prescribed under subsection (b) shall include underwriting standards established by the Federal banking agencies that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan.

"(d) ORIGINATORS.—In determining how to allocate risk retention obligations between a securitizer and an originator under sub-

section (c)(1)(E)(iv), the Federal banking agencies and the Commission shall—

"(1) reduce the percentage of risk retention obligations required of the securitizer by the percentage of risk retention obligations required of the originator; and

"(2) consider—

"(A) whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk;

"(B) whether the form or volume of transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the securitizer; and

"(C) the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

"(e) EXEMPTIONS, EXCEPTIONS, AND ADJUSTMENTS.—

"(1) IN GENERAL.—The Federal banking agencies and the Commission may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to the risk retention requirement and the prohibition on hedging under subsection (c)(1).

"(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies and the Commission under this paragraph shall—

"(A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and

"(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

"(3) CERTAIN INSTITUTIONS AND PROGRAMS EXEMPT.—

"(A) FARM CREDIT SYSTEM INSTITUTIONS.—Notwithstanding any other provision of this section, the requirements of this section shall not apply to any loan or other financial asset made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation.

"(B) OTHER FEDERAL PROGRAMS.—This section shall not apply to any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such an asset, which is insured or guaranteed by the United States or an agency of the United States. For purposes of this subsection, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks shall not be considered an agency of the United States.

"(4) EXEMPTION FOR QUALIFIED RESIDENTIAL MORTGAGES.—

"(A) IN GENERAL.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Develop-

ment, and the Director of the Federal Housing Finance Agency shall jointly issue regulations to exempt qualified residential mortgages from the risk retention requirements of this subsection.

"(B) QUALIFIED RESIDENTIAL MORTGAGE.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly define the term 'qualified residential mortgage' for purposes of this subsection, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—

"(i) documentation and verification of the financial resources relied upon to qualify the mortgagor;

"(ii) standards with respect to—

"(I) the residual income of the mortgagor after all monthly obligations;

"(II) the ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;

"(III) the ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;

"(iii) mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;

"(iv) mortgage guarantee insurance or other types of insurance or credit enhancement obtained at the time of origination, to the extent such insurance or credit enhancement reduces the risk of default; and

"(v) prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other features that have been demonstrated to exhibit a higher risk of borrower default.

"(C) LIMITATION ON DEFINITION.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency in defining the term 'qualified residential mortgage', as required by subparagraph (B), shall define that term to be no broader than the definition 'qualified mortgage' as the term is defined under section 129C(c)(2) of the Truth in Lending Act, as amended by the Consumer Financial Protection Act of 2010, and regulations adopted thereunder.

"(5) CONDITION FOR QUALIFIED RESIDENTIAL MORTGAGE EXEMPTION.—The regulations issued under paragraph (4) shall provide that an asset-backed security that is collateralized by tranches of other asset-backed securities shall not be exempt from the risk retention requirements of this subsection.

"(6) CERTIFICATION.—The Commission shall require an issuer to certify, for each issuance of an asset-backed security collateralized exclusively by qualified residential mortgages, that the issuer has evaluated the effectiveness of the internal supervisory controls of the issuer with respect to the process

for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages.

"(f) ENFORCEMENT.—The regulations issued under this section shall be enforced by—

"(1) the appropriate Federal banking agency, with respect to any securitizer that is an insured depository institution; and

"(2) the Commission, with respect to any securitizer that is not an insured depository institution.

"(g) AUTHORITY OF COMMISSION.—The authority of the Commission under this section shall be in addition to the authority of the Commission to otherwise enforce the securities laws.

"(h) AUTHORITY TO COORDINATE ON RULEMAKING.—The Chairperson of the Financial Stability Oversight Council shall coordinate all joint rulemaking required under this section.

"(i) EFFECTIVE DATE OF REGULATIONS.—The regulations issued under this section shall become effective—

"(1) with respect to securitizers and originators of asset-backed securities backed by residential mortgages, 1 year after the date on which final rules under this section are published in the Federal Register; and

"(2) with respect to securitizers and originators of all other classes of asset-backed securities, 2 years after the date on which final rules under this section are published in the Federal Register.".

[(c) STUDY ON RISK RETENTION.—

[(1) STUDY.—The Board of Governors of the Federal Reserve System, in coordination and consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission shall conduct a study of the combined impact on each individual class of asset-backed security established under section 15G(c)(2) of the Securities Exchange Act of 1934, as added by subsection (b), of—

[(A) the new credit risk retention requirements contained in the amendment made by subsection (b), including the effect credit risk retention requirements have on increasing the market for Federally subsidized loans; and

[(B) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board.

[(2) REPORT.—Not later than 90 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include statutory and regulatory recommendations for eliminating any negative impacts on the continued viability of the asset-backed securitization markets and on the availability of credit for new lending identified by the study conducted under paragraph (1).]

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[SEC. 946. STUDY ON THE MACROECONOMIC EFFECTS OF RISK RETENTION REQUIREMENTS

[(a) STUDY REQUIRED.—The Chairman of the Financial Services Oversight Council shall carry out a study on the macroeconomic ef-

fects of the risk retention requirements under this subtitle, and the amendments made by this subtitle, with emphasis placed on potential beneficial effects with respect to stabilizing the real estate market. Such study shall include—

[(1) an analysis of the effects of risk retention on real estate asset price bubbles, including a retrospective estimate of what fraction of real estate losses may have been averted had such requirements been in force in recent years;

[(2) an analysis of the feasibility of minimizing real estate price bubbles by proactively adjusting the percentage of risk retention that must be borne by creditors and securitizers of real estate debt, as a function of regional or national market conditions;

[(3) a comparable analysis for proactively adjusting mortgage origination requirements;

[(4) an assessment of whether such proactive adjustments should be made by an independent regulator, or in a formulaic and transparent manner;

[(5) an assessment of whether such adjustments should take place independently or in concert with monetary policy; and

[(6) recommendations for implementation and enabling legislation.

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

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Subtitle E—Accountability and Executive Compensation

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SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.

[(a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—] Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

"(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.".

[(b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

[(1) IN GENERAL.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer, other than an emerging growth company, as that

term is defined in section 3(a) of the Securities Exchange Act of 1934, to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)—

[(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;

[(B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and

[(C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

[(2) TOTAL COMPENSATION.—For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.]

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[SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIRECTOR HEDGING

[Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

["(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

["(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

["(2) held, directly or indirectly, by the employee or member of the board of directors.".

[SEC. 956. ENHANCED COMPENSATION STRUCTURE REPORTING.

[(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

[(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations or guidelines to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

[(A) provides an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

[(B) could lead to material financial loss to the covered financial institution.

[(2) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as requiring the reporting of the actual compensa-

tion of particular individuals. Nothing in this section shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

[(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators shall jointly prescribe regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions—

[(1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

[(2) that could lead to material financial loss to the covered financial institution.

[(c) STANDARDS.—The appropriate Federal regulators shall—

[(1) ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established under section of the Federal Deposit Insurance Act (12 U.S.C. 2 1831p-1) for insured depository institutions; and

[(2) in establishing such standards under such subsections, take into consideration the compensation standards described in section 39(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831p- 9 1(c)).

[(d) ENFORCEMENT.—The provisions of this section and the regulations issued under this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section or such regulations shall be treated as a violation of subtitle A of title V of such Act.

[(e) DEFINITIONS.—As used in this section—

[(1) the term "appropriate Federal regulator" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Securities and Exchange Commission, the Federal Housing Finance Agency; and

[(2) the term "covered financial institution" means—

[(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

[(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

[(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

[(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

[(E) the Federal National Mortgage Association;

[(F) the Federal Home Loan Mortgage Corporation; and

[(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

[(f) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

[SEC. 956. ENHANCED COMPENSATION STRUCTURE REPORTING

[(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

[(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations or guidelines to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

[(A) provides an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

[(B) could lead to material financial loss to the covered financial institution.

[(2) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this section shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

[(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators shall jointly prescribe regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions—

[(1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

[(2) that could lead to material financial loss to the covered financial institution.

[(c) STANDARDS.—The appropriate Federal regulators shall—

[(1) ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established under section of the Federal Deposit Insurance Act (12 U.S.C. 2 1831p-1) for insured depository institutions; and

[(2) in establishing such standards under such subsections, take into consideration the compensation standards described in section 39(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831p- 9 1(c)).

[(d) ENFORCEMENT.—The provisions of this section and the regulations issued under this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section or such regulations shall be treated as a violation of subtitle A of title V of such Act.

[(e) DEFINITIONS.—As used in this section—

[(1) the term "appropriate Federal regulator" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Board of Directors of

the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Securities and Exchange Commission, the Federal Housing Finance Agency; and

[(2) the term "covered financial institution" means—

[(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

[(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

[(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

[(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

[(E) the Federal National Mortgage Association;

[(F) the Federal Home Loan Mortgage Corporation; and

[(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

[(f) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.]

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Subtitle F—Improvements to the Management of the Securities and Exchange Commission

[SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURITIES ASSOCIATIONS.

[(a) REPORT REQUIRED.—Not later than 2 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes an evaluation of the oversight by the Commission of national securities associations registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) with respect to—

[(1) the governance of such national securities associations, including the identification and management of conflicts of interest by such national securities associations, together with an analysis of the impact of any conflicts of interest on the regulatory enforcement or rulemaking by such national securities associations;

[(2) the examinations carried out by the national securities associations, including the expertise of the examiners;

[(3) the executive compensation practices of such national securities associations;

[(4) the arbitration services provided by the national securities associations;

[(5) the review performed by national securities associations of advertising by the members of the national securities associations;

[(6) the cooperation with and assistance to State securities administrators by the national securities associations to promote investor protection;

[(7) how the funding of national securities associations is used to support the mission of the national securities associations, including—

[(A) the methods of funding;

[(B) the sufficiency of funds;

[(C) how funds are invested by the national securities association pending use; and

[(D) the impact of the methods, sufficiency, and investment of funds on regulatory enforcement by the national securities associations;

[(8) the policies regarding the employment of former employees of national securities associations by regulated entities;

[(9) the ongoing effectiveness of the rules of the national securities associations in achieving the goals of the rules;

[(10) the transparency of governance and activities of the national securities associations; and

[(11) any other issue that has an impact, as determined by the Comptroller General, on the effectiveness of such national securities associations in performing their mission and in dealing fairly with investors and members;

[(b) REIMBURSEMENTS FOR COST OF REPORTS.—

[(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (a), as billed therefor by the Comptroller General.

[(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

[(A) be credited to the appropriation account "Salaries and Expenses, Government Accountability Office" current when the payment is received; and

[(B) remain available until expended.

[SEC. 965. COMPLIANCE EXAMINERS

[Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

[“(h) EXAMINERS.—

[“(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

[“(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

[“(B) report to the Director of that Division.

[“(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

[“(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

[“(B) report to the Director of that Division.”.]

* * * * * * *

SEC. 967. COMMISSION ORGANIZATIONAL STUDY AND REFORM

(a) STUDY REQUIRED.—

(1) IN GENERAL.—Not later than the end of the 90-day period beginning on the date of the enactment of this subtitle, the Securities and Exchange Commission (hereinafter in this section referred to as the “SEC”) shall hire an independent consultant of high caliber and with expertise in organizational restructuring and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as the SEC’s relationship with and the reliance on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the SEC’s oversight.

(2) SPECIFIC AREAS FOR STUDY.—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the SEC;

(B) improving communications between SEC offices and divisions;

(C) the need to put in place a clear chain-of-command structure, particularly for enforcement examinations and compliance inspections;

(D) the effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market;

(E) the SEC’s hiring authorities, workplace policies, and personal practices, including—

(i) whether there is a need to further streamline hiring authorities for those who are not lawyers, accountants, compliance examiners, or economists;

(ii) whether there is a need for further pay reforms;

(iii) the diversity of skill sets of SEC employees and whether the present skill set diversity efficiently and effectively fosters the SEC’s mission of investor protection; and

(iv) the application of civil service laws by the SEC;

(F) whether the SEC’s oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the SEC’s reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than the end of the 150-day period after being retained, the independent consultant hired pursuant to subsection (a)(1) shall issue a report to the SEC and the Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1); and

(2) recommendations for legislative, regulatory, or administrative action that the consultant determines appropriate to enable the SEC and other entities on which the consultant reports to perform their statutorily or otherwise mandated missions.

(c) SEC REPORT.—Not later than the end of the 6-month period beginning on the date the consultant issues the report under subsection (b), and every 6-months thereafter during the 2-year period following the date on which the consultant issues such report, the SEC shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the SEC's implementation of the regulatory and administrative recommendations contained in the consultant's report.

(d) IMPLEMENTATION OF RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this subsection, the Securities and Exchange Commission shall complete an implementation of the recommendations contained in the report of the independent consultant issued under subsection (b) on March 10, 2011. To the extent that implementation of certain recommendations requires legislation, the Commission shall submit a report to Congress containing a request for legislation granting the Commission such authority it needs to fully implement such recommendations.

[SEC. 968. STUDY ON SEC REVOLVING DOOR

[(a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—The Comptroller General of the United States shall conduct a study that will—

[(1) review the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission;

[(2) determine how many employees who leave the Securities and Exchange Commission worked on cases that involved financial institutions regulated by such Commission;

[(3) review the length of time employees work for the Securities and Exchange Commission before leaving to be employed by financial institutions regulated by such Commission;

[(4) review existing internal controls and make recommendations on strengthening such controls to ensure that employees of the Securities and Exchange Commission who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission;

[(5) determine if greater post-employment restrictions are necessary to prevent employees of the Securities and Exchange Commission from being employed by financial institutions after employment with such Commission;

[(6) determine if the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions has led to inefficiencies in enforcement;

[(7) determine if employees of the Securities and Exchange Commission who are later employed by financial institutions assisted such institutions in circumventing Federal rules and regulations while employed by such Commission;

[(8) review any information that may address the volume of employees of the Securities and Exchange Commission who are

later employed by financial institutions, and make recommendations to Congress; and

[(9) review other additional issues as may be raised during the course of the study conducted under this subsection.

[(b) REPORT.—Not later than 1 year after the date of the enactment of this subtitle, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a).]

Subtitle H—Municipal Securities

* * * * * * *

[SEC. 971. PROXY ACCESS

[(a) PROXY ACCESS.—Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

[(1) by inserting "(1)" after "(a)"; and

[(2) by adding at the end the following:

["(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

["(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

["(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).".

[(b) REGULATIONS.—The Commission may issue rules permitting the use by a shareholder of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

[(c) EXEMPTIONS.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement made by this section or an amendment made by this section. In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirement in the amendment made by subsection (a) disproportionately burdens small issuers.

[SEC. 972. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES

[The Securities Exchange Act of 1934 (15 U.S. C. 78a et seq.) is amended by inserting after section 14A, as added by this title, the following:

["SEC. 14B. CORPORATE GOVERNANCE

["Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

["(1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or

[“(2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).”.]

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[SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF INCREASED DISCLOSURE TO INVESTORS

[(a) STUDY.—The Comptroller General of the United States shall conduct a study and review of the disclosure required to be made by issuers of municipal securities.

[(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Comptroller General of the United States shall—

[(1) broadly describe—

[(A) the size of the municipal securities markets and the issuers and investors; and

[(B) the disclosures provided by issuers to investors;

[(2) compare the amount, frequency, and quality of disclosures that issuers of municipal securities are required by law to provide for the benefit of municipal securities holders, including the amount of and frequency of disclosures actually provided by issuers of municipal securities, with the amount of and frequency of disclosures that issuers of corporate securities provide for the benefit of corporate securities holders, taking into account the differences between issuers of municipal securities and issuers of corporate securities;

[(3) evaluate the costs and benefits to various types of issuers of municipal securities of requiring issuers of municipal bonds to provide additional financial disclosures for the benefit of investors;

[(4) evaluate the potential benefit to investors from additional financial disclosures by issuers of municipal bonds; and

[(5) make recommendations relating to disclosure requirements for municipal issuers, including the advisability of the repeal or retention of section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(d)) (commonly known as the “Tower Amendment”).

[(c) REPORT.—Not later than 24 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the results of the study conducted under subsection (a), including recommendations for how to improve disclosure by issuers of municipal securities.

[SEC. 977. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE MUNICIPAL SECURITIES MARKETS

[(a) STUDY.—The Comptroller General of the United States shall conduct a study of the municipal securities markets.

[(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, with copies to the Special Committee on Aging of the Senate and the Commission, on the results of the study conducted under subsection (a), including—

[(1) an analysis of the mechanisms for trading, quality of trade executions, market transparency, trade reporting, price discovery, settlement clearing, and credit enhancements;

[(2) the needs of the markets and investors and the impact of recent innovations;

[(3) recommendations for how to improve the transparency, efficiency, fairness, and liquidity of trading in the municipal securities markets, including with reference to items listed in paragraph (1); and

[(4) potential uses of derivatives in the municipal securities markets.

[(c) RESPONSES.—Not later than 180 days after receipt of the report required under subsection (b), the Commission shall submit a response to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, with a copy to the Special Committee on Aging of the Senate, stating the actions the Commission has taken in response to the recommendations contained in such report.

[SEC. 978. FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD

[(a) AMENDMENT TO THE SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), as amended by section 912, is further amended by adding at the end the following:

[“(g) FUNDING FOR THE GASB.—

[“(1) IN GENERAL.—The Commission may, subject to the limitations imposed by section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4), require a national securities association registered under the Securities Exchange Act of 1934 to establish—

[“(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (referred to in this subsection as the ‘GASB’); and

[“(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

[“(2) ANNUAL BUDGET.—For purposes of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation.

[“(3) USE OF FUNDS.—Any fees or funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable to State and local governments of the United States.

[“(4) LIMITATION ON FEE.—The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

[“(5) RULES OF CONSTRUCTION.—

[“(A) FEES NOT PUBLIC MONIES.—Accounting support fees collected under this subsection and other receipts of the GASB shall not be considered public monies of the United States.

[“(B) LIMITATION ON AUTHORITY OF THE COMMISSION.—Nothing in this subsection shall be construed to—

[“(i) provide the Commission or any national securities association direct or indirect oversight of the budget or technical agenda of the GASB; or

[“(ii) affect the setting of generally accepted accounting principles by the GASB.

[“(C) NONINTERFERENCE WITH STATES.—Nothing in this subsection shall be construed to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.”.

[(b) STUDY OF FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.—

[(1) STUDY.—The Comptroller General of the United States shall conduct a study that evaluates—

[(A) the role and importance of the Governmental Accounting Standards Board in the municipal securities markets; and

[(B) the manner and the level at which the Governmental Accounting Standards Board has been funded.

[(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller General shall consult with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers.

[(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).]

SEC. 979. COMMISSION OFFICE OF MUNICIPAL SECURITIES.

(a) IN GENERAL.—There shall be in the Commission, *within the Division of Trading and Markets,* an Office of Municipal Securities, which shall—

(1) administer the rules of the Commission with respect to the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and

(2) coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions as required by law.

(b) DIRECTOR OF THE OFFICE.—The head of the Office of Municipal Securities shall be the Director, who shall [report to the Chairman] *report to the head of the Division of Trading and Markets*.

(c) STAFFING.—

(1) IN GENERAL.—The Office of Municipal Securities shall be staffed sufficiently to carry out the requirements of this section.

(2) REQUIREMENT.—The staff of the Office of Municipal Securities shall include individuals with knowledge of and expertise in municipal finance.

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Subtitle I—Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters

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[SEC. 984. LOAN OR BORROWING OF SECURITIES.

[(a) RULEMAKING AUTHORITY.—Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following:

["(c)(1) To effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

["(2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.".

[(b) RULEMAKING REQUIRED.—Not later than 2 years after the date of enactment of this Act, the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities.]

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[SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON PROPRIETARY TRADING.

[(a) DEFINITIONS.—In this section—

[(1) the term "covered entity" means—

[(A) an insured depository institution, an affiliate of an insured depository institution, a bank holding company, a financial holding company, or a subsidiary of a bank holding company or a financial holding company, as those terms are defined in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.); and

[(B) any other entity, as the Comptroller General of the United States may determine; and

[(2) the term "proprietary trading" means the act of a covered entity investing as a principal in securities, commodities, derivatives, hedge funds, private equity firms, or such other financial products or entities as the Comptroller General may determine.

[(b) STUDY.—

[(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding the risks and conflicts associated with proprietary trading by and within covered entities, including an evaluation of—

[(A) whether proprietary trading presents a material systemic risk to the stability of the United States financial system, and if so, the costs and benefits of options for mitigating such systemic risk;

[(B) whether proprietary trading presents material risks to the safety and soundness of the covered entities that engage in such activities, and if so, the costs and benefits of options for mitigating such risks;

[(C) whether proprietary trading presents material conflicts of interest between covered entities that engage in proprietary trading and the clients of the institutions who use the firm to execute trades or who rely on the firm to manage assets, and if so, the costs and benefits of options for mitigating such conflicts of interest;

[(D) whether adequate disclosure regarding the risks and conflicts of proprietary trading is provided to the depositors, trading and asset management clients, and investors of covered entities that engage in proprietary trading, and if not, the costs and benefits of options for the improvement of such disclosure; and

[(E) whether the banking, securities, and commodities regulators of institutions that engage in proprietary trading have in place adequate systems and controls to monitor and contain any risks and conflicts of interest related to proprietary trading, and if not, the costs and benefits of options for the improvement of such systems and controls.

[(2) CONSIDERATIONS.—In carrying out the study required under paragraph (1), the Comptroller General shall consider—

[(A) current practice relating to proprietary trading;

[(B) the advisability of a complete ban on proprietary trading;

[(C) limitations on the scope of activities that covered entities may engage in with respect to proprietary trading;

[(D) the advisability of additional capital requirements for covered entities that engage in proprietary trading;

[(E) enhanced restrictions on transactions between affiliates related to proprietary trading;

[(F) enhanced accounting disclosures relating to proprietary trading;

[(G) enhanced public disclosure relating to proprietary trading; and

[(H) any other options the Comptroller General deems appropriate.

[(c) REPORT TO CONGRESS.—Not later than 15 months after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study conducted under subsection (b).

[(d) ACCESS BY COMPTROLLER GENERAL.—For purposes of conducting the study required under subsection (b), the Comptroller General shall have access, upon request, to any information, data,

schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by a covered entity that engages in proprietary trading, and to the officers, directors, employees, independent public accountants, financial advisors, staff, and agents and representatives of a covered entity (as related to the activities of the agent or representative on behalf of the covered entity), at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records, as the Comptroller General deems appropriate.

[(e) CONFIDENTIALITY OF REPORTS.—

[(1) IN GENERAL.—Except as provided in paragraph (2), the Comptroller General may not disclose information regarding—

[(A) any proprietary trading activity of a covered entity, unless such information is disclosed at a level of generality that does not reveal the investment or trading position or strategy of the covered entity for any specific security, commodity, derivative, or other investment or financial product; or

[(B) any individual interviewed by the Comptroller General for purposes of the study under subsection (b), unless such information is disclosed at a level of generality that does not reveal—

[(i) the name of or identifying details relating to such individual; or

[(ii) in the case of an individual who is an employee of a third party that provides professional services to a covered entity believed to be engaged in proprietary trading, the name of or any identifying details relating to such third party.

[(2) EXCEPTIONS.—The Comptroller General may disclose the information described in paragraph (1)—

[(A) to a department, agency, or official of the Federal Government, for official use, upon request;

[(B) to a committee of Congress, upon request; and

[(C) to a court, upon an order of such court.

[SEC. 989A. SENIOR INVESTOR PROTECTIONS.

[(a) DEFINITIONS.—As used in this section—

[(1) the term "eligible entity" means—

[(A) a securities commission (or any agency or office performing like functions) of a State that the Office determines has adopted rules on the appropriate use of designations in the offer or sale of securities or the provision of investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

[(B) the insurance commission (or any agency or office performing like functions) of any State that the Office determines has—

[(i) adopted rules on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Com-

missioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

[(ii) adopted rules with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); or

[(C) a consumer protection agency of any State, if—

[(i) the securities commission (or any agency or office performing like functions) of the State is eligible under subparagraph (A); or

[(ii) the insurance commission (or any agency or office performing like functions) of the State is eligible under subparagraph (B);

[(2) the term "financial product" means a security, an insurance product (including an insurance product that pays a return, whether fixed or variable), a bank product, and a loan product;

[(3) the term "misleading designation"—

[(A) means a certification, professional designation, or other purported credential that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

[(B) does not include a certification, professional designation, license, or other credential that—

[(i) was issued by or obtained from an academic institution having regional accreditation;

[(ii) meets the standards for certifications and professional designations outlined by the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto) or by the Model Regulations on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, adopted by the National Association of Insurance Commissioners (or any successor thereto); or

[(iii) was issued by or obtained from a State;

[(4) the term "misleading or fraudulent marketing" means the use of a misleading designation by a person that sells to or advises a senior in connection with the sale of a financial product;

[(5) the term "NASAA" means the North American Securities Administrators Association;

[(6) the term "Office" means the Office of Financial Literacy of the Bureau;

[(7) the term "senior" means any individual who has attained the age of 62 years or older; and

[(8) the term "State" has the same meaning as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

[(b) GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLED BY FALSE DESIGNATIONS.—The Office shall es-

tablish a program under which the Office may make grants to States or eligible entities—

[(1) to hire staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing;

[(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement officers, in order to identify salespersons and advisers who target seniors through the use of misleading designations;

[(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of salespersons and advisers who target seniors with the use of misleading designations;

[(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers in connection with the sale and marketing of financial products;

[(5) to provide educational materials and training to seniors to increase awareness and understanding of misleading or fraudulent marketing;

[(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

[(7) to enhance provisions of State law to provide protection for seniors against misleading or fraudulent marketing.

[(c) APPLICATIONS.—A State or eligible entity desiring a grant under this section shall submit an application to the Office, in such form and in such a manner as the Office may determine, that includes—

[(1) a proposal for activities to protect seniors from misleading or fraudulent marketing that are proposed to be funded using a grant under this section, including—

[(A) an identification of the scope of the problem of misleading or fraudulent marketing in the State;

[(B) a description of how the proposed activities would—

[(i) protect seniors from misleading or fraudulent marketing in the sale of financial products, including by proactively identifying victims of misleading and fraudulent marketing who are seniors;

[(ii) assist in the investigation and prosecution of those using misleading or fraudulent marketing; and

[(iii) discourage and reduce cases of misleading or fraudulent marketing; and

[(C) a description of how the proposed activities would be coordinated with other State efforts; and

[(2) any other information, as the Office determines is appropriate.

[(d) PERFORMANCE OBJECTIVES AND REPORTING REQUIREMENTS.—The Office may establish such performance objectives and reporting requirements for States and eligible entities receiving a grant under this section as the Office determines are necessary to carry out and assess the effectiveness of the program under this section.

[(e) MAXIMUM AMOUNT.—The amount of a grant under this section may not exceed—

[(1) $500,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted rules—

[(A) on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto);

[(B) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

[(C) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto); and

[(2) $100,000 for each of 3 consecutive fiscal years, if the recipient is a State, or an eligible entity of a State, that has adopted—

[(A) rules on the appropriate use of designations in the offer or sale of securities or investment advice that meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations (or any successor thereto); or

[(B) rules—

[(i) on the appropriate use of designations in the sale of insurance products that, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (or any successor thereto); and

[(ii) with respect to fiduciary or suitability requirements in the sale of annuities that meet or exceed the minimum requirements established by the Suitability in Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (or any successor thereto).

[(f) SUBGRANTS.—A State or eligible entity that receives a grant under this section may make a subgrant, as the State or eligible entity determines is necessary to carry out the activities funded using a grant under this section.

[(g) REAPPLICATION.—A State or eligible entity that receives a grant under this section may reapply for a grant under this section, notwithstanding the limitations on grant amounts under subsection (e).

[(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $8,000,000 for each of fiscal years 2011 through 2015.]

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SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the "Council of Inspectors General") chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(J) The Consumer Law Enforcement Agency.

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

[SEC. 989F. GAO STUDY OF PERSON TO PERSON LENDING

[(a) STUDY.—

[(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of person to person lending to determine the optimal Federal regulatory structure.

[(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller General shall consult with Federal banking agencies, the Commission, consumer groups, outside experts, and the person to person lending industry.

[(3) CONTENT OF STUDY.—The study required under paragraph (1) shall include an examination of—

[(A) the regulatory structure as it exists on the date of enactment of this Act, as determined by the Commission, with particular attention to—

[(i) the application of the Securities Act of 1933 to person to person lending platforms;

[(ii) the posting of consumer loan information on the EDGAR database of the Commission; and

[(iii) the treatment of privately held person to person lending platforms as public companies;

[(B) the State and other Federal regulators responsible for the oversight and regulation of person to person lending markets;

[(C) any Federal, State, or local government or private studies of person to person lending completed or in progress on the date of enactment of this Act;

[(D) consumer privacy and data protections, minimum credit standards, anti-money laundering and risk management in the regulatory structure as it exists on the date of enactment of this Act, and whether additional or alternative safeguards are needed; and

[(E) the uses of person to person lending.

[(b) REPORT.—

[(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the study required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

[(2) CONTENT OF REPORT.—The report required under paragraph (1) shall include alternative regulatory options, including—

[(A) the involvement of other Federal agencies; and

[(B) alternative approaches by the Commission and recommendations on whether the alternative approaches are effective.]

SEC. 989G. EXEMPTION FOR NONACCELERATED FILERS

[(a) EXEMPTION.—]Section 404 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

"(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is neither a 'large accelerated filer' nor an 'accelerated filer' as those terms are defined in Rule 12b-2 of the Commission (17 C.F.R. 240.12b-2).".

[(b) STUDY.—The Securities and Exchange Commission shall conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between $75,000,000 and $250,000,000 for the relevant reporting period while maintaining investor protections for such companies. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 9 months after the date of the enactment of this subtitle, the Commission shall transmit a report of such study to Congress.]

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[SEC. 989I. GAO STUDY REGARDING EXEMPTION FOR SMALLER ISSUERS

[(a) STUDY REGARDING EXEMPTION FOR SMALLER ISSUERS.—The Comptroller General of the United States shall carry out a study on the impact of the amendments made by this Act to section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)), which shall include an analysis of—

[(1) whether issuers that are exempt from such section 404(b) have fewer or more restatements of published accounting statements than issuers that are required to comply with such section 404(b);

[(2) the cost of capital for issuers that are exempt from such section 404(b) compared to the cost of capital for issuers that are required to comply with such section 404(b);

[(3) whether there is any difference in the confidence of investors in the integrity of financial statements of issuers that comply with such section 404(b) and issuers that are exempt from compliance with such section 404(b);

[(4) whether issuers that do not receive the attestation for internal controls required under such section 404(b) should be required to disclose the lack of such attestation to investors; and

[(5) the costs and benefits to issuers that are exempt from such section 404(b) that voluntarily have obtained the attestation of an independent auditor.

[(b) REPORT.—Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study required under subsection (a).]

* * * * * * *

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the "Consumer Financial Protection Act of 2010".

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

(1) AFFILIATE.—The term "affiliate" means any person that controls, is controlled by, or is under common control with another person.

(2) BUREAU.—The term "Bureau" means the Bureau of Consumer Financial Protection.

(3) BUSINESS OF INSURANCE.—The term "business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) CONSUMER.—The term "consumer" means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term "consumer financial product or service" means any financial product or service that is described in one or more categories under—

(A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) COVERED PERSON.—The term "covered person" means—

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) CREDIT.—The term "credit" means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(8) DEPOSIT-TAKING ACTIVITY.—The term "deposit-taking activity" means—

(A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;

(B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or

(C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(9) DESIGNATED TRANSFER DATE.—The term "designated transfer date" means the date established under section 1062.

(10) DIRECTOR.—The term "Director" means the Director of the Bureau.

(11) ELECTRONIC CONDUIT SERVICES.—The term "electronic conduit services"—

(A) means the provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network; and

(B) does not include a person that provides electronic conduit services if, when providing such services, the person—

(i) selects or modifies the content of the electronic data;

(ii) transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such financial data is differentiated from other types of data of the same form that such person transmits, routes, or stores, or with respect to which, provides connections; or

(iii) is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.

(12) ENUMERATED CONSUMER LAWS.—Except as otherwise specifically provided in section 1029, subtitle G or subtitle H, the term "enumerated consumer laws" means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act;

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the [Home Owners] *Homeowners* Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)-(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802-6809) except for section 505 as it applies to section 501(b);

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111-8); and

(R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

(13) FAIR LENDING.—The term "fair lending" means fair, equitable, and nondiscriminatory access to credit for consumers.

(14) FEDERAL CONSUMER FINANCIAL LAW.—The term "Federal consumer financial law" means the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act.

(15) FINANCIAL PRODUCT OR SERVICE.—

(A) IN GENERAL.—The term "financial product or service" means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau;

(iii) providing real estate settlement services, except such services excluded under subparagraph (C), or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a cus-

todian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause—

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—

(I) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(II) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services (other than services relating to securities provided by a person regulated by the Commission or a person regulated by a State securities Commission, but only to the extent that such person acts in a regulated capacity) to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to

the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person;

(bb) provides the information described in item (aa) to an affiliate of such person; or

(cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in section 1027(a)(2)(A);

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title, if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.

(B) RULE OF CONSTRUCTION.—

(i) IN GENERAL.—For purposes of subparagraph (A)(xi)(II), and subject to clause (ii) of this subparagraph, the following activities provided to a covered person shall not, for purposes of this title, be consid-

ered incidental or complementary to a financial activity permissible for a financial holding company to engage in under any provision of a Federal law or regulation applicable to a financial holding company:

(I) Providing information products or services to a covered person for identity authentication.

(II) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(III) Providing document retrieval or delivery services.

(IV) Providing public records information retrieval.

(V) Providing information products or services for anti-money laundering activities.

(ii) LIMITATION.—Nothing in clause (i) may be construed as modifying or limiting the authority of the Bureau to exercise any—

(I) [examination or] enforcement powers authority under this title with respect to a covered person or service provider engaging in an activity described in subparagraph (A)(ix); or

(II) powers authorized by this title to prescribe rules, issue orders, or take other actions under any enumerated consumer law or law for which the authorities are transferred under subtitle F or H.

(C) EXCLUSIONS.—The term "financial product or service" does not include—

(i) the business of insurance; or

(ii) electronic conduit services.

(16) FOREIGN EXCHANGE.—The term "foreign exchange" means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(17) INSURED CREDIT UNION.—The term "insured credit union" has the same meaning as in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(18) PAYMENT INSTRUMENT.—The term "payment instrument" means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(19) PERSON.—The term "person" means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(20) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term "person regulated by the Commodity Futures Trading Commission" means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(21) PERSON REGULATED BY THE COMMISSION.—The term "person regulated by the Commission" means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(22) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term "person regulated by a State insurance regulator" means any person that is engaged in the business of insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(23) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term "person that performs income tax preparation activities for consumers" means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(24) PRUDENTIAL REGULATOR.—The term "prudential regulator" means—

(A) in the case of an insured depository institution or depository institution holding company (as defined in section 3 of the Federal Deposit Insurance Act), or subsidiary of such institution or company, the appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(25) RELATED PERSON.—The term "related person"—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 2 of the Bank Holding Company Act of 1956), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(26) SERVICE PROVIDER.—

(A) IN GENERAL.—The term "service provider" means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) EXCEPTIONS.—The term "service provider" does not include a person solely by virtue of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) RULE OF CONSTRUCTION.—A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(27) STATE.—The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1(a)).

(28) STORED VALUE.—

(A) IN GENERAL.—The term "stored value" means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(B) EXCLUSION.—Notwithstanding subparagraph (A), the term "stored value" does not include a special purpose card or certificate, which shall be defined for purposes of this paragraph as funds or monetary value represented in any electronic format, whether or not specially encrypted, that is—

(i) issued by a merchant, retailer, or other seller of nonfinancial goods or services;

(ii) redeemable only for transactions with the merchant, retailer, or seller of nonfinancial goods or services or with an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services;

(iii) issued in a specified amount that, except in the case of a card or product used solely for telephone services, may not be increased or reloaded;

(iv) purchased on a prepaid basis in exchange for payment; and

(v) honored upon presentation to such merchant, retailer, or seller of nonfinancial goods or services or an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services, only for any nonfinancial goods or services.

(29) TRANSMITTING OR EXCHANGING FUNDS.—The term "transmitting or exchanging funds" means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

Subtitle A—Bureau of Consumer Financial Protection

SEC. 1011. ESTABLISHMENT OF THE [BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER LAW ENFORCEMENT AGENCY.*

(a) [BUREAU] *AGENCY* ESTABLISHED.—There is established [in the Federal Reserve System,] an [independent bureau] *independent agency* to be known as the "[Bureau of Consumer Financial Protection] *Consumer Law Enforcement Agency (hereinafter in this section referred to as the "Agency")*", which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The [Bureau] *Agency* shall be considered an Executive agency, as defined in section 105 of title 5, United States Code. Except as otherwise provided expressly by law, all Federal laws dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the [Bureau] *Agency*.

(b) DIRECTOR AND DEPUTY DIRECTOR.—

(1) IN GENERAL.—There is established the position of the Director, who shall serve as the head of the [Bureau] *Agency*.

(2) APPOINTMENT.—Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) QUALIFICATION.—The President shall nominate the Director from among individuals who are citizens of the United States.

(4) COMPENSATION.—The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(5) DEPUTY DIRECTOR.—There is established the position of Deputy Director, who shall—

[(A) be appointed by the Director; and]

(A) shall be appointed by the President; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) TERM.—

(1) IN GENERAL.—The Director shall serve for a term of 5 years.

(2) EXPIRATION OF TERM.—An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

[(3) REMOVAL FOR CAUSE.—The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.]

(d) SERVICE RESTRICTION.—No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) OFFICES.—The principal office of the [Bureau] *Agency* shall be in the District of Columbia. The Director may establish regional offices of the [Bureau] *Agency* [, including in cities in which the

Federal reserve banks, or branches of such banks, are located,] in order to carry out the responsibilities assigned to the [Bureau] *Agency* under the Federal consumer financial laws.

(i) INSPECTOR GENERAL.—There is established the position of the Inspector General of the Agency.

SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.

(a) POWERS OF THE BUREAU.—The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the Director and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, [examinations,] and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) DELEGATION OF AUTHORITY.—The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

[(c) AUTONOMY OF THE BUREAU.—

[(1) COORDINATION WITH THE BOARD OF GOVERNORS.—Notwithstanding any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

[(2) AUTONOMY.—Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act, the Board of Governors may not—

[(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

[(B) appoint, direct, or remove any officer or employee of the Bureau; or

[(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or

office of the Board of Governors or the Federal reserve banks.

[(3) RULES AND ORDERS.—No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

[(4) RECOMMENDATIONS AND TESTIMONY.—No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

[(5) CLARIFICATION OF AUTONOMY OF THE BUREAU IN LEGAL PROCEEDINGS.—The Bureau shall not be liable under any provision of law for any action or inaction of the Board of Governors, and the Board of Governors shall not be liable under any provision of law for any action or inaction of the Bureau.]

SEC. 1013. ADMINISTRATION.

(a) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Bureau, in accordance with the applicable provisions of title 5, United States Code.

(B) EMPLOYEES OF THE BUREAU.—The Director is authorized to employ attorneys, [compliance examiners, compliance supervision analysts,] economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Unless otherwise provided expressly by law, any individual appointed under this section shall be an employee as defined in section 2105 of title 5, United States Code, and subject to the provisions of such title and other laws generally applicable to the employees of an Executive agency.

(C) WAIVER AUTHORITY.—

(i) IN GENERAL.—In making any appointment under subparagraph (A), the Director may waive the requirements of chapter 33 of title 5, United States Code, and the regulations implementing such chapter, to the extent necessary to appoint employees on terms and conditions that are consistent with those set forth in [section 11(1)] *subsection (l) of section 11* of the Federal Reserve Act (12 U.S.C. 248(1)), while providing for—

(I) fair, credible, and transparent methods of establishing qualification requirements for, recruitment for, and appointments to positions;

(II) fair and open competition and equitable treatment in the consideration and selection of individuals to positions;

(III) fair, credible, and transparent methods of assigning, reassigning, detailing, transferring, and promoting employees.

(ii) VETERANS PREFERENCES.—In implementing this subparagraph, the Director shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, in a manner consistent with that in which such provisions are applied under chapter 33 of title 5, United States Code. The authority under this subparagraph to waive the requirements of that chapter 33 shall expire 5 years after the date of enactment of this Act.

[(2) COMPENSATION.—Notwithstanding any otherwise applicable provision of title 5, United States Code, concerning compensation, including the provisions of chapter 51 and chapter 53, the following provisions shall apply with respect to employees of the Bureau:

[(A) The rates of basic pay for all employees of the Bureau may be set and adjusted by the Director.

[(B) The Director shall at all times provide compensation (including benefits) to each class of employees that, at a minimum, are comparable to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

[(C) All such employees shall be compensated (including benefits) on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)).]

(2) COMPENSATION.—The rates of basic pay for all employees of the Agency shall be set and adjusted by the Director in accordance with the General Schedule set forth in section 5332 of title 5, United States Code.

(3) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN AND FEDERAL RESERVE SYSTEM THRIFT PLAN.—

(A) EMPLOYEE ELECTION.—Employees appointed to the Bureau may elect to participate in either—

(i) both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, under the same terms on which such participation is offered to employees of the Board of Governors who participate in such plans and under the terms and conditions specified under section 1064(i)(1)(C); or

(ii) the Civil Service Retirement System under chapter 83 of title 5, United States Code, or the Federal Employees Retirement System under chapter 84 of title 5, United States Code, if previously covered under one of those Federal employee retirement systems.

(B) ELECTION PERIOD.—Bureau employees shall make an election under this paragraph not later than 1 year after the date of appointment by, or transfer under subtitle F to, the Bureau. Participation in, and benefit accruals under, any other retirement plan established or maintained by the Federal Government shall end not later than the date on which participation in, and benefit accruals under, the

Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan begin.

(C) EMPLOYER CONTRIBUTION.—The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5, United States Code, for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of such plan.

(D) CONTROLLED GROUP STATUS.—The Bureau is the same employer as the Federal Reserve System (as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to the date of enactment of this Act) for purposes of subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986, (26 U.S.C. 414).

(4) LABOR-MANAGEMENT RELATIONS.—Chapter 71 of title 5, United States Code, shall apply to the Bureau and the employees of the Bureau.

(5) AGENCY OMBUDSMAN.—

(A) ESTABLISHMENT REQUIRED.—Not later than 180 days after the designated transfer date, the Bureau shall appoint an ombudsman.

(B) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with subparagraph (A) shall—

(i) act as a liaison between the Bureau and any affected person with respect to any problem that such party may have in dealing with the Bureau, resulting from the regulatory activities of the Bureau; and

(ii) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(b) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director [shall establish] *may establish* a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(E) consumer behavior with respect to consumer financial products or services, including performance on mortgage loans; and

(F) experiences of traditionally underserved consumers, including un-banked and under-banked consumers.

(2) COMMUNITY AFFAIRS.—The Director [shall establish] *may establish* a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with the Federal Trade Commission or other Federal agencies to route complaints to such agencies, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems;

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources; and

(iii) participation by the State agency includes measures necessary to provide for protection of personally identifiable information that conform to the standards for protection of the confidentiality of personally identifiable information and for data integrity and security that apply to the Federal agencies described in subparagraph (D).

(C) REPORTS TO THE CONGRESS.—The Director shall present an annual report to Congress not later than March 31 of each year on the complaints received by the Bureau in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, complaint types, and, where applicable, information about resolution of complaints.

(D) DATA SHARING REQUIRED.—[To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the] *The* Bureau shall share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies, subject to the standards applicable to Federal agencies for protection of the confidentiality of personally identifiable information and for data security and integrity. The prudential regulators, the Federal Trade Commission, and other Federal

agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Bureau, subject to the standards applicable to Federal agencies for protection of confidentiality of personally identifiable information and for data security and integrity. *Information collected under this paragraph may not be made publicly available.*

(c) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—The Director [shall establish] *may establish* within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—[There is established the] *At any time when the Office of Fair Lending and Equal Opportunity exists within the Agency, there shall be a* position of Assistant Director of the Bureau for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(d) OFFICE OF FINANCIAL EDUCATION.—

(1) ESTABLISHMENT.—The Director [shall establish] *may establish* an Office of Financial Education, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(2) OTHER DUTIES.—The Office of Financial Education shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy, through activities including providing opportunities for consumers to access—

(A) financial counseling, including community-based financial counseling, where practicable;

(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(C) savings, borrowing, and other services found at mainstream financial institutions;

(D) activities intended to—

(i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;

(ii) reduce debt; and

(iii) improve the financial situation of the consumer;

(E) assistance in developing long-term savings strategies; and

(F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.

(3) COORDINATION.—The Office of Financial Education shall coordinate with other units within the Bureau in carrying out its functions, including—

(A) working with the Community Affairs Office*, if such Office exists within the Agency,* to implement the strategy to improve financial literacy of consumers; and

(B) working with the research unit ❚established by the Director❚*, if established by the Director,* to conduct research related to consumer financial education and counseling.

(4) REPORT.—❚Not later than 24 months after the designated transfer date, and annually thereafter,❚ *Annually, at any time when the Office of Financial Education exists within the Agency,* the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(5) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(A) in subparagraph (B), by striking "and" at the end;

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) the Director of the Bureau of Consumer Financial Protection; and".

(6) CONFORMING AMENDMENT.—Section 513(d) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(d)) is amended by adding at the end the following: "The Director of the Bureau of Consumer Financial Protection shall serve as the Vice Chairman.".

(7) STUDY AND REPORT ON FINANCIAL LITERACY PROGRAM.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study to identify—

(i) the feasibility of certification of persons providing the programs or performing the activities described in paragraph (2), including recognizing outstanding pro-

grams, and developing guidelines and resources for community-based practitioners, including—

(I) a potential certification process and standards for certification;

(II) appropriate certifying entities;

(III) resources required for funding such a process; and

(IV) a cost-benefit analysis of such certification;

(ii) technological resources intended to collect, analyze, evaluate, or promote financial literacy and counseling programs;

(iii) effective methods, tools, and strategies intended to educate and empower consumers about personal finance management; and

(iv) recommendations intended to encourage the development of programs that effectively improve financial education outcomes and empower consumers to make better informed financial decisions based on findings.

(B) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(e) OFFICE OF SERVICE MEMBER AFFAIRS.—

(1) IN GENERAL.—The Director [shall] *may* establish an Office of Service Member Affairs, which shall be responsible for developing and implementing initiatives for service members and their families intended to—

(A) educate and empower service members and their families to make better informed decisions regarding consumer financial products and services;

(B) coordinate with the unit of the Bureau established under subsection (b)(3), in order to monitor complaints by service members and their families and responses to those complaints by the Bureau or other appropriate Federal or State agency; and

(C) coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families.

(2) COORDINATION.—

(A) REGIONAL SERVICES.—The Director is authorized to assign employees of the Bureau as may be deemed necessary to conduct the business of the Office of Service Member Affairs, including by establishing and maintaining the functions of the Office in regional offices of the Bureau located near military bases, military treatment facilities, or other similar military facilities.

(B) AGREEMENTS.—The Director is authorized to enter into memoranda of understanding and similar agreements with the Department of Defense, including any branch or

agency as authorized by the department, in order to carry out the business of the Office of Service Member Affairs.

(3) DEFINITION.—As used in this subsection, the term "service member" means any member of the United States Armed Forces and any member of the National Guard or Reserves.

[(f) TIMING.—The Office of Fair Lending and Equal Opportunity, the Office of Financial Education, and the Office of Service Member Affairs shall each be established not later than 1 year after the designated transfer date.]

[(g)] *(f)* OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS.—

(1) ESTABLISHMENT.—[Before the end of the 180-day period beginning on the designated transfer date, the Director shall] *The Director may* establish the Office of Financial Protection for Older Americans, the functions of which shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this subsection, referred to as "seniors") [on protection from unfair, deceptive, and abusive practices and] on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(2) ASSISTANT DIRECTOR.—[The Office] *At any time when the Office of Financial Protection for Older Americans exists within the Agency, the Office* of Financial Protection for Older Americans (in this subsection referred to as the "Office") shall be headed by an assistant director.

(3) DUTIES.—The Office shall—

(A) develop goals for programs that provide seniors financial literacy and counseling, including programs that—

[(i) help seniors recognize warning signs of unfair, deceptive, or abusive practices, protect themselves from such practices;]

[(ii)] *(i)* provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

[(iii)] *(ii)* provide personal consumer credit advocacy [to respond to consumer problems caused by unfair, deceptive, or abusive practices];

(B) monitor certifications or designations of financial advisors who advise seniors [and alert the Commission and State regulators of certifications or designations that are identified as unfair, deceptive, or abusive];

(C) not later than 18 months after the date of the establishment of the Office, submit to Congress and the Commission any legislative and regulatory recommendations on the best practices for—

(i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(ii) methods in which a senior can identify the financial advisor most appropriate for the senior's needs; and

(iii) methods in which a senior can verify a financial advisor's credentials;

(D) conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

[(i) protecting themselves from unfair, deceptive, and abusive practices;]

[(ii)] *(i)* long-term savings; and

[(iii)] *(ii)* planning for retirement and long-term care;

(E) coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement; and

(F) work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

[(h)] *(g)* APPLICATION OF FACA.—Notwithstanding any provision of the Federal Advisory Committee Act (5 U.S.C. App.), such Act shall apply to each advisory committee of the Bureau and each subcommittee of such an advisory committee.

(h) OFFICE OF ECONOMIC ANALYSIS.—

(1) ESTABLISHMENT.—The Director shall, not later than the end of the 60-day period beginning on the date of the enactment of this subsection, establish an Office of Economic Analysis.

(2) DIRECT REPORTING.—The head of the Office of Economic Analysis shall report directly to the Director.

(3) REVIEW AND ASSESSMENT OF PROPOSED RULES AND REGULATIONS.—The Office of Economic Analysis shall—

(A) review all proposed rules and regulations of the Agency;

(B) assess the impact of such rules and regulations on consumer choice, price, and access to credit products; and

(C) publish a report on such reviews and assessments in the Federal Register.

(4) MEASURING EXISTING RULES AND REGULATIONS.—The Office of Economic Analysis shall—

(A) review each rule and regulation issued by the Commission after 1, 2, 6, and 11 years;

(B) measure the rule or regulation's success in solving the problem that the rule or regulation was intended to solve when issued; and

(C) publish a report on such review and measurement in the Federal Register.

(5) COST-BENEFIT ANALYSIS RELATED TO ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS.—The Office of Economic Analysis shall—

(A) carry out a cost-benefit analysis of any proposed administrative enforcement action, civil lawsuit, or consent order of the Agency; and

(B) assess the impact of such complaint, lawsuit, or order on consumer choice, price, and access to credit products.

[SEC. 1014. CONSUMER ADVISORY BOARD.

[(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

[(b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

[(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

[(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

[(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

[(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.]

* * * * * * *

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) REPORTS REQUIRED.—The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Energy and Commerce of the House of Representatives, a report, beginning with the session following the designated transfer date. The Bureau may also submit such report to the Committee on Commerce, Science, and Transportation of the Senate.

(c) CONTENTS.—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public [supervisory and] enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, [orders, and supervisory actions] *and orders* with respect to covered persons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law;

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau; and

(9) an analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion.

(d) ADDITIONAL REQUIREMENT FOR INSPECTOR GENERAL.—On a separate occasion from that described in subsection (a), the Inspector General of the Agency shall appear, upon invitation, before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b) and the reports required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).

SEC. 1017. FUNDING; PENALTIES AND FINES.

(a) [TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—] *BUDGET, FINANCIAL MANAGEMENT, AND AUDIT.—*

[(1) IN GENERAL.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

[(2) FUNDING CAP.—

[(A) IN GENERAL.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

[(i) 10 percent of such expenses in fiscal year 2011;

[(ii) 11 percent of such expenses in fiscal year 2012; and

[(iii) 12 percent of such expenses in fiscal year 2013, and in each year thereafter.

[(B) ADJUSTMENT OF AMOUNT.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted annually, using the percent increase, if any, in the employment cost index for total compensation for State and local government workers published by the Federal Government, or the successor index thereto, for the 12-month period ending on September 30 of the year preceding the transfer.

[(C) REVIEWABILITY.—Notwithstanding any other provision in this title, the funds derived from the Federal Reserve System pursuant to this subsection shall not be subject to review by the Committees on Appropriations of the House of Representatives and the Senate.

[(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date.]

[(4)] *(1)* BUDGET AND FINANCIAL MANAGEMENT.—

(A) FINANCIAL OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and results of operations of the Bureau, as prepared by the Director in the ordinary course of the operations of the Bureau.

(B) FINANCIAL STATEMENTS.—The Bureau shall prepare annually a statement of—

(i) assets and liabilities and surplus or deficit;

(ii) income and expenses; and

(iii) sources and application of funds.

(C) FINANCIAL MANAGEMENT SYSTEMS.—The Bureau shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements and applicable Federal accounting standards.

(D) ASSERTION OF INTERNAL CONTROLS.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established in section 3512(c) of title 31, United States Code.

[(E) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in subparagraph (A) or any jurisdiction or oversight over the affairs or operations of the Bureau.

[(F) FINANCIAL STATEMENTS.—The financial statements of the Bureau shall not be consolidated with the financial

statements of either the Board of Governors or the Federal Reserve System.]

[(5)] *(2)* AUDIT OF THE BUREAU.—

(A) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General, and the right of access of the Comptroller General to such information shall be enforceable pursuant to section [716(c)] *716* of title 31, United States Code.

(B) REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Bureau, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Bureau at the time submitted to the Congress.

(C) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to [section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)] *section 6101 of title 41, United States Code*, professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The

Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

[(b) CONSUMER FINANCIAL PROTECTION FUND.—

[(1) SEPARATE FUND IN FEDERAL RESERVE ESTABLISHED.—There is established in the Federal Reserve a separate fund, to be known as the "Bureau of Consumer Financial Protection Fund" (referred to in this section as the "Bureau Fund"). The Bureau Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose.

[(2) FUND RECEIPTS.—All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

[(3) INVESTMENT AUTHORITY.—

[(A) AMOUNTS IN BUREAU FUND MAY BE INVESTED.—The Bureau may request the Board of Governors to direct the investment of the portion of the Bureau Fund that is not, in the judgment of the Bureau, required to meet the current needs of the Bureau.

[(B) ELIGIBLE INVESTMENTS.—Investments authorized by this paragraph shall be made in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Bureau Fund, as determined by the Bureau.

[(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Bureau Fund shall be credited to the Bureau Fund.

[(c) USE OF FUNDS.—

[(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Bureau Fund shall be immediately available to the Bureau and under the control of the Director, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities. The compensation of the Director and other employees of the Bureau and all other expenses thereof may be paid from, obtained by, transferred to, or credited to the Bureau Fund under this section.

[(2) FUNDS THAT ARE NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies.

[(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Bureau Fund and in the Civil Penalty Fund established under subsection (d) shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.]

[(d)] *(b)* PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Federal Reserve a separate fund, to be known as the "Consumer Financial Civil Penalty Fund" (referred to in this section as the "Civil Penalty Fund"). The Civil Penalty

Fund shall be maintained and established at a Federal reserve bank, in accordance with such requirements as the Board of Governors may impose. If the Bureau obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws, the Bureau shall deposit into the Civil Penalty Fund, the amount of the penalty collected.

(2) SEGREGATED ACCOUNTS IN CIVIL PENALTY FUND.—

(A) IN GENERAL.—The Agency shall establish and maintain a segregated account in the Civil Penalty Fund each time the Agency obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws.

(B) DEPOSITS IN SEGREGATED ACCOUNTS.—The Agency shall deposit each civil penalty collected into the segregated account established for such penalty under subparagraph (A).

[(2) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent that such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.]

(3) PAYMENT TO VICTIMS.—

(A) IN GENERAL.—

(i) IDENTIFICATION OF CLASS.—Not later than 60 days after the date of deposit of amounts in a segregated account in the Civil Penalty Fund, the Agency shall identify the class of victims of the violation of Federal consumer financial laws for which such amounts were collected and deposited under paragraph (2).

(ii) PAYMENTS.—The Agency, within 2 years after the date on which such class of victims is identified, shall locate and make payments from such amounts to each victim.

(B) FUNDS DEPOSITED IN TREASURY.—

(i) IN GENERAL.—The Agency shall deposit into the general fund of the Treasury any amounts remaining in a segregated account in the Civil Penalty Fund at the end of the 2-year period for payments to victims under subparagraph (A).

(ii) IMPOSSIBLE OR IMPRACTICAL PAYMENTS.—If the Agency determines before the end of the 2-year period for payments to victims under subparagraph (A) that such victims cannot be located or payments to such victims are otherwise not practicable, the Agency shall deposit into the general fund of the Treasury the amounts in the segregated account in the Civil Penalty Fund.

[(e)] *(c)* AUTHORIZATION OF APPROPRIATIONS; ANNUAL REPORT.—

[(1) DETERMINATION REGARDING NEED FOR APPROPRIATED FUNDS.—

[(A) IN GENERAL.—The Director is authorized to determine that sums available to the Bureau under this section will not be sufficient to carry out the authorities of the Bureau under Federal consumer financial law for the upcoming year.

[(B) REPORT REQUIRED.—When making a determination under subparagraph (A), the Director shall prepare a report regarding the funding of the Bureau, including the assets and liabilities of the Bureau, and the extent to which the funding needs of the Bureau are anticipated to exceed the level of the amount set forth in subsection (a)(2). The Director shall submit the report to the President and to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives.

[(2) AUTHORIZATION OF APPROPRIATIONS.—If the Director makes the determination and submits the report pursuant to paragraph (1), there are hereby authorized to be appropriated to the Bureau, for the purposes of carrying out the authorities granted in Federal consumer financial law, $200,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.

[(3) APPORTIONMENT.—Notwithstanding any other provision of law, the amounts in paragraph (2) shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.]

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Agency for each of fiscal years 2017 and 2018 an amount equal to the aggregate amount of funds transferred by the Board of Governors to the Bureau of Consumer Financial Protection during fiscal year 2015.

[(4)] *(2)* ANNUAL REPORT.—The Director shall prepare and submit a report, on an annual basis, to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives regarding the financial operating plans and forecasts of the Director, the financial condition and results of operations of the Bureau, and the sources and application of funds of the Bureau, including any funds appropriated in accordance with this subsection.

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Subtitle B—General Powers of the Bureau

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

(a) PURPOSE.—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. *In addition, the Director shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of strengthening participation in markets by covered persons, without Government interference or subsidies, to increase competition and enhance consumer choice.*

(b) OBJECTIVES.—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from [unfair, deceptive, or abusive acts and practices and] from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) FUNCTIONS.—The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

[(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;]

[(4)] *(3)* subject to sections 1024 through 1026, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

[(5)] *(4)* issuing rules, orders, and guidance implementing Federal consumer financial law; and

[(6)] *(5)* performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

SEC. 1022. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) GENERAL AUTHORITY.—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; [and]

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas; *and*

(iii) the impact of such rule on the financial safety or soundness of an insured depository institution;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection**[**, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau**]**.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

(i) the total assets of the class of covered persons;

(ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and

(iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—

[(A) IN GENERAL.—**]** Notwithstanding any other provisions of Federal law and except as provided in section 1061(b)(5), to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

[(B) DEFERENCE.—Notwithstanding any power granted to any Federal agency or to the Council under this title, and subject to section 1061(b)(5)(E), the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.**]**

(5) CONSIDERATION OF REVIEW AND ASSESSMENT BY THE OFFICE OF ECONOMIC ANALYSIS.—Before issuing any rule or regulation, the Director shall consider the review and assessment of such rule or regulation carried out by the Office of Economic Analysis.

(6) IDENTIFICATION OF PROBLEMS AND METRICS FOR JUDGING SUCCESS.—

(A) IN GENERAL.—The Director shall, in each proposed rulemaking of the Agency—

(i) identify the problem that the particular rule or regulations is seeking to solve; and

(ii) specify the metrics by which the Agency will measure the success of the rule or regulation in solving such problem.

(B) REQUIRED METRICS.—The metrics specified under subparagraph (A)(ii) shall include a measurement of changes to consumer access to, and cost of, consumer financial products and services.

(7) ADVISORY OPINIONS.—

(A) ESTABLISHING PROCEDURES.—

(i) IN GENERAL.—The Director shall establish a procedure and, as necessary, promulgate rules to provide written opinions in response to inquiries concerning the conformance of specific conduct with Federal consumer financial law. In establishing the procedure, the Director shall consult with the prudential regulators and such other Federal departments and agencies as the Director determines appropriate, and obtain the views of all interested persons through a public notice and comment period.

(ii) SCOPE OF REQUEST.—A request for an opinion under this paragraph must relate to specific proposed or prospective conduct by a covered person contemplating the proposed or prospective conduct.

(iii) SUBMISSION.—A request for an opinion under this paragraph may be submitted to the Director either by or on behalf of a covered person.

(iv) RIGHT TO WITHDRAW INQUIRY.—Any inquiry under this paragraph may be withdrawn at any time prior to the Director issuing an opinion in response to such inquiry, and any opinion based on an inquiry that has been withdrawn shall have no force or effect.

(B) ISSUANCE OF OPINIONS.—

(i) IN GENERAL.—The Director shall, within 90 days of receiving the request for an opinion under this paragraph, either—

(I) issue an opinion stating whether the described conduct would violate Federal consumer financial law;

(II) if permissible under clause (iii), deny the request; or

(III) explain why it is not feasible to issue an opinion.

(ii) EXTENSION.—Notwithstanding clause (i), if the Director determines that the Agency requires addi-

tional time to issue an opinion, the Director may make a single extension of the deadline of 90 days or less.

(iii) DENIAL OF REQUESTS.—The Director shall not issue an opinion, and shall so inform the requestor, if the request for an opinion—

(I) asks a general question of interpretation;

(II) asks about a hypothetical situation;

(III) asks about the conduct of someone other than the covered person on whose behalf the request is made;

(IV) asks about past conduct that the covered person on whose behalf the request is made does not plan to continue in the future; or

(V) fails to provide necessary supporting information requested by the Agency within a reasonable time established by the Agency.

(iv) AMENDMENT AND REVOCATION.—An advisory opinion issued under this paragraph may be amended or revoked at any time.

(v) PUBLIC DISCLOSURE.—An opinion rendered pursuant to this paragraph shall be placed in the Agency's public record 90 days after the requesting party has received the advice, subject to any limitations on public disclosure arising from statutory restrictions, Agency regulations, or the public interest. The Agency shall redact any personal, confidential, or identifying information about the covered person or any other persons mentioned in the advisory opinion, unless the covered person consents to such disclosure.

(vi) REPORT TO CONGRESS.—The Agency shall, concurrent with the semi-annual report required under section 1016(b), submit information regarding the number of requests for an advisory opinion received, the subject of each request, the number of requests denied pursuant to clause (iii), and the time needed to respond to each request.

(C) RELIANCE ON OPINION.—Any person may rely on an opinion issued by the Director pursuant to this paragraph that has not been amended or withdrawn. No liability under Federal consumer financial law shall attach to conduct consistent with an advisory opinion that had not been amended or withdrawn at the time the conduct was undertaken.

(D) CONFIDENTIALITY.—Any document or other material that is received by the Agency or any other Federal department or agency in connection with an inquiry under this paragraph shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the "Freedom of Information Act") and may not, except with the consent of the covered person making such inquiry, be made publicly available, regardless of whether the Director responds to such inquiry or the covered person withdraws such inquiry before receiving an opinion.

(E) ASSISTANCE FOR SMALL BUSINESSES.—

(i) IN GENERAL.—The Agency shall assist, to the maximum extent practicable, small businesses in preparing inquiries under this paragraph.

(ii) SMALL BUSINESS DEFINED.—For purposes of this subparagraph, the term "small business" has the meaning given the term "small business concern" under section 3 of the Small Business Act (15 U.S.C. 632).

(F) INQUIRY FEE.—

(i) IN GENERAL.—The Director shall develop a system to charge a fee for each inquiry made under this paragraph in an amount sufficient, in the aggregate, to pay for the cost of carrying out this paragraph.

(ii) NOTICE AND COMMENT.—Not later than 45 days after the date of the enactment of this paragraph, the Director shall publish a description of the fee system described in clause (i) in the Federal Register and shall solicit comments from the public for a period of 60 days after publication.

(iii) FINALIZATION.—The Director shall publish a final description of the fee system and implement such fee system not later than 30 days after the end of the public comment period described in clause (ii).

(8) GUIDANCE ON INDIRECT AUTO FINANCING.—In proposing and issuing guidance primarily related to indirect auto financing, the Agency shall—

(A) provide for a public notice and comment period before issuing the guidance in final form;

(B) make available to the public, including on the website of the Agency, all studies, data, methodologies, analyses, and other information relied on by the Agency in preparing such guidance;

(C) redact any information that is exempt from disclosure under paragraph (3), (4), (6), (7), or (8) of section 552(b) of title 5, United States Code;

(D) consult with the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Justice; and

(E) conduct a study on the costs and impacts of such guidance to consumers and women-owned, minority-owned, veteran-owned, and small businesses, including consumers and small businesses in rural areas.

[(c) MONITORING.—

[(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

[(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

[(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

[(B) understanding by consumers of the risks of a type of consumer financial product or service;

[(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

[(D) rates of growth in the offering or provision of a consumer financial product or service;

[(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

[(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

[(3) SIGNIFICANT FINDINGS.—

[(A) IN GENERAL.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

[(B) CONFIDENTIAL INFORMATION.—The Bureau may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with paragraphs (4), (6), (8), and (9).

[(4) COLLECTION OF INFORMATION.—

[(A) IN GENERAL.—In conducting any monitoring or assessment required by this section, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

[(B) METHODOLOGY.—In order to gather information described in subparagraph (A), the Bureau may—

[(i) gather and compile information from a variety of sources, including examination reports concerning covered persons or service providers, consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with covered persons and service providers, and review of available databases; and

[(ii) require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.

[(C) LIMITATION.—The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers.

[(5) LIMITED INFORMATION GATHERING.—In order to assess whether a nondepository is a covered person, as defined in section 1002, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.

[(6) CONFIDENTIALITY RULES.—

[(A) RULEMAKING.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

[(B) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

[(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

[(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

[(C) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

[(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

[(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

[(7) REGISTRATION.—

[(A) IN GENERAL.—The Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

[(B) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau may publicly disclose

registration information to facilitate the ability of consumers to identify covered persons that are registered with the Bureau.

[(C) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

[(8) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

[(9) CONSUMER PRIVACY.—

[(A) IN GENERAL.—The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider, except—

[(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person or service provider to the Bureau; or

[(ii) as may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

[(B) TREATMENT OF COVERED PERSON OR SERVICE PROVIDER.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978, to a disclosure by a covered person or service provider subject to this subsection, the covered person or service provider shall be treated as if it were a "financial institution", as defined in section 1101 of that Act (12 U.S.C. 3401).]

(c) CONSUMER PRIVACY.—

(1) IN GENERAL.—The Agency may not request, obtain, access, collect, use, retain, or disclose any nonpublic personal information about a consumer unless—

(A) the Agency clearly and conspicuously discloses to the consumer, in writing or in an electronic form, what information will be requested, obtained, accessed, collected, used, retained, or disclosed; and

(B) before such information is requested, obtained, accessed, collected, used, retained, or disclosed, the consumer informs the Agency that such information may be requested, obtained, accessed, collected, used, retained, or disclosed.

(2) APPLICATION OF REQUIREMENT TO CONTRACTORS OF THE AGENCY.—Paragraph (1) shall apply to any person directed or

engaged by the Agency to collect information to the extent such information is being collected on behalf of the Agency.

(3) DEFINITION OF NONPUBLIC PERSONAL INFORMATION.—In this subsection, the term "nonpublic personal information" has the meaning given the term in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809).

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) REPORTS.—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

(e) AUTHORITY OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS.—The Office of Information and Regulatory Affairs shall have the same duties and authorities with respect to the Consumer Law Enforcement Agency as the Office of Information and Regulatory Affairs has with respect to any other agency that is not an independent regulatory agency (as such terms are defined, respectively, under section 3502 of title 44, United States Code).

[SEC. 1023. REVIEW OF BUREAU REGULATIONS.

[(a) REVIEW OF BUREAU REGULATIONS.—On the petition of a member agency of the Council, the Council may set aside a final regulation prescribed by the Bureau, or any provision thereof, if the Council decides, in accordance with subsection (c), that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

[(b) PETITION.—

[(1) PROCEDURE.—An agency represented by a member of the Council may petition the Council, in writing, and in accordance with rules prescribed pursuant to subsection (f), to stay the effectiveness of, or set aside, a regulation if the member agency filing the petition—

[(A) has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States; and

[(B) files the petition with the Council not later than 10 days after the date on which the regulation has been published in the Federal Register.

[(2) PUBLICATION.—Any petition filed with the Council under this section shall be published in the Federal Register and transmitted contemporaneously with filing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the

Committee on Financial Services of the House of Representatives.

[(c) STAYS AND SET ASIDES.—

[(1) STAY.—

[(A) IN GENERAL.—Upon the request of any member agency, the Chairperson of the Council may stay the effectiveness of a regulation for the purpose of allowing appropriate consideration of the petition by the Council.

[(B) EXPIRATION.—A stay issued under this paragraph shall expire on the earlier of—

[(i) 90 days after the date of filing of the petition under subsection (b); or

[(ii) the date on which the Council makes a decision under paragraph (3).

[(2) NO ADVERSE INFERENCE.—After the expiration of any stay imposed under this section, no inference shall be drawn regarding the validity or enforceability of a regulation which was the subject of the petition.

[(3) VOTE.—

[(A) IN GENERAL.—The decision to issue a stay of, or set aside, any regulation under this section shall be made only with the affirmative vote in accordance with subparagraph (B) of ⅔ of the members of the Council then serving.

[(B) AUTHORIZATION TO VOTE.—A member of the Council may vote to stay the effectiveness of, or set aside, a final regulation prescribed by the Bureau only if the agency or department represented by that member has—

[(i) considered any relevant information provided by the agency submitting the petition and by the Bureau; and

[(ii) made an official determination, at a public meeting where applicable, that the regulation which is the subject of the petition would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

[(4) DECISIONS TO SET ASIDE.—

[(A) EFFECT OF DECISION.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall render such regulation, or provision thereof, unenforceable.

[(B) TIMELY ACTION REQUIRED.—The Council may not issue a decision to set aside a regulation, or provision thereof, which is the subject of a petition under this section after the expiration of the later of—

[(i) 45 days following the date of filing of the petition, unless a stay is issued under paragraph (1); or

[(ii) the expiration of a stay issued by the Council under this section.

[(C) SEPARATE AUTHORITY.—The issuance of a stay under this section does not affect the authority of the Council to set aside a regulation.

[(5) DISMISSAL DUE TO INACTION.—A petition under this section shall be deemed dismissed if the Council has not issued

a decision to set aside a regulation, or provision thereof, within the period for timely action under paragraph (4)(B).

[(6) PUBLICATION OF DECISION.—Any decision under this subsection to issue a stay of, or set aside, a regulation or provision thereof shall be published by the Council in the Federal Register as soon as practicable after the decision is made, with an explanation of the reasons for the decision.

[(7) RULEMAKING PROCEDURES INAPPLICABLE.—The notice and comment procedures under section 553 of title 5, United States Code, shall not apply to any decision under this section of the Council to issue a stay of, or set aside, a regulation.

[(8) JUDICIAL REVIEW OF DECISIONS BY THE COUNCIL.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall be subject to review under chapter 7 of title 5, United States Code.

[(d) APPLICATION OF OTHER LAW.—Nothing in this section shall be construed as altering, limiting, or restricting the application of any other provision of law, except as otherwise specifically provided in this section, including chapter 5 and chapter 7 of title 5, United States Code, to a regulation which is the subject of a petition filed under this section.

[(e) SAVINGS CLAUSE.—Nothing in this section shall be construed as limiting or restricting the Bureau from engaging in a rulemaking in accordance with applicable law.

[(f) IMPLEMENTING RULES.—The Council shall prescribe procedural rules to implement this section.]

SEC. 1024. [SUPERVISION OF] *AUTHORITY WITH RESPECT TO CERTAIN* NONDEPOSITORY COVERED PERSONS.

(a) SCOPE OF COVERAGE.—

(1) APPLICABILITY.—Notwithstanding any other provision of this title, and except as provided in paragraph (3), this section shall apply to any covered person who—

(A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans;

(B) is a larger participant of a market for other consumer financial products or services, [as defined by rule in accordance with paragraph (2)] *as of the date of the enactment of the Financial CHOICE Act of 2017*;

(C) the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 1013(b)(3) or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services; *or*

(D) offers or provides to a consumer any private education loan, as defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650), notwithstanding section 1027(a)(2)(A) and subject to section 1027(a)(2)(C)[; or].

[(E) offers or provides to a consumer a payday loan.]

[(2) RULEMAKING TO DEFINE COVERED PERSONS SUBJECT TO THIS SECTION.—The Bureau shall consult with the Federal Trade Commission prior to issuing a rule, in accordance with paragraph (1)(B), to define covered persons subject to this section. The Bureau shall issue its initial rule not later than 1 year after the designated transfer date.]

[(3)] *(2)* RULES OF CONSTRUCTION.—

(A) CERTAIN PERSONS EXCLUDED.—This section shall not apply to persons described in section [1025(a) or] 1026(a).

(B) ACTIVITY LEVELS.—For purposes of computing activity levels under paragraph (1) or rules issued thereunder, activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated.

[(b) SUPERVISION.—

[(1) IN GENERAL.—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—

[(A) assessing compliance with the requirements of Federal consumer financial law;

[(B) obtaining information about the activities and compliance systems or procedures of such person; and

[(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

[(2) RISK-BASED SUPERVISION PROGRAM.—The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a)(1), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

[(A) the asset size of the covered person;

[(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

[(C) the risks to consumers created by the provision of such consumer financial products or services;

[(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

[(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

[(3) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators, the State bank regulatory authorities, and the State agencies that licence, supervise, or examine the offering of consumer financial products or services, including establishing their respective schedules for examining persons described in subsection (a)(1) and requirements regarding reports to be submitted by such persons. The sharing of information with such regulators, authorities, and agencies shall not be construed as waiving, destroying, or otherwise affecting any privilege or confidentiality such person may claim with respect to such information under Federal or State law as to any person or entity other than such Bureau, agency, supervisor, or authority.

[(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

[(A) reports pertaining to persons described in subsection (a)(1) that have been provided or required to have been provided to a Federal or State agency; and

[(B) information that has been reported publicly.

[(5) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from persons described in subsection (a)(1), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

[(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

[(7) REGISTRATION, RECORDKEEPING AND OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

[(A) IN GENERAL.—The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.

[(B) RECORDKEEPING.—The Bureau may require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

[(C) REQUIREMENTS CONCERNING OBLIGATIONS.—The Bureau may prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

[(D) CONSULTATION WITH STATE AGENCIES.—In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.]

[(c)] *(b)* ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE ENFORCEMENT AUTHORITY.—Except as provided in paragraph (3) and section 1061, with respect to any person described in subsection (a)(1), to the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law.

(2) REFERRAL.—Any Federal agency authorized to enforce a Federal consumer financial law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforcement proceeding, as the Bureau is authorized by that Federal law or by this title.

(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Bureau and the Federal Trade Commission shall negotiate an agreement for coordinating

with respect to enforcement actions by each agency regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1), or service providers thereto. The agreement shall include procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce any Federal law regarding the offering or provision of consumer financial products or services.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Bureau or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) AGREEMENT TERMS.—The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) DEADLINE.—The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

[(d)**]** *(c)* EXCLUSIVE RULEMAKING **[**AND EXAMINATION AUTHORITY**]**.—Notwithstanding any other provision of Federal law and except as provided in section 1061, to the extent that Federal law authorizes the Bureau and another Federal agency to issue regulations or guidance**[**, conduct examinations,**]** or require reports from a person described in subsection (a)(1) under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules, issue guidance**[**, conduct examinations,**]** require reports, or issue exemptions with regard to a person described in subsection (a)(1), subject to those provisions of law.

[(e)**]** *(d)* SERVICE PROVIDERS.—A service provider to a person described in subsection (a)(1) shall be subject to the *rulemaking and enforcement, but not supervisory,* authority of the Bureau under this section, to the same extent as if such service provider were engaged in a service relationship with a bank, and the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). In **[**conducting any examination or requiring any report from a service provider subject to this subsection**]** *carrying out any authority pursuant to this subsection with respect to a service provider*, the Bureau shall coordinate with the appropriate prudential regulator, as applicable.

[(f)**]** *(e)* PRESERVATION OF FARM CREDIT ADMINISTRATION AUTHORITY.—No provision of this title may be construed as modifying,

limiting, or otherwise affecting the authority of the Farm Credit Administration.

[SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

[(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

[(1) an insured depository institution with total assets of more than $10,000,000,000 and any affiliate thereof; or

[(2) an insured credit union with total assets of more than $10,000,000,000 and any affiliate thereof.

[(b) SUPERVISION.—

[(1) IN GENERAL.—The Bureau shall have exclusive authority to require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

[(A) assessing compliance with the requirements of Federal consumer financial laws;

[(B) obtaining information about the activities subject to such laws and the associated compliance systems or procedures of such persons; and

[(C) detecting and assessing associated risks to consumers and to markets for consumer financial products and services.

[(2) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including consultation regarding their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

[(3) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

[(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

[(B) information that has been reported publicly.

[(4) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

[(5) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

[(c) PRIMARY ENFORCEMENT AUTHORITY.—

[(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

[(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal con-

sumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

[(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, including performing follow up supervisory and support functions incidental thereto, to assure compliance with such proceeding.

[(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

[(e) SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.—

[(1) EXAMINATIONS.—A prudential regulator and the Bureau shall, with respect to each insured depository institution, insured credit union, or other covered person described in subsection (a) that is supervised by the prudential regulator and the Bureau, respectively—

[(A) coordinate the scheduling of examinations of the insured depository institution, insured credit union, or other covered person described in subsection (a);

[(B) conduct simultaneous examinations of each insured depository institution or insured credit union, unless such institution requests examinations to be conducted separately;

[(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

[(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

[(2) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

[(3) AVOIDANCE OF CONFLICT IN SUPERVISION.—

[(A) REQUEST.—If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the "agencies") are conflicting, an insured depository institution, insured credit union, or other covered person described in subsection (a) may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

[(B) JOINT STATEMENT.—The agencies shall provide a joint statement under subparagraph (A), not later than 30

days after the date of receipt of the request of the insured depository institution, credit union, or covered person described in subsection (a).

[(4) APPEALS TO GOVERNING PANEL.—

[(A) IN GENERAL.—If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person described in subsection (a) may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

[(B) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this paragraph shall be composed of—

[(i) a representative from the Bureau and a representative of the prudential regulator, both of whom—

[(I) have not participated in the material supervisory determinations under appeal; and

[(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

[(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.

[(C) CONDUCT OF APPEAL.—In an appeal under this paragraph—

[(i) the insured depository institution, insured credit union, or other covered person described in subsection (a)—

[(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

[(II) may, through counsel, employees, or representatives, appear before the governing panel in person or by telephone; and

[(ii) the governing panel—

[(I) may request the insured depository institution, insured credit union, or other covered person described in subsection (a), the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

[(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, insured credit union, or other covered

person described in subsection (a) may jointly agree.

[(D) PUBLIC AVAILABILITY OF DETERMINATIONS.—A governing panel shall publish all information contained in a determination by the governing panel, with appropriate redactions of information that would be subject to an exemption from disclosure under section 552 of title 5, United States Code.

[(E) PROHIBITION AGAINST RETALIATION.—The Bureau and the prudential regulators shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured credit union, or other covered person described in subsection (a) instituting an appeal under this paragraph, as well as their officers and employees.

[(F) LIMITATION.—The process provided in this paragraph shall not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) or section 212 of the Federal Credit Union Act (112 U.S.C. 1790a), as applicable.

[(G) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law, or the authority of a prudential regulator to interpret or take enforcement action under any other provision of Federal law for safety and soundness purposes.]

SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

[(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

[(1) an insured depository institution with total assets of $10,000,000,000 or less; or

[(2) an insured credit union with total assets of $10,000,000,000 or less.]

(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is an insured depository institution or an insured credit union.

(b) REPORTS.—The Director may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to support its examination activities under subsection (c)[, and to assess and detect risks to consumers and consumer financial markets].

(1) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(2) PRESERVATION OF AUTHORITY.—Nothing in this subsection may be construed as limiting the authority of the Director from requiring from a person described in subsection (a), as per-

mitted under paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(3) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any [report of examination or related] information identifying possible tax law noncompliance.

[(c) EXAMINATIONS.—

[(1) IN GENERAL.—The Bureau may, at its discretion, include examiners on a sampling basis of the examinations performed by the prudential regulator to assess compliance with the requirements of Federal consumer financial law of persons described in subsection (a).

[(2) AGENCY COORDINATION.—The prudential regulator shall—

[(A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;

[(B) involve such Bureau examiner in the entire examination process for such person; and

[(C) consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.]

[(d)] *(c)* ENFORCEMENT.—

(1) IN GENERAL.—Except for requiring reports under subsection (b), the prudential regulator is authorized to enforce the requirements of Federal consumer financial laws and, with respect to a covered person described in subsection (a), shall have exclusive authority (relative to the Bureau) to enforce such laws.

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—

(A) REFERRAL.—When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in writing and recommend appropriate action to respond.

(B) RESPONSE.—Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

[(e)] *(d)* SERVICE PROVIDERS.—A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under [section 1025] *this section* to the same extent as if the Bureau were an appropriate Federal bank agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). [When conducting any examination or requiring any report from a service provider subject to this subsection] *In carrying out any authority pursuant to this subsection with respect to a service provider*, the Bureau shall coordinate with the appropriate prudential regulator.

SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU; PRESERVATION OF AUTHORITIES.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND OTHER SELLERS OF NONFINANCIAL GOODS OR SERVICES.—

(1) SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—The Bureau may not exercise any rulemaking, [supervisory,] enforcement or other authority under this title with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(2) OFFERING OR PROVISION OF CERTAIN CONSUMER FINANCIAL PRODUCTS OR SERVICES IN CONNECTION WITH THE SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, [supervisory,] enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services, but only to the extent that such person—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) APPLICABILITY.—Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C)(i), arising from a transaction described in subparagraph (A)—

(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(iii));

(ii) in which the credit extended significantly exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title; or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is subject to a finance charge.

(C) LIMITATIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (B), subparagraph (A) shall apply with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

(ii) EXCEPTION.—Subparagraph (A) and clause (i) of this subparagraph do not apply to any merchant, retailer, or seller of nonfinancial goods or services—

(I) if such merchant, retailer, or seller of nonfinancial goods or services is engaged in a transaction described in subparagraph (B)(i) or (B)(ii); or

(II) to the extent that such merchant, retailer, or seller is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(D) RULES.—

(i) AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency (other than the Bureau) with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(ii) SMALL BUSINESSES.—A merchant, retailer, or seller of nonfinancial goods or services that would otherwise be subject to the authority of the Bureau solely by virtue of the application of subparagraph (B)(iii) shall be deemed not to be engaged significantly in offering or providing consumer financial products or services under subparagraph (C)(i), if such person—

(I) only extends credit for the sale of nonfinancial goods or services, as described in subparagraph (A)(i);

(II) retains such credit on its own accounts (except to sell or convey such debt that is delinquent or otherwise in default); and

(III) meets the relevant industry size threshold to be a small business concern, based on annual receipts, pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder.

(iii) INITIAL YEAR.—A merchant, retailer, or seller of nonfinancial goods or services shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) during the first year of operations of that business concern if, during that year, the receipts of that business concern reasonably are expected to meet that size threshold.

(iv) OTHER STANDARDS FOR SMALL BUSINESS.—With respect to a merchant, retailer, or seller of nonfinancial goods or services that is a classified on a basis other than annual receipts for the purposes of section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder, such merchant, retailer, or seller shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) if such merchant, retailer, or seller meets the relevant industry size threshold to be a small business concern based on the number of employees, or other such applicable measure, established under that Act.

(E) EXCEPTION FROM STATE ENFORCEMENT.—To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this title may be brought under subsection 1042(a), with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of nonfinancial goods or services.

(b) EXCLUSION FOR REAL ESTATE BROKERAGE ACTIVITIES.—

(1) REAL ESTATE BROKERAGE ACTIVITIES EXCLUDED.—Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, [supervisory,] enforcement, or other authority under this title with respect to a person that is licensed or registered as a real estate broker or real estate agent, in accordance with State law, to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) DESCRIPTION OF ACTIVITIES.—The Bureau may exercise rulemaking, [supervisory,] enforcement, or other authority under this title with respect to a person described in paragraph (1) when such person is—

(A) engaged in an activity of offering or providing any consumer financial product or service, except that the Bureau may exercise such authority only with respect to that activity; or

(B) otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(c) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The Director may not exercise any rulemaking, [supervisory,] enforcement, or other authority over a person to the extent that—

(A) such person is not described in paragraph (2); and

(B) such person—

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) DESCRIPTION OF ACTIVITIES.—A person is described in this paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

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

(A) MANUFACTURED HOME.—The term "manufactured home" has the same meaning as in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term "modular home" means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

(d) EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, [supervisory,] enforcement, or other authority over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided—

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

(B) any person, other than a person described in subparagraph (A), that performs income tax preparation activities for consumers.

(2) DESCRIPTION OF ACTIVITIES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any person described in paragraph (1)(A) or (1)(B) to the extent that such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is the offering or provision of any consumer financial product or service, except to the extent that a person described in paragraph (1)(A) is engaged in an activity which is a customary and usual accounting activity described in paragraph (1)(A), or incidental thereto.

(B) NOT A CUSTOMARY AND USUAL ACCOUNTING ACTIVITY.—For purposes of this subsection, extending or brokering credit is not a customary and usual accounting activity, or incidental thereto.

(C) RULE OF CONSTRUCTION.—For purposes of subparagraphs (A) and (B), a person described in paragraph (1)(A) shall not be deemed to be extending credit, if such person is only extending credit directly to a consumer, exclusively for the purpose of enabling such consumer to purchase services described in clause (i) or (ii) of paragraph (1)(A) directly from such person, and such credit is—

(i) not subject to a finance charge; and

(ii) not payable by written agreement in more than 4 installments.

(D) OTHER LIMITATIONS.—Paragraph (1) does not apply to any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(e) EXCLUSION FOR PRACTICE OF LAW.—

(1) IN GENERAL.—Except as provided under paragraph (2), the Bureau may not exercise any [supervisory or] enforcement authority with respect to an activity engaged in by an attorney as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed so as to limit the exercise by the Bureau of any [supervisory,] enforcement, or other authority regarding the offering or provision of a consumer financial product or service described in any subparagraph of section 1002(5)—

(A) that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship; or

(B) that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service.

(3) EXISTING AUTHORITY.—Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise

subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(f) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by a State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) does not apply to any person described in such paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) STATE INSURANCE AUTHORITY UNDER GRAMM-LEACH-BLILEY.—Notwithstanding paragraph (2), the Bureau shall not exercise any authorities that are granted a State insurance authority under section 505(a)(6) of the Gramm-Leach-Bliley Act with respect to a person regulated by a State insurance authority.

(g) EXCLUSION FOR EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.—

(1) PRESERVATION OF AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) ACTIVITIES NOT CONSTITUTING THE OFFERING OR PROVISION OF ANY CONSUMER FINANCIAL PRODUCT OR SERVICE.—For purposes of this title, a person shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is—

(A) a specified plan or arrangement;

(B) engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement; or

(C) engaged in the activity of establishing or maintaining a qualified tuition program under section 529(b)(1) of the Internal Revenue Code of 1986 offered by a State or other prepaid tuition program offered by a State.

(3) LIMITATION ON BUREAU AUTHORITY.—

(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the Bureau [may not exercise any rulemaking or enforcement authority] *may not exercise any rulemaking, enforcement, or other authority* with respect to products or services that relate to any specified plan or arrangement.

(B) BUREAU ACTION PURSUANT TO AGENCY REQUEST.—

(i) AGENCY REQUEST.—The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement.

(ii) AGENCY RESPONSE.—In response to a request by the Bureau, the Secretary and the Secretary of Labor shall jointly issue a written response, not later than 90 days after receipt of such request, to grant or deny the request of the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement.

(iii) SCOPE OF BUREAU ACTION.—Subject to a request or response pursuant to clause (i) or clause (ii) by the agencies made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request or response, in accordance with the provisions of this title. A request or response made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this title with respect to the provision of services relating to any specified plan or arrangement.

(C) DESCRIPTION OF PRODUCTS OR SERVICES.—To the extent that a person engaged in providing products or services relating to any specified plan or arrangement is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, subparagraph (A) shall not apply with respect to that law.

(4) SPECIFIED PLAN OR ARRANGEMENT.—For purposes of this subsection, the term "specified plan or arrangement" means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, 529A, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974, or any prepaid tuition program offered by a State.

(h) PERSONS REGULATED BY A STATE SECURITIES COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(i) EXCLUSION FOR PERSONS REGULATED BY THE COMMISSION.—

(1) IN GENERAL.—No provision of this title may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau [shall have no authority to exercise any power to enforce this title] *may not exercise any rulemaking, enforcement, or other authority* with respect to a person regulated by the Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commission shall consult and coordinate, where feasible, with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law. In carrying out this paragraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for providing advance notice to the Bureau when the Commission is initiating a rulemaking.

(j) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau [shall have no authority to exercise any power to enforce this title] *may not exercise any rulemaking, enforcement, or other authority* with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law.

(k) EXCLUSION FOR PERSONS REGULATED BY THE FARM CREDIT ADMINISTRATION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Bureau shall have no authority to exercise any power to enforce this title

with respect to a person regulated by the Farm Credit Administration.

(2) DEFINITION.—For purposes of this subsection, the term "person regulated by the Farm Credit Administration" means any Farm Credit System institution that is chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(l) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, ⟦supervisory,⟧ enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information, education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) LIMITATION.—The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(m) INSURANCE.—The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(n) LIMITED AUTHORITY OF THE BUREAU.—Notwithstanding subsections (a) through (h) and (l), a person subject to or described in one or more of such provisions—

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 1022, 1052, or 1053.

(o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(p) ATTORNEY GENERAL.—No provision of this title, including ⟦section 1024(c)(1)⟧ *section 1024(b)(1)*, shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(q) SECRETARY OF THE TREASURY.—No provision of this title shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

(r) DEPOSIT INSURANCE AND SHARE INSURANCE.—Nothing in this title shall affect the authority of the Corporation under the Federal Deposit Insurance Act or the National Credit Union Administration Board under the Federal Credit Union Act as to matters related to deposit insurance and share insurance, respectively.

(s) FAIR HOUSING ACT.—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.

(t) NO AUTHORITY TO REGULATE SMALL-DOLLAR CREDIT.—The Agency may not exercise any rulemaking, enforcement, or other authority with respect to payday loans, vehicle title loans, or other similar loans.

[SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

[(a) STUDY AND REPORT.—The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

[(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The findings in such rule shall be consistent with the study conducted under subsection (a).

[(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

[(d) EFFECTIVE DATE.—Notwithstanding any other provision of law, any regulation prescribed by the Bureau under subsection (b) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau.]

SEC. 1029. EXCLUSION FOR AUTO DEALERS.

(a) SALE, SERVICING, AND LEASING OF MOTOR VEHICLES EXCLUDED.—Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(b) CERTAIN FUNCTIONS EXCEPTED.—Subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property;

(2) operates a line of business—

(A) that involves the extension of retail credit or retail leases involving motor vehicles; and

(B) in which—

(i) the extension of retail credit or retail leases are provided directly to consumers; and

(ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or

(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

(c) PRESERVATION OF AUTHORITIES OF OTHER AGENCIES.—Except as provided in subsections (b) and (d), nothing in this title, including subtitle F, shall be construed as modifying, limiting, or superseding the operation of any provision of Federal law, or otherwise affecting the authority of the Board of Governors, the Federal Trade Commission, or any other Federal agency, with respect to a person described in subsection (a).

(d) FEDERAL TRADE COMMISSION AUTHORITY.—Notwithstanding section 18 of the Federal Trade Commission Act, the Federal Trade Commission is authorized to prescribe rules under sections 5 and 18(a)(1)(B) of the Federal Trade Commission Act**[**.**]** in accordance with section 553 of title 5, United States Code, with respect to a person described in subsection (a).

(e) COORDINATION WITH OFFICE OF SERVICE MEMBER AFFAIRS.—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, *if established under this title,* to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

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

(1) MOTOR VEHICLE.—The term "motor vehicle" means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term "motor vehicle dealer" means any person or resident in the United States, or any territory of the United States, who—

(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and

(B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.

Subtitle C—Specific Bureau Authorities

[SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

[(a) IN GENERAL.—The Bureau may take any action authorized under subtitle E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

[(b) RULEMAKING.—The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

[(c) UNFAIRNESS.—

[(1) IN GENERAL.—The Bureau shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

[(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

[(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

[(2) CONSIDERATION OF PUBLIC POLICIES.—In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

[(d) ABUSIVE.—The Bureau shall have no authority under this section to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

[(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

[(2) takes unreasonable advantage of—

[(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

[(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

[(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

[(e) CONSULTATION.—In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the

proposed rule with prudential, market, or systemic objectives administered by such agencies.

[(f) CONSIDERATION OF SEASONAL INCOME.—The rules of the Bureau under this section shall provide, with respect to an extension of credit secured by residential real estate or a dwelling, if documented income of the borrower, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, the creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.]

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SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND INQUIRIES.

(a) TIMELY REGULATOR RESPONSE TO CONSUMERS.—The Bureau shall establish, in consultation with the appropriate Federal regulatory agencies, reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person, including—

(1) steps that have been taken by the regulator in response to the complaint or inquiry of the consumer;

(2) any responses received by the regulator from the covered person; and

(3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer.

[(b) TIMELY RESPONSE TO REGULATOR BY COVERED PERSON.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered person concerning a consumer complaint or inquiry, including—

[(1) steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer;

[(2) responses received by the covered person from the consumer; and

[(3) follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.

[(c) PROVISION OF INFORMATION TO CONSUMERS.—

[(1) IN GENERAL.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall, in a timely manner, comply with a consumer request for information in the control or possession of such covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including supporting written documentation, concerning the account of the consumer.

[(2) EXCEPTIONS.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025, a prudential regulator, and any other agency having jurisdiction over a covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 may not be required by this section to make available to the consumer—

[(A) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

[(B) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting or making any report regarding other unlawful or potentially unlawful conduct;

[(C) any information required to be kept confidential by any other provision of law; or

[(D) any nonpublic or confidential information, including confidential supervisory information.]

[(d)] *(b)* AGREEMENTS WITH OTHER AGENCIES.—The Bureau shall enter into a memorandum of understanding with any affected Federal regulatory agency regarding procedures by which any covered person, and the prudential regulators, and any other agency having jurisdiction over a covered person, including the Secretary of the Department of Housing and Urban Development and the Secretary of Education, shall comply with this section.

SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Director, [shall designate] *may designate* a Private Education Loan Ombudsman (in this section referred to as the "Ombudsman") within the Bureau, to provide timely assistance to borrowers of private education loans.

(b) PUBLIC INFORMATION.—[The Secretary] *If the Secretary designates the Ombudsman under subsection (a), the Secretary* and the Director shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.

(c) FUNCTIONS OF OMBUDSMAN.—The Ombudsman designated under this subsection shall—

(1) in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of understanding with the student loan ombudsman established under section 141(f) of the Higher Education Act of 1965 (20 U.S.C. 1018(f)), to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the Director, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) ANNUAL REPORTS.—

(1) IN GENERAL.—The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) SUBMISSION.—The report required by paragraph (1) shall be submitted on the same date annually to the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) DEFINITIONS.—For purposes of this section, the terms "private education loan" and "institution of higher education" have the same meanings as in section 140 of the Truth in Lending Act (15 U.S.C. 1650).

SEC. 1036. PROHIBITED ACTS.

(a) IN GENERAL.—It shall be unlawful for—

(1) any covered person or service [provider—]

[(A)] [to offer] *provider to offer* or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or

[(B) to engage in any unfair, deceptive, or abusive act or practice;]

(2) any covered person or service provider to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau[; or].

[(3) any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of section 1031, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.]

(b) EXCEPTION.—No person shall be held to have violated subsection (a)(1) solely by virtue of providing or selling time or space to a covered person or service provider placing an advertisement.

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Subtitle E—Enforcement Powers

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SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) SUBPOENAS.—

(1) IN GENERAL.—The Bureau or a Bureau investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In the case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Bureau or a Bureau investigator and after notice to such person, may issue an order requiring such person to appear and give testimony or to appear and produce documents or other material.

(3) CONTEMPT.—Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(c) DEMANDS.—

(1) IN GENERAL.—Whenever the Bureau has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state *with specificity* the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—Any civil investigative demand issued, and any enforcement petition filed, under this section may be served—

(A) by any Bureau investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

(ii) to the extent that the courts of the United States have authority to assert jurisdiction over such person, consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at the principal office or place of business of such person.

(9) PROOF OF SERVICE.—

(A) IN GENERAL.—A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) RETURN RECEIPTS.—In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) TESTIMONY.—

(A) IN GENERAL.—

(i) OATH AND RECORDATION.—The examination of any person pursuant to a demand for oral testimony served under this subsection shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place at which the examination is held. The officer before whom oral testimony is to be taken shall put the wit-

ness on oath or affirmation and shall personally, or by any individual acting under the direction of and in the presence of the officer, record the testimony of the witness.

(ii) TRANSCRIPTION.—The testimony shall be taken stenographically and transcribed.

(iii) TRANSMISSION TO CUSTODIAN.—After the testimony is fully transcribed, the officer investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Bureau investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons, except the person giving the testimony, the attorney for that person, the officer before whom the testimony is to be taken, an investigator or representative of an agency with which the Bureau is engaged in a joint investigation, and any stenographer taking such testimony.

(C) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Bureau investigator before whom the oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) AUTHORITY.—The attorney may advise a person described in clause (i), in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(iii) OBJECTIONS.—A person described in clause (i), or the attorney for that person, may object on the record to any question, in whole or in part, and such person shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and such person or attorney shall not otherwise interrupt the oral examination.

(iv) REFUSAL TO ANSWER.—If a person described in clause (i) refuses to answer any question—

(I) the Bureau may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question; and

(II) if the refusal is on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the Bureau investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator, with a statement of the reasons given by the witness for making such changes;

(iv) the transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the Bureau investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) CERTIFICATION BY INVESTIGATOR.—The Bureau investigator shall certify on the transcript that the witness was duly sworn by him or her and that the transcript is a true record of the testimony given by the witness, and the Bureau investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The Bureau investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Bureau may for good cause limit such witness to inspection of the official transcript of his testimony.

(H) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(14) MEETING REQUIREMENT.—The recipient of a civil investigative demand shall meet and confer with an Agency investigator within 30 calendar days after receipt of the demand to discuss and attempt to resolve all issues regarding compliance with the civil investigative demand, unless the Agency grants an extension requested by such recipient.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Documentary materials and tangible things received as a result of a civil investigative demand shall be

subject to requirements and procedures regarding confidentiality, in accordance with rules established by the Bureau.

(2) DISCLOSURE TO CONGRESS.—No rule established by the Bureau regarding the confidentiality of materials submitted to, or otherwise obtained by, the Bureau shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the Bureau is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Bureau, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(2) SERVICE OF PROCESS.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

[(1) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Bureau investigator named in the demand, such person may file with the Bureau a petition for an order by the Bureau modifying or setting aside the demand.]

(1) IN GENERAL.—Not later than 45 days after the service of any civil investigative demand upon any person under subsection (c), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 45 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Agency investigator named in the demand, such person may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, a petition for an order modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the Bureau, shall not run during the pendency of a petition under paragraph (1) [at the Bureau], except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to

comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or rule promulgated by the Bureau.

(h) JURISDICTION OF COURT.—

[(1) IN GENERAL.—]Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section.

[(2) APPEAL.—Any final order entered as described in paragraph (1) shall be subject to appeal pursuant to section 1291 of title 28, United States Code.]

SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Bureau is authorized to conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(1) the provisions of this title, including any rules prescribed by the Bureau under this title; and

(2) any other Federal law that the Bureau is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the Bureau from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ORDERS AUTHORIZED.—

(A) IN GENERAL.—If, in the opinion of the Bureau, any covered person or service provider is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Bureau, the Bureau may, subject to [sections 1024, 1025, and 1026] *sections 1024 and 1026*, issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) CONTENT OF NOTICE.—The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Bureau, at the request of any party so served.

(C) CONSENT.—Unless the party or parties served under subparagraph (B) appear at the hearing personally or by

a duly authorized representative, such person shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) PROCEDURE.—In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the Bureau finds that any violation specified in the notice of charges has been established, the Bureau may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Bureau or a reviewing court.

(3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within 90 days after the Bureau has notified the parties that the case has been submitted to the Bureau for final decision, the Bureau shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4), and thereafter until the record in the proceeding has been filed as provided in paragraph (4), the Bureau may at any time, upon such notice and in such manner as the Bureau shall determine proper, modify, terminate, or set aside any such order. Upon filing of the record as provided, the Bureau may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Bureau be modified, terminated, or set aside. A copy of such petition shall

be forthwith transmitted by the clerk of the court to the Bureau, and thereupon the Bureau shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Bureau. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court of the United States, upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Bureau.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—Whenever the Bureau determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the Bureau may issue a temporary order requiring the person to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings. Such order may include any requirement authorized under this subtitle. Such order shall become effective upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Bureau shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Not later than 10 days after the covered person or service provider concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the residence or principal office or place of business of the person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that the books and records of a

covered person or service provider are so incomplete or inaccurate that the Bureau is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the Bureau may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Bureau determines[, by examination or otherwise,] that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Bureau may in its discretion apply to the United States district court within the jurisdiction of which the principal office or place of business of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) RULES.—The Bureau shall prescribe rules establishing such procedures as may be necessary to carry out this section.

(f) PRIVATE PARTIES AUTHORIZED TO COMPEL THE AGENCY TO SEEK SANCTIONS BY FILING CIVIL ACTIONS.—

(1) TERMINATION OF ADMINISTRATIVE PROCEEDING.—In the case of any person who is a party to a proceeding brought by the Agency under this section, to which chapter 5 of title 5, United States Code, applies, and against whom an order imposing a cease and desist order or a penalty may be issued at the conclusion of the proceeding, that person may, not later than 20 days after receiving notice of such proceeding, and at that person's discretion, require the Agency to terminate the proceeding.

(2) CIVIL ACTION AUTHORIZED.—If a person requires the Agency to terminate a proceeding pursuant to paragraph (1), the Agency may bring a civil action against that person for the same remedy that might be imposed.

(g) ADJUDICATIONS DEEMED ACTIONS.—Any administrative adjudication commenced under this section shall be deemed an "action" for purposes of section 1054(g).

SEC. 1054. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a Federal consumer financial law, the Bureau may, subject to [sections 1024, 1025, and 1026] *sections 1024 and 1026*, commence a civil action against such person to impose a civil penalty or to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Bureau may act in its own name and through its own attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Bureau is a party.

(c) COMPROMISE OF ACTIONS.—The Bureau may compromise or settle any action if such compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—

(1) IN GENERAL.—When commencing a civil action under Federal consumer financial law, or any rule thereunder, the Bureau shall notify the Attorney General and, with respect to a civil action against an insured depository institution or insured credit union, the appropriate prudential regulator.

(2) NOTICE AND COORDINATION.—

(A) NOTICE OF OTHER ACTIONS.—In addition to any notice required under paragraph (1), the Bureau shall notify the Attorney General concerning any action, suit, or proceeding to which the Bureau is a party, except an action, suit, or proceeding that involves the offering or provision of consumer financial products or services.

(B) COORDINATION.—In order to avoid conflicts and promote consistency regarding litigation of matters under Federal law, the Attorney General and the Bureau shall consult regarding the coordination of investigations and proceedings, including by negotiating an agreement for coordination by not later than 180 days after the designated transfer date. The agreement under this subparagraph shall include provisions to ensure that parallel investigations and proceedings involving the Federal consumer financial laws are conducted in a manner that avoids conflicts and does not impede the ability of the Attorney General to prosecute violations of Federal criminal laws.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the authority of the Bureau under this title, including the authority to interpret Federal consumer financial law.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Bureau may represent itself in its own name before the Supreme Court of the United States, provided that the Bureau makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari, and the Attorney General concurs with such request or fails to take action within 60 days of the request of the Bureau.

(f) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of com-

petent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with any Federal consumer financial law.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) IN GENERAL.—An action arising under this title does not include claims arising solely under enumerated consumer laws.

(B) BUREAU AUTHORITY.—In any action arising solely under an enumerated consumer law, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

(C) TRANSFERRED AUTHORITY.—In any action arising solely under laws for which authorities were transferred under subtitles F and H, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

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SEC. 1059. CONSIDERATION OF COST-BENEFIT ANALYSIS RELATED TO ADMINISTRATIVE ENFORCEMENT AND CIVIL ACTIONS.

Before initiating any administrative enforcement action or civil lawsuit or entering into a consent order, the Director shall consider the cost-benefit analysis of such action, lawsuit, or order carried out by the Office of Economic Analysis.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.

(a) DEFINED TERMS.—For purposes of this subtitle—

(1) the term "consumer financial protection functions" means—

(A) all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines[; and].

[(B) the examination authority described in subsection (c)(1), with respect to a person described in subsection 1025(a); and]

(2) the terms "transferor agency" and "transferor agencies" mean, respectively—

(A) the Board of Governors (and any Federal reserve bank, as the context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Super-

vision, and the Department of Housing and Urban Development, and the heads of those agencies; and

(B) the agencies listed in subparagraph (A), collectively.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Bureau.

(B) BOARD OF GOVERNORS AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Bureau.

(B) COMPTROLLER AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

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

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Bureau.

(B) DIRECTOR AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Bureau.

(B) CORPORATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—The authority of the Federal Trade Commission under an enumerated consumer law to prescribe rules, issue guidelines, or conduct a study or issue a report mandated under such law shall be transferred to the Bureau on the designated transfer date. Nothing in this title shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission.

(B) BUREAU AUTHORITY.—

(i) IN GENERAL.—The Bureau shall have all powers and duties under the enumerated consumer laws to prescribe rules, issue guidelines, or to conduct studies or issue reports mandated by such laws, that were vested in the Federal Trade Commission on the day before the designated transfer date.

[(ii) FEDERAL TRADE COMMISSION ACT.—Subject to subtitle B, the Bureau may enforce a rule prescribed under the Federal Trade Commission Act by the Federal Trade Commission with respect to an unfair or deceptive act or practice to the extent that such rule applies to a covered person or service provider with respect to the offering or provision of a consumer financial product or service as if it were a rule prescribed under section 1031 of this title.]

(C) AUTHORITY OF THE FEDERAL TRADE COMMISSION.—

(i) IN GENERAL.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission (including its authority with respect to affiliates described in section 1025(a)(1)) under the Federal Trade Commission Act or any other law, other than the authority under an enumerated consumer law to prescribe rules, issue official guidelines, or conduct a study or issue a report mandated under such law.

(ii) COMMISSION AUTHORITY RELATING TO RULES PRESCRIBED BY THE BUREAU.—Subject to subtitle B, the Federal Trade Commission shall have authority to enforce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) a rule prescribed by the Bureau under this title with respect to a covered person subject to the jurisdiction of the Federal Trade Commission under that Act, and a violation of such a rule by such a person shall be treated as a violation of a rule issued under section 18 of that Act (15 U.S.C. 57a) with respect to unfair or deceptive acts or practices.

[(D) COORDINATION.—To avoid duplication of or conflict between rules prescribed by the Bureau under section 1031 of this title and the Federal Trade Commission under section 18(a)(1)(B) of the Federal Trade Commission Act that apply to a covered person or service provider with respect to the offering or provision of consumer financial products or services, the agencies shall negotiate an agreement with respect to rulemaking by each agency, including consultation with the other agency prior to proposing a rule and during the comment period.]

[(E)] *(D)* DEFERENCE.—No provision of this title shall be construed as altering, limiting, expanding, or otherwise affecting the deference that a court [affords to the—]

[(i)] [Federal Trade Commission] *affords to the Federal Trade Commission* in making determinations regarding the meaning or interpretation of any provision of the Federal Trade Commission Act, or of any other Federal law for which the Commission has authority to prescribe rules[; or].

[(ii) Bureau in making determinations regarding the meaning or interpretation of any provision of a Federal consumer financial law (other than any law described in clause (i)).]

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Bureau.

(B) NATIONAL CREDIT UNION ADMINISTRATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the [Secretary of the Department of Housing and Urban Development] *Department of Housing and Urban Development* relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [(12 U.S.C. 5102 et seq.)] *(12 U.S.C. 5101 et seq.)*, and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) are transferred to the Bureau.

(B) AUTHORITY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—The Bureau shall have all powers and duties that were vested in the [Secretary of the Department of Housing and Urban Development] *Department of Housing and Urban Development* relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.), and the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.), on the day before the designated transfer date.

(c) AUTHORITIES OF THE PRUDENTIAL REGULATORS.—

[(1) EXAMINATION.—A transferor agency that is a prudential regulator shall have—

[(A) authority to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 1025(a), that is incidental to the backup and enforcement procedures provided to the regulator under section 1025(c); and

[(B) exclusive authority (relative to the Bureau) to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 1026(a), except as provided to the Bureau under subsections (b) and (c) of section 1026.]

(1) EXAMINATION.—A transferor agency that is a prudential regulator shall have exclusive authority (relative to the Bureau) to require reports from and conduct examinations for compliance with Federal consumer financial laws with respect to a person described in section 1026(a).

(2) ENFORCEMENT.—

[(A) LIMITATION.—The authority of a transferor agency that is a prudential regulator to enforce compliance with Federal consumer financial laws with respect to a person described in section 1025(a), shall be limited to the backup and enforcement procedures in described in section 1025(c).]

[(B)] *(A)* EXCLUSIVE AUTHORITY.—A transferor agency that is a prudential regulator shall have exclusive authority (relative to the Bureau) to enforce compliance with Federal consumer financial laws with respect to a person described in section 1026(a), except as provided to the Bureau under subsections (b) and (c) of section 1026.

[(C)] *(B)* STATUTORY ENFORCEMENT.—For purposes of carrying out the authorities under, and subject to the limitations of, subtitle B, each prudential regulator may enforce compliance with the requirements imposed under this title, and any rule or order prescribed by the Bureau under this title, under—

(i) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any covered person or service provider that is an insured credit union, or service provider thereto, or any affiliate of an insured credit union, who is subject to the jurisdiction of the Board under that Act; and

(ii) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to a covered person or service provider that is a person described in section 3(q) of that Act and who is subject to the jurisdiction of that agency, as set forth in sections 3(q) and 8 of the Federal Deposit Insurance Act; or

(iii) the Bank Service Company Act (12 U.S.C. 1861 et seq.).

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

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SEC. 1063. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Bureau by this title, except that the Bureau, subject to [sections 1024, 1025, and 1026] *sections 1024 and 1026*, shall be substituted for the Board of Governors

(or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(4) does not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title, except that the Bureau, subject to ⟦sections 1024, 1025, and 1026⟧ *sections 1024 and 1026*, shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—Section 1061(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(1) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title; and

(2) existed on the day before the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(6) does not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title, except that the Bureau, subject to ⟦sections 1024, 1025, and 1026⟧ *sections 1024 and 1026*, shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(2) does not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to [sections 1024, 1025, and 1026] *sections 1024 and 1026*, shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(3) does not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title; and

(B) [that] existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to [sections 1024, 1025, and 1026] *sections 1024 and 1026*, shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development), or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of the Department of Housing and Urban Development with respect to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et

seq.), the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [(12 U.S.C. 5102 et seq.)] *(12 U.S.C. 5101 et seq.)*, or the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et [seq)] *seq.)* transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any proceeding commenced by or against the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of the Department of Housing and Urban Development transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to [sections 1024, 1025, and 1026] *sections 1024 and 1026*, shall be substituted for the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, RULINGS, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and under subsection (i), all orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect, and shall continue to be enforceable by the appropriate transferor agency, according to the terms of those orders, resolutions, determinations, agreements, and rulings, and shall not be enforceable by or against the Bureau.

(2) EXCEPTION FOR ORDERS APPLICABLE TO PERSONS DESCRIBED IN SECTION 1025(A).—All orders, resolutions, determinations, agreements, and rulings that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date with respect to any person described in section 1025(a), shall continue in effect, according to the terms of those orders, resolutions, determinations, agreements, and rulings, and shall be enforceable by or against the Bureau or transferor agency.

(i) IDENTIFICATION OF RULES AND ORDERS CONTINUED.—Not later than the designated transfer date, the Bureau—

(1) shall, after consultation with the head of each transferor agency, identify the rules and orders that will be enforced by the Bureau; and

(2) shall publish a list of such rules and orders in the Federal Register.

(j) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Bureau.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Bureau according to its terms.

SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Governors shall—

(i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Bureau, in a manner that the Bureau and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Bureau, in a manner that the Bureau and the Board of Directors of the Corporation, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Bureau, in a manner that the Bureau and the National Credit Union Administration Board, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(4) CERTAIN OFFICE OF THE COMPTROLLER OF THE CURRENCY EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Comptroller of the Currency shall—

(i) jointly determine the number of employees of the Office of the Comptroller of the Currency necessary to perform or support the consumer financial protection functions of the Office of the Comptroller of the Currency that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of the Comptroller of the Currency for transfer to the Bureau, in a manner that the Bureau and the Office of the Comptroller of the Currency, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of the Comptroller of the Currency identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(5) CERTAIN OFFICE OF THRIFT SUPERVISION EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Director of the Office of Thrift Supervision shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the consumer financial protection functions of the Office of Thrift Supervision that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Bureau, in a manner that the Bureau and the Office of Thrift Supervision, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of Thrift Supervision identified under sub-

paragraph (A)(ii) shall be transferred to the Bureau for employment.

(6) CERTAIN EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Secretary of the Department of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer protection functions of the Department that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Bureau in a manner that the Bureau and the Secretary of the Department of Housing and Urban Development, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(7) CONSUMER EDUCATION, FINANCIAL LITERACY, CONSUMER COMPLAINTS, AND RESEARCH FUNCTIONS.—The Bureau and each of the transferor agencies (except the Federal Trade Commission) shall jointly determine the number of employees and the types and grades of employees necessary to perform the functions of the Bureau under subtitle A, including consumer education, financial literacy, policy analysis, responses to consumer complaints and inquiries, research, and similar functions. All employees jointly identified under this paragraph shall be transferred to the Bureau for employment.

(8) AUTHORITY OF THE PRESIDENT TO RESOLVE DISPUTES.—

(A) ACTION AUTHORIZED.—In the event that the Bureau and a transferor agency are unable to reach an agreement under paragraphs (1) through (7) by the designated transfer date, the President, or the designee thereof, may issue an order or directive to the transferor agency to effect the transfer of personnel and property under this subtitle.

(B) TRANSMITTAL TO CONGRESS REQUIRED.—If an order or directive is issued under subparagraph (A), the President shall transmit a copy of the written determination made with respect to such order or directive, including an explanation for the need for the order or directive, to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Financial Services and the Committee on Appropriations of the House of Representatives.

(C) SUNSET.—The authority provided in this paragraph shall terminate 3 years after the designated transfer date.

(9) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant

to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

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

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

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

(c) TRANSFER OF FUNCTION.—

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

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

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM, FDIC, HUD, NCUA, OCC, AND OTS.—Each employee transferred to the Bureau from the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be placed in a position at the Bureau with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—For purposes of determining the status and position placement of a transferred employee, any period of service with the Board of Governors or a Federal reserve bank shall be credited as a period of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Bureau are not subject to any additional certification requirements before being placed in a comparable examiner position at the Bureau examining the same types of institutions as they examined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau—

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

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

(C) to reassign a supervisory employee outside of his or her locality pay area when the Bureau determines that the reassignment is necessary for the efficient operation of the Bureau.

(g) PAY.—

(1) 2-YEAR PROTECTION.—

(A) IN GENERAL.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received during the pay period immediately preceding the date of transfer.

(B) LIMITATION.—Notwithstanding subparagraph (A), if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the date of transfer, the Bureau may reduce the rate of basic pay on the date on which the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 2-year period shall be the reduced rate that would have applied, but for the transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the consent of the employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Bureau.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Bureau to increase the pay of a transferred employee.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Bureau is required—

(i) that reorganization shall be deemed a "substantial reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of

Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Bureau as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Bureau is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Unless an election is made under clause (iii) or subparagraph (B), each employee transferred pursuant to

this subtitle shall remain enrolled in the existing retirement plan of that employee as of the date of transfer, through any period of continuous employment with the Bureau.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

(iii) OPTION TO ELECT INTO THE FEDERAL RESERVE SYSTEM RETIREMENT PLAN AND FEDERAL RESERVE SYSTEM THRIFT PLAN.—Any employee transferred pursuant to this subtitle may, during the 1-year period beginning 6 months after the designated transfer date, elect to end their participation and benefit accruals under their existing retirement plan or plans and elect to participate in both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, through any period of continuous employment with the Bureau, under the same terms as are applicable to Federal Reserve System transferred employees, as provided in subparagraph (C). An election of coverage by the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan shall begin on the day following the end of the 18- month period beginning on the designated transfer date, and benefit accruals under the existing retirement plan of the transferred employee shall end on the last day of the 18-month period beginning on the designated transfer date. If an employee elects to participate in the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, all of the service of the employee that was creditable under their existing retirement plan shall be transferred to the Federal Reserve System Retirement Plan on the day following the end of the 18-month period beginning on the designated transfer date.

(iv) BUREAU CONTRIBUTION.—The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5, United States Code, for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan under this subparagraph. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of the Federal Reserve System Thrift Plan.

(v) ADDITIONAL FUNDING.—The Bureau shall transfer to the Federal Reserve System Retirement Plan an amount determined by the Board of Governors, in consultation with the Bureau, to be necessary to reimburse the Federal Reserve System Retirement Plan for the costs to such plan of providing benefits to employ-

ees electing coverage under the Federal Reserve System Retirement Plan under subparagraph (iii), and who were transferred to the Bureau from outside of the Federal Reserve System.

(vi) OPTION TO ELECT INTO THRIFT PLAN CREATED BY THE BUREAU.—If the Bureau chooses to establish a thrift plan, the employees transferred pursuant to this subtitle shall have the option to elect, under such terms and conditions as the Bureau may establish, coverage under such a thrift plan established by the Bureau. Transferred employees may not remain in the thrift plan of the agency from which the employee transferred under this subtitle, if the employee elects to participate in a thrift plan established by the Bureau.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO THE FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any Federal Reserve System transferred employee who was enrolled in the Federal Reserve System Retirement Plan on the day before the date of his or her transfer to the Bureau may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal Employee Retirement Program.

(ii) EFFECTIVE DATE OF COVERAGE.—An election of coverage by the Federal Employee Retirement Program under this subparagraph shall begin on the day following the end of the 18-month period beginning on the designated transfer date, and benefit accruals under the existing retirement plan of the Federal Reserve System transferred employee shall end on the last day of the 18-month period beginning on the designated transfer date.

(C) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) BENEFITS PROVIDED.—Federal Reserve System employees transferred pursuant to this subtitle shall continue to be eligible to participate in the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan through any period of continuous employment with the Bureau, unless the employee makes an election under subparagraph (A)(vi) or (B). The retirement benefits, formulas, and features offered to the Federal Reserve System transferred employees shall be the same as those offered to employees of the Board of Governors who participate in the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, as amended from time to time.

(ii) LIMITATION.—The Bureau shall not have responsibility or authority—

(I) to amend an existing retirement plan (including the Federal Reserve System Retirement Plan or Federal Reserve System Thrift Plan);

(II) for administering an existing retirement plan (including the Federal Reserve System Retirement Plan or Federal Reserve System Thrift Plan); or

(III) for ensuring the plans comply with applicable laws, fiduciary rules, and related responsibilities.

(iii) TAX QUALIFIED STATUS.—Notwithstanding any other provision of law, providing benefits to Federal Reserve System employees transferred to the Bureau pursuant to this subtitle, and to employees who elect coverage pursuant to subparagraph (A)(iii) or under section 1013(a)(2)(B), shall not cause any existing retirement plan (including the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan) to lose its tax-qualified status under sections 401(a) and 501(a) of the Internal Revenue Code of 1986.

(iv) BUREAU CONTRIBUTION.—The Bureau shall pay any employer contributions to the existing retirement plan (including the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan) for each Federal Reserve System transferred employee participating in those plans, as required under the plan, after the designated transfer date.

(v) CONTROLLED GROUP STATUS.—The Bureau is the same employer as the Federal Reserve System (as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to the date of enactment of this Act) for purposes of subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. 414).

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

(i) the term "existing retirement plan" means, with respect to an employee transferred pursuant to this subtitle, the retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan, of the agency from which the employee was transferred under this subtitle, in which the employee was enrolled on the day before the date on which the employee was transferred;

(ii) the term "Federal Employee Retirement Program" means either the Civil Service Retirement System established under chapter 83 of title 5, United States Code, or the Federal Employees Retirement System established under chapter 84 of title 5, United States Code, depending upon the service history of the individual;

(iii) the term "Federal Reserve System transferred employee" means a transferred employee who is an employee of the Board of Governors or a Federal reserve bank on the day before the designated transfer date, and who is transferred to the Bureau on the designated transfer date pursuant to this subtitle;

(iv) the term "Federal Reserve System Retirement Plan" means the Retirement Plan for Employees of the Federal Reserve System; and

(v) the term "Federal Reserve System Thrift Plan" means the Thrift Plan for Employees of the Federal Reserve System.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each employee transferred pursuant to this subtitle may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a medical, dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) MEDICAL, DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, at the end of the 1-year period beginning on the designated transfer date, the Bureau has not established its own, or arranged for participation in another entity's, medical, dental, vision, or life insurance program, an employee transferred pursuant to this subtitle who was a member of such a program at the agency or Federal reserve bank from which the employee transferred may, before the coverage of that employee ends under subparagraph (A)(i), elect to enroll, without regard to any regularly scheduled open season, in—

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

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

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

(iv) the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, at the end of the 1-year period beginning on the designated transfer date, the Bureau has not established its own, or arranged for participation in another entity's, long term care insurance program, an employee transferred pursuant to this subtitle who was a member of such a program at the agency or Federal reserve bank from which the employee transferred may, before the coverage of that employee ends under subparagraph (A)(i), elect to apply for coverage under the Federal Long Term Care Insurance

Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in part 875 of title 5, Code of Federal Regulations).

(D) EMPLOYEE CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Bureau shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a health benefits plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

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

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

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Bureau shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a life insurance plan administered by a transferor agency immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States

Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Bureau shall implement a uniform pay and classification system for all employees transferred under this title.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Bureau—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency, including the Board of Governors, the Corporation, the Department of Housing and Urban Development, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Bureau shall coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

* * * * * * *

SEC. 1067. TRANSITION OVERSIGHT.

(a) PURPOSE.—The purpose of this section is to ensure that the Bureau—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Bureau shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Bureau shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) WORKPLACE FLEXIBILITIES PLAN.—The Bureau shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;

(v) part-time work;

(vi) job sharing;

(vii) parental leave benefits and childcare assistance;

(viii) domestic partner benefits;

(ix) other workplace flexibilities; or

(x) any combination of the items described in clauses (i) through (ix).

(C) RECRUITMENT AND RETENTION PLAN.—The Bureau shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(ii) streamlined employment application processes;

(iii) the provision of timely notification of the status of employment applications to applicants; and

(iv) the collection of information to measure indicators of hiring effectiveness.

(c) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or

(2) the rights of employees under chapter 71 of title 5, United States Code.

[(e) PARTICIPATION IN EXAMINATIONS.—In order to prepare the Bureau to conduct examinations under section 1025 upon the designated transfer date, the Bureau and the applicable prudential regulator may agree to include, on a sampling basis, examiners on examinations of the compliance with Federal consumer financial law of institutions described in section 1025(a) conducted by the prudential regulators prior to the designated transfer date.]

Subtitle G—Regulatory Improvements

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SEC. 1073. REMITTANCE TRANSFERS.

(a) [Omitted—Amendatory]

(b) AUTOMATED CLEARINGHOUSE SYSTEM.—

(1) EXPANSION OF SYSTEM.—The Board of Governors shall work with the Federal reserve banks and the Department of the Treasury to expand the use of the automated clearinghouse system and other payment mechanisms for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(A) the number, volume, and size of such transfers;

(B) the significance of the volume of such transfers relative to the external financial flows of the receiving country, including—

(i) the total amount transferred; and

(ii) the total volume of payments made by United States Government agencies to beneficiaries and retirees living abroad;

(C) the feasibility of such an expansion; and

(D) the ability of the Federal Reserve System to establish payment gateways in different geographic regions and currency zones to receive remittance transfers and route them through the payments systems in the destination countries.

(2) REPORT TO CONGRESS.—Not later than one calendar year after the date of enactment of this Act, and on April 30 biennially thereafter during the 10-year period beginning on that date of enactment, the Board of Governors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this subsection. The report shall include an analysis of adoption rates of International ACH Transactions rules and formats, the efficacy of increasing adoption rates, and potential recommendations to increase adoption.

(c) EXPANSION OF FINANCIAL INSTITUTION PROVISION OF REMITTANCE TRANSFERS.—

(1) PROVISION OF GUIDELINES TO INSTITUTIONS.—Each of the Federal banking agencies and the National Credit Union Administration shall provide guidelines to financial institutions under the jurisdiction of the agency regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts, as well as agency services to remittance transfer providers.

(2) ASSISTANCE TO FINANCIAL LITERACY *AND EDUCATION* COMMISSION.—As part of [its duties] *their duties* as members of the Financial Literacy and Education Commission, the Bureau, the Federal banking agencies, and the National Credit Union Administration shall assist the Financial Literacy and Education Commission in executing the Strategy for Assuring Financial Empowerment (or the "SAFE Strategy"), as it relates to remittances.

* * * * * * *

[SEC. 1075. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

[(a) IN GENERAL.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

[(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

[(2) by inserting after section 919 the following:

["SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS

["(a) REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—

["(1) REGULATORY AUTHORITY OVER INTERCHANGE TRANSACTION FEES.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction, to implement this subsection (including related definitions), and to prevent circumvention or evasion of this subsection.

["(2) REASONABLE INTERCHANGE TRANSACTION FEES.—The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

["(3) RULEMAKING REQUIRED.—

["(A) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

["(B) INFORMATION COLLECTION.—The Board may require any issuer (or agent of an issuer) or payment card network to provide the Board with such information as may be necessary to carry out the provisions of this subsection and the Board, in issuing rules under subparagraph (A) and on at least a bi-annual basis thereafter, shall disclose such aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transactions as the Board considers appropriate and in the public interest.

["(4) CONSIDERATIONS; CONSULTATION.—In prescribing regulations under paragraph (3)(A), the Board shall—

["(A) consider the functional similarity between—

["(i) electronic debit transactions; and

["(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

["(B) distinguish between—

["(i) the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

[“(ii) other costs incurred by an issuer which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

[“(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

[“(5) ADJUSTMENTS TO INTERCHANGE TRANSACTION FEES FOR FRAUD PREVENTION COSTS.—

[“(A) ADJUSTMENTS.—The Board may allow for an adjustment to the fee amount received or charged by an issuer under paragraph (2), if—

[“(i) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer; and

[“(ii) the issuer complies with the fraud-related standards established by the Board under subparagraph (B), which standards shall—

[“(I) be designed to ensure that any fraud-related adjustment of the issuer is limited to the amount described in clause (i) and takes into account any fraud-related reimbursements (including amounts from charge-backs) received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer; and

[“(II) require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud prevention technology.

[“(B) RULEMAKING REQUIRED.—

[“(i) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for making adjustments under this paragraph.

[“(ii) FACTORS FOR CONSIDERATION.—In issuing the standards and prescribing regulations under this paragraph, the Board shall consider—

[“(I) the nature, type, and occurrence of fraud in electronic debit transactions;

[“(II) the extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means;

[“(III) the available and economical means by which fraud on electronic debit transactions may be reduced;

[“(IV) the fraud prevention and data security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

[“(V) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

[“(VI) the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and

[“(VII) such other factors as the Board considers appropriate.

[“(6) EXEMPTION FOR SMALL ISSUERS.—

[“(A) IN GENERAL.—This subsection shall not apply to any issuer that, together with its affiliates, has assets of less than $10,000,000,000, and the Board shall exempt such issuers from regulations prescribed under paragraph (3)(A).

[“(B) DEFINITION.—For purposes of this paragraph, the term ‘issuer’ shall be limited to the person holding the asset account that is debited through an electronic debit transaction.

[“(7) EXEMPTION FOR GOVERNMENT-ADMINISTERED PAYMENT PROGRAMS AND RELOADABLE PREPAID CARDS.—

[“(A) IN GENERAL.—This subsection shall not apply to an interchange transaction fee charged or received with respect to an electronic debit transaction in which a person uses—

[“(i) a debit card or general-use prepaid card that has been provided to a person pursuant to a Federal, State or local government-administered payment program, in which the person may only use the debit card or general-use prepaid card to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program; or

[“(ii) a plastic card, payment code, or device that is—

[“(I) linked to funds, monetary value, or assets which are purchased or loaded on a prepaid basis;

[“(II) not issued or approved for use to access or debit any account held by or for the benefit of the card holder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis);

[“(III) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

[“(IV) used to transfer or debit funds, monetary value, or other assets; and

[“(V) reloadable and not marketed or labeled as a gift card or gift certificate.

[“(B) EXCEPTION.—Notwithstanding subparagraph (A), after the end of the 1-year period beginning on the effective date provided in paragraph (9), this subsection shall apply to an interchange transaction fee charged or received with respect to an electronic debit transaction described in subparagraph (A)(i) in which a person uses a general-use prepaid card, or an electronic debit transaction described in subparagraph (A)(ii), if any of the following fees may be charged to a person with respect to the card:

[“(i) A fee for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance.

[“(ii) A fee imposed by the issuer for the first withdrawal per month from an automated teller machine that is part of the issuer’s designated automated teller machine network.

[“(C) DEFINITION.—For purposes of subparagraph (B), the term ‘designated automated teller machine network’ means either—

[“(i) all automated teller machines identified in the name of the issuer; or

[“(ii) any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer’s customers.

[“(D) REPORTING.—Beginning 12 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall annually provide a report to the Congress regarding —

[“(i) the prevalence of the use of general-use prepaid cards in Federal, State or local government-administered payment programs; and

[“(ii) the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards.

[“(8) REGULATORY AUTHORITY OVER NETWORK FEES.—

[“(A) IN GENERAL.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any network fee.

[“(B) LIMITATION.—The authority under subparagraph (A) to prescribe regulations shall be limited to regulations to ensure that—

[“(i) a network fee is not used to directly or indirectly compensate an issuer with respect to an electronic debit transaction; and

[“(ii) a network fee is not used to circumvent or evade the restrictions of this subsection and regulations prescribed under such subsection.

[“(C) RULEMAKING REQUIRED.—The Board shall prescribe regulations in final form before the end of the 9-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, to carry out the authorities provided under subparagraph (A).

[“(9) EFFECTIVE DATE.—This subsection shall take effect at the end of the 12-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010.

[“(b) LIMITATION ON PAYMENT CARD NETWORK RESTRICTIONS.—

[“(1) PROHIBITIONS AGAINST EXCLUSIVITY ARRANGEMENTS.—

[“(A) NO EXCLUSIVE NETWORK.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to—

[“(i) 1 such network; or

[“(ii) 2 or more such networks which are owned, controlled, or otherwise operated by —

[“(I) affiliated persons; or

[“(II) networks affiliated with such issuer.

[“(B) NO ROUTING RESTRICTIONS.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

[“(2) LIMITATION ON RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—

[“(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards to the extent that—

[“(i) in the case of a discount or in-kind incentive for payment by the use of debit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network;

[“(ii) in the case of a discount or in-kind incentive for payment by the use of credit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network; and

[“(iii) to the extent required by Federal law and applicable State law, such discount or in-kind incentive is offered to all prospective buyers and disclosed clearly and conspicuously.

[“(B) LAWFUL DISCOUNTS.—For purposes of this paragraph, the network may not penalize any person for the

providing of a discount that is in compliance with Federal law and applicable State law.

[“(3) LIMITATION ON RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—

[“(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability—

[“(i) of any person to set a minimum dollar value for the acceptance by that person of credit cards, to the extent that —

[“(I) such minimum dollar value does not differentiate between issuers or between payment card networks; and

[“(II) such minimum dollar value does not exceed $10.00; or

[“(ii) of any Federal agency or institution of higher education to set a maximum dollar value for the acceptance by that Federal agency or institution of higher education of credit cards, to the extent that such maximum dollar value does not differentiate between issuers or between payment card networks.

[“(B) INCREASE IN MINIMUM DOLLAR AMOUNT.—The Board may, by regulation prescribed pursuant to section 553 of title 5, United States Code, increase the amount of the dollar value listed in subparagraph (A)(i)(II).

[“(4) RULE OF CONSTRUCTION:.—No provision of this subsection shall be construed to authorize any person—

[“(A) to discriminate between debit cards within a payment card network on the basis of the issuer that issued the debit card; or

[“(B) to discriminate between credit cards within a payment card network on the basis of the issuer that issued the credit card.

[“(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

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

[“(2) DEBIT CARD.—The term ‘debit card’—

[“(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means;

[“(B) includes a general-use prepaid card, as that term is defined in section 915(a)(2)(A); and

[“(C) does not include paper checks.

[“(3) CREDIT CARD.—The term ‘credit card’ has the same meaning as in section 103 of the Truth in Lending Act.

[“(4) DISCOUNT.—The term ‘discount’—

[“(A) means a reduction made from the price that customers are informed is the regular price; and

[“(B) does not include any means of increasing the price that customers are informed is the regular price.

[“(5) ELECTRONIC DEBIT TRANSACTION.—The term ‘electronic debit transaction’ means a transaction in which a person uses a debit card.

[“(6) FEDERAL AGENCY.—The term ‘Federal agency’ means—

[“(A) an agency (as defined in section 101 of title 31, United States Code); and

[“(B) a Government corporation (as defined in section 103 of title 5, United States Code).

[“(7) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the same meaning as in 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002).

[“(8) INTERCHANGE TRANSACTION FEE.—The term ‘interchange transaction fee’ means any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.

[“(9) ISSUER.—The term ‘issuer’ means any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

[“(10) NETWORK FEE.—The term ‘network fee’ means any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee.

[“(11) PAYMENT CARD NETWORK.—The term ‘payment card network’ means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.

[“(d) ENFORCEMENT.—

[“(1) IN GENERAL.—Compliance with the requirements imposed under this section shall be enforced under section 918.

[“(2) EXCEPTION.—Sections 916 and 917 shall not apply with respect to this section or the requirements imposed pursuant to this section.”.

[(b) AMENDMENT TO THE FOOD AND NUTRITION ACT OF 2008.—Section 7(h)(10) of the Food and Nutrition Act of 2008 (7 U.S.C. 2016(h)(10)) is amended to read as follows:

[“(10) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer or reimbursement systems under this Act.”.

[(c) AMENDMENT TO THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002.—Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) is amended by adding at the end the following new subsection:

[“(f) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this section.”.

[(d) AMENDMENT TO THE CHILD NUTRITION ACT OF 1966.—Section 11 of the Child Nutrition Act of 1966 (42 U.S.C. 1780) is amended by adding at the end the following:

[“(c) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this Act or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).”.]

SEC. 1076. REVERSE MORTGAGE STUDY AND REGULATIONS.

(a) STUDY.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study on reverse mortgage transactions.

(b) REGULATIONS.—

(1) IN GENERAL.—If the Bureau determines through the study required under subsection (a) that conditions or limitations on reverse mortgage transactions are necessary or appropriate for accomplishing the purposes and objectives of this title, including protecting borrowers with respect to the obtaining of reverse mortgage loans for the purpose of funding investments, annuities, and other investment products and the suitability of a borrower in obtaining a reverse mortgage for such purpose*, the Agency may, after notice and opportunity for comment, prescribe regulations*.

(2) IDENTIFIED PRACTICES AND INTEGRATED DISCLOSURES.—The regulations prescribed under paragraph (1) may, as the Bureau may so [determine—]

[(A) identify any practice as unfair, deceptive, or abusive in connection with a reverse mortgage transaction; and]

[(B)] [provide for] *determine, provide for* an integrated disclosure standard and model disclosures for reverse mortgage transactions, consistent with section 4302(d), that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act, with the disclosures required to be provided to consumers for Home Equity Conversion Mortgages under section 255 of the National Housing Act.

(c) RULE OF CONSTRUCTION.—This section shall not be construed as limiting the authority of the Bureau to issue regulations, orders, or guidance that apply to reverse mortgages prior to the completion of the study required under subsection (a).

* * * * * * *

SEC. 1077. REPORT ON PRIVATE EDUCATION LOANS AND PRIVATE EDUCATIONAL LENDERS.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director and the Secretary of Education, in consultation with the Commissioners of the Federal Trade Commission, and the Attorney General of the United States, shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives, on private education loans (as that term is defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650)) and private educational lenders (as that term is defined in such section).

(b) CONTENT.—The report required by this section shall examine, at a minimum—

(1) the growth and changes of the private education loan market in the United States;

(2) factors influencing such growth and changes;

(3) the extent to which students and parents of students rely on private education loans to finance postsecondary education and the private education loan indebtedness of borrowers;

(4) the characteristics of private education loan borrowers, including—

(A) the types of institutions of higher education that they attend;

(B) socioeconomic characteristics (including income and education levels, racial characteristics, geographical background, age, and gender);

(C) what other forms of financing borrowers use to pay for education;

(D) whether they exhaust their Federal loan options before taking out a private loan;

(E) whether such borrowers are dependent or independent students (as determined under part F of title IV of the Higher Education Act of 1965) or parents of such students;

(F) whether such borrowers are students enrolled in a program leading to a certificate, license, or credential other than a degree, an [associates] *associate's* degree, a baccalaureate degree, or a graduate or professional degree; and

(G) if practicable, employment and repayment behaviors;

(5) the characteristics of private educational lenders, including whether such creditors are for-profit, non-profit, or institutions of higher education;

(6) the underwriting criteria used by private educational lenders, including the use of cohort default rate (as such term is defined in section 435(m) of the Higher Education Act of 1965);

(7) the terms, conditions, and pricing of private education loans;

(8) the consumer protections available to private education loan borrowers, including the effectiveness of existing disclosures and requirements and borrowers' awareness and understanding about terms and conditions of various financial products;

(9) whether Federal regulators and the public have access to information sufficient to provide them with assurances that private education loans are provided in accord with the Nation's fair lending laws and that allows public officials to determine lender compliance with fair lending laws; and

(10) any statutory or legislative recommendations necessary to improve consumer protections for private education loan borrowers and to better enable Federal regulators and the public to ascertain private educational lender compliance with fair lending laws.

* * * * * * *

SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by striking "Board" each place that term appears and inserting "Bureau", except in subsections (a) and (e) of section 904 (as amended in paragraph (3) of this section) and in 918 (15 U.S.C. 1693o) (as so designated by the Credit Card Act of 2009), and section 920 (as added by section 1076);

(2) in section 903 (15 U.S.C. 1693a)—

(A) by redesignating paragraphs (3) through (11) as paragraphs (4) through (12), respectively; and

(B) by inserting after paragraph (3) the following:

"(4) the term 'Bureau' means the Bureau of Consumer Financial Protection;";

(3) in section 904 (15 U.S.C. 1693b)—

(A) in subsection (a), by striking "(a) Prescription by Board.—The Board shall prescribe regulations to carry out the purposes of this title." and inserting the following:

"(a) PRESCRIPTION BY THE BUREAU AND THE BOARD.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Bureau shall prescribe rules to carry out the purposes of this title.

"(2) AUTHORITY OF THE BOARD.—The Board shall have sole authority to prescribe rules—

"(A) to carry out the purposes of this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010; and

"(B) to carry out the purposes of section 920."; and

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

"(e) DEFERENCE.—No provision of this title may be construed as altering, limiting, or otherwise affecting the deference that a court affords to—

"(1) the Bureau in making determinations regarding the meaning or interpretation of any provision of this title for which the Bureau has authority to prescribe regulations; or

"(2) the Board in making determinations regarding the meaning or interpretation of section 920.".

(4) in section 916(d) (15 U.S.C. 1693m) (as so designated by the Credit CARD Act of 2009)—

(A) in the subsection heading, by striking "**of Board or Approval of Duly Authorized Official or Employee of Federal Reserve System**";

(B) by inserting "Bureau or the" before "Board" each place that term appears; and

(C) by inserting "Bureau of Consumer Financial Protection or the" before "Federal Reserve System"; and

(5) in section 918 (15 U.S.C. 1693o) (as so designated by the Credit CARD Act of 2009)—

(A) in subsection (a)—

(i) by striking "Compliance" and inserting "Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance";

(ii) by striking paragraphs (1) and (2), and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

"(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

"(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;";

(iii) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively;

(iv) in paragraph (2) (as so redesignated), by striking the period at the end and inserting a semicolon;

(v) in paragraph (3) (as so redesignated), by striking "and" at the end;

(vi) in paragraph (4) (as so redesignated), by striking the period at the end and inserting "and"; and

(vii) by adding at the end the following:

"(5) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title, except that the Bureau shall not have authority to enforce the requirements of section 920 or any regulations prescribed by the Board under section 920.";

(B) in subsection (b), by inserting "any of paragraphs (1) through (4) of" before "subsection (a)" each place that term appears; and

(C) by striking subsection (c) and inserting the following:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (4) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.".

* * * * * * *

SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by striking "Commission" each place that term appears and inserting "Bureau";

(2) in section 803 (15 U.S.C. 1692a)—

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

"(1) The term 'Bureau' means the Bureau of Consumer Financial Protection.";

(3) in section 814 (15 U.S.C. 1692l)—

(A) by striking subsection (a) and inserting the following:

"(a) FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall be authorized to enforce compliance with this title, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.";

[and]

(B) in subsection (b)—

(i) by striking "Compliance" and inserting "Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance";

(ii) by striking paragraphs (1) and (2) and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

"(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

"(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;";

(iii) by redesignating paragraphs (3) through (6), as paragraphs (2) through (5), respectively;

(iv) in paragraph (4) (as so redesignated), by striking "and" at the end;

(v) in paragraph (5) (as so redesignated), by striking the period at the end and inserting "; and"; and

(vi) by inserting before the undesignated matter at the end the following:

"(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title."**[**.**]** *; and*

[(4)**]** *(C)* in subsection (d), by striking "Neither the Commission" and all that follows through the end of the subsection and inserting the following: "Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this title.".

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SEC. 1098. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3 (12 U.S.C. 2602)—

(A) in paragraph (7), by striking "and" at the end;

(B) in paragraph (8), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(9) the term 'Bureau' means the Bureau of Consumer Financial Protection.";

(2) in section 4 (12 U.S.C. 2603)—

(A) in subsection (a), by striking the first sentence and inserting the following: "The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.";

(B) by striking "Secretary" each place that term appears and inserting "Bureau"; and

(C) by striking "form" each place that term appears and inserting "forms";

(3) in section 5 (12 U.S.C. 2604)—

(A) by striking "Secretary" each place that term appears and inserting "Bureau"; and

(B) in subsection (a), by striking the first sentence and inserting the following: "The Bureau shall prepare and dis-

tribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.";

(4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

(A) by striking "Secretary" and inserting "Bureau"; and

(B) by striking ", by regulations that shall take effect not later than April 20, 1991,";

(5) in section 7(b) (12 U.S.C. 2606(b)) by striking "Secretary" and inserting "Bureau";

(6) in section 8(c)(5) (12 U.S.C. 2607(c)(5)), by striking "Secretary" *the first place that term appears* and inserting "Bureau";

(7) in section 8(d) (12 U.S.C. 2607(d))—

(A) in the subsection heading, by inserting "**Bureau and**" before "Secretary"; and

(B) by striking paragraph (4), and inserting the following:

"(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010.";

(8) in section 10(c) (12 U.S.C. 2609(c) and (d)), by striking "Secretary" and inserting "Bureau";

(9) in section 16 (12 U.S.C. 2614), by inserting "the Bureau," before "the Secretary";

(10) in section 18 (12 U.S.C. 2616), by striking "Secretary" each place that term appears and inserting "Bureau"; and

(11) in section 19 (12 U.S.C. 2617)—

(A) in the section heading by striking "**secretary**" and inserting "**bureau**";

(B) in subsection (a), by striking "Secretary" each place that term appears and inserting "Bureau"; and

(C) in subsections (b) and (c), by striking "the Secretary" each place that term appears and inserting "the Bureau".

TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

* * * * * * *

[SEC. 1104. LIQUIDITY EVENT DETERMINATION.

[(a) DETERMINATION AND WRITTEN RECOMMENDATION.—

[(1) DETERMINATION REQUEST.—The Secretary may request the Corporation and the Board of Governors to determine whether a liquidity event exists that warrants use of the guarantee program authorized under section 1105.

[(2) REQUIREMENTS OF DETERMINATION.—Any determination pursuant to paragraph (1) shall—

[(A) be written; and

[(B) contain an evaluation of the evidence that—

[(i) a liquidity event exists;

[(ii) failure to take action would have serious adverse effects on financial stability or economic conditions in the United States; and

[(iii) actions authorized under section 1105 are needed to avoid or mitigate potential adverse effects on the United States financial system or economic conditions.

[(b) PROCEDURES.—Notwithstanding any other provision of Federal or State law, upon the determination of both the Corporation (upon a vote of not fewer than ⅔ of the members of the Corporation then serving) and the Board of Governors (upon a vote of not fewer than ⅔ of the members of the Board of Governors then serving) under subsection (a) that a liquidity event exists that warrants use of the guarantee program authorized under section 1105, and with the written consent of the Secretary—

[(1) the Corporation shall take action in accordance with section 1105(a); and

[(2) the Secretary (in consultation with the President) shall take action in accordance with section 1105(c).

[(c) DOCUMENTATION AND REVIEW.—

[(1) DOCUMENTATION.—The Secretary shall—

[(A) maintain the written documentation of each determination of the Corporation and the Board of Governors under this section; and

[(B) provide the documentation for review under paragraph (2).

[(2) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination of the Corporation and the Board of Governors under subsection (a), including—

[(A) the basis for the determination; and

[(B) the likely effect of the actions taken.

[(d) REPORT TO CONGRESS.—On the earlier of the date of a submission made to Congress under section 1105(c), or within 30 days of the date of a determination under subsection (a), the Secretary shall provide written notice of the determination of the Corporation and the Board of Governors to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, including a description of the basis for the determination.

[SEC. 1105. EMERGENCY FINANCIAL STABILIZATION.

[(a) IN GENERAL.—Upon the written determination of the Corporation and the Board of Governors under section 1104, the Corporation shall create a widely available program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof) during times of severe economic distress, except that a guarantee of obligations under this section may not include the provision of equity in any form.

[(b) RULEMAKING AND TERMS AND CONDITIONS.—

[(1) POLICIES AND PROCEDURES.—As soon as is practicable after the date of enactment of this Act, the Corporation shall

establish, by regulation, and in consultation with the Secretary, policies and procedures governing the issuance of guarantees authorized by this section. Such policies and procedures may include a requirement of collateral as a condition of any such guarantee.

[(2) TERMS AND CONDITIONS.—The terms and conditions of any guarantee program shall be established by the Corporation, with the concurrence of the Secretary.

[(c) DETERMINATION OF GUARANTEED AMOUNT.—

[(1) IN GENERAL.—In connection with any program established pursuant to subsection (a) and subject to paragraph (2) of this subsection, the Secretary (in consultation with the President) shall determine the maximum amount of debt outstanding that the Corporation may guarantee under this section, and the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees up to that maximum amount and a request for approval of such plan. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

[(2) ADDITIONAL DEBT GUARANTEE AUTHORITY.—If the Secretary (in consultation with the President) determines, after a submission to Congress under paragraph (1), that the maximum guarantee amount should be raised, and the Council concurs with that determination, the President may transmit to Congress a written report on the plan of the Corporation to exercise the authority under this section to issue guarantees up to the increased maximum debt guarantee amount. The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

[(d) RESOLUTION OF APPROVAL.—

[(1) ADDITIONAL DEBT GUARANTEE AUTHORITY.—Arequest by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

[(2) FAST TRACK CONSIDERATION IN SENATE.—

[(A) RECONVENING.—Upon receipt of a request under subsection (c), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

[(B) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

[(C) FLOOR CONSIDERATION.—

[(i) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a request under subsection (c), and ending on the 7th day after that date (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

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

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

[(iv) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

[(3) RULES.—

[(A) COORDINATION WITH ACTION BY HOUSE OF REPRESENTATIVES.—If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply:

[(i) The joint resolution of the House of Representatives shall not be referred to a committee.

[(ii) With respect to a joint resolution of the Senate—

[(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

[(II) the vote on passage shall be on the joint resolution of the House of Representatives.

[(B) TREATMENT OF JOINT RESOLUTION OF HOUSE OF REPRESENTATIVES.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of

the House of Representatives shall be entitled to expedited floor procedures under this subsection.

[(C) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

[(D) RULES OF THE SENATE.—This subsection is enacted by Congress—

[(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a joint resolution, and it supersedes other rules, only to the extent that it is inconsistent with such rules; and

[(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

[(4) DEFINITION.—As used in this subsection, the term "joint resolution" means only a joint resolution—

[(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress;

[(B) that does not have a preamble;

[(C) the title of which is as follows: "Joint resolution relating to the approval of a plan to guarantee obligations under section 1105 of the Dodd-Frank Wall Street Reform and Consumer Protection Act"; and

[(D) the matter after the resolving clause of which is as follows: "That Congress approves the obligation of any amount described in section 1105(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.".

[(e) FUNDING.—

[(1) FEES AND OTHER CHARGES.—The Corporation shall charge fees and other assessments to all participants in the program established pursuant to this section, in such amounts as are necessary to offset projected losses and administrative expenses, including amounts borrowed pursuant to paragraph (3), and such amounts shall be available to the Corporation.

[(2) EXCESS FUNDS.—If, at the conclusion of the program established under this section, there are any excess funds collected from the fees associated with such program, the funds shall be deposited in the General Fund of the Treasury.

[(3) AUTHORITY OF CORPORATION.—The Corporation—

[(A) may borrow funds from the Secretary of the Treasury and issue obligations of the Corporation to the Secretary for amounts borrowed, and the amounts borrowed shall be available to the Corporation for purposes of carrying out a program established pursuant to this section, including the payment of reasonable costs of administering the program, and the obligations issued shall be repaid in full with interest through fees and charges paid by partici-

pants in accordance with paragraphs (1) and (4), as applicable; and

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

[(4) BACKUP SPECIAL ASSESSMENTS.—To the extent that the funds collected pursuant to paragraph (1) are insufficient to cover any losses or expenses, including amounts borrowed pursuant to paragraph (3), arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in the program, in amounts necessary to address such insufficiency, and which shall be available to the Corporation to cover such losses or expenses.

[(5) AUTHORITY OF THE SECRETARY.—The Secretary may purchase any obligations issued under paragraph (3)(A). For such purpose, the Secretary may use the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under that chapter 31 are extended to include such purchases, and the amount of any securities issued under that chapter 31 for such purpose shall be treated in the same manner as securities issued under section 208(n)(5)(E).

[(f) RULE OF CONSTRUCTION.—For purposes of this section, a guarantee of deposits held by insured depository institutions shall not be treated as a debt guarantee program.

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

[(1) COMPANY.—The term "company" means any entity other than a natural person that is incorporated or organized under Federal law or the laws of any State.

[(2) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

[(3) LIQUIDITY EVENT.—The term "liquidity event" means—

[(A) an exceptional and broad reduction in the general ability of financial market participants—

[(i) to sell financial assets without an unusual and significant discount; or

[(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

[(B) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.

[(4) SOLVENT.—The term "solvent" means that the value of the assets of an entity exceed its obligations to creditors.

[SEC. 1106. ADDITIONAL RELATED AMENDMENTS.

[(a) SUSPENSION OF PARALLEL FEDERAL DEPOSIT INSURANCE ACT AUTHORITY.—Effective upon the date of enactment of this section, the Corporation may not exercise its authority under section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to establish any widely available debt guarantee program for which section 1105 would provide authority.

[(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is amended—

[(1) in clause (i)—

[(A) in subclause (I), by inserting "for which the Corporation has been appointed receiver" before "would have serious"; and

[(B) in the undesignated matter following subclause (II), by inserting "for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver" after "provide assistance under this section"; and

[(2) in clause (v)(I), by striking "The" and inserting "Not later than 3 days after making a determination under clause (i), the".

[(c) EFFECT OF DEFAULT ON AN FDIC GUARANTEE.—If an insured depository institution or depository institution holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) participating in a program under section 1105, or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation shall—

[(1) appoint itself as receiver for the insured depository institution that defaults; and

[(2) with respect to any other participating company that is not an insured depository institution that defaults—

[(A) require—

[(i) consideration of whether a determination shall be made, as provided in section 203 to resolve the company under section 202; and

[(ii) the company to file a petition for bankruptcy under section 301 of title 11, United States Code, if the Corporation is not appointed receiver pursuant to section 202 within 30 days of the date of default; or

[(B) file a petition for involuntary bankruptcy on behalf of the company under section 303 of title 11, United States Code.]

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TITLE XII—IMPROVING ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS

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SEC. 1208. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION TO THE SECRETARY.—There are authorized to be appropriated to the Secretary, such sums as are necessary to both administer and fund the programs and projects authorized by this title, to remain available until expended.

(b) AUTHORIZATION TO THE FUND.—There is authorized to be appropriated to the Fund*, as defined in section 103(10) of the Riegle Community Development and Regulatory Improvement Act of 1994*

(12 U.S.C. 4702(10)), for each fiscal year beginning in fiscal year 2010, an amount equal to the amount of the administrative costs of the Fund for the operation of the grant program established under this title.

* * * * * * *

TITLE XIV—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

SEC. 1400. SHORT TITLE; DESIGNATION AS ENUMERATED CONSUMER LAW.

(a) SHORT TITLE.—This title may be cited as the "Mortgage Reform and Anti-Predatory Lending Act".

(b) DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE [BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER LAW ENFORCEMENT AGENCY*.—Subtitles A, B, C, and E and sections 1471, 1472, 1475, and 1476, and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 1002, and come under the purview of the [Bureau of Consumer Financial Protection] *Consumer Law Enforcement Agency* for purposes of title X, including the transfer of functions and personnel under subtitle F of title X and the savings provisions of such subtitle.

(c) REGULATIONS; EFFECTIVE DATE.—

(1) REGULATIONS.—The regulations required to be prescribed under this title or the amendments made by this title shall—

(A) be prescribed in final form before the end of the 18-month period beginning on the designated transfer date; and

(B) take effect not later than 12 months after the date of issuance of the regulations in final form.

(2) EFFECTIVE DATE ESTABLISHED BY RULE.—Except as provided in paragraph (3), a section, or provision thereof, of this title shall take effect on the date on which the final regulations implementing such section, or provision, take effect.

(3) EFFECTIVE DATE.—A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date.

* * * * * * *

Subtitle B—Minimum Standards For Mortgages

SEC. 1411. ABILITY TO REPAY.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—No regulation, order, or guidance issued by the [Bureau] *Agency* under this title shall be construed as requiring a depository institution to apply mortgage underwriting standards that do not meet the minimum underwriting standards required by the appropriate prudential regulator of the depository institution.

(2) AMENDMENT TO TRUTH IN LENDING ACT.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129B (as added by section 1402(a)) the following new section:

"SEC. 129C. Minimum standards for residential mortgage loans

"(a) ABILITY TO REPAY.—

"(1) IN GENERAL.—In accordance with regulations prescribed by the Board, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

"(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

"(3) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

"(4) INCOME VERIFICATION.—A creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer's income history in making a determination under this subsection shall include the verification of such income by the use of—

"(A) Internal Revenue Service transcripts of tax returns; or

"(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Board.

"(5) EXEMPTION.—With respect to loans made, guaranteed, or insured by Federal departments or agencies identified in subsection (b)(3)(B)(ii), such departments or agencies may exempt refinancings under a streamlined refinancing from this income

verification requirement as long as the following conditions are met:

"(A) The consumer is not 30 days or more past due on the prior existing residential mortgage loan.

"(B) The refinancing does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by the department or agency making, guaranteeing, or insuring the refinancing.

"(C) Total points and fees (as defined in section 103(aa)(4), other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the refinancing do not exceed 3 percent of the total new loan amount.

"(D) The interest rate on the refinanced loan is lower than the interest rate of the original loan, unless the borrower is refinancing from an adjustable rate to a fixed-rate loan, under guidelines that the department or agency shall establish for loans they make, guarantee, or issue.

"(E) The refinancing is subject to a payment schedule that will fully amortize the refinancing in accordance with the regulations prescribed by the department or agency making, guaranteeing, or insuring the refinancing.

"(F) The terms of the refinancing do not result in a balloon payment, as defined in subsection (b)(2)(A)(ii).

"(G) Both the residential mortgage loan being refinanced and the refinancing satisfy all requirements of the department or agency making, guaranteeing, or insuring the refinancing.

"(6) NONSTANDARD LOANS.—

"(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer's ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

"(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

"(C) CALCULATION FOR NEGATIVE AMORTIZATION.—In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

"(D) CALCULATION PROCESS.—For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

"(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

"(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Board, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

"(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

"(E) REFINANCE OF HYBRID LOANS WITH CURRENT LENDER.—In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which there would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

"(i) consider the mortgagor's good standing on the existing mortgage;

"(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

"(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

"(7) FULLY-INDEXED RATE DEFINED.—For purposes of this subsection, the term 'fully indexed rate' means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

"(8) REVERSE MORTGAGES AND BRIDGE LOANS.—This subsection shall not apply with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a different dwelling within 12 months.

"(9) SEASONAL INCOME.—If documented income, including income from a small business, is a repayment source for a residential mortgage loan, a creditor may consider the seasonality

and irregularity of such income in the underwriting of and scheduling of payments for such credit.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B (as added by section 1402(b)) the following new item:

"129C. Minimum standards for residential mortgage loans.".

Subtitle D—Office of Housing Counseling

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SEC. 1447. DEFAULT AND FORECLOSURE DATABASE.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development and the [Director of the Bureau] *Director of the Consumer Law Enforcement Agency*, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available, subject to subsection (e).

(b) CENSUS TRACT DATA.—Information in the database may be collected, aggregated, and made available on a census tract basis.

(c) REQUIREMENTS.—Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obligation amount that is greater than the value of the property for which the loan was made; and

(6) such other information as the Secretary of Housing and Urban Development and the [Director of the Bureau] *Director of the Consumer Law Enforcement Agency* consider appropriate.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to encourage discriminatory or unsound allocation of credit or lending policies or practices.

(e) PRIVACY AND CONFIDENTIALITY.—In establishing and maintaining the database described in subsection (a), the Secretary of Housing and Urban Development and the [Director of the Bureau] *Director of the Consumer Law Enforcement Agency* shall—

(1) be subject to the standards applicable to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity;

(2) implement the necessary measures to conform to the standards for data integrity and security described in paragraph (1); and

(3) collect and make available information under this section, in accordance with paragraphs (5) and (6) of section 1022(c) and the rules prescribed under such paragraphs, in order to protect privacy and confidentiality.

* * * * * * *

SEC. 1451. HOME INSPECTION COUNSELING.

(a) PUBLIC OUTREACH.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development (in this section referred to as the "Secretary") shall take such actions as may be necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection. Such actions shall include—

(A) publication of the HUD/FHA form HUD 92564-CN entitled "For Your Protection: Get a Home Inspection", in both English and Spanish languages;

(B) publication of the HUD/FHA booklet entitled "For Your Protection: Get a Home Inspection", in both English and Spanish languages;

(C) development and publication of a HUD booklet entitled "For Your Protection—Get a Home Inspection" that does not reference FHA-insured homes, in both English and Spanish languages; and

(D) publication of the HUD document entitled "Ten Important Questions To Ask Your Home Inspector", in both English and Spanish languages.

(2) AVAILABILITY.—The Secretary shall make the materials specified in paragraph (1) available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development. The Secretary shall give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts.

(3) UPDATING.—The Secretary may periodically update and revise such materials, as the Secretary determines to be appropriate.

(b) REQUIREMENT FOR FHA-APPROVED LENDERS.—Each mortgagee approved for participation in the mortgage insurance programs under title II of the National Housing Act shall provide prospective homebuyers, at first contact, whether upon pre-qualification, pre-approval, or initial application, the materials specified in subparagraphs (A), (B), and (D) of subsection (a)(1).

(c) REQUIREMENTS FOR HUD-APPROVED COUNSELING AGENCIES.—Each counseling agency certified [pursuant] by the Secretary to provide housing counseling services shall provide each of their clients, as part of the home purchase counseling process, the materials specified in subparagraphs (C) and (D) of subsection (a)(1).

(d) TRAINING.—Training provided the Department of Housing and Urban Development for housing counseling agencies, whether such training is provided directly by the Department or otherwise, shall include—

(1) providing information on counseling potential homebuyers of the availability and importance of getting an independent home inspection;

(2) providing information about the home inspection process, including the reasons for specific inspections such as radon and lead-based paint testing;

(3) providing information about advising potential homebuyers on how to locate and select a qualified home inspector; and

(4) review of home inspection public outreach materials of the Department.

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TITLE XV—MISCELLANEOUS PROVISIONS

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[SEC. 1502. CONFLICT MINERALS.

[(a) SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b).

[(b) DISCLOSURE RELATING TO CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following new subsection:

[“(p) DISCLOSURES RELATING TO CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—

[“(1) REGULATIONS.—

[“(A) IN GENERAL.—Not later than 270 days after the date of the enactment of this subsection, the Commission shall promulgate regulations requiring any person described in paragraph (2) to disclose annually, beginning with the person’s first full fiscal year that begins after the date of promulgation of such regulations, whether conflict minerals that are necessary as described in paragraph (2)(B), in the year for which such reporting is required, did originate in the Democratic Republic of the Congo or an adjoining country and, in cases in which such conflict minerals did originate in any such country, submit to the Commission a report that includes, with respect to the period covered by the report—

[“(i) a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report submitted through the Commission that is conducted in accordance with standards established by the Comptroller General of the United States, in ac-

cordance with rules promulgated by the Commission, in consultation with the Secretary of State; and

[“(ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free (‘DRC conflict free’ is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent private sector audit in accordance with clause (i), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity.

[“(B) CERTIFICATION.—The person submitting a report under subparagraph (A) shall certify the audit described in clause (i) of such subparagraph that is included in such report. Such a certified audit shall constitute a critical component of due diligence in establishing the source and chain of custody of such minerals.

[“(C) UNRELIABLE DETERMINATION.—If a report required to be submitted by a person under subparagraph (A) relies on a determination of an independent private sector audit, as described under subparagraph (A)(i), or other due diligence processes previously determined by the Commission to be unreliable, the report shall not satisfy the requirements of the regulations promulgated under subparagraph (A)(i).

[“(D) DRC CONFLICT FREE.—For purposes of this paragraph, a product may be labeled as ‘DRC conflict free’ if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country.

[“(E) INFORMATION AVAILABLE TO THE PUBLIC.—Each person described under paragraph (2) shall make available to the public on the Internet website of such person the information disclosed by such person under subparagraph (A).

[“(2) PERSON DESCRIBED.—A person is described in this paragraph if—

[“(A) the person is required to file reports with the Commission pursuant to paragraph (1)(A); and

[“(B) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

[“(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President transmits to the Commission a determination that—

[“(A) such revision or waiver is in the national security interest of the United States and the President includes the reasons therefor; and

[“(B) establishes a date, not later than 2 years after the initial publication of such exemption, on which such exemption shall expire.

[“(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—The requirements of paragraph (1) shall terminate on the date on which the President determines and certifies to the appropriate congressional committees, but in no case earlier than the date that is one day after the end of the 5-year period beginning on the date of the enactment of this subsection, that no armed groups continue to be directly involved and benefitting from commercial activity involving conflict minerals.

[“(5) DEFINITIONS.—For purposes of this subsection, the terms ‘adjoining country’, ‘appropriate congressional committees’, ‘armed group’, and ‘conflict mineral’ have the meaning given those terms under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.”.

[(c) STRATEGY AND MAP TO ADDRESS LINKAGES BETWEEN CONFLICT MINERALS AND ARMED GROUPS.—

[(1) STRATEGY.—

[(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit to the appropriate congressional committees a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products.

[(B) CONTENTS.—The strategy required by subparagraph (A) shall include the following:

[(i) A plan to promote peace and security in the Democratic Republic of the Congo by supporting efforts of the Government of the Democratic Republic of the Congo, including the Ministry of Mines and other relevant agencies, adjoining countries, and the international community, in particular the United Nations Group of Experts on the Democratic Republic of Congo, to—

[(I) monitor and stop commercial activities involving the natural resources of the Democratic Republic of the Congo that contribute to the activities of armed groups and human rights violations in the Democratic Republic of the Congo; and

[(II) develop stronger governance and economic institutions that can facilitate and improve transparency in the cross-border trade involving the natural resources of the Democratic Republic of the Congo to reduce exploitation by armed groups and promote local and regional development.

[(ii) A plan to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products and on their suppliers to ensure that conflict minerals used in the products of such suppliers do not directly or indirectly finance armed conflict or result in labor or human rights violations.

[(iii) A description of punitive measures that could be taken against individuals or entities whose com-

mercial activities are supporting armed groups and human rights violations in the Democratic Republic of the Congo.

[(2) MAP.—

[(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall, in accordance with the recommendation of the United Nations Group of Experts on the Democratic Republic of the Congo in their December 2008 report—

[(i) produce a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries based on data from multiple sources, including—

[(I) the United Nations Group of Experts on the Democratic Republic of the Congo;

[(II) the Government of the Democratic Republic of the Congo, the governments of adjoining countries, and the governments of other Member States of the United Nations; and

[(III) local and international nongovernmental organizations;

[(ii) make such map available to the public; and

[(iii) provide to the appropriate congressional committees an explanatory note describing the sources of information from which such map is based and the identification, where possible, of the armed groups or other forces in control of the mines depicted.

[(B) DESIGNATION.—The map required under subparagraph (A) shall be known as the "Conflict Minerals Map", and mines located in areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries, as depicted on such Conflict Minerals Map, shall be known as "Conflict Zone Mines".

[(C) UPDATES.—The Secretary of State shall update the map required under subparagraph (A) not less frequently than once every 180 days until the date on which the disclosure requirements under paragraph (1) of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b), terminate in accordance with the provisions of paragraph (4) of such section 13(p).

[(D) PUBLICATION IN FEDERAL REGISTER.—The Secretary of State shall add minerals to the list of minerals in the definition of conflict minerals under section 1502, as appropriate. The Secretary shall publish in the Federal Register notice of intent to declare a mineral as a conflict mineral included in such definition not later than one year before such declaration.

[(d) REPORTS.—

[(1) BASELINE REPORT.—Not later than 1 year after the date of the enactment of this Act and annually thereafter through 2020, in 2022, and in 2024, the Comptroller General of the United States shall submit to appropriate congressional committees a report that includes an assessment of the rate of

sexual- and gender-based violence in war-torn areas of the Democratic Republic of the Congo and adjoining countries.

[(2) REGULAR REPORT ON EFFECTIVENESS.—Not later than 2 years after the date of the enactment of this Act and annually thereafter through 2020, in 2022, and in 2024, the Comptroller General of the United States shall submit to the appropriate congressional committees a report that includes the following:

[(A) An assessment of the effectiveness of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b), in promoting peace and security in the Democratic Republic of the Congo and adjoining countries.

[(B) A description of issues encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(p).

[(C)(i) A general review of persons described in clause (ii) and whether information is publicly available about—

[(I) the use of conflict minerals by such persons; and

[(II) whether such conflict minerals originate from the Democratic Republic of the Congo or an adjoining country.

[(ii) A person is described in this clause if—

[(I) the person is not required to file reports with the Securities and Exchange Commission pursuant to section 13(p)(1)(A) of the Securities Exchange Act of 1934, as added by subsection (b); and

[(II) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

[(3) REPORT ON PRIVATE SECTOR AUDITING.—Not later than 30 months after the date of the enactment of this Act, and annually thereafter, the Secretary of Commerce shall submit to the appropriate congressional committees a report that includes the following:

[(A) An assessment of the accuracy of the independent private sector audits and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934.

[(B) Recommendations for the processes used to carry out such audits, including ways to—

[(i) improve the accuracy of such audits; and

[(ii) establish standards of best practices.

[(C) A listing of all known conflict mineral processing facilities worldwide.

[(e) DEFINITIONS.—For purposes of this section:

[(1) ADJOINING COUNTRY.—The term "adjoining country", with respect to the Democratic Republic of the Congo, means a country that shares an internationally recognized border with the Democratic Republic of the Congo.

[(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

[(A) the Committee on Appropriations, the Committee on Foreign Affairs, the Committee on Ways and Means,

and the Committee on Financial Services of the House of Representatives; and

[(B) the Committee on Appropriations, the Committee on Foreign Relations, the Committee on Finance, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

[(3) ARMED GROUP.—The term "armed group" means an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating to the Democratic Republic of the Congo or an adjoining country.

[(4) CONFLICT MINERAL.—The term "conflict mineral" means—

[(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or

[(B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

[(5) UNDER THE CONTROL OF ARMED GROUPS.—The term "under the control of armed groups" means areas within the Democratic Republic of the Congo or adjoining countries in which armed groups—

[(A) physically control mines or force labor of civilians to mine, transport, or sell conflict minerals;

[(B) tax, extort, or control any part of trade routes for conflict minerals, including the entire trade route from a Conflict Zone Mine to the point of export from the Democratic Republic of the Congo or an adjoining country; or

[(C) tax, extort, or control trading facilities, in whole or in part, including the point of export from the Democratic Republic of the Congo or an adjoining country.

[SEC. 1503. REPORTING REQUIREMENTS REGARDING COAL OR OTHER MINE SAFETY.

[(a) REPORTING MINE SAFETY INFORMATION.—Each issuer that is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o) and that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall include, in each periodic report filed with the Commission under the securities laws on or after the date of enactment of this Act, the following information for the time period covered by such report:

[(1) For each coal or other mine of which the issuer or a subsidiary of the issuer is an operator—

[(A) the total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration;

[(B) the total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b));

[(C) the total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d));

[(D) the total number of flagrant violations under section 110(b)(2) of such Act (30 U.S.C. 820(b)(2));

[(E) the total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a));

[(F) the total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 et seq.); and

[(G) the total number of mining-related fatalities.

[(2) A list of such coal or other mines, of which the issuer or a subsidiary of the issuer is an operator, that receive written notice from the Mine Safety and Health Administration of—

[(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

[(B) the potential to have such a pattern.

[(3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

[(b) REPORTING SHUTDOWNS AND PATTERNS OF VIOLATIONS.—Beginning on and after the date of enactment of this Act, each issuer that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall file a current report with the Commission on Form 8-K (or any successor form) disclosing the following regarding each coal or other mine of which the issuer or subsidiary is an operator:

[(1) The receipt of an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a)).

[(2) The receipt of written notice from the Mine Safety and Health Administration that the coal or other mine has—

[(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

[(B) the potential to have such a pattern.

[(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any obligation of a person to make a disclosure under any other applicable law in effect before, on, or after the date of enactment of this Act.

[(d) COMMISSION AUTHORITY.—

[(1) ENFORCEMENT.—A violation by any person of this section, or any rule or regulation of the Commission issued under this section, shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this section, and any such person shall be subject to the same penalties, and to the

same extent, as for a violation of such Act or the rules or regulations issued thereunder.

[(2) RULES AND REGULATIONS.—The Commission is authorized to issue such rules or regulations as are necessary or appropriate for the protection of investors and to carry out the purposes of this section.

[(e) DEFINITIONS.—In this section—

[(1) the terms "issuer" and "securities laws" have the meaning given the terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

[(2) the term "coal or other mine" means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq.); and

[(3) the term "operator" has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

[(f) EFFECTIVE DATE.—This section shall take effect on the day that is 30 days after the date of enactment of this Act.

[SEC. 1504. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

[Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

["(q) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

["(1) DEFINITIONS.—In this subsection—

["(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

["(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

["(C) the term 'payment'—

["(i) means a payment that is—

["(I) made to further the commercial development of oil, natural gas, or minerals; and

["(II) not de minimis; and

["(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

["(D) the term 'resource extraction issuer' means an issuer that—

["(i) is required to file an annual report with the Commission; and

["(ii) engages in the commercial development of oil, natural gas, or minerals;

[“(E) the term ‘interactive data format’ means an electronic data format in which pieces of information are identified using an interactive data standard; and

[“(F) the term ‘interactive data standard’ means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

[“(2) DISCLOSURE.—

[“(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

[“(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

[“(ii) the type and total amount of such payments made to each government.

[“(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

[“(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

[“(D) INTERACTIVE DATA STANDARD.—

[“(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

[“(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

[“(I) the total amounts of the payments, by category;

[“(II) the currency used to make the payments;

[“(III) the financial period in which the payments were made;

[“(IV) the business segment of the resource extraction issuer that made the payments;

[“(V) the government that received the payments, and the country in which the government is located;

[“(VI) the project of the resource extraction issuer to which the payments relate; and

[“(VII) such other information as the Commission may determine is necessary or appropriate in

the public interest or for the protection of investors.

[“(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

[“(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

[“(3) PUBLIC AVAILABILITY OF INFORMATION.—

[“(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

[“(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

[“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.”.

[SEC. 1505. STUDY BY THE COMPTROLLER GENERAL

[(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall issue a report assessing the relative independence, effectiveness, and expertise of presidentially appointed inspectors general and inspectors general of designated Federal entities, as such term is defined under section 8G of the Inspector General Act of 1978, and the effects on independence of the amendments to the Inspector General Act of 1978 made by this Act.

[(b) REPORT.—The report required by subsection (a) shall be issued to the Committees on Financial Services and Oversight and Government Reform of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Homeland Security and Governmental Affairs of the Senate.

[SEC. 1506. STUDY ON CORE DEPOSITS AND BROKERED DEPOSITS

[(a) STUDY.—The Corporation shall conduct a study to evaluate—

[(1) the definition of core deposits for the purpose of calculating the insurance premiums of banks;

[(2) the potential impact on the Deposit Insurance Fund of revising the definitions of brokered deposits and core deposits to better distinguish between them;

[(3) an assessment of the differences between core deposits and brokered deposits and their role in the economy and banking sector of the United States;

[(4) the potential stimulative effect on local economies of redefining core deposits; and

[(5) the competitive parity between large institutions and community banks that could result from redefining core deposits.

[(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Corporation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study under subsection (a) that includes legislative recommendations, if any, to address concerns arising in connection with the definitions of core deposits and brokered deposits.]

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FEDERAL DEPOSIT INSURANCE ACT

SECTION 1. FEDERAL DEPOSIT INSURANCE CORPORATION.

(a) ESTABLISHMENT OF CORPORATION.—There is hereby established a Federal Deposit Insurance Corporation (hereinafter referred to as the "Corporation") which shall insure, as hereinafter provided, the deposits of all banks and savings associations which are entitled to the benefits of insurance under this Act, and which shall have the powers hereinafter granted.

(b) ASSET DISPOSITION DIVISION.—

(1) ESTABLISHMENT.—The Corporation shall have a separate division of asset disposition.

(2) MANAGEMENT.—The division of asset disposition shall have an administrator who shall be appointed by the Board of Directors.

(3) RESPONSIBILITIES OF DIVISION.—The division of asset disposition shall carry out all of the responsibilities of the Corporation under this Act relating to the liquidation of insured depository institutions and the disposition of assets of such institutions.

SEC. 2. MANAGEMENT.

(a) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of [5 members—]

[(A) 1 of whom shall be the Comptroller of the Currency;

[(B) 1 of whom shall be the Director of the Consumer Financial Protection Bureau; and]

[(C)] [3 of whom] *5 members, who* shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.

(2) POLITICAL AFFILIATION.—After February 28, 1993, not more than 3 of the members of the Board of Directors may be members of the same political party.

(b) CHAIRPERSON AND VICE CHAIRPERSON.—

(1) CHAIRPERSON.—1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.

(2) VICE CHAIRPERSON.—1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.

(3) ACTING CHAIRPERSON.—In the event of a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

(c) TERMS.—

(1) APPOINTED MEMBERS.—Each appointed member shall be appointed for a term of 6 years.

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

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

[(d) VACANCY.—

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

[(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Consumer Financial Protection Bureau and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency or the Director of the Consumer Financial Protection Bureau, the acting Comptroller of the Currency or the acting Director of the Consumer Financial Protection Bureau, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.]

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

(e) INELIGIBILITY FOR OTHER OFFICES.—

(1) POSTSERVICE RESTRICTION.—

(A) IN GENERAL.—No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any depository institution holding company during—

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

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

(B) EXCEPTION FOR MEMBERS WHO SERVE FULL TERM.—The limitation contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the Board of Directors after serving the full term for which such member was appointed.

(2) RESTRICTION DURING SERVICE.—No member of the Board of Directors may—

(A) be an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank; or

(B) hold stock in any insured depository institution or depository institution holding company.

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

(f) STATUS OF EMPLOYEES.—

(1) IN GENERAL.—A director, member, officer, or employee of the Corporation has no liability under the Securities Act of 1933 with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. This subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment.

[(2) DEFINITION.—For purposes of this subsection, the term "employee of the Corporation" includes any employee of the Office of the Comptroller of the Currency or of the Consumer Financial Protection Bureau who serves as a deputy or assistant to a member of the Board of Directors of the Corporation in connection with activities of the Corporation.**]**

[(3)**]** *(2)* EFFECT ON OTHER LAW.—This subsection does not affect—

(A) any other immunities and protections that may be available to such person under applicable law with respect to such transactions, or

(B) any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a person described in paragraph (1) participating in such transactions.

This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

SEC. 3. As used in this Act—

(a) DEFINITIONS OF BANK AND RELATED TERMS.—

(1) BANK.—The term "bank"—

(A) means any national bank and State bank, and any Federal branch and insured branch;

(B) includes any former savings association.

(2) STATE BANK.—The term "State bank" means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—

(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia,

including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(3) STATE.—The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(b) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERMS.—

(1) SAVINGS ASSOCIATION.—The term "savings association" means—

(A) any Federal savings association;

(B) any State savings association; and

(C) any corporation (other than a bank) that the Board of Directors and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association.

(2) FEDERAL SAVINGS ASSOCIATION.—The term "Federal savings association" means any Federal savings association or Federal savings bank which is chartered under section 5 of the Home Owners' Loan Act.

(3) STATE SAVINGS ASSOCIATION.—The term "State savings association" means—

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2)),

which is organized and operating according to the laws of the State (as defined in subsection (a)(3)) in which it is chartered or organized.

(c) DEFINITIONS RELATING TO DEPOSITORY INSTITUTIONS.—

(1) DEPOSITORY INSTITUTION.—The term "depository institution" means any bank or savings association.

(2) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" means any bank or savings association the deposits of which are insured by the Corporation pursuant to this Act.

(3) INSTITUTIONS INCLUDED FOR CERTAIN PURPOSES.—The term "insured depository institution" includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purposes of section 8 of this Act.

(4) FEDERAL DEPOSITORY INSTITUTION.—The term "Federal depository institution" means any national bank, any Federal savings association, and any Federal branch.

(5) STATE DEPOSITORY INSTITUTION.—The term "State depository institution" means any State bank, any State savings association, and any insured branch which is not a Federal branch.

(d) DEFINITIONS RELATING TO MEMBER BANKS.—

(1) NATIONAL MEMBER BANK.—The term "national member bank" means any national bank which is a member of the Federal Reserve System.

(2) STATE MEMBER BANK.—The term "State member bank" means any State bank which is a member of the Federal Reserve System.

(e) DEFINITIONS RELATING TO NONMEMBER BANKS.—

(1) NATIONAL NONMEMBER BANK.—The term "national nonmember bank" means any national bank which—

(A) is located in any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands; and

(B) is not a member of the Federal Reserve System.

(2) STATE NONMEMBER BANK.—The term "State nonmember bank" means any State bank which is not a member of the Federal Reserve System.

(f) The term "mutual savings bank" means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers.

(g) SAVINGS BANK.—The term "savings bank" means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.

(h) The term "insured bank" means any bank (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of this Act; and the term "noninsured bank" means any bank the deposits of which are not so insured.

(i) NEW DEPOSITORY INSTITUTION AND BRIDGE DEPOSITORY INSTITUTION DEFINED.—

(1) NEW DEPOSITORY INSTITUTION.—The term "new depository institution" means a new national bank or Federal savings association, other than a bridge depository institution, organized by the Corporation in accordance with section 11(m).

(2) BRIDGE DEPOSITORY INSTITUTION.—The term "bridge depository institution" means a new national bank or Federal savings association organized by the Corporation in accordance with section 11(n).

(j) The term "receiver" includes a receiver, liquidating agent, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a bank or savings association or of a branch of a foreign bank.

(k) The term "Board of Directors" means the Board of Directors of the Corporation.

(l) The term "deposit" means—

(1) the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by

the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable: *Provided,* That, without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection,

(2) trust funds as defined in this Act received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association,

(3) money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: *Provided,* That there shall not be included funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness,

(4) outstanding draft (including advice or authorization to charge a bank's or a savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

(5) such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this Act or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless—

(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and

(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State;

(B) any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal Reserve System in regulation D or any successor regulation issued by the Board of Governors of the Federal Reserve System; and

(C) any liability of an insured depository institution that arises under an annuity contract, the income of which is tax deferred under section 72 of the Internal Revenue Code of 1986.

(m) INSURED DEPOSIT.—

(1) IN GENERAL.—Subject to paragraph (2), the term "insured deposit" means the net amount due to any depositor for deposits in an insured depository institution as determined under sections 7(i) and 11(a).

(2) In the case of any deposit in a branch of a foreign bank, the term "insured deposit" means an insured deposit as defined in paragraph (1) of this subsection which—

(A) is payable in the United States to—

(i) an individual who is a citizen or resident of the United States,

(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

(iii) an individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this Act; and

(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this Act or to facilitate the administration thereof.

(3) UNINSURED DEPOSITS.—The term "uninsured deposit" means the amount of any deposit of any depositor at any insured depository institution in excess of the amount of the insured deposits of such depositor (if any) at such depository institution.

(4) PREFERRED DEPOSITS.—The term "preferred deposits" means deposits of any public unit (as defined in paragraph (1)) at any insured depository institution which are secured or collateralized as required under State law.

(n) The term "transferred deposit" means a deposit in a new bank or other insured depository institution made available to a depositor by the Corporation as payment of the insured deposit of such depositor in a closed bank, and assumed by such new bank or other insured depository institution.

(o) The term "domestic branch" includes any branch bank, branch office, branch agency, additional office, or any branch place

of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent. The term "domestic branch" does not include an automated teller machine or a remote service unit. The term "foreign branch" means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted.

(p) The term "trust funds" means funds held by an insured depository institution in a fiduciary capacity and includes, without being limited to, funds held as trustee, executor, administrator, guardian, or agent.

(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" means—

(1) the Office of the Comptroller of the Currency, in the case of—

(A) any national banking association;

(B) any Federal branch or agency of a foreign bank; and

(C) any Federal savings association;

(2) the Federal Deposit Insurance Corporation, in the case of—

(A) any State nonmember insured bank;

(B) any foreign bank having an insured branch; and

(C) any State savings association; *and*

(3) the Board of Governors of the Federal Reserve System, in the case of—

(A) any State member bank;

(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

(C) any foreign bank which does not operate an insured branch;

(D) any agency or commercial lending company other than a Federal agency;

(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966;

(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution.

(r) STATE BANK SUPERVISOR.—

(1) IN GENERAL.—The term "State bank supervisor" means any officer, agency, or other entity of any State which has primary regulatory authority over State banks or State savings associations in such State.

(2) INTERSTATE APPLICATION.—The State bank supervisors of more than 1 State may be the appropriate State bank supervisor for any insured depository institution.

(s) DEFINITIONS RELATING TO FOREIGN BANKS AND BRANCHES.—

(1) FOREIGN BANK.—The term "foreign bank" has the meaning given to such term by section 1(b)(7) of the International Banking Act of 1978.

(2) FEDERAL BRANCH.—The term "Federal branch" has the meaning given to such term by section 1(b)(6) of the International Banking Act of 1978.

(3) INSURED BRANCH.—The term "insured branch" means any branch (as defined in section 1(b)(3) of the International Banking Act of 1978) of a foreign bank any deposits in which are insured pursuant to this Act.

(t) INCLUDES, INCLUDING.—

(1) IN GENERAL.—The terms "includes" and "including" shall not be construed more restrictively than the ordinary usage of such terms so as to exclude any other thing not referred to or described.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as creating any inference that the term "includes" or "including" in any other provision of Federal law may be deemed to exclude any other thing not referred to or described.

(u) INSTITUTION-AFFILIATED PARTY.—The term "institution-affiliated party" means—

(1) any director, officer, employee, or controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an insured depository institution;

(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 7(j);

(3) any shareholder (other than a bank holding company or savings and loan holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

(v) VIOLATION.—The term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(w) DEFINITIONS RELATING TO AFFILIATES OF DEPOSITORY INSTITUTIONS.—

(1) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" means a bank holding company or a savings and loan holding company.

(2) BANK HOLDING COMPANY.—The term "bank holding company" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

(3) SAVINGS AND LOAN HOLDING COMPANY.—The term "savings and loan holding company" has the meaning given to such term in section 10 of the Home Owners' Loan Act.

(4) SUBSIDIARY.—The term "subsidiary"—

(A) means any company which is owned or controlled directly or indirectly by another company; and

(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

(5) CONTROL.—The term "control" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

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

(7) COMPANY.—The term "company" has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956.

(x) DEFINITIONS RELATING TO DEFAULT.—

(1) DEFAULT.—The term "default" means, with respect to an insured depository institution, any adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch.

(2) IN DANGER OF DEFAULT.—The term "in danger of default" means an insured depository institution with respect to which (or in the case of a foreign bank having an insured branch, with respect to such insured branch) the appropriate Federal banking agency or State chartering authority has advised the Corporation (or, if the appropriate Federal banking agency is the Corporation, the Corporation has determined) that—

(A) in the opinion of such agency or authority—

(i) the depository institution or insured branch is not likely to be able to meet the demands of the institution's or branch's depositors or pay the institution's or branch's obligations in the normal course of business; and

(ii) there is no reasonable prospect that the depository institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or

(B) in the opinion of such agency or authority—

(i) the depository institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(ii) there is no reasonable prospect that the capital of the depository institution or insured branch will be replenished without Federal assistance.

(y) DEFINITIONS RELATING TO DEPOSIT INSURANCE FUND.—

(1) DEPOSIT INSURANCE FUND.—The term "Deposit Insurance Fund" means the Deposit Insurance Fund established under section 11(a)(4).

(2) DESIGNATED RESERVE RATIO.—The term "designated reserve ratio" means the reserve ratio designated by the Board of Directors in accordance with section 7(b)(3).

(3) RESERVE RATIO.—The term "reserve ratio", when used with regard to the Deposit Insurance Fund other than in connection with a reference to the designated reserve ratio, means the ratio of the net worth of the Deposit Insurance Fund to the value of the aggregate estimated insured deposits, or such comparable percentage of the assessment base set forth in section 7(b)(2)(C).

(z) FEDERAL BANKING AGENCY.—The term "Federal banking agency" means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

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SEC. 7. (a)(1) Each insured State nonmember bank and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than [$1,000,000] *$1,500,000* or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed

and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

(2)(A) The Corporation and, with respect to any State depository institution, any appropriate State bank supervisor for such institution, shall have access to reports of examination made by, and reports of condition made to, the Comptroller of the Currency, the Federal Housing Finance Agency, any Federal home loan bank, or any Federal Reserve bank and to all revisions of reports of condition made to any of them, and they shall promptly advise the Corporation of any revisons or changes in respect to deposit liabilities made or required to be made in any report of condition. The Corporation may accept any report made by or to any commission, board, or authority having supervision of a depository institution, and may furnish to the Comptroller of the Currency, to the Federal Housing Finance Agency, to any Federal home loan bank, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation.

(B) ADDITIONAL REPORTS.—The Board of Directors may from time to time require any insured depository institution to file such additional reports as the Corporation, after consultation with the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, as appropriate, may deem advisable for insurance purposes.

(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the discretion of the agency, furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to—

(i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;

(ii) any officer, director, or receiver of such depository institution or entity; and

(iii) any other person that the Federal banking agency determines to be appropriate.

(3) Each insured depository institution shall make to the appropriate Federal banking agency 4 reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System. The dates se-

lected shall be the same for all insured depository institutions, except that when any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. Such reports of condition shall be the basis for the certified statements to be filed pursuant to subsection (c). The deposit liabilities shall be reported in said reports of condition in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depository institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of conditions shall be attested by the signatures of at least two directors or trustees of the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or savings associations under its jurisdiction to make additional reports of condition at any time.

(4) In the reports of condition required to be made by paragraph (3) of this subsection, each insured depository institution shall report the total amount of the liability of the depository institution for deposits in the main office and in any branch located in any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, according to the definition of the term "deposit" in and pursuant to subsection (1) of section 3 of this Act, without any deduction for indebtedness of depositors or creditors or any deduction for cash items in the process of collection drawn on others than the reporting depository institution: *Provided,* That the depository institution in reporting such deposits may (i) subtract from the deposit balance due to any depository institution the deposit balance due from the same depository institution (other than trust funds deposited by either depository institution) and any cash items in the process of collection due from or due to such depository institutions shall be included in determining such net balance, except that balances of time deposits of any depository institution and any balances standing to the credit of private depository institutions, of depository institutions in foreign countries, of foreign branches of other American depository institutions, and of American branches of foreign banks shall be reported gross without any such subtraction, and (ii) exclude any deposits received in any office of the depository institution for deposit in any other office of the depository institution: *And provided further,* That outstanding drafts (including advices and authorizations to charge depository institution's balance in another depository institution) drawn in the regular course of business by the reporting depository institution on depository institutions need not be reported as deposit liabilities. The amount of trust funds

held in the depository institution's own trust department, which the reporting depository institution keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included in the total deposits in such reports, but shall be separately stated in such reports. Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment.

(5) The deposits to be reported on such reports of condition shall be segregated between (i) time and savings deposits and (ii) demand deposits. For this purpose, the time and savings deposits shall consist of time certificates of deposit, time deposits-open account and savings deposits; and demand deposits shall consist of all deposits other than time and savings deposits.

(6) LIFELINE ACCOUNT DEPOSITS.—In the reports of condition required to be reported under this subsection, the deposits in lifeline accounts (as defined in section 232(a)(3)(D) of the Bank Enterprise Act of 1991) shall be reported separately.

(7) The Board of Directors, after consultation with the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, may by regulation define the terms "cash items" and "process of collection", and shall classify deposits as "time,""savings," and "demand" deposits, for the purposes of this section.

(8) In respect of any report required or authorized to be supplied or published pursuant to this subsection or any other provision of law, the Board of Directors or the Comptroller of the Currency, as the case may be, may differentiate between domestic banks and foreign banks to such extent as, in their judgment, may be reasonably required to avoid hardship and can be done without substantial compromise of insurance risk or supervisory and regulatory effectiveness.

(9) DATA COLLECTIONS.—In addition to or in connection with any other report required under this subsection, the Corporation shall take such action as may be necessary to ensure that—

(A) each insured depository institution maintains; and

(B) the Corporation receives on a regular basis from such institution,

information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution. In prescribing reporting and other requirements for the collection of actual and accurate information pursuant to this paragraph, the Corporation shall minimize the regulatory burden imposed upon insured depository institutions that are well capitalized (as defined in section 38) while taking into account the benefit of the information to the Corporation, including the use of the information to enable the Corporation to more accurately determine the total amount of insured deposits in each insured depository institution for purposes of compliance with this Act.

(10) A Federal banking agency may not, by regulation or otherwise, designate, or require an insured institution or an affiliate to designate, a corporation as highly leveraged or a trans-

action with a corporation as a highly leveraged transaction solely because such corporation is or has been a debtor or bankrupt under title 11, United States Code, if, after confirmation of a plan of reorganization, such corporation would not otherwise be highly leveraged.

(11) STREAMLINING REPORTS OF CONDITION.—

(A) REVIEW OF INFORMATION AND SCHEDULES.—Before the end of the 1-year period beginning on the date of enactment of the Financial Services Regulatory Relief Act of 2006 and before the end of each 5-year period thereafter, each Federal banking agency shall, in conjunction with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

(B) REDUCTION OR ELIMINATION OF INFORMATION FOUND TO BE UNNECESSARY.—After completing the review required by subparagraph (A), a Federal banking agency, in conjunction with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or schedules that are otherwise required by law) if the agency determines that the continued collection of such information or schedules is no longer necessary or appropriate.

(12) SHORT FORM REPORTING.—

(A) IN GENERAL.—The appropriate Federal banking agencies shall issue regulations allowing for a reduced reporting requirement for covered depository institutions when making the first and third report of condition for a year, as required pursuant to paragraph (3).

(B) COVERED DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term "covered depository institution" means an insured depository institution that—

(i) is well capitalized (as defined under section 38(b)); and

(ii) satisfies such other criteria as the appropriate Federal banking agencies determine appropriate.

(b) ASSESSMENTS.—

(1) RISK-BASED ASSESSMENT SYSTEM.—

(A) RISK-BASED ASSESSMENT SYSTEM REQUIRED.—The Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

(B) PRIVATE REINSURANCE AUTHORIZED.—In carrying out this paragraph, the Corporation may—

(i) obtain private reinsurance covering not more than 10 percent of any loss the Corporation incurs with respect to an insured depository institution; and

(ii) base that institution's assessment (in whole or in part) on the cost of the reinsurance.

(C) RISK-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term "risk-based assessment system" means a system for calculating a depository institution's assessment based on—

(i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) different categories and concentrations of assets;

(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) any other factors the Corporation determines are relevant to assessing such probability;

(ii) the likely amount of any such loss; and

(iii) the revenue needs of the Deposit Insurance Fund.

(D) SEPARATE ASSESSMENT SYSTEMS.—The Board of Directors may establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund.

(E) INFORMATION CONCERNING RISK OF LOSS AND ECONOMIC CONDITIONS.—

(i) SOURCES OF INFORMATION.—For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, including reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from private economic, credit, or business analysts.

(ii) CONSULTATION WITH FEDERAL BANKING AGENCIES.—

(I) IN GENERAL.—Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

(II) TREATMENT ON AGGREGATE BASIS.—In the case of insured depository institutions that are well capitalized (as defined in section 38) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

(iii) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as providing any new

authority for the Corporation to require submission of information by insured depository institutions to the Corporation.

(F) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT.—In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.

(2) SETTING ASSESSMENTS.—

(A) IN GENERAL.—The Board of Directors shall set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph [(D)] *(C)*.

(B) FACTORS TO BE CONSIDERED.—In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to paragraph (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

(v) Any other factors the Board of Directors may determine to be appropriate.

[(D)] *(C)* NOTICE OF ASSESSMENTS.—The Corporation shall notify each insured depository institution of that institution's assessment.

[(E)] *(D)* BANK ENTERPRISE ACT REQUIREMENT.—The Corporation shall design the risk-based assessment system so that, insofar as the system bases assessments, directly or indirectly, on deposits, the portion of the deposits of any insured depository institution which are attributable to lifeline accounts established in accordance with the Bank Enterprise Act of 1991 shall be subject to assessment at a rate determined in accordance with such Act.

(3) DESIGNATED RESERVE RATIO.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—Before the beginning of each calendar year, the Board of Directors shall designate the reserve ratio applicable with respect to the Deposit Insurance Fund and publish the reserve ratio so designated.

(ii) RULEMAKING REQUIREMENT.—Any change to the designated reserve ratio shall be made by the Board of Directors by regulation after notice and opportunity for comment.

(B) MINIMUM RESERVE RATIO.—The reserve ratio designated by the Board of Directors for any year may not be less than 1.35 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).

(C) FACTORS.—In designating a reserve ratio for any year, the Board of Directors shall—

(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

(D) PUBLICATION OF PROPOSED CHANGE IN RATIO.—In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published proposal a thorough analysis of the data and projections on which the proposal is based.

(E) DIF RESTORATION PLANS.—

(i) IN GENERAL.—Whenever—

(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made,

the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

(ii) REQUIREMENTS OF RESTORATION PLAN.—A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 8-year period beginning upon the implementation of the plan

(or such longer period as the Corporation may determine to be necessary due to extraordinary circumstances).

(iii) RESTRICTION ON ASSESSMENT CREDITS.—As part of any restoration plan under this subparagraph, the Corporation may elect to restrict the application of assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

(iv) LIMITATION ON RESTRICTION.—Notwithstanding clause (iii), while any restoration plan under this subparagraph is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed on the institution for any assessment period in an amount equal to the lesser of—

(I) the amount of the assessment; or

(II) the amount equal to 3 basis points of the institution's assessment base.

(v) TRANSPARENCY.—Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(4) DEPOSITORY INSTITUTION REQUIRED TO MAINTAIN ASSESSMENT-RELATED RECORDS.—Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of—

(A) the end of the 3-year period beginning on the due date of the assessment; or

(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.

(5) EMERGENCY SPECIAL ASSESSMENTS.—In addition to the other assessments imposed on insured depository institutions under this subsection, the Corporation may impose 1 or more special assessments on insured depository institutions in an amount determined by the Corporation if the amount of any such assessment is necessary—

(A) to provide sufficient assessment income to repay amounts borrowed from the Secretary of the Treasury under section 14(a) in accordance with the repayment schedule in effect under section 14(c) during the period with respect to which such assessment is imposed;

(B) to provide sufficient assessment income to repay obligations issued to and other amounts borrowed from insured depository institutions under section 14(d); or

(C) for any other purpose that the Corporation may deem necessary.

(6) COMMUNITY ENTERPRISE CREDITS.—The Corporation shall allow a credit against any semiannual assessment to any insured depository institution which satisfies the requirements of the Community Enterprise Assessment Credit Board under

section 233(a)(1) of the Bank Enterprise Act of 1991 in the amount determined by such Board by regulation.

(c) CERTIFIED STATEMENTS; PAYMENTS.—

(1) CERTIFIED STATEMENTS REQUIRED.—

(A) IN GENERAL.—Each insured depository institution shall file with the Corporation a certified statement containing such information as the Corporation may require for determining the institution's assessment.

(B) FORM OF CERTIFICATION.—The certified statement required under subparagraph (A) shall—

(i) be in such form and set forth such supporting information as the Board of Directors shall prescribe; and

(ii) be certified by the president of the depository institution or any other officer designated by its board of directors or trustees that to the best of his or her knowledge and belief, the statement is true, correct and complete, and in accordance with this Act and regulations issued hereunder.

(2) PAYMENTS REQUIRED.—

(A) IN GENERAL.—Each insured depository institution shall pay to the Corporation the assessment imposed under subsection (b).

(B) FORM OF PAYMENT.—The payments required under subparagraph (A) shall be made in such manner and at such time or times as the Board of Directors shall prescribe by regulation.

(3) NEWLY INSURED INSTITUTIONS.—To facilitate the administration of this section, the Board of Directors may waive the requirements of paragraphs (1) and (2) for the initial assessment period in which a depository institution becomes insured.

(4) PENALTY FOR FAILURE TO MAKE ACCURATE CERTIFIED STATEMENT.—

(A) FIRST TIER.—Any insured depository institution which—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement; or

(ii) submits the statement at a time which is minimally after the time required in such paragraph,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false and misleading information is not corrected. The institution shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) SECOND TIER.—Any insured depository institution which fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement in a manner not described in subparagraph (A) shall be subject to a penalty of not more than $20,000 for each

day during which such failure continues or such false and misleading information is not corrected.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), if any insured depository institution knowingly or with reckless disregard for the accuracy of any certified statement described in paragraph (1) submits a false or misleading certified statement under paragraph (1), the Corporation may assess a penalty of not more than $1,000,000 or not more than 1 percent of the total assets of the institution, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) ASSESSMENT PROCEDURE.—Any penalty imposed under this paragraph shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(E) HEARING.—Any insured depository institution against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the institution submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 8(h) shall apply to any proceeding under this subparagraph.

[(d) CORPORATION EXEMPT FROM APPORTIONMENT.—Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or under any other authority.]

(d) DEPOSIT INSURANCE FUND EXEMPT FROM APPORTIONMENT.—Notwithstanding any other provision of law, amounts received pursuant to any assessments or other fees that are deposited into the Deposit Insurance Fund shall not be subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or under any other authority.

(e) REFUNDS, DIVIDENDS, AND CREDITS.—

(1) REFUNDS OF OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

(A) refund the amount of the excess payment to the insured depository institution; or

(B) credit such excess amount toward the payment of subsequent assessments until such credit is exhausted.

(2) DIVIDENDS FROM EXCESS AMOUNTS IN DEPOSIT INSURANCE FUND.—

(A) RESERVE RATIO IN EXCESS OF 1.5 PERCENT OF ESTIMATED INSURED DEPOSITS.—If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund exceeds 1.5 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.5

percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

(B) LIMITATION.—The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).

(C) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe, by regulation, after notice and opportunity for comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph.

(3) ONE-TIME CREDIT BASED ON TOTAL ASSESSMENT BASE AT YEAR-END 1996.—

(A) IN GENERAL.—Before the end of the 270-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors shall, by regulation after notice and opportunity for comment, provide for a credit to each eligible insured depository institution (or a successor insured depository institution), based on the assessment base of the institution on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

(B) CREDIT LIMIT.—The aggregate amount of credits available under subparagraph (A) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

(C) ELIGIBLE INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term "eligible insured depository institution" means any insured depository institution that—

(i) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or

(ii) is a successor to any insured depository institution described in clause (i).

(D) APPLICATION OF CREDITS.—

(i) IN GENERAL.—Subject to clause (ii), the amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(E), to the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under subparagraph (A).

(ii) TEMPORARY RESTRICTION ON USE OF CREDITS.—The amount of a credit to any eligible insured depository institution under this paragraph may not be applied to more than 90 percent of the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010.

(iii) REGULATIONS.—The regulations prescribed under subparagraph (A) shall establish the qualifications and procedures governing the application of assessment credits pursuant to clause (i).

(E) LIMITATION ON AMOUNT OF CREDIT FOR CERTAIN DEPOSITORY INSTITUTIONS.—In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 38) at the beginning of an assessment period, the amount of any credit allowed under this paragraph against the assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

(F) SUCCESSOR DEFINED.—The Corporation shall define the term "successor" for purposes of this paragraph, by regulation, and may consider any factors as the Board may deem appropriate.

(4) ADMINISTRATIVE REVIEW.—

(A) IN GENERAL.—The regulations prescribed under paragraphs (2) and (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

(B) ADMINISTRATIVE REVIEW.—Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.

(f) Any insured depository institution which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of any assessment payable by the depository institution to the Corporation may be compelled to make such report or file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Corporation against the depository institution and any officer or officers thereof in any court of the United States of competent jurisdiction in the District or Territory in which such depository institution is located.

(g) ASSESSMENT ACTIONS.—

(1) IN GENERAL.—The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any insured depository institution the amount of any unpaid assessment lawfully payable by such insured depository institution.

(2) STATUTE OF LIMITATIONS.—The following provisions shall apply to actions relating to assessments, notwithstanding any other provision in Federal law, or the law of any State:

(A) Any action by an insured depository institution to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exception in subparagraph (E).

(B) Any action by the Corporation to recover from an insured depository institution the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exceptions in subparagraphs (C) and (E).

(C) If an insured depository institution has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(D) Except as provided in subparagraph (C), assessment deposit information contained in records no longer required to be maintained pursuant to subsection (b)(4) shall be considered conclusive and not subject to change.

(E) Any action for the underpaid or overpaid amount of any assessment that became due before the amendment to this subsection under the Federal Deposit Insurance Reform Act of 2005 took effect shall be subject to the statute of limitations for assessments in effect at the time the assessment became due.

(h) Should any national member bank or any insured national nonmember bank fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by such bank under any provision of this section, or fail to pay any assessment required to be paid by such bank under any provision of this Act, and should the bank not correct such failure within thirty days after written notice has been given by the Corporation to an officer of the bank, citing this subsection, and stating that the bank has failed to make any report of condition under subsection (a) of this section or to file or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under the National Bank Act, as amended, the Federal Reserve Act, as amended, or this Act, shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged in the manner provided in the sixth paragraph of section 2 of the Federal Reserve Act, as amended. The remedies provided in this subsection and in the two preceding subsections shall not be construed as limiting any other remedies against any insured depository institution, but shall be in addition thereto.

(i) INSURANCE OF TRUST FUNDS.—

(1) IN GENERAL.—Trust funds held on deposit by an insured depository institution in a fiduciary capacity as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed the standard maximum deposit insurance amount (as determined under section 11(a)(1)) for each trust estate.

(2) INTERBANK DEPOSITS.—Trust funds described in paragraph (1) which are deposited by the fiduciary depository institution in another insured depository institution shall be similarly insured to the fiduciary depository institution according to the trust estates represented.

(3) BANK DEPOSIT FINANCIAL ASSISTANCE PROGRAM.—Notwithstanding paragraph (1), funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy shall be separately insured in an amount not to exceed the standard maximum deposit insurance amount (as determined under section 11(a)(1)) for each insured depository institution depositing such funds.

(4) REGULATIONS.—The Board of Directors may prescribe such regulations as may be necessary to clarify the insurance coverage under this subsection and to prescribe the manner of reporting and depositing such trust funds.

(j)(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured depository institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured depository institution unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or, in the discretion of the agency, extending for an additional 30 days the period during which such a disapproval may issue.The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the agency's judgment, any material information submitted is substantially inaccurate;

(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the agency determines that additional time is needed—

(i) to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code; or

(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6)(E) or the future prospects of the institution.

An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action.

(2)(A) NOTICE TO STATE AGENCY.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State depository institution supervisory agency if the depository institution the voting shares of which are sought to be acquired is a State depository institution, and shall allow thirty days within which the views and recommendations of such State depository institution supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph, if the appropriate Federal banking agency determines that

it must act immediately upon any notice of a proposed acquisition in order to prevent the probable default of the depository institution involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this paragraph or, if a copy of the notice is forwarded to the State depository institution supervisory agency, such Federal banking agency may request that the views and recommendations of such State depository institution supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.

(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, unless such agency determines that an emergency exists, within a reasonable period of time—

(i) publish the name of the insured depository institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.

(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home of-

fice of the bank to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank;

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency; or

(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.

(8) For the purposes of this subsection, the term—

(A) "person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) "control" means the power, directly or indirectly, to direct the management or policies of an insured depository institution or to vote 25 per centum or more of any class of voting securities of an insured depository institution.

(9) REPORTING OF STOCK LOANS.—

(A) REPORT REQUIRED.—Any foreign bank, or any affiliate thereof, that has credit outstanding to any person or group of persons which is secured, directly or indirectly, by shares of an insured depository institution shall file a consolidated report with the appropriate Federal banking agency for such insured depository institution if the extensions of credit by the foreign bank or any affiliate thereof, in the aggregate, are secured, directly or indirectly, by 25 percent or more of any class of shares of the same insured depository institution.

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

(i) FOREIGN BANK.—The terms "foreign bank" and "affiliate" have the same meanings as in section 1 of the International Banking Act of 1978.

(ii) CREDIT OUTSTANDING.—The term "credit outstanding" includes—

(I) any loan or extension of credit,

(II) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, and

(III) any other type of transaction that extends credit or financing to the person or group of persons.

(iii) GROUP OF PERSONS.—The term "group of persons" includes any number of persons that the foreign bank or any affiliate thereof reasonably believes—

(I) are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same insured depository institution at approximately the same time under substantially the same terms; or

(II) have made, or propose to make, a joint filing under section 13 of the Securities Exchange Act of 1934 regarding ownership of the shares of the same insured depository institution.

(C) INCLUSION OF SHARES HELD BY THE FINANCIAL INSTITUTION.—Any shares of the insured depository institution held by the foreign bank or any affiliate thereof as principal shall be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of subparagraph (A).

(D) REPORT REQUIREMENTS.—

(i) TIMING OF REPORT.—The report required under this paragraph shall be a consolidated report on behalf of the foreign bank and all affiliates thereof, and shall be filed in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of shares of an insured depository institution.

(ii) CONTENT OF REPORT.—The report under this paragraph shall indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(iii) COPY TO OTHER AGENCIES.—A copy of any report under this paragraph shall be filed with the appropriate Federal banking agency for the foreign bank or any affiliate thereof (if other than the agency receiving the report under this paragraph).

(iv) OTHER INFORMATION.—Each appropriate Federal banking agency may require any additional information necessary to carry out the agency's supervisory responsibilities.

(E) EXCEPTIONS.—

(i) EXCEPTION WHERE INFORMATION PROVIDED BY BORROWER.—Notwithstanding subparagraph (A), a foreign bank or any affiliate thereof shall not be required to report a transaction under this paragraph if the person or group of persons referred to in such subparagraph has disclosed the amount borrowed from such foreign bank or any affiliate thereof and the security interest of the foreign bank or any affiliate thereof to the appropriate Federal banking agency for the insured depository institution in connection with a notice filed under this subsection, an application filed under the Bank Holding Company Act of 1956, section 10 of the Home Owners' Loan Act, or any other application filed with the appropriate Federal banking agency for the insured depository institution as a substitute for a notice under this subsection, such as an application for deposit insurance, membership in the Federal Reserve System, or a national bank charter.

(ii) EXCEPTION FOR SHARES OWNED FOR MORE THAN 1 YEAR.—Notwithstanding subparagraph (A), a foreign bank and any affiliate thereof shall not be required to report a transaction involving—

(I) a person or group of persons that has been the owner or owners of record of the stock for a period of 1 year or more; or

(II) stock issued by a newly chartered bank before the bank's opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular report.

(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

(12) Whenever such a change in control occurs, each insured depository institution shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(13) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection.

(14) Within two years after the effective date of the Change in Bank Control Act of 1978, and each year thereafter in each appropriate Federal banking agency's annual report to the Congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency

under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

(C) JURISDICTION.—

(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond. The resignation, termination of employment or participation, divestiture of control, or separation of or by an institution-affiliated party (including a separation caused by the closing of a depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this subsection against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this sentence).

(16) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any person who violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency under this subsection, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any person who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such institution; or

(III) results in pecuniary gain or other benefit to such person,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any person who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than a depository institution, an amount to not exceed **[**$1,000,000**]** *$1,500,000*; and

(ii) in the case of a depository institution, an amount not to exceed the lesser of—

(I) **[**$1,000,000**]** *$1,500,000*; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A), (B), or (C) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(F) HEARING.—The depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or other person submits a request for such hearing within 20 days after the issuance of the notice of assess-

ment. Section 8(h) shall apply to any proceeding under this paragraph.

(G) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(17) EXCEPTIONS.—This subsection shall not apply with respect to a transaction which is subject to—

(A) section 3 of the Bank Holding Company Act of 1956;

(B) section 18(c) of this Act; or

(C) section 10 of the Home Owners' Loan Act.

(18) APPLICABILITY OF CHANGE IN CONTROL PROVISIONS TO OTHER INSTITUTIONS.—For purposes of this subsection, the term "insured depository institution" includes—

(A) any depository institution holding company; and

(B) any other company which controls an insured depository institution and is not a depository institution holding company.

(k) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or any executive officer or prinicipal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.

(l) DESIGNATION OF FUND MEMBERSHIP FOR NEWLY INSURED DEPOSITORY INSTITUTIONS; DEFINITIONS.—For purposes of this section:

(1) BANK INSURANCE FUND.—Any institution which—

(A) becomes an insured depository institution; and

(B) does not become a Savings Association Insurance Fund member pursuant to paragraph (2),

shall be a Bank Insurance Fund member.

(2) SAVINGS ASSOCIATION INSURANCE FUND.—Any savings association, other than any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act, which becomes an insured depository institution shall be a Savings Association Insurance Fund member.

(3) TRANSITION PROVISION.—

(A) BANK INSURANCE FUND.—Any depository institution the deposits of which were insured by the Federal Deposit Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, including—

(i) any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act; and

(ii) any cooperative bank,

shall be a Bank Insurance Fund member as of such date of enactment.

(B) SAVINGS ASSOCIATION INSURANCE FUND.—Any savings association which is an insured depository institution by operation of section 4(a)(2) shall be a Savings Association Insurance Fund member as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(4) BANK INSURANCE FUND MEMBER.—The term "Bank Insurance Fund member" means any depository institution the deposits of which are insured by the Bank Insurance Fund.

(5) SAVINGS ASSOCIATION INSURANCE FUND MEMBER.—The term "Savings Association Insurance Fund member" means any depository institution the deposits of which are insured by the Savings Association Insurance Fund.

(6) BANK INSURANCE FUND RESERVE RATIO.—The term "Bank Insurance Fund reserve ratio" means the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate estimated insured deposits held in all Bank Insurance Fund members.

(7) SAVINGS ASSOCIATION INSURANCE FUND RESERVE RATIO.—The term "Savings Association Insurance Fund reserve ratio" means the ratio of the net worth of the Savings Association Insurance Fund to the value of the aggregate estimated insured deposits held in all Savings Association Insurance Fund members.

(m) SECONDARY RESERVE OFFSETS AGAINST PREMIUMS.—

(1) OFFSETS IN CALENDAR YEARS BEGINNING BEFORE 1993.—Subject to the maximum amount limitation contained in paragraph (2) and notwithstanding any other provision of law, any insured savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) of this section for any calendar year beginning before 1993.

(2) ANNUAL MAXIMUM AMOUNT LIMITATION.—The amount of any offset allowed for any savings association under paragraph (1) for any calendar year beginning before 1993 shall not exceed an amount which is equal to 20 percent of such association's pro rata share of the statutorily prescribed amount (as computed for such calendar year).

(3) OFFSETS IN CALENDAR YEARS BEGINNING AFTER 1992.—Notwithstanding any other provision of law, a savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) for any calendar year beginning after 1992.

(4) TRANSFERABILITY.—No right, title, or interest of any insured depository institution in or with respect to its pro rata share of the secondary reserve shall be assignable or transferable whether by operation of law or otherwise, except to the extent that the Corporation may provide for transfer of such pro rata share in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar transactions, as defined by the Corporation for purposes of this paragraph.

(5) PRO RATA DISTRIBUTION ON TERMINATION OF INSURED STATUS.—If—

(A) the status of any savings association as an insured depository institution is terminated pursuant to any provision of section 8 or the insurance of accounts of any such institution is otherwise terminated;

(B) a receiver or other legal custodian is appointed for the purpose of liquidation or winding up the affairs of any savings association; or

(C) the Corporation makes a determination that for the purposes of this subsection any savings association has otherwise gone into liquidation,

the Corporation shall pay in cash to such institution its pro rata share of the secondary reserve, in accordance with such terms and conditions as the Corporation may prescribe, or, at the option of the Corporation, the Corporation may apply the whole or any part of the amount which would otherwise be paid in cash toward the payment of any indebtedness or obligation, whether matured or not, of such institution to the Corporation, existing or arising before such payment in cash. Such payment or such application need not be made to the extent that the provisions of the exception in paragraph (4) are applicable.

(6) STATUTORILY PRESCRIBED AMOUNT DEFINED.—For purposes of this subsection, the term "statutorily prescribed amount" means, with respect to any calendar year which ends after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(A) $823,705,000, minus

(B) the sum of—

(i) the aggregate amount of offsets made before such date of enactment by all insured institutions under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment); and

(ii) the aggregate amount of offsets made by all savings associations under this subsection before the beginning of such calendar year.

(7) SAVINGS ASSOCIATION'S PRO RATA AMOUNT.—For purposes of this subsection, any savings association's pro rata share of the statutorily prescribed amount is the percentage which is equal to such association's share of the secondary reserve as determined under section 404(e) of the National Housing Act on the day before the date on which the Federal Savings and Loan Insurance Corporation ceased to recognize the secondary reserve (as such Act was in effect on the day before such date).

(8) YEAR OF ENACTMENT RULE.—With respect to the calendar year in which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is enacted, the Corporation shall make such adjustments as may be necessary—

(A) in the computation of the statutorily prescribed amount which shall be applicable for the remainder of such calendar year after taking into account the aggregate amount of offsets by all insured institutions under section 404(e)(2) of the National Housing Act (as in effect before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) after the beginning of such calendar year and before such date of enactment; and

(B) in the computation of the maximum amount of any savings association's offset for such calendar year under paragraph (1) after taking into account—

(i) the amount of any offset by such savings association under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment) after the beginning of such calendar year and before such date of enactment; and

(ii) the change of such association's premium year from the 1-year period applicable under section 404(b) of the National Housing Act (as in effect before such date of enactment) to a calendar year basis.

(n) COLLECTIONS ON BEHALF OF THE COMPTROLLER OF THE CURRENCY.—When requested by the Comptroller of the Currency, the Corporation shall collect on behalf of the Comptroller assessments on Federal savings associations levied by the Comptroller under section 9 of the Home Owners' Loan Act. The Corporation shall be reimbursed for its actual costs for the collection of such assessments. Any such assessments by the Comptroller shall be in addition to any amounts assessed by the Corporation.

SEC. 8. (a) TERMINATION OF INSURANCE.—

(1) VOLUNTARY TERMINATION.—Any insured depository institution which is not—

(A) a national member bank;

(B) a State member bank;

(C) a Federal branch;

(D) a Federal savings association; or

(E) an insured branch which is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978,

may terminate such depository institution's status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.

(2) INVOLUNTARY TERMINATION.—

(A) NOTICE TO PRIMARY REGULATOR.—If the Board of Directors determines that—

(i) an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution;

(ii) an insured depository institution is in an unsafe or unsound condition to continue operations as an insured institution; or

(iii) an insured depository institution or the directors or trustees of the insured institution have violated any applicable law, regulation, order, condition imposed in writing by the Corporation in connection with the approval of any application or other request by the insured depository institution, or written agreement entered into between the insured depository institution and the Corporation,

the Board of Directors shall notify the appropriate Federal banking agency with respect to such institution (if other than the Corporation) or the State banking supervisor of such institution (if the Corporation is the appropriate Federal banking agency) of the Board's determination and the facts and circumstances on which such determination is based for the purpose of securing the correction of such practice, condition, or violation. Such notice shall be given to the appropriate Federal banking agency not less than

30 days before the notice required by subparagraph (B), except that this period for notice to the appropriate Federal banking agency may be reduced or eliminated with the agreement of such agency.

(B) NOTICE OF INTENTION TO TERMINATE INSURANCE.—If, after giving the notice required under subparagraph (A) with respect to an insured depository institution, the Board of Directors determines that any unsafe or unsound practice or condition or any violation specified in such notice requires the termination of the insured status of the insured depository institution, the Board shall—

(i) serve written notice to the insured depository institution of the Board's intention to terminate the insured status of the institution;

(ii) provide the insured depository institution with a statement of the charges on the basis of which the determination to terminate such institution's insured status was made (or a copy of the notice under subparagraph (A)); and

(iii) notify the insured depository institution of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Board of Directors (or any person designated by the Board) with respect to the termination of the institution's insured status.

(3) HEARING; TERMINATION.—If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection (w) has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

(4) APPEARANCE; CONSENT TO TERMINATION.—Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

(5) JUDICIAL REVIEW.—Any insured depository institution whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

(6) PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the

Board of Directors may find to be necessary and may order for the protection of depositors.

(7) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence from the date of such termination, and in the event that such depository institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such depository institution as in case of an insured depository institution.

(8) TEMPORARY SUSPENSION OF INSURANCE.—

(A) IN GENERAL.—If the Board of Directors initiates a termination proceeding under paragraph (2), and the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

(B) SPECIAL RULE FOR CERTAIN SAVINGS INSTITUTIONS.—

(i) CERTAIN GOODWILL INCLUDED IN TANGIBLE CAPITAL.—In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 5(t) of the Home Owners' Loan Act. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a "special supervisory association".

(ii) SUSPENSION ORDER.—The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that—

(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within the time period set forth in section 5(t) of the Home Owners' Loan Act.

Nothing in this paragraph limits the right of the Corporation or the Comptroller of the Currency to enforce a contractual provision which authorizes the Corporation or the Comptroller of the Currency, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this Act or under applicable accounting standards.

(C) EFFECTIVE PERIOD OF TEMPORARY ORDER.—Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until the Corporation dismisses the proceedings under paragraph (3).

(D) JUDICIAL REVIEW.—Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

(E) CONTINUATION OF INSURANCE FOR PRIOR DEPOSITS.—The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings as provided in this Act.

(F) PUBLICATION OF ORDER.—The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

(G) NOTICE BY CORPORATION.—If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors, the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

(H) LACK OF NOTICE.—Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that—

(i) such deposit consists of additions made by automatic deposit the depositor was unable to prevent; or

(ii) such depositor did not have actual knowledge of the suspension of insurance.

(9) FINAL DECISIONS TO TERMINATE INSURANCE.—Any decision by the Board of Directors to—

(A) issue a temporary order terminating deposit insurance; or

(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q));

shall be made by the Board of Directors and may not be delegated.

(10) LOW- TO MODERATE-INCOME HOUSING LENDER.—In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

(b)(1) If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party, or any written agreement entered into with the agency, the appropriate Federal banking agency for the depository institution may issue and serve upon the depository institution or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the depository institution or the institution-affiliated party. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such

notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the depository institution or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the depository institution or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(3) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 of this Act shall apply to any bank holding company, and to any "subsidiary" (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding Company Act of 1956, any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company (as such terms are defined in section 10 of Home Owners' Loan [Act)] *Act)*, any noninsured State member bank and to any organization organized and operated under section 25(a) of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, in the same manner as they apply to a State member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank) or against a savings and loan holding company or any subsidiary thereof (other than a depository institution or a subsidiary of such depository institution).

(4) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 of this Act shall apply to any foreign bank or company to which subsection (a) of section 8 of the International Banking Act of 1978 applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under paragraph (3) of this subsection. For the purposes of this paragraph, the term "subsidiary" shall have the meaning assigned to it in section 2 of the Bank Holding Company Act of 1956.

(5) This section shall apply, in the same manner as it applies to any insured depository institution for which the appropriate Fed-

eral banking agency is the Comptroller of the Currency, to any national banking association chartered by the Comptroller of the Currency, including an uninsured association.

(6) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection and subsection (c) which requires an insured depository institution or any institution-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such depository institution or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(i) such depository institution or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

(B) restrict the growth of the institution;

(C) dispose of any loan or asset involved;

(D) rescind agreements or contracts; and

(E) employ qualified officers or employees (who may be subject to approval by the appropriate Federal banking agency at the direction of such agency); and

(F) take such other action as the banking agency determines to be appropriate.

(7) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (c) includes the authority to place limitations on the activities or functions of an insured depository institution or any institution-affiliated party.

(8) UNSATISFACTORY ASSET QUALITY, MANAGEMENT, EARNINGS, OR LIQUIDITY AS UNSAFE OR UNSOUND PRACTICE.—If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.

(9)

(10) STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the appropriate Federal banking agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(c)(1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the depository institution or any institution-affiliated party pursuant to paragraph (1) of subsection (b) of this section, or

the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the depository institution, or is likely to weaken the condition of the depository institution or otherwise prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the depository institution or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection (b)(6). Such order shall become effective upon service upon the depository institution or such party participating in the conduct of the affairs of such depository institution and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the depository institution or such party, until the effective date of such order.

(2) Within ten days after the depository institution concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the depository institution or such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the depository institution or such party under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b)(1) specifies, on the basis of particular facts and circumstances, that an insured depository institution's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable, through the normal supervisory process, to determine the financial condition of that depository institution or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that depository institution, the agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b)(1) in connection with the notice of charges; or

(II) the date the appropriate Federal banking agency determines, by examination or otherwise, that the insured depository institution's books and records are accurate and reflect the financial condition of the depository institution.

(4) FALSE ADVERTISING OR MISUSE OF NAMES TO INDICATE INSURED STATUS.—

(A) TEMPORARY ORDER.—

(i) IN GENERAL.—If a notice of charges served under subsection (b)(1) specifies on the basis of particular facts that any person engaged or is engaging in conduct described in section 18(a)(4), the Corporation or other appropriate Federal banking agency may issue a temporary order requiring—

(I) the immediate cessation of any activity or practice described, which gave rise to the notice of charges; and

(II) affirmative action to prevent any further, or to remedy any existing, violation.

(ii) EFFECT OF ORDER.—Any temporary order issued under this subparagraph shall take effect upon service.

(B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—A temporary order issued under subparagraph (A) shall remain effective and enforceable, pending the completion of an administrative proceeding pursuant to subsection (b)(1) in connection with the notice of charges—

(i) until such time as the Corporation or other appropriate Federal banking agency dismisses the charges specified in such notice; or

(ii) if a cease-and-desist order is issued against such person, until the effective date of such order.

(C) CIVIL MONEY PENALTIES.—Any violation of section 18(a)(4) shall be subject to civil money penalties, as set forth in subsection (i), except that for any person other than an insured depository institution or an institution-affiliated party that is found to have violated this paragraph, the Corporation or other appropriate Federal banking agency shall not be required to demonstrate any loss to an insured depository institution.

(d) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to paragraph (1) of subsection (c) of the section, the appropriate Federal banking agency may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or

failure to obey, it shall be the duty of the court to issue such injunction.

(e) REMOVAL AND PROHIBITION AUTHORITY.—

(1) AUTHORITY TO ISSUE ORDER.—Whenever the appropriate Federal banking agency determines that—

(A) any institution-affiliated party has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or request by such depository institution or institution-affiliated party; or

(IV) any written agreement between such depository institution and such agency;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured depository institution or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured depository institution's depositors have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution,

the appropriate Federal banking agency for the depository institution may serve upon such party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution.

(2) SPECIFIC VIOLATIONS.—

(A) IN GENERAL.—Whenever the appropriate Federal banking agency determines that—

(i) an institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code, and such violation was not inadvertent or unintentional;

(ii) an officer or director of an insured depository institution has knowledge that an institution-affiliated

party of the insured depository institution has violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii);

(iii) an officer or director of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act; or

(iv) an institution-affiliated party of a subsidiary (other than a bank) of a bank holding company or of a subsidiary (other than a savings association) of a savings and loan holding company has been convicted of any criminal offense involving dishonesty or a breach of trust or a criminal offense under section 1956, 1957, or 1960 of title 18, United States Code, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense,

the agency may serve upon such party, officer, or director a written notice of the agency's intention to remove such party from office.

(B) FACTORS TO BE CONSIDERED.—In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the agency shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

(3) SUSPENSION ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the appropriate Federal banking agency serves written notice under paragraph (1) or (2) to any institution-affiliated party of such agency's intention to issue an order under such paragraph, the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution, if the agency—

(i) determines that such action is necessary for the protection of the depository institution or the interests of the depository institution's depositors; and

(ii) serves such party with written notice of the suspension order.

(B) EFFECTIVE PERIOD.—Any suspension order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until—

(I) the date the appropriate Federal banking agency dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

(II) the effective date of an order issued by the agency to such party under paragraph (1) or (2).

(C) COPY OF ORDER.—If an appropriate Federal banking agency issues a suspension order under subparagraph (A) to any institution-affiliated party, the agency shall serve a copy of such order on any insured depository institution

with which such party is associated at the time such order is issued.

(4) A notice of intention to remove an institution-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an insured depository institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such party, and for good cause shown, or (B) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the depository institution, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such depository institution and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" within the term "institution-affiliated party" as used in this subsection means an employee or officer with management functions, and the term "director" within the term "institution-affiliated party" as used in this subsection includes an advisory or honorary director, a trustee of a depository institution under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

(6) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this subsection shall not—

(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

(D) vote for a director, or serve or act as an institution-affiliated party.

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (g), has been removed or suspended from office in an insured depository institution or prohibited from participating in the conduct of the affairs

of an insured depository institution may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(i) any insured depository institution;

(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4), or as a savings association under subsection (b)(9);

(iii) any insured credit union under the Federal Credit Union Act;

(iv) any institution chartered under the Farm Credit Act of 1971;

(v) any appropriate Federal depository institution regulatory agency; and

(vi) the Federal Housing Finance Agency and any Federal home loan bank.

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured depository institution, such party receives the written consent of—

(i) the agency that issued such order; and

(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to the Corporation and publicly disclose such consent.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this paragraph and subsection (j), the term "appropriate Federal financial institutions regulatory agency" means—

(i) the appropriate Federal banking agency, in the case of an insured depository institution;

(ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971;

(iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act); and

(iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Agency and any Federal home loan bank.

(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the appropriate Federal banking agency specifically finds that it should apply to a corporation, firm, or other business enterprise.

(f) Within ten days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured depository institution under subsection (e)(3) of this section, such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under subsection (e)(1) or (e)(2) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(g) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—

(1) SUSPENSION OR PROHIBITION.—

(A) IN GENERAL.—Whenever any institution-affiliated party is the subject of any information, indictment, or complaint, involving the commission of or participation in—

(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

(ii) a criminal violation of section 1956, 1957, or 1960 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code,

the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any depository institution.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon any depository institution that the subject of the notice is affiliated with at the time the notice is issued.

(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the agency.

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subpara-

graph (A)(i), at such time as such judgment is not subject to further appellate review, the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

(ii) REQUIRED FOR CERTAIN OFFENSES.—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the appropriate Federal banking agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served upon any depository institution that the subject of the order is affiliated with at the time the order is issued, whereupon the institution-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such depository institution.

(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the agency from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in depository institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section.

(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.

(E) RELEVANT DEPOSITORY INSTITUTION.—For purposes of this subsection, the term "relevant depository institution" means any depository institution of which the party is or was an institution-affiliated party at the time at which—

(i) the information, indictment, or complaint described in subparagraph (A) was issued; or

(ii) the notice is issued under subparagraph (A) or the order is issued under subparagraph (C)(i).

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such

board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the depository institution by such party does not, or is not likely to, pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the depository institution. Upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the depository institution will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency's decision, if adverse to such party. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(h)(1) Any hearing provided for in this section (other than the hearing provided for in subsection (g)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the depository institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve System has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any

such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the depository institution or the institution-affiliated party concerned, or an order issued under paragraph (1) of subsection (g) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(i)(1) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for the enforcement of any effective and outstanding notice or order issued under this section or under section 38 or 39, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this section or under section 38 or 39 no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any insured depository institution which, and any institution-affiliated party who—

(i) violates any law or regulation;

(ii) violates any final order or temporary order issued pursuant to subsection (b), (c), (e), (g), or (s) or any final order under section 38 or 39;

(iii) violates any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party; or

(iv) violates any written agreement between such depository institution and such agency,

shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any insured depository institution which, and any institution-affiliated party who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such depository institution; or

(III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any insured depository institution which, and any institution-affiliated party who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than an insured depository institution, an amount to not exceed **[**$1,000,000**]** *$1,500,000*; and

(ii) in the case of any insured depository institution, an amount not to exceed the lesser of—

(I) **[**$1,000,000**]** *$1,500,000*; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT.—

(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and col-

lected by the appropriate Federal banking agency by written notice.

(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—Any appropriate Federal banking agency may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) MITIGATING FACTORS.—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the appropriate agency shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the insured depository institution or other person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) HEARING.—The insured depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

(i) REFERRAL.—If any insured depository institution or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the agency that imposed the penalty shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) REGULATIONS.—Each appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice or order and proceed under this section against any such party, if such notice or order is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such

date occurs before, on, or after the date of the enactment of this paragraph).

(4) PREJUDGMENT ATTACHMENT.—

(A) IN GENERAL.—In any action brought by an appropriate Federal banking agency (excluding the Corporation when acting in a manner described in section 11(d)(18)) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue a restraining order that—

(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(ii) appoints a temporary receiver to administer the restraining order.

(B) STANDARD.—

(i) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (A) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought under subparagraph (A) may be requested under the laws of such State.

(j) CRIMINAL PENALTY.—Whoever, being subject to an order in effect under subsection (e) or (g), without the prior written approval of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (e)(6)) in the conduct of the affairs of—

(1) any insured depository institution;

(2) any institution treated as an insured bank under subsection (b)(3) or (b)(4);

(3) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act); or

(4) any institution chartered under the Farm Credit Act of 1971,

shall be fined not more than **[**$1,000,000**]** *$1,500,000*, imprisoned for not more than 5 years, or both.

(k)

(l) Any service required or authorized to be made by the appropriate Federal banking agency under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide. Copies of any notice or order served by the agency upon any State depository institution or any institution-affiliated party, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

(m) In connection with any proceeding under subsection (b), (c)(1), or (e) of this section involving an insured State bank or any institution-affiliated party, the appropriate Federal banking agency shall provide the appropriate State supervisory authority with notice of the agency's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Federal banking agency deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of the State supervisory authority, the agency may proceed as provided in this section. No bank or other party who is the subject of any notice or order issued by the agency under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(n) In the course of or in connection with any proceeding under this section, or in connection with any claim for insured deposits or any examination or investigation under section 10(c), the agency conducting the proceeding, examination, or investigation or considering the claim for insured deposits, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any such agency or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured depository institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the depository institution or from its assets. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

(o) Whenever the insured status of a State member bank shall be terminated by action of the Board of Directors, the Board of

Governors of the Federal Reserve System shall terminate its membership in the Federal Reserve System in accordance with the provisions of section 9 of the Federal Reserve Act, and whenever the insured status of a national member bank shall be so terminated the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation. Except as provided in subsection (c) or (d) of section 4, whenever a member bank shall cease to be a member of the Federal Reserve System, its status as an insured depository institution shall, without notice or other action by the Board of Directors, terminate on the date the bank shall cease to be a member of the Federal Reserve System, with like effect as if its insured status had been terminated on said date by the Board of Directors after proceedings under subsection (a) of this section. Whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation.

(p) Notwithstanding any other provision of law, whenever the Board of Directors shall determine that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds as herein defined, the Corporation shall notify the depository institution that its insured status will terminate at the expiration of the first full assessment period following such notice. A finding by the Board of Directors that a depository institution is not engaged in the business of receiving deposits, other than such trust funds, shall be conclusive. The Board of Directors shall prescribe the notice to be given by the depository institution of such termination and the Corporation may publish notice thereof. Upon the termination of the insured status of any such depository institution, its deposits shall thereupon cease to be insured and the depository institution shall thereafter be relieved of all future obligations to the Corporation, including the obligation to pay future assessments.

(q) Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. Where the deposits of an insured depository institution are assumed by a newly insured depository institution, the depository institution whose deposits are assumed shall not be required to pay any assessment with respect to the deposits which have been so assumed after the assessment period in which the assumption takes effect.

(r)(1) Except as otherwise specifically provided in this section, the provisions of this section shall be applied to foreign banks in accordance with this subsection.

(2) An act or practice outside the United States on the part of a foreign bank or any officer, director, employee, or agent thereof

may not constitute the basis for any action by any officer or agency of the United States under this section, unless—

(A) such officer or agency alleges a belief that such act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any one or more States which, in and of itself, would constitute an appropriate basis for action by a Federal officer or agency under this section; or

(B) the alleged act or practice is one which, if proven, would, in the judgment of the Board of Directors, adversely affect the insurance risk assumed by the Corporation.

(3) In any case in which any action or proceeding is brought pursuant to an allegation under paragraph (2) of this subsection for the suspension or removal of any officer, director, or other person associated with a foreign bank, and such person fails to appear promptly as a party to such action or proceeding and to comply with any effective order or judgment therein, any failure by the foreign bank to secure his removal from any office he holds in such bank and from any further participation in its affairs shall, in and of itself, constitute grounds for termination of the insurance of the deposits in any branch of the bank.

(4) Where the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the home office of a bank, the venue of such a proceeding with respect to a foreign bank having one or more branches or agencies in not more than one judicial district or other relevant jurisdiction shall be within such jurisdiction. Where such a bank has branches or agencies in more than one such jurisdiction, the venue shall be in the jurisdiction within which the branch or branches or agency or agencies involved in the proceeding are located, and if there is more than one such jurisdiction, the venue shall be proper in any such jurisdiction in which the proceeding is brought or to which it may appropriately be transferred.

(5) Any service required or authorized to be made on a foreign bank may be made on any branch or agency located within any State, but if such service is in connection with an action or proceeding involving one or more branches or one or more agencies located in any State, service shall be made on at least one branch or agency so involved.

(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(1) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(2) EXAMINATIONS OF DEPOSITORY INSTITUTION TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(A) IN GENERAL.—Each examination of an insured depository institution by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured depository institution.

(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that an insured depository institution—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such depository institution which was previously reported to the depository institution by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such depository institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

(t) AUTHORITY OF FDIC TO TAKE ENFORCEMENT ACTION AGAINST INSURED DEPOSITORY INSTITUTIONS AND INSTITUTION-AFFILIATED PARTIES.—

(1) RECOMMENDING ACTION BY APPROPRIATE FEDERAL BANKING AGENCY.—The Corporation, based on an examination of an insured depository institution by the Corporation or by the appropriate Federal banking agency or on other information, may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 7(j), this section, or section 18(j) with respect to any insured depository institution, any depository institution holding company, or any institution-affiliated party. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) FDIC'S AUTHORITY TO ACT IF APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—If the appropriate Federal banking agency does not, before the end of the 60-day period beginning on the date on which the agency receives the recommendation under paragraph (1), take the enforcement action recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the Corporation's concerns, the Corporation may take the recommended enforcement action if the Board of Directors determines, upon a vote of its members, that—

(A) the insured depository institution is in an unsafe or unsound condition;

(B) the institution or institution-affiliated party is engaging in unsafe or unsound practices, and the recommended enforcement action will prevent the institution or institution-affiliated party from continuing such practices;

(C) the conduct or threatened conduct (including any acts or omissions) poses a risk to the Deposit Insurance Fund, or may prejudice the interests of the institution's [depositors or] *depositors; or*

(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund, provided that such authority may not be used with respect to

a depository institution holding company that is in generally sound condition and whose conduct does not pose a foreseeable and material risk of loss to the Deposit Insurance Fund;

(3) EFFECT OF EXIGENT CIRCUMSTANCES.—

(A) AUTHORITY TO ACT.—The Corporation may, upon a vote of the Board of Directors, and after notice to the appropriate Federal banking agency, exercise its authority under paragraph (2) in exigent circumstances without regard to the time period set forth in paragraph (2).

(B) AGREEMENT ON EXIGENT CIRCUMSTANCES.—The Corporation shall, by agreement with the appropriate Federal banking agency, set forth those exigent circumstances in which the Corporation may act under subparagraph (A).

(4) CORPORATION'S POWERS; INSTITUTION'S DUTIES.—For purposes of this subsection—

(A) the Corporation shall have the same powers with respect to any insured depository institution and its affiliates as the appropriate Federal banking agency has with respect to the institution and its affiliates; and

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

(5) REQUESTS FOR FORMAL ACTIONS AND INVESTIGATIONS.—

(A) SUBMISSION OF REQUESTS.—A regional office of an appropriate Federal banking agency (including a Federal Reserve bank) that requests a formal investigation of or civil enforcement action against an insured depository institution or institution-affiliated party shall submit the request concurrently to the chief officer of the appropriate Federal banking agency and to the Corporation.

(B) AGENCIES REQUIRED TO REPORT ON REQUESTS.—Each appropriate Federal banking agency shall report semiannually to the Corporation on the status or disposition of all requests under subparagraph (A), including the reasons for any decision by the agency to approve or deny such requests.

(6) POWERS AND DUTIES WITH RESPECT TO DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of exercising the backup authority provided in this subsection—

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

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

(6) REFERRAL TO [BUREAU OF CONSUMER FINANCIAL PROTECTION] *CONSUMER LAW ENFORCEMENT AGENCY*.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, each appropriate Federal banking agency shall make a referral to the [Bureau of Consumer Financial Protection] *Consumer Law Enforcement Agency* when the Federal banking agency has a

reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.

(u) PUBLIC DISCLOSURES OF FINAL ORDERS AND AGREEMENTS.—

(1) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public on a monthly basis—

(A) any written agreement or other written statement for which a violation may be enforced by the appropriate Federal banking agency, unless the appropriate Federal banking agency, in its discretion, determines that publication would be contrary to the public interest;

(B) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other law; and

(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

(2) HEARINGS.—All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(3) TRANSCRIPT OF HEARING.—A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (i). A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

(4) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the appropriate Federal banking agency makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

(5) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The appropriate Federal banking agency may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

(6) RETENTION OF DOCUMENTS.—Each Federal banking agency shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

(7) DISCLOSURES TO CONGRESS.—No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

(v) FOREIGN INVESTIGATIONS.—

(1) REQUESTING ASSISTANCE FROM FOREIGN BANKING AUTHORITIES.—In conducting any investigation, examination, or enforcement action under this Act, the appropriate Federal banking agency may—

(A) request the assistance of any foreign banking authority; and

(B) maintain an office outside the United States.

(2) PROVIDING ASSISTANCE TO FOREIGN BANKING AUTHORITIES.—

(A) IN GENERAL.—Any appropriate Federal banking agency may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

(B) INVESTIGATION BY FEDERAL BANKING AGENCY.—Any appropriate Federal banking agency may, in such agency's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the appropriate Federal banking agency.

(C) FACTORS TO CONSIDER.—In deciding whether to provide assistance under this paragraph, the appropriate Federal banking agency shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(D) TREATMENT OF FOREIGN BANKING AUTHORITY.—For purposes of any Federal law or appropriate Federal banking agency regulation relating to the collection or transfer of information by any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

(3) RULE OF CONSTRUCTION.—Paragraphs (1) and (2) shall not be construed to limit the authority of an appropriate Federal banking agency or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.

(w) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

(1) IN GENERAL.—

(A) CONVICTION OF TITLE 18 OFFENSES.—

(i) DUTY TO NOTIFY.—If an insured State depository institution has been convicted of any criminal offense under section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Corporation a written notification of the conviction and

shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receipt of written notification from the Attorney General by the Corporation of such a conviction, the Board of Directors shall issue to the insured depository institution a notice of its intention to terminate the insured status of the insured depository institution and schedule a hearing on the matter, which shall be conducted in all respects as a termination hearing pursuant to paragraphs (3) through (5) of subsection (a).

(B) CONVICTION OF TITLE 31 OFFENSES.—If an insured State depository institution is convicted of any criminal offense under section 5322 or 5324 of title 31, United States Code, after receipt of written notification from the Attorney General by the Corporation, the Board of Directors may initiate proceedings to terminate the insured status of the insured depository institution in the manner described in subparagraph (A).

(C) NOTICE TO STATE SUPERVISOR.—The Corporation shall simultaneously transmit a copy of any notice issued under this paragraph to the appropriate State financial institutions supervisor.

(2) FACTORS TO BE CONSIDERED.—In determining whether to terminate insurance under paragraph (1), the Board of Directors shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the depository institution knew of, or were involved in, the commission of the money laundering offense of which the institution was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the depository institution which were designed to prevent the occurrence of any such offense.

(C) The extent to which the depository institution has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the institution was found guilty.

(D) The extent to which the depository institution has implemented additional internal controls (since the commission of the offense of which the depository institution was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

(3) NOTICE TO STATE BANKING SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

(A) notify the State banking supervisor of any State depository institution described in paragraph (1), where appropriate, at least 10 days prior to the effective date of the order of termination of the insured status of such deposi-

tory institution, including a State branch of a foreign bank; and

(B) publish notice of the termination of the insured status of the depository institution in the Federal Register.

(4) TEMPORARY INSURANCE OF PREVIOUSLY INSURED DEPOSITS.—Upon termination of the insured status of any State depository institution pursuant to paragraph (1), the deposits of such depository institution shall be treated in accordance with subsection (a)(7).

(5) SUCCESSOR LIABILITY.—This subsection shall not apply to a successor to the interests of, or a person who acquires, an insured depository institution that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(6) DEFINITION.—The term "senior executive officer" has the same meaning as in regulations prescribed under section 32(f) of this Act.

* * * * * * *

SEC. 10. ⟦(a)⟧ ⟦The⟧ *(a) POWERS.—*

(1) IN GENERAL.—The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination. The Board of Directors of the Corporation*, subject to paragraph (2),* shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. The Corporation shall be entitled to the free use of the United States mails in the same manner as the executive departments of the Government. The Corporation with the consent of any Federal Reserve bank or of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, and facilities thereof in carrying out the provisions of this Act.

(2) APPROPRIATIONS REQUIREMENT.—

(A) OPERATING FUND.—There is established an Operating Fund, to which Congress shall provide annual appropriations to the Corporation, which shall be separate from the Deposit Insurance Fund.

(B) RECOVERY OF COSTS OF ANNUAL APPROPRIATION.—The Corporation shall collect assessments and other fees, as provided under this Act, that are designed to recover the costs to the Government of the annual appropriation to the Corporation by Congress. Except as provided in (E) and subject to subparagraph (F), the Corporation may only incur obligations, or allow and pay expenses, from the Operating Fund pursuant to an appropriations Act.

(C) DEPOSITS.—Assessments and other fees described under subparagraph (B) for any fiscal year—

(i) shall be deposited in the Operating Fund; and

(ii) except as provided in subparagraph (E), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(D) CREDITS.—Amounts deposited in the Operating Fund during a fiscal year shall be credited as offsetting the

amount appropriated to the Operating Fund for such fiscal year.

(E) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year an appropriation to the Corporation has not been enacted, the Corporation shall continue to collect the assessments and other fees described under subparagraph (B) at the rate in effect during the preceding fiscal year, until 60 days after the date such an appropriation is enacted.

(F) EXCEPTION FOR CERTAIN PROGRAMS.—This paragraph shall not apply to the Corporation's Insurance Business Line Programs and Receivership Management Business Line Programs, as in existence on the date of enactment of this paragraph.

(b) EXAMINATIONS.—

(1) APPOINTMENT OF EXAMINERS AND CLAIMS AGENTS.—The Board of Directors shall appoint examiners and claims agents.

(2) REGULAR EXAMINATIONS.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to examine—

(A) any insured State nonmember bank or insured State branch of any foreign bank;

(B) any depository institution which files an application with the Corporation to become an insured depository institution; and

(C) any insured depository institution in default,

whenever the Board of Directors determines an examination of any such depository institution is necessary.

(3) SPECIAL EXAMINATION OF ANY INSURED DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—In addition to the examinations authorized under paragraph (2), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make any special examination of any insured depository institution or nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, whenever the Board of Directors determines that a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes**[**, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010, for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act**]**, provided that such authority may not be used with respect to any such company that is in a generally sound condition.

(B) LIMITATION.—Before conducting a special examination of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, the Corporation shall review any available and acceptable resolution plan that the company has submitted in accord-

ance with section 165(d) of that Act, consistent with the nonbinding effect of such plan, and available reports of examination, and shall coordinate to the maximum extent practicable with the Board of Governors, in order to minimize duplicative or conflicting examinations.

(4) EXAMINATION OF AFFILIATES.—

(A) IN GENERAL.—In making any examination under paragraph (2) or (3), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make such examinations of the affairs of any affiliate of any depository institution as may be necessary to disclose fully—

(i) the relationship between such depository institution and any such affiliate; and

(ii) the effect of such relationship on the depository institution.

(B) COMMITMENT BY FOREIGN BANKS TO ALLOW EXAMINATIONS OF AFFILIATES.—No branch or depository institution subsidiary of a foreign bank may become an insured depository institution unless such foreign bank submits a written binding commitment to the Board of Directors to permit any examination of any affiliate of such branch or depository institution subsidiary pursuant to subparagraph (A) to the extent determined by the Board of Directors to be necessary to carry out the purposes of this Act.

(5) EXAMINATION OF INSURED STATE BRANCHES.—The Board of Directors shall—

(A) coordinate examinations of insured State branches of foreign banks with examinations conducted by the Board of Governors of the Federal Reserve System under section 7(c)(1) of the International Banking Act of 1978; and

(B) to the extent possible, participate in any simultaneous examination of the United States operations of a foreign bank requested by the Board under such section.

(6) POWER AND DUTY OF EXAMINERS.—Each examiner appointed under paragraph (1) shall—

(A) have power to make a thorough examination of any insured depository institution or affiliate under paragraph (2), (3), (4), or (5); and

(B) shall make a full and detailed report of condition of any insured depository institution or affiliate examined to the Corporation.

(7) POWER OF CLAIM AGENTS.—Each claim agent appointed under paragraph (1) shall have power to investigate and examine all claims for insured deposits.

(c) In connection with examinations of insured depository institutions and any State nonmember bank, savings association, or other institution making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank

or institution or affiliate thereof, and to exercise such other powers as are set forth in section 8(n) of this Act.

(d) ANNUAL ON-SITE EXAMINATIONS OF ALL INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

(1) IN GENERAL.—The appropriate Federal banking agency shall, not less than once during each 12-month period, conduct a full-scope, on-site examination of each insured depository institution.

(2) EXAMINATIONS BY CORPORATION.—Paragraph (1) shall not apply during any 12-month period in which the Corporation has conducted a full-scope, on-site examination of the insured depository institution.

(3) STATE EXAMINATIONS ACCEPTABLE.—The examinations required by paragraph (1) may be conducted in alternate 12-month periods, as appropriate, if the appropriate Federal banking agency determines that an examination of the insured depository institution conducted by the State during the intervening 12-month period carries out the purpose of this subsection.

(4) 18-MONTH RULE FOR CERTAIN SMALL INSTITUTIONS.—Paragraphs (1), (2), and (3) shall apply with "18-month" substituted for "12-month" if—

(A) the insured depository institution has total assets of less than $1,000,000,000;

(B) the institution is well capitalized, as defined in section 38;

(C) when the institution was most recently examined, it was found to be well managed, and its composite condition—

(i) was found to be outstanding; or

(ii) was found to be outstanding or good, in the case of an insured depository institution that has total assets of not more than $200,000,000;

(D) the insured institution is not currently subject to a formal enforcement proceeding or order by the Corporation or the appropriate Federal banking agency; and

(E) no person acquired control of the institution during the 12-month period in which a full-scope, on-site examination would be required but for this paragraph.

(5) CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.—Paragraph (1) does not apply to—

(A) any institution for which the Corporation is conservator; or

(B) any bridge depository institution, none of the voting securities of which are owned by a person or agency other than the Corporation.

(6) COORDINATED EXAMINATIONS.—To minimize the disruptive effects of examinations on the operations of insured depository institutions—

(A) each appropriate Federal banking agency shall, to the extent practicable and consistent with principles of safety and soundness and the public interest—

(i) coordinate examinations to be conducted by that agency at an insured depository institution and its affiliates;

(ii) coordinate with the other appropriate Federal banking agencies in the conduct of such examinations;

(iii) work to coordinate with the appropriate State bank supervisor—

(I) the conduct of all examinations made pursuant to this subsection; and

(II) the number, types, and frequency of reports required to be submitted to such agencies and supervisors by insured depository institutions, and the type and amount of information required to be included in such reports; and

(iv) use copies of reports of examinations of insured depository institutions made by any other Federal banking agency or appropriate State bank supervisor to eliminate duplicative requests for information; and

(B) not later than 2 years after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, the Federal banking agencies shall jointly establish and implement a system for determining which one of the Federal banking agencies or State bank supervisors shall be the lead agency responsible for managing a unified examination of each insured depository institution and its affiliates, as required by this subsection.

(7) SEPARATE EXAMINATIONS PERMITTED.—Notwithstanding paragraph (6), each appropriate Federal banking agency may conduct a separate examination in an emergency or under other exigent circumstances, or when the agency believes that a violation of law may have occurred.

(8) REPORT.—At the time the system provided for in paragraph (6) is established, the Federal banking agencies shall submit a joint report describing the system to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Thereafter, the Federal banking agencies shall annually submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives regarding the progress of the agencies in implementing the system and indicating areas in which enhancements to the system, including legislature improvements, would be appropriate.

(9) STANDARDS FOR DETERMINING ADEQUACY OF STATE EXAMINATIONS.—The Federal Financial Institutions Examination Council shall issue guidelines establishing standards to be used at the discretion of the appropriate Federal banking agency for purposes of making a determination under paragraph (3).

(10) AGENCIES AUTHORIZED TO INCREASE MAXIMUM ASSET AMOUNT OF INSTITUTIONS FOR CERTAIN PURPOSES.—At any time after the end of the 2-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, the appropriate Federal banking agency, in the agency's discretion, may increase the maximum amount limitation contained in paragraph (4)(C)(ii), by regulation, from $200,000,000 to an amount not to exceed

$1,000,000,000 for purposes of such paragraph, if the agency determines that the greater amount would be consistent with the principles of safety and soundness for insured depository institutions.

(e) EXAMINATION FEES.—

(1) REGULAR AND SPECIAL EXAMINATIONS OF DEPOSITORY INSTITUTIONS.—The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) or of any entity described in section 3(q)(2) may be assessed by the Corporation against the institution or entity to meet the expenses of the Corporation in carrying out such examinations.

(2) EXAMINATION OF AFFILIATES.—The cost of conducting any examination of any affiliate of any insured depository institution under subsection (b)(4) may be assessed by the Corporation against each affiliate which is examined to meet the Corporation's expenses in carrying out such examination.

(3) ASSESSMENT AGAINST DEPOSITORY INSTITUTION IN CASE OF AFFILIATE'S REFUSAL TO PAY.—

(A) IN GENERAL.—Subject to subparagraph (B), if any affiliate of any insured depository institution—

(i) refuses to pay any assessment under paragraph (2); or

(ii) fails to pay any such assessment before the end of the 60-day period beginning on the date the affiliate receives notice of the assessment,

the Corporation may assess such cost against, and collect such cost from, the depository institution.

(B) AFFILIATE OF MORE THAN 1 DEPOSITORY INSTITUTION.—If any affiliate referred to in subparagraph (A) is an affiliate of more than 1 insured depository institution, the assessment under subparagraph (A) may be assessed against the depository institutions in such proportions as the Corporation determines to be appropriate.

(4) CIVIL MONEY PENALTY FOR AFFILIATE'S REFUSAL TO COOPERATE.—

(A) PENALTY IMPOSED.—If any affiliate of any insured depository institution—

(i) refuses to permit an examiner appointed by the Board of Directors under subsection (b)(1) to conduct an examination; or

(ii) refuses to provide any information required to be disclosed in the course of any examination,

the depository institution shall forfeit and pay a penalty of not more than $5,000 for each day that any such refusal continues.

(B) ASSESSMENT AND COLLECTION.—Any penalty imposed under subparagraph (A) shall be assessed and collected by the Corporation in the manner provided in section 8(i)(2).

(5) DEPOSITS OF EXAMINATION ASSESSMENT.—Amounts received by the Corporation under this subsection (other than paragraph (4)) may be deposited in the manner provided in section 13.

(f) PRESERVATION OF AGENCY RECORDS.—

(1) IN GENERAL.—A Federal banking agency may cause any and all records, papers, or documents kept by the agency or in the possession or custody of the agency to be—

(A) photographed or microphotographed or otherwise reproduced upon film; or

(B) preserved in any electronic medium or format which is capable of—

(i) being read or scanned by computer; and

(ii) being reproduced from such electronic medium or format by printing any other form of reproduction of electronically stored data.

(2) TREATMENT AS ORIGINAL RECORDS.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(3) AUTHORITY OF THE FEDERAL BANKING AGENCIES.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be preserved in such manner as the Federal banking agency shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Federal banking agency may direct.

(g) AUTHORITY TO PRESCRIBE REGULATIONS AND DEFINITIONS.—Except to the extent that authority under this Act is conferred on any of the Federal banking agencies other than the Corporation, the Corporation may—

(1) prescribe regulations to carry out this Act; and

(2) by regulation define terms as necessary to carry out this Act.

(h) COORDINATION OF EXAMINATION AUTHORITY.—

(1) STATE BANK SUPERVISORS OF HOME AND HOST STATES.—

(A) HOME STATE OF BANK.—The appropriate State bank supervisor of the home State of an insured State bank has authority to examine and supervise the bank.

(B) HOST STATE BRANCHES.—The State bank supervisor of the home State of an insured State bank and any State bank supervisor of an appropriate host State shall exercise its respective authority to supervise and examine the branches of the bank in a host State in accordance with the terms of any applicable cooperative agreement between the home State bank supervisor and the State bank supervisor of the relevant host State.

(C) SUPERVISORY FEES.—Except as expressly provided in a cooperative agreement between the State bank supervisors of the home State and any host State of an insured State bank, only the State bank supervisor of the home State of an insured State bank may levy or charge State supervisory fees on the bank.

(2) HOST STATE EXAMINATION.—

(A) IN GENERAL.—With respect to a branch operated in a host State by an out-of-State insured State bank that resulted from an interstate merger transaction approved under section 44, or that was established in such State pursuant to section 5155(g) of the Revised Statutes of the United States, the third undesignated paragraph of section 9 of the Federal Reserve Act or section 18(d)(4) of this Act, the appropriate State bank supervisor of such host State may—

(i) with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of such home State, examine such branch for the purpose of determining compliance with host State laws that are applicable pursuant to section 24(j), including those that govern community reinvestment, fair lending, and consumer protection; and

(ii) if expressly permitted under and subject to the terms of a cooperative agreement with the State bank supervisor of the bank's home State or if such out-of-State insured State bank has been determined to be in a troubled condition by either the State bank supervisor of the bank's home State or the bank's appropriate Federal banking agency, participate in the examination of the bank by the State bank supervisor of the bank's home State to ascertain that the activities of the branch in such host State are not conducted in an unsafe or unsound manner.

(B) NOTICE OF DETERMINATION.—

(i) IN GENERAL.—The State bank supervisor of the home State of an insured State bank shall notify the State bank supervisor of each host State of the bank if there has been a final determination that the bank is in a troubled condition.

(ii) TIMING OF NOTICE.—The State bank supervisor of the home State of an insured State bank shall provide notice under clause (i) as soon as is reasonably possible, but in all cases not later than 15 business days after the date on which the State bank supervisor has made such final determination or has received written notification of such final determination.

(3) HOST STATE ENFORCEMENT.—If the State bank supervisor of a host State determines that a branch of an out-of-State insured State bank is violating any law of the host State that is applicable to such branch pursuant to section 24(j), including a law that governs community reinvestment, fair lending, or consumer protection, the State bank supervisor of the host State or, to the extent authorized by the law of the host State, a host State law enforcement officer may, with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of the bank's home State, undertake such enforcement actions and proceedings as would be permitted under the law of the host State as if the branch were a bank chartered by that host State.

(4) COOPERATIVE AGREEMENT.—

(A) IN GENERAL.—The State bank supervisors from 2 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

(B) DEFINITION.—For purposes of this subsection, the term "cooperative agreement" means a written agreement that is signed by the home State bank supervisor and the host State bank supervisor to facilitate State regulatory supervision of State banks, and includes nationwide or multi-State cooperative agreements and cooperative agreements solely between the home State and host State.

(C) RULE OF CONSTRUCTION.—Except for State bank supervisors, no provision of this subsection relating to such cooperative agreements shall be construed as limiting in any way the authority of home State and host State law enforcement officers, regulatory supervisors, or other officials that have not signed such cooperative agreements to enforce host State laws that are applicable to a branch of an out-of-State insured State bank located in the host State pursuant to section 24(j).

(5) FEDERAL REGULATORY AUTHORITY.—No provision of this subsection shall be construed as limiting in any way the authority of any Federal banking agency.

(6) STATE TAXATION AUTHORITY NOT AFFECTED.—No provision of this subsection shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(7) DEFINITIONS.—For purpose of this section, the following definitions shall apply:

(A) HOST STATE, HOME STATE, OUT-OF-STATE BANK.—The terms "host State", "home State", and "out-of-State bank" have the same meanings as in section 44(g).

(B) STATE SUPERVISORY FEES.—The term "State supervisory fees" means assessments, examination fees, branch fees, license fees, and all other fees that are levied or charged by a State bank supervisor directly upon an insured State bank or upon branches of an insured State bank.

(C) TROUBLED CONDITION.—Solely for purposes of paragraph (2)(B), an insured State bank has been determined to be in "troubled condition" if the bank—

(i) has a composite rating, as determined in its most recent report of examination, of 4 or 5 under the Uniform Financial Institutions Ratings System;

(ii) is subject to a proceeding initiated by the Corporation for termination or suspension of deposit insurance; or

(iii) is subject to a proceeding initiated by the State bank supervisor of the bank's home State to vacate, revoke, or terminate the charter of the bank, or to liquidate the bank, or to appoint a receiver for the bank.

(D) FINAL DETERMINATION.—For purposes of paragraph (2)(B), the term "final determination" means the transmittal of a report of examination to the bank or transmittal of official notice of proceedings to the bank.

(i) FLOOD INSURANCE COMPLIANCE BY INSURED DEPOSITORY INSTITUTIONS.—

(1) EXAMINATIONS.—The appropriate Federal banking agency shall, during each scheduled on-site examination required by this section, determine whether the insured depository institution is complying with the requirements of the national flood insurance program.

(2) REPORT.—

(A) REQUIREMENT.—Not later than 1 year after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 and biennially thereafter for the next 4 years, each appropriate Federal banking agency shall submit a report to the Congress on compliance by insured depository institutions with the requirements of the national flood insurance program.

(B) CONTENTS.—Each report submitted under this paragraph shall include a description of the methods used to determine compliance, the number of institutions examined during the reporting year, a listing and total number of institutions found not to be in compliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.

(j) CONSULTATION AMONG EXAMINERS.—

(1) IN GENERAL.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that examiners employed by the agency—

(A) consult on examination activities with respect to any depository institution; and

(B) achieve an agreement and resolve any inconsistencies in the recommendations to be given to such institution as a consequence of any examinations.

(2) EXAMINER-IN-CHARGE.—Each appropriate Federal banking agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the examiners of that agency involved in examinations of the institution.

(k) ONE-YEAR RESTRICTIONS ON FEDERAL EXAMINERS OF FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—In addition to other applicable restrictions set forth in title 18, United States Code, the penalties set forth in paragraph (6) of this subsection shall apply to any person who—

(A) was an officer or employee (including any special Government employee) of a Federal banking agency or a Federal reserve bank;

(B) served 2 or more months during the final 12 months of his or her employment with such agency or entity as the senior examiner (or a functionally equivalent position) of a depository institution or depository institution holding company with continuing, broad responsibility for the examination (or inspection) of that depository institution or depository institution holding company on behalf of the relevant agency or Federal reserve bank; and

(C) within 1 year after the termination date of his or her service or employment with such agency or entity, knowingly accepts compensation as an employee, officer, director, or consultant from—

(i) such depository institution, any depository institution holding company that controls such depository institution, or any other company that controls such depository institution; or

(ii) such depository institution holding company or any depository institution that is controlled by such depository institution holding company.

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

(A) the term "depository institution" includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State; and

(B) the term "depository institution holding company" includes any foreign bank or company described in section 8(a) of the International Banking Act of 1978.

(3) RULES OF CONSTRUCTION.—For purposes of this subsection, a foreign bank shall be deemed to control any branch or agency of the foreign bank, and a person shall be deemed to act as a consultant for a depository institution, depository institution holding company, or other company, only if such person directly works on matters for, or on behalf of, such depository institution, depository institution holding company, or other company.

(4) REGULATIONS.—

(A) IN GENERAL.—Each Federal banking agency shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines to define the scope of persons referred to in paragraph (1)(B).

(B) CONSULTATION REQUIRED.—The Federal banking agencies shall consult with each other for the purpose of assuring that the rules and regulations issued by the agencies under subparagraph (A) are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the supervisory programs utilized by the agencies for the supervision of depository institutions and depository institution holding companies.

(5) WAIVER.—

(A) AGENCY AUTHORITY.—A Federal banking agency may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (in-

cluding any special Government employee) of that agency, and the Board of Governors of the Federal Reserve System may grant a waiver of the restriction imposed by this subsection to any officer or employee of a Federal reserve bank, if the head of such agency certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the relevant Federal banking agency.

(B) DEFINITION.—For purposes of this paragraph, the head of an agency is—

(i) the Comptroller of the Currency, in the case of the Office of the Comptroller of the Currency;

(ii) the Chairman of the Board of Governors of the Federal Reserve System, in the case of the Board of Governors of the Federal Reserve System; and

(iii) the Chairperson of the Board of Directors, in the case of the Corporation.

(6) PENALTIES.—

(A) IN GENERAL.—In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever a Federal banking agency determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with a depository institution, depository institution holding company, or other company for which such agency serves as the appropriate Federal banking agency, the agency shall impose upon such person one or more of the following penalties:

(i) INDUSTRY-WIDE PROHIBITION ORDER.—The Federal banking agency shall serve a written notice or order in accordance with and subject to the provisions of section 8(e)(4) for written notices or orders under paragraph (1) or (2) of section 8(e), upon such person of the intention of the agency—

(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the depository institution, depository institution holding company, or other company for a period of up to 5 years; and

(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured depository institution for a period of up to 5 years.

(ii) CIVIL MONETARY PENALTY.—The Federal banking agency may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than $250,000. Any administrative proceeding under this clause shall be conducted in accordance with section 8(i). In lieu of an action by the Federal banking agency under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court.

(B) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under subparagraph (A)(i) shall be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under such section.

(C) DEFINITIONS.—Solely for purposes of this paragraph, the "appropriate Federal banking agency" for a company that is not a depository institution or depository institution holding company shall be the Federal banking agency on whose behalf the person described in paragraph (1) performed the functions described in paragraph (1)(B).

SEC. 11. (a) DEPOSIT INSURANCE.—

(1) INSURED AMOUNTS PAYABLE.—

(A) IN GENERAL.—The Corporation shall insure the deposits of all insured depository institutions as provided in this Act.

(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).

(C) AGGREGATION OF DEPOSITS.—For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person, other than any amount in a trust fund described in paragraph (1) or (2) of section 7(i) or any funds described in section 7(i)(3).

(D) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—

(i) PASS-THROUGH INSURANCE.—The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

(ii) PROHIBITION ON ACCEPTANCE OF BENEFIT PLAN DEPOSITS.—An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

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

(I) CAPITAL STANDARDS.—The terms "well capitalized" and "adequately capitalized" have the same meanings as in section 38.

(II) EMPLOYEE BENEFIT PLAN.—The term "employee benefit plan" has the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

(III) PASS-THROUGH DEPOSIT INSURANCE.—The term "pass-through deposit insurance" means, with respect to an employee benefit plan, deposit insurance coverage based on the interest of each

participant, in accordance with regulations issued by the Corporation.

(E) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.—For purposes of this Act, the term "standard maximum deposit insurance amount" means $250,000, adjusted as provided under subparagraph (F) after March 31, 2010. Notwithstanding any other provision of law, the increase in the standard maximum deposit insurance amount to $250,000 shall apply to depositors in any institution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corporation shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this Act. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B).

(F) INFLATION ADJUSTMENT.—

(i) IN GENERAL.—By April 1 of 2010, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly consider the factors set forth under clause (v), and, upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 207(k) of the Federal Credit Union Act) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

(I) $100,000; and

(II) the ratio of the published annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this clause, to the published annual value of such index for the calendar year preceding the date this subparagraph takes effect under the Federal Deposit Insurance Reform Act of 2005.

The values used in the calculation under subclause (II) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(ii) ROUNDING.—If the amount determined under clause (ii) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.

(iii) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 207(k)(3) of the Federal Credit Union Act, as so calculated; and

(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

(iv) 6-MONTH IMPLEMENTATION PERIOD.—Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

(v) INFLATION ADJUSTMENT CONSIDERATION.—In making any determination under clause (i) to increase the standard maximum deposit insurance amount and the standard maximum share insurance amount, the Board of Directors and the National Credit Union Administration Board shall jointly consider—

(I) the overall state of the Deposit Insurance Fund and the economic conditions affecting insured depository institutions;

(II) potential problems affecting insured depository institutions; or

(III) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits.

(2) GOVERNMENT DEPOSITORS.—

(A) IN GENERAL.—Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available to any 1 depositor—

(i) a government depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed to be a depositor separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in subparagraph (B); and

(ii) except as provided in subparagraph (C), the deposits of a government depositor shall be insured in an amount equal to the standard maximum deposit insurance amount (as determined under paragraph (1)).

(B) GOVERNMENT DEPOSITOR.—In this paragraph, the term "government depositor" means a depositor that is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Virgin Islands, of American Samoa, of the Trust Territory of the Pacific Islands, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution.

(C) AUTHORITY TO LIMIT DEPOSITS.—The Corporation may limit the aggregate amount of funds that may be invested or deposited in deposits in any insured depository institution by any government depositor on the basis of the size of any such bank in terms of its assets: *Provided, however,* such limitation may be exceeded by the pledging of acceptable securities to the government depositor when and where required.

(3) CERTAIN RETIREMENT ACCOUNTS.—

(A) IN GENERAL.—Notwithstanding any limitation in this Act relating to the amount of deposit insurance available for the account of any 1 depositor, deposits in an insured depository institution made in connection with—

(i) any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986;

(ii) subject to the exception contained in paragraph (1)(D)(ii), any eligible deferred compensation plan described in section 457 of such Code; and

(iii) any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act, and any plan described in section 401(d) of the Internal Revenue Code of 1986, to the extent that participants and beneficiaries under such plan have the

right to direct the investment of assets held in individual accounts maintained on their behalf by the plan,

shall be aggregated and insured in an amount not to exceed $250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that $250,000 shall be substituted for $100,000 wherever such term appears in such paragraph) per participant per insured depository institution.

(B) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), the amount aggregated for insurance coverage under this paragraph shall consist of the present vested and ascertainable interest of each participant under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) DEPOSIT INSURANCE FUND.—

(A) ESTABLISHMENT.—There is established the Deposit Insurance Fund, which the Corporation shall—

(i) maintain and administer;

(ii) use to carry out its insurance purposes, in the manner provided by this subsection; and

(iii) invest in accordance with section 13(a).

(B) USES.—The Deposit Insurance Fund shall be available to the Corporation for use with respect to insured depository institutions the deposits of which are insured by the Deposit Insurance Fund.

(C) LIMITATION ON USE.—Notwithstanding any provision of law other than section 13(c)(4)(G), the Deposit Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of—

(i) any insured depository institution for which the Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation;

(ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation; or

(iii) any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B)) another insured depository institution.

(D) DEPOSITS.—All amounts assessed against insured depository institutions by the Corporation shall be deposited into the Deposit Insurance Fund.

(5) CERTAIN INVESTMENT CONTRACTS NOT TREATED AS INSURED DEPOSITS.—

(A) IN GENERAL.—A liability of an insured depository institution shall not be treated as an insured deposit if the liability arises under any insured depository institution in-

vestment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals or transfers.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

(i) BENEFIT-RESPONSIVE WITHDRAWALS OR TRANSFERS.—The term "benefit-responsive withdrawals or transfers" means any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance.

(ii) EMPLOYEE BENEFIT PLAN.—The term "employee benefit plan"—

(I) has the meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974; and

(II) includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(b) For the purposes of this Act an insured depository institution shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.

(c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may accept appointment and act as conservator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

(2) FEDERAL DEPOSITORY INSTITUTIONS.—

(A) APPOINTMENT.—

(i) CONSERVATOR.—The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution and the Corporation may accept such appointment.

(ii) RECEIVER.—The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution by the appropriate Federal banking agency, notwithstanding any other provision of Federal law.

(B) ADDITIONAL POWERS.—In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties, shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Fed-

eral depository institution under any other provision of law.

(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY.—When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of the Corporation's rights, powers, and privileges.

(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION.—Notwithstanding subparagraph (C), any Federal depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate Federal banking agency.

(3) INSURED STATE DEPOSITORY INSTITUTIONS.—

(A) APPOINTMENT BY APPROPRIATE STATE SUPERVISOR.—Whenever the authority having supervision of any insured State depository institution appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

(B) ADDITIONAL POWERS.—In addition to the powers conferred and the duties related to the exercise of such powers imposed by State law on any conservator or receiver appointed under the law of such State for an insured State depository institution, the Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver.

(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY.—When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of its rights, powers, and privileges.

(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION.—Notwithstanding subparagraph (C), any insured State depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate State bank or savings association supervisor.

(4) APPOINTMENT OF CORPORATION BY THE CORPORATION.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may appoint itself as sole conservator or receiver of any insured State depository institution if—

(A) the Corporation determines—

(i) that—

(I) a conservator, receiver, or other legal custodian has been appointed for such institution;

(II) such institution has been subject to the appointment of any such conservator, receiver, or

custodian for a period of at least 15 consecutive days; and

(III) 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or

(ii) that such institution has been closed by or under the laws of any State; and

(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5)—

(i) existed with respect to such institution at the time—

(I) the conservator, receiver, or other legal custodian was appointed; or

(II) such institution was closed; or

(ii) exist at any time—

(I) during the appointment of the conservator, receiver, or other legal custodian; or

(II) while such institution is closed.

(5) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER.—The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

(A) ASSETS INSUFFICIENT FOR OBLIGATIONS.—The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

(B) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

(i) any violation of any statute or regulation; or

(ii) any unsafe or unsound practice.

(C) UNSAFE OR UNSOUND CONDITION.—An unsafe or unsound condition to transact business.

(D) CEASE AND DESIST ORDERS.—Any willful violation of a cease-and-desist order which has become final.

(E) CONCEALMENT.—Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) INABILITY TO MEET OBLIGATIONS.—The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) LOSSES.—The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in section 38(b)) without Federal assistance.

(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) cause insolvency or substantial dissipation of assets or earnings;

(ii) weaken the institution's condition; or

(iii) otherwise seriously prejudice the interests of the institution's depositors or the Deposit Insurance Fund.

(I) CONSENT.—The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) CESSATION OF INSURED STATUS.—The institution ceases to be an insured institution.

(K) UNDERCAPITALIZATION.—The institution is undercapitalized (as defined in section 38(b)), and—

(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

(ii) fails to become adequately capitalized when required to do so under section 38(f)(2)(A);

(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 38(e)(2)(D); or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 38(e)(2).

(L) The institution—

(i) is critically undercapitalized, as defined in section 38(b); or

(ii) otherwise has substantially insufficient capital.

(M) MONEY LAUNDERING OFFENSE.—The Attorney General notifies the appropriate Federal banking agency or the Corporation in writing that the insured depository institution has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code.

(6) APPOINTMENT BY COMPTROLLER OF THE CURRENCY.—

(A) CONSERVATOR.—The Corporation may, at the discretion of the Comptroller of the Currency, be appointed conservator and the Corporation may accept any such appointment.

(B) RECEIVER.—The Corporation may, at the discretion of the Comptroller of the Currency, be appointed receiver and the Corporation may accept any such appointment.

(7) JUDICIAL REVIEW.—If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.

(8) REPLACEMENT OF CONSERVATOR OF STATE DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation

may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) REPLACEMENT TREATED AS REMOVAL OF INCUMBENT.—The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) RIGHT OF REVIEW OF ORIGINAL APPOINTMENT NOT AFFECTED.—The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

(9) APPROPRIATE FEDERAL BANKING AGENCY MAY APPOINT CORPORATION AS CONSERVATOR OR RECEIVER FOR INSURED STATE DEPOSITORY INSTITUTION TO CARRY OUT SECTION 38.—

(A) IN GENERAL.—The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

(ii) the appointment is necessary to carry out the purpose of section 38.

(B) NONDELEGATION.—The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

(10) CORPORATION MAY APPOINT ITSELF AS CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTION TO PREVENT LOSS TO DEPOSIT INSURANCE FUND.—The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

(B) the appointment is necessary to reduce—

(i) the risk that the Deposit Insurance Fund would incur a loss with respect to the insured depository institution, or

(ii) any loss that the Deposit Insurance Fund is expected to incur with respect to that institution.

(11) APPROPRIATE FEDERAL BANKING AGENCY SHALL NOT APPOINT CONSERVATOR UNDER CERTAIN PROVISIONS WITHOUT GIVING CORPORATION OPPORTUNITY TO APPOINT RECEIVER.—The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

(12) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

(A) the appointment of the Corporation as conservator or receiver for that institution; or

(B) an acquisition or combination under section 38(f)(2)(A)(iii).

(13) ADDITIONAL POWERS.—In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

(A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

(B) the Corporation as receiver of the institution may—

(i) liquidate the institution in an orderly manner; and

(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) POWERS AND DUTIES OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) GENERAL POWERS.—

(A) SUCCESSOR TO INSTITUTION.—The Corporation shall, as conservator or receiver, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(B) OPERATE THE INSTITUTION.—The Corporation may (subject to the provisions of section 40), as conservator or receiver—

(i) take over the assets of and operate the insured depository institution with all the powers of the members or shareholders, the directors, and the officers of the institution and conduct all business of the institution;

(ii) collect all obligations and money due the institution;

(iii) perform all functions of the institution in the name of the institution which are consistent with the appointment as conservator or receiver; and

(iv) preserve and conserve the assets and property of such institution.

(C) FUNCTIONS OF INSTITUTION'S OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any insured depository institution for which the Corporation has been appointed conservator or receiver.

(D) POWERS AS CONSERVATOR.—The Corporation may, as conservator, take such action as may be—

(i) necessary to put the insured depository institution in a sound and solvent condition; and

(ii) appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution.

(E) ADDITIONAL POWERS AS RECEIVER.—The Corporation may (subject to the provisions of section 40), as receiver, place the insured depository institution in liquidation and proceed to realize upon the assets of the institution, having due regard to the conditions of credit in the locality.

(F) ORGANIZATION OF NEW INSTITUTIONS.—The Corporation may, as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).

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

(i) IN GENERAL.—The Corporation may, as conservator or receiver—

(I) merge the insured depository institution with another insured depository institution; or

(II) subject to clause (ii), transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer.

(ii) APPROVAL BY APPROPRIATE FEDERAL BANKING AGENCY.—No transfer described in clause (i)(II) may be made to another depository institution (other than a new depository institution or a bridge depository institution established pursuant to subsection (m) or (n)) without the approval of the appropriate Federal banking agency for such institution.

(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this Act.

(I) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution), exercise any power established under section 8(n), and

the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) AUTHORITY OF BOARD OF DIRECTORS.—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board of Directors or their designees (or, in the case of a subpoena or subpoena duces tecum issued by the Resolution Trust Corporation under this subparagraph [and section 21A(b)(4)], only by, or with the written approval of, the Board of Directors of such Corporation or their designees).

(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have under section 10(c) of this Act.

(J) INCIDENTAL POWERS.—The Corporation may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this Act and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this Act,

which the Corporation determines is in the best interests of the depository institution, its depositors, or the Corporation.

(K) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity, the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, only if such services are available in the private sector and the Corporation determines utilization of such services is the most practicable, efficient, and cost effective.

(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.—

(A) IN GENERAL.—The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed depository institution, shall—

(i) promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i)

at the time of such publication to any creditor shown on the institution's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the institution's books within 30 days after the discovery of such name and address.

(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(B) FINAL SETTLEMENT PAYMENT PROCEDURE.—

(i) IN GENERAL.—In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants.

(ii) FINAL SETTLEMENT PAYMENT.—For purposes of clause (i), a final settlement payment shall be payment of an amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership; and

(iii) FINAL SETTLEMENT PAYMENT RATE.—For purposes of clause (ii), the final settlement payment rate shall be a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership.

(iv) CORPORATION AUTHORITY.—The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured depository institution in the event of its insolvency.

(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

(A) DETERMINATION PERIOD.—

(i) IN GENERAL.—Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

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

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the depository institution's books;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

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

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) ALLOWANCE OF PROVEN CLAIMS.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

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

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against an insured depository institution which is secured by any property or other asset of such institution, any receiver appointed for any insured depository institution—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the institution; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in

connection with the disposition of all claims of unsecured creditors of the institution.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(II) any security interest in the assets of the institution securing any such extension of credit.

(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(6) PROVISION FOR AGENCY REVIEW OR JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) STATUTE OF LIMITATIONS.—If any claimant fails to—

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) REVIEW OF CLAIMS.—

(A) ADMINISTRATIVE HEARING.—If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5, United States Code.

(B) OTHER REVIEW PROCEDURES.—

(i) IN GENERAL.—The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Corporation shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Corporation may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Corporation, must agree to the use of the process in a particular case.

(iv) CONSIDERATION OF INCENTIVES.—The Corporation shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any depository institution for which the Corporation has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

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

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(9) AGREEMENT AS BASIS OF CLAIM.—

(A) REQUIREMENTS.—Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 13(e) shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.

(B) EXCEPTION TO CONTEMPORANEOUS EXECUTION REQUIREMENT.—Notwithstanding section 13(e)(2), any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—The receiver may, in the receiver's discretion and to the extent funds are available, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this Act.

(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the receiver's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation (in such Corporation's corporate capacity or as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uni-

form interest rate for or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

(11) DEPOSITOR PREFERENCE.—

(A) IN GENERAL.—Subject to section 5(e)(2)(C), amounts realized from the liquidation or other resolution of any insured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

(i) Administrative expenses of the receiver.

(ii) Any deposit liability of the institution.

(iii) Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)).

(iv) Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)).

(v) Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

(B) EFFECT ON STATE LAW.—

(i) IN GENERAL.—The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.

(ii) PROCEDURE FOR DETERMINATION OF INCONSISTENCY.—Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.

(iii) JUDICIAL REVIEW.—The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5, United States Code.

(C) ACCOUNTING REPORT.—Any distribution by the Corporation in connection with any claim described in subparagraph (A)(v) shall be accompanied by the accounting report required under paragraph (15)(B).

(12) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed—

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

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

in any judicial action or proceeding to which such institution is or becomes a party.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Corporation as conservator or receiver shall—

(i) have all the rights and remedies available to the insured depository institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and

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

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

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

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of any insured depository institution for which the Corporation has been appointed conservator or receiver, including any sale or disposition of assets acquired by the Corporation under section 13(d)(1), the Corporation shall conduct its operations in a manner which—

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

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

(iii) ensures adequate competition and fair and consistent treatment of offerors;

(iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and

(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(14) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

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

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim (other than a claim which is subject to section 21A(b)(14) of the Federal Home Loan Bank Act), the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Corporation as conservator or receiver; or

(ii) the date on which the cause of action accrues.

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

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

(15) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship and receivership or other disposition of institutions in default.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary of the Treasury, the Comptroller General of the United States, and the authority which appointed the Corporation as conservator or receiver.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the

Corporation upon request to any shareholder of the depository institution for which the Corporation was appointed conservator or receiver or any other member of the public.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution, the Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) OLD RECORDS.—Notwithstanding clause (i), the Corporation may destroy records of an insured depository institution which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such depository institution in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(16) CONTRACTS WITH STATE HOUSING FINANCE AUTHORITIES.—

(A) IN GENERAL.—The Corporation may enter into contracts with any State housing finance authority for the sale of mortgage-related assets (as such terms are defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) of any depository institution in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto.

(B) FACTORS TO CONSIDER.—In evaluating the disposition of mortgage related assets to any State housing finance authority the Corporation shall consider—

(i) the State housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage related assets;

(ii) the State housing finance authority's ability to further national housing policies;

(iii) the State housing finance authority's sensitivity to the impact of the sale of mortgage related assets upon the State and local communities;

(iv) the costs to the Federal Government associated with alternative ownership or disposition of the mortgage related assets;

(v) the minimization of future guaranties which may be required of the Federal Government;

(vi) the maximization of mortgage related asset values; and

(vii) the utilization of institutions currently established in mortgage related asset market activities.

(17) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as conservator or receiver for any insured depository institution, and any con-

servator appointed by the Comptroller of the Currency may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository institution, the Corporation or other conservator, or any other appropriate Federal banking agency.

(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation or any conservator described in such subparagraph may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

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

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation or any conservator described in subparagraph (A) may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

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

(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the Corporation and any conservator described in subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

(18) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (19), any court of competent jurisdiction may, at the request of—

(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13); or

(B) any conservator appointed by the Comptroller of the Currency,

issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

(19) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under

paragraph (18) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation or a conservator pursuant to paragraph (18) may be requested under the laws of such State.

(20) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE RECEIVER OR CONSERVATOR.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for an insured depository institution for the breach of an agreement executed or approved by such receiver or conservator after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(e) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease—

(A) to which such institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

(2) TIMING OF REPUDIATION.—The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the

disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term "actual direct compensatory damages" does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (i) except as otherwise specifically provided in this section.

(4) LEASES UNDER WHICH THE INSTITUTION IS THE LESSEE.—

(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the insured depository institution was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

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

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

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

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (i).

(5) LEASES UNDER WHICH THE INSTITUTION IS THE LESSOR.—

(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the insured depository institution under which the institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee

defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the insured depository institution under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the conservator or receiver repudiates any contract (which meets the requirements of each paragraph of section 13(e)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

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

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the depository institution under the contract; and

(ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

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

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any insured depository institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

(i) a claim to be paid in accordance with subsections (d) and (i); and

(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

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

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this Act (other than subsection (d)(9) of this section and section 13(e)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (d)(12) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the insured depository institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such institution.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured depository institution.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured depository institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such institution, the creditors of such institution, or any conservator or receiver appointed for such institution.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term "qualified financial contract" means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term "securities contract"—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security,

certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v));

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

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

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

(V) means any margin loan;

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

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

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

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

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract

under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term "commodity contract" means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obliga-

tion in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term "forward contract" means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

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

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

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term "repurchase agreement" (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States

against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

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

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

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

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term "qualified foreign government security" means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) SWAP AGREEMENT.—The term "swap agreement" means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign ex-

change, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other

statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.

(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) TRANSFER.—The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.

(ix) PERSON.—The term "person" includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1, United States Code.

(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than subsections (d)(9) and (e)(10) of this section, and section 13(e) of this Act), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a depository institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);

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

(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or re-

pudiate any such contract in accordance with subsection (e)(1) of this section.

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term "walkaway clause" means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of an insured depository institution that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such depository institution, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term "financial institution" means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term "clearing organization" has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE DEPOSITORY INSTITUTIONS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bank-

ruptcy or insolvency proceeding for purposes of paragraph (9):

(i) A bridge depository institution.

(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

(I) immediately upon the organization of the institution; or

(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term "business day" means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the depository institution in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or depository institution bond under other applicable law.

(C) CONSENT REQUIREMENT.—

(i) IN GENERAL.—Except as otherwise provided by this section or section 15, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the depository in-

stitution is a party, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a depository institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contract.

(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11, United States Code.

(14) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

(15) SELLING CREDIT CARD ACCOUNTS RECEIVABLE.—

(A) NOTIFICATION REQUIRED.—An undercapitalized insured depository institution (as defined in section 38) shall notify the Corporation in writing before entering into an agreement to sell credit card accounts receivable.

(B) WAIVER BY CORPORATION.—The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

(i) determines that the waiver is in the best interests of the Deposit Insurance Fund; and

(ii) provides a written waiver to the selling institution.

(C) EFFECT OF WAIVER ON SUCCESSORS.—

(i) IN GENERAL.—If, under subparagraph (B), the Corporation has waived its right to repudiate an agreement to sell credit card accounts receivable—

(I) any provision of the agreement that restricts solicitation of a credit card customer of the selling institution, or the use of a credit card customer list of the institution, shall bind any receiver or conservator of the institution; and

(II) the Corporation shall require any acquirer of the selling institution, or of substantially all of the selling institution's assets or liabilities, to

agree to be bound by a provision described in subclause (I) as if the acquirer were the selling institution.

(ii) EXCEPTION.—Clause (i)(II) does not—

(I) restrict the acquirer's authority to offer any product or service to any person identified without using a list of the selling institution's customers in violation of the agreement;

(II) require the acquirer to restrict any preexisting relationship between the acquirer and a customer; or

(III) apply to any transaction in which the acquirer acquires only insured deposits.

(D) WAIVER NOT ACTIONABLE.—The Corporation shall not, in any capacity, be liable to any person for damages resulting from the waiver of or failure to waive the Corporation's right under this section to repudiate any contract or lease, including an agreement to sell credit card accounts receivable. No court shall issue any order affecting any such waiver or failure to waive.

(E) OTHER AUTHORITY NOT AFFECTED.—This paragraph does not limit any other authority of the Corporation to waive the Corporation's right to repudiate an agreement or lease under this section.

(16) CERTAIN CREDIT CARD CUSTOMER LISTS PROTECTED.—

(A) IN GENERAL.—If any insured depository institution sells credit card accounts receivable under an agreement negotiated at arm's length that provides for the sale of the institution's credit card customer list, the Corporation shall prohibit any party to a transaction with respect to the institution under this section or section 13 from using the list, except as permitted under the agreement.

(B) FRAUDULENT TRANSACTIONS EXCLUDED.—Subparagraph (A) does not limit the Corporation's authority to repudiate any agreement entered into with the intent to hinder, delay, or defraud the institution, the institution's creditors, or the Corporation.

(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(f) PAYMENT OF INSURED DEPOSITS.—

(1) IN GENERAL.—In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g), either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in an-

other insured depository institution in an amount equal to the insured deposit of such depositor.

(2) PROOF OF CLAIMS.—The Corporation, in its discretion, may require proof of claims to be filed and may approve or reject such claims for insured deposits.

(3) RESOLUTION OF DISPUTES.—A determination by the Corporation regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Corporation may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit.

(4) REVIEW OF CORPORATION DETERMINATION.—A final determination made by the Corporation regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5, United States Code, by the United States district court for the Federal judicial district where the principal place of business of the depository institution is located.

(5) STATUTE OF LIMITATIONS.—Any request for review of a final determination by the Corporation regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.

(g) SUBROGATION OF CORPORATION.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation, upon the payment to any depositor as provided in subsection (f) in connection with any insured depository institution or insured branch described in such subsection or the assumption of any deposit in such institution or branch by another insured depository institution pursuant to this section or section 13, shall be subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption.

(2) DIVIDENDS ON SUBROGATED AMOUNTS.—The subrogation of the Corporation under paragraph (1) with respect to any insured depository institution shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such institution and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain such claim for any uninsured or unassumed portion of the deposit.

(3) WAIVER OF CERTAIN CLAIMS.—With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon such stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated.

(4) APPLICABILITY OF STATE LAW.—Subject to subsection (d)(11), if the Corporation is appointed pursuant to subsection (c)(3), or determines not to invoke the authority conferred in subsection (c)(4), the rights of depositors and other creditors of any State depository institution shall be determined in accordance with the applicable provisions of State law.

(h) CONDITIONS APPLICABLE TO RESOLUTION PROCEEDINGS.—

(1) CONSIDERATION OF LOCAL ECONOMIC IMPACT REQUIRED.—The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a depository institution in default.

(2) ACTIONS TO ALLEVIATE ADVERSE ECONOMIC IMPACT TO BE CONSIDERED.—The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

(3) GUIDELINES REQUIRED.—The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.

(4) FINANCIAL SERVICES INDUSTRY IMPACT ANALYSIS.—After the appointment of the Corporation as conservator or receiver for any insured depository institution and before taking any action under this section or section 13 in connection with the resolution of such institution, the Corporation shall—

(A) evaluate the likely impact of the means of resolution, and any action which the Corporation may take in connection with such resolution, on the viability of other insured depository institutions in the same community; and

(B) take such evaluation into account in determining the means for resolving the institution and establishing the terms and conditions for any such action.

(i) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State and regardless of the method which the Corporation determines to utilize with respect to an insured depository institution in default or in danger of default, including transactions authorized under subsection (n) and section 13(c), this subsection shall govern the rights of the creditors (other than insured depositors) of such institution.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such institution without exercising the Corporation's authority under subsection (n) of this section or section 13.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Corporation may, in its discretion and in the interests of minimizing its losses, use its own

resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. Notwithstanding any other provision of Federal or State law, or the constitution of any State, the Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) MANNER OF PAYMENT.—The Corporation may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

(j) LIMITATION ON COURT ACTION.—Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(k) LIABILITY OF DIRECTORS AND OFFICERS.—A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(1) acting as conservator or receiver of such institution,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or

(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 13,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

(l) DAMAGES.—In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest.

(m) NEW DEPOSITORY INSTITUTIONS.—

(1) ORGANIZATION AUTHORIZED.—As soon as possible after the default of an insured depository institution, the Corporation, if it finds that it is advisable and in the interest of the depositors of the insured depository institution in default or the public shall organize a new national bank or Federal savings association in the same community as the insured depository institution in default to assume the insured deposits of

such depository institution in default and otherwise to perform temporarily the functions hereinafter provided for.

(2) ARTICLES OF ASSOCIATION.—The articles of association and the organization certificate of the new depository institution shall be executed by representatives designated by the Corporation.

(3) CAPITAL STOCK.—No capital stock need be paid in by the Corporation.

(4) EXECUTIVE OFFICER.—The new depository institution shall not have a board of directors, but shall be managed by an executive officer appointed by the Board of Directors of the Corporation who shall be subject to its directions.

(5) SUBJECT TO LAWS RELATING TO NATIONAL BANKS.—In all other respects the new depository institution shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations.

(6) NEW DEPOSITS.—The new depository institution may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new depository institution is the only depository institution in the community, shall not exceed an amount equal to the standard maximum deposit insurance amount from any depositor.

(7) INSURED STATUS.—The new depository institution, without application to or approval by the Corporation, shall be an insured depository institution and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank.

(8) INVESTMENTS.—Funds of the new depository institution shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, any Federal Reserve bank, or, to the extent of the insurance coverage on any such deposit, an insured depository institution.

(9) CONDUCT OF BUSINESS.—The new depository institution, unless otherwise authorized by the Comptroller of the Currency, shall transact business only as authorized by this Act and as may be incidental to its organization.

(10) EXEMPT STATUS.—Notwithstanding any other provision of Federal or State law, the new depository institution, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) TRANSFER OF DEPOSITS.—(A) Upon the organization of a new depository institution, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such depository institution in default plus the estimated amount of the expenses of operating the new depository institution, and shall determine as soon as possible the amount due each depositor for the depositor's insured deposit in the insured depository institution in default, and the total expenses of operation of the new depository institution.

(12) EARNINGS.—Earnings of the new depository institution shall be paid over or credited to the Corporation in such adjustment.

(13) LOSSES.—If any new depository institution, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured depository institution, the Corporation shall furnish to it additional funds in the amount of such losses.

(14) PAYMENT OF INSURED DEPOSITS.—(A) The new depository institution shall assume as transferred deposits the payment of the insured deposits of such depository institution in default to each of its depositors.

(B) Of the amounts so made available, the Corporation shall transfer to the new depository institution, in cash, such sums as may be necessary to enable it to meet its expenses of operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new depository institution on demand.

(15) ISSUANCE OF STOCK.—(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the new depository institution to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new depository institution on a sound basis.

(B) The stockholders of the insured depository institution in default shall be given the first opportunity to purchase any shares of common stock so offered.

(16) ISSUANCE OF CERTIFICATE.—Upon proof that an adequate amount of capital stock in the new depository institution has been subscribed and paid for in cash, the Comptroller of the Currency**[**,**]** shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank or Federal savings association, and thereafter, when the requirements of law with respect to the organization of a national bank or Federal savings association have been complied with, the Comptroller of the Currency**[**,**]** shall issue to the depository institution a certificate of authority to commence business, and thereupon the depository institution shall cease to have the status of a new depository institution, shall be managed by directors elected by its own shareholders, may exercise all the powers granted by law, and shall be subject to all provisions of law relating to national banks or Federal savings associations. Such depository institution shall thereafter be an insured national bank or Federal savings association, without certification to or approval by the Corporation.

(17) TRANSFER TO OTHER INSTITUTION.—If the capital stock of the new depository institution is not offered for sale, or if an adequate amount of capital for such new depository institution is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured depository institution in the same community which will take over its assets, assume

its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new depository institution to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided.

(18) WINDING UP.—Unless the capital stock of the new depository institution is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as above provided within 2 years after the date of its organization, the Corporation shall wind up the affairs of such depository institution, after giving such notice, if any, as the Comptroller of the Currency[,] may require, and shall certify to the Comptroller of the Currency[,] the termination of the new depository institution. Thereafter the Corporation shall be liable for the obligations of such depository institution and shall be the owner of its assets.

(19) APPLICABILITY OF CERTAIN LAWS.—The provisions of sections 5220 and 5221 of the Revised Statutes shall not apply to a new depository institution under this subsection.

(n) BRIDGE DEPOSITORY INSTITUTIONS.—

(1) ORGANIZATION.—

(A) PURPOSE.—When 1 or more insured depository institutions are in default, or when the Corporation anticipates that 1 or more insured depository institutions may become in default, the Corporation may, in its discretion, organize, and the Office of the Comptroller of the Currency, with respect to 1 or more insured depository institutions or 1 or more insured savings associations, shall charter, 1 or more national banks or Federal savings associations, as appropriate, with respect thereto with the powers and attributes of national banking associations or Federal savings associations, as applicable, subject to the provisions of this subsection, to be referred to as "bridge depository institutions".

(B) AUTHORITIES.—Upon the granting of a charter to a bridge depository institution, the bridge depository institution may—

(i) assume such deposits of such insured depository institution or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured depository institution or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(iii) purchase such assets (including assets associated with any trust business) of such insured depository institution or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

(iv) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this Act.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge depository institution as approved by the Corporation shall be executed by 3 representatives designated by the Corporation.

(D) INTERIM DIRECTORS.—A bridge depository institution shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION.—A bridge depository institution shall be organized as a national bank, in the case of 1 or more insured depository institutions, and as a Federal savings association, in the case of 1 or more insured savings associations.

(2) CHARTERING.—

(A) CONDITIONS.—A national bank or Federal savings association may be chartered by the Comptroller of the Currency as a bridge depository institution only if the Board of Directors determines that—

(i) the amount which is reasonably necessary to operate such bridge depository institution will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, 1 or more insured depository institutions in default or in danger of default with respect to which the bridge depository institution is chartered;

(ii) the continued operation of such insured depository institution or banks in default or in danger of default with respect to which the bridge depository institution is chartered is essential to provide adequate banking services in the community where each such depository institution in default or in danger of default is located; or

(iii) the continued operation of such insured depository institution or banks in default or in danger of default with respect to which the bridge depository institution is chartered is in the best interest of the depositors of such depository institution or banks in default or in danger of default or the public.

(B) INSURED NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION.—A bridge depository institution shall be an insured depository institution from the time it is chartered as a national bank or Federal savings association.

(C) BRIDGE BANK TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge depository institution shall be treated as an insured depository institution in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(D) MANAGEMENT.—A bridge depository institution, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) BYLAWS.—The board of directors of a bridge depository institution shall adopt such bylaws as may be approved by the Corporation.

(3) TRANSFER OF ASSETS AND LIABILITIES.—

(A) IN GENERAL.—

(i) TRANSFER UPON GRANT OF CHARTER.—Upon the granting of a charter to a bridge depository institution pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to any insured depository institution in default with respect to which the bridge depository institution is chartered may transfer any assets and liabilities of such depository institution in default to the bridge depository institution in accordance with paragraph (1).

(ii) SUBSEQUENT TRANSFERS.—At any time after a charter is granted to a bridge depository institution, the Corporation, as receiver, or any other receiver appointed with respect to an insured depository institution in default may transfer any assets and liabilities of such insured depository institution in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(iii) TREATMENT OF TRUST BUSINESS.—For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured depository institution in default is included among its assets and liabilities.

(iv) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust business, of an insured depository institution in default transferred to a bridge depository institution shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(B) INTENT OF CONGRESS REGARDING CONTINUING OPERATIONS.—It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any insured depository institution in default with respect to which a bridge depository institution is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should—

(i) continue to honor commitments made by the depository institution in default to creditworthy customers, and

(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

(4) POWERS OF BRIDGE BANKS.—Each bridge depository institution chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank or Federal savings association, as appropriate, except that—

(A) the Corporation may—

(i) remove the interim directors and directors of a bridge depository institution;

(ii) fix the compensation of members of the interim board of directors and the board of directors and sen-

ior management, as determined by the Corporation in its discretion, of a bridge depository institution; and

(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section 31 of the Banking Act of 1933 which would otherwise be applicable with respect to directors of a bridge depository institution by operation of paragraph (2)(B);

(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge depository institution on such terms as the Corporation determines to be appropriate;

(C) no requirement under any provision of law relating to the capital of a national bank shall apply with respect to a bridge depository institution;

(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to a bridge depository institution without regard to the amount of the bridge depository institution's capital or surplus;

(E)(i) the board of directors of a bridge depository institution shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation; and

(ii) the board of directors of a bridge depository institution may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

(F) a bridge depository institution shall not be required to purchase stock of any Federal Reserve bank;

(G) the Comptroller of the Currency shall waive any requirement for a fidelity bond with respect to a bridge depository institution at the request of the Corporation;

(H) any judicial action to which a bridge depository institution becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a depository institution in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge depository institution;

(I) no agreement which tends to diminish or defeat the right, title or interest of a bridge depository institution in any asset of an insured depository institution in default acquired by it shall be valid against the bridge depository institution unless such agreement—

(i) is in writing,

(ii) was executed by such insured depository institution in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured depository institution in default,

(iii) was approved by the board of directors of such insured depository institution in default or its loan

committee, which approval shall be reflected in the minutes of said board or committee, and

(iv) has been, continuously from the time of its execution, an official record of such insured depository institution in default;

(J) notwithstanding section 13(e)(2), any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such depository institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (I); and

(K) except with the prior approval of the Corporation, a bridge depository institution may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

(5) CAPITAL.—

(A) NO CAPITAL REQUIRED.—The Corporation shall not be required to—

(i) issue any capital stock on behalf of a bridge depository institution chartered under this subsection; or

(ii) purchase any capital stock of a bridge depository institution, except that notwithstanding any other provision of Federal or State law, the Corporation may purchase and retain capital stock of a bridge depository institution in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.

(B) OPERATING FUNDS IN LIEU OF CAPITAL.—Upon the organization of a bridge depository institution, and thereafter, as the Board of Directors may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge depository institution, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge depository institution in lieu of capital.

(C) AUTHORITY TO ISSUE CAPITAL STOCK.—Whenever the Board of Directors determines it is advisable to do so, the Corporation shall cause capital stock of a bridge depository institution to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(D) CAPITAL LEVELS.—A bridge depository institution shall not be considered an undercapitalized depository institution or a critically undercapitalized depository institution for purposes of section 10B(b) of the Federal Reserve Act.

(6) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge depository institution is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a bridge depository institution are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a bridge depository institution shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge depository institution in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(7) ASSISTANCE AUTHORIZED.—The Corporation may, in its discretion, provide assistance under section 13(c) to facilitate any transaction described in clause (i), (ii), or (iii) of paragraph (10)(A) with respect to any bridge depository institution in the same manner and to the same extent as such assistance may be provided under such section with respect to an insured depository institution in default, or to facilitate a bridge depository institution's acquisition of any assets or the assumption of any liabilities of an insured depository institution in default.

(8) ACQUISITION.—

(A) IN GENERAL.—The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge depository institution requiring approval under section 18(c) and if a report on competitive factors is requested within 10 days, such transaction may not be consummated before the 5th calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of 1 of the depository institutions involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

(B) BY OUT-OF-STATE HOLDING COMPANY.—Any depository institution, including an out-of-State depository institution, or any out-of-State depository institution holding company may acquire and retain the capital stock or assets of, or otherwise acquire and retain a bridge depository institution if the bridge depository institution at any time had assets aggregating $500,000,000 or more, as determined by the Corporation on the basis of the bridge depository institution's reports of condition or on the basis of the last available reports of condition of any insured depository institution in default, which institution has been acquired, or whose assets have been acquired, by the bridge depository institution. The acquiring entity may acquire the bridge depository institution only in the same manner

and to the same extent as such entity may acquire an insured depository institution in default under section 13(f)(2).

(9) DURATION OF BRIDGE DEPOSITORY INSTITUTION.—Subject to paragraphs (11) and (12), the status of a bridge depository institution as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of Directors may, in its discretion, extend the status of the bridge depository institution as such for 3 additional 1-year periods.

(10) TERMINATION OF BRIDGE DEPOSITORY INSTITUTION STATUS.—The status of any bridge depository institution as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge depository institution with a depository institution that is not a bridge depository institution;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(C) the sale of 80 percent, or more, of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge depository institution by a depository institution holding company or a depository institution that is not a bridge depository institution, or the acquisition of all or substantially all of the assets of the bridge depository institution by a depository institution holding company, a depository institution that is not a bridge depository institution, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (9), or the earlier dissolution of the bridge depository institution as provided in paragraph (12).

(11) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A bridge depository institution that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank or a Federal savings association, as the case may be, with all the rights, powers, and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge depository institution as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge depository institution to reflect the termination of the status of the bridge depository institution as such, whereupon the depository institution shall remain a national bank or a Federal savings association, as the case may be,, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge depository institution as provided in paragraph (10)(C), the depository institution shall remain a national bank or a Federal savings association, as the case may be,, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge depository institution, or the sale of all or substantially all of the assets of the bridge depository institution, as provided in paragraph (10)(D), at the election of the Corporation the bridge depository institution may retain its status as such for the period provided in paragraph (9).

(E) EFFECT ON HOLDING COMPANIES.—A depository institution holding company acquiring a bridge depository institution under section 13(f), paragraph (8)(B) (or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge depository institution as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 13(f).

(F) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (10), the charter of the resulting institution shall be amended to reflect the termination of bridge depository institution status, if appropriate.

(12) DISSOLUTION OF BRIDGE DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—Notwithstanding any other provision of State or Federal law, if the bridge depository institution's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (10)—

(i) the Board of Directors may, in its discretion, dissolve a bridge depository institution in accordance with this paragraph at any time; and

(ii) the Board of Directors shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge depository institution was chartered, or any extension thereof, as provided in paragraph (9).

(B) PROCEDURES.—The Comptroller of the Currency shall appoint the Corporation as receiver for a bridge depository institution upon certification by the Board of Directors to the Comptroller of the Currency of its determination to dissolve the bridge depository institution. The Corporation as such receiver shall wind up the affairs of the bridge depository institution in conformity with the provisions of law relating to the liquidation of closed national banks or Federal savings associations, as appropriate. With respect to any such bridge depository institution, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties

related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured depository institution and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(13) MULTIPLE BRIDGE DEPOSITORY INSTITUTIONS.—Subject to paragraph (1)(B)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge depository institutions under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single depository institution in default.

(o) SUPERVISORY RECORDS.—In addition to the requirements of section 7(a)(2) to provide to the Corporation copies of reports of examination and reports of condition, whenever the Corporation has been appointed as receiver for an insured depository institution, the appropriate Federal banking agency shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(p) CERTAIN SALES OF ASSETS PROHIBITED.—

(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, DEPOSITORY INSTITUTIONS.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed institution by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations the aggregate amount of which exceed $1,000,000, to such failed institution;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution for which the Corporation has been appointed as conservator or receiver;

(B) any person who participated, as an officer or director of such failed institution or of any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.

(2) CONVICTED DEBTORS.—Except as provided in paragraph (3), any person who—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to

commit such an offense, affecting any insured depository institution for which any conservator or receiver has been appointed; and

(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid, will cause substantial loss to the institution, the Deposit Insurance Fund, or the Corporation,

may not purchase any asset of such institution from the conservator or receiver.

(3) SETTLEMENT OF CLAIMS.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any insured depository institution to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the person; or

(B) obligations owed by the person to any insured depository institution or the Corporation.

(4) DEFINITION OF DEFAULT.—For purposes of this subsection, the term "default" means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(q) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—Consistent with section 1657 of title 18, United States Code, a court of the United States shall expedite the consideration of any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution. As far as practicable the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(r) FOREIGN INVESTIGATIONS.—The Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution—

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 8(v); and

(2) may each maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

(s) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as conservator or receiver for an insured depository institution.

(t) AGENCIES MAY SHARE INFORMATION WITHOUT WAIVING PRIVILEGE.—

(1) IN GENERAL.—A covered agency, in any capacity, shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

(A) any other covered agency, in any capacity; or

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

(2) DEFINITIONS.—For purposes of this subsection:

(A) COVERED AGENCY.—The term "covered agency" means any of the following:

(i) Any Federal banking agency.

(ii) The Farm Credit Administration.

(iii) The Farm Credit System Insurance Corporation.

(iv) The National Credit Union Administration.

(v) The General Accounting Office.

[(vi) The Bureau of Consumer Financial Protection.]

(vi) The Consumer Law Enforcement Agency.

(vii) Federal Housing Finance Agency.

(B) PRIVILEGE.—The term "privilege" includes any work-product, attorney-client, or other privilege recognized under Federal or State law.

(3) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.

(u) PURCHASE RIGHTS OF TENANTS.—

(1) NOTICE.—Except as provided in paragraph (3), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under paragraph (2).

(2) PREFERENCE.—In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

(A) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

(B) such offer is made during the period beginning upon the Corporation making such property available and of a

reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

(C) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(3) EXCEPTIONS.—Paragraphs (1) and (2) shall not apply to—

(A) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

(B) any eligible single family property (as such term is defined in section 40(p)); or

(C) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage.

(v) PREFERENCE FOR SALES FOR HOMELESS FAMILIES.—Subject to subsection (u), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 40(p)) to which the Corporation acquires title, the Corporation shall give preference among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

(w) PREFERENCES FOR SALES OF CERTAIN COMMERCIAL REAL PROPERTIES.—

(1) AUTHORITY.—In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer—

(A) that is made by a public agency or nonprofit organization; and

(B) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (i) homeownership and rental housing opportunities for very-low-, low-, and moderate-income families, or (ii) housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

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

(A) ELIGIBLE COMMERCIAL REAL PROPERTY.—The term "eligible commercial real property" means any property (i) to which the Corporation acquires title, and (ii) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in paragraph (1)(B).

(B) NONPROFIT ORGANIZATION AND PUBLIC AGENCY.—The terms "nonprofit organization" and "public agency" have the same meanings as in section 40(p).

* * * * * * *

SEC. 13. (a) INVESTMENT OF CORPORATION'S FUNDS.—

(1) AUTHORITY.—Funds held in the Deposit Insurance Fund or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(2) LIMITATION.—The Corporation shall not sell or purchase any obligations described in paragraph (1) for its own account, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury. The Secretary may approve a transaction or class of transactions subject to the provisions of this paragraph under such conditions as the Secretary may determine.

(b) The depository accounts of the Corporation shall be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, with a Federal Reserve bank, or with a depository institution designated as a depositary or fiscal agent of the United States: *Provided,* That the Secretary of the Treasury may waive the requirements of this subsection under such conditions as he may determine: *And provided further,* That this subsection shall not apply to the establishment and maintenance in any depository institution for temporary purposes of depository accounts not in excess of $50,000 in any one depository institution, or to the establishment and maintenance in any depository institution of any depository accounts to facilitate the payment of insured desposits, or the making of loans to, or the purchase of assets of, insured depository institutions. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depositary of public moneys, except receipts from customs, under such regulations as may be prescribed by the said Secretary, and may also be employed as a financial agent of the Government. It shall perform all such reasonable duties as depositary of public moneys and financial agent of the Government as may be required of it.

(c)(1) The Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe, to make loans to, to make deposits in, to purchase the assets or securities of, to assume the liabilities of, or to make contributions to, any insured depository institution—

(A) if such action is taken to prevent the default of such insured depository institution;

(B) if, with respect to an insured bank in default, such action is taken to restore such insured bank to normal operation; or

(C) if, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, such action is taken in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(2)(A) In order to facilitate a merger or consolidation of another insured depository institution described in subparagraph (B) with another insured depository institution or the sale of any or all of

the assets of such insured depository institution or the assumption of any or all of such insured depository institution's liabilities by another insured depository institution, or the acquisition of the stock of such insured depository institution, the Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe—

(i) to purchase any such assets or assume any such liabilities;

(ii) to make loans or contributions to, or deposits in, or purchase the securities of, such insured institution or the company which controls or will acquire control of such insured institution;

(iii) to guarantee such insured institution or the company which controls or will acquire control of such insured institution against loss by reason of such insured institution's merging or consolidating with or assuming the liabilities and purchasing the assets of such insured depository institution or by reason of such company acquiring control of such insured depository institution; or

(iv) to take any combination of the actions referred to in subparagraphs (i) through (iii).

(B) For the purpose of subparagraph (A), the insured depository institution must be an insured depository institution—

(i) which is in default;

(ii) which, in the judgment of the Board of Directors, is in danger of default; or

(iii) which, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, is determined by the Corporation, in its sole discretion, to require assistance under subparagraph (A) in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(C) Any action to which the Corporation is or becomes a party by acquiring any asset or exercising any other authority set forth in this section shall be stayed for a period of 60 days at the request of the Corporation.

(3) The Corporation may provide any person acquiring control of, merging with, consolidating with or acquiring the assets of an insured depository institution under subsection (f) or (k) of this section with such financial assistance as it could provide an insured institution under this subsection.

(4) LEAST-COST RESOLUTION REQUIRED.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Corporation may not exercise any authority under this subsection or subsection (d), (f), (h), (i), or (k) with respect to any insured depository institution unless—

(i) the Corporation determines that the exercise of such authority is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in such institution; and

(ii) the total amount of the expenditures by the Corporation and obligations incurred by the Corporation (including any immediate and long-term obligation of

the Corporation and any direct or contingent liability for future payment by the Corporation) in connection with the exercise of any such authority with respect to such institution is the least costly to the Deposit Insurance Fund of all possible methods for meeting the Corporation's obligation under this section.

(B) DETERMINING LEAST COSTLY APPROACH.—In determining how to satisfy the Corporation's obligations to an institution's insured depositors at the least possible cost to the Deposit Insurance Fund, the Corporation shall comply with the following provisions:

(i) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The Corporation shall—

(I) evaluate alternatives on a present-value basis, using a realistic discount rate;

(II) document that evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities; and

(III) retain the documentation for not less than 5 years.

(ii) FOREGONE TAX REVENUES.—Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, shall be treated as if they were revenues foregone by the Deposit Insurance Fund.

(C) TIME OF DETERMINATION.—

(i) GENERAL RULE.—For purposes of this subsection, the determination of the costs of providing any assistance under paragraph (1) or (2) or any other provision of this section with respect to any depository institution shall be made as of the date on which the Corporation makes the determination to provide such assistance to the institution under this section.

(ii) RULE FOR LIQUIDATIONS.—For purposes of this subsection, the determination of the costs of liquidation of any depository institution shall be made as of the earliest of—

(I) the date on which a conservator is appointed for such institution;

(II) the date on which a receiver is appointed for such institution; or

(III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to such institution.

(D) LIQUIDATION COSTS.—In determining the cost of liquidating any depository institution for the purpose of comparing the costs under subparagraph (A) (with respect to such institution), the amount of such cost may not exceed the amount which is equal to the sum of the insured deposits of such institution as of the earliest of the dates described in subparagraph (C), minus the present value of the total net amount the Corporation reasonably expects to

receive from the disposition of the assets of such institution in connection with such liquidation.

(E) DEPOSIT INSURANCE FUND AVAILABLE FOR INTENDED PURPOSE ONLY.—

(i) IN GENERAL.—After December 31, 1994, or at such earlier time as the Corporation determines to be appropriate, the Corporation may not take any action, directly or indirectly, with respect to any insured depository institution that would have the effect of increasing losses to the Deposit Insurance Fund by protecting—

(I) depositors for more than the insured portion of deposits (determined without regard to whether such institution is liquidated); or

(II) creditors other than depositors.

(ii) DEADLINE FOR REGULATIONS.—The Corporation shall prescribe regulations to implement clause (i) not later than January 1, 1994, and the regulations shall take effect not later than January 1, 1995.

(iii) PURCHASE AND ASSUMPTION TRANSACTIONS.—No provision of this subparagraph shall be construed as prohibiting the Corporation from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution for which the Corporation has been appointed conservator or receiver to acquire uninsured deposit liabilities of such institution so long as the insurance fund does not incur any loss with respect to such deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

(F) DISCRETIONARY DETERMINATIONS.—Any determination which the Corporation may make under this paragraph shall be made in the sole discretion of the Corporation.

[(G) SYSTEMIC RISK.—

[(i) EMERGENCY DETERMINATION BY SECRETARY OF THE TREASURY.—Notwithstanding subparagraphs (A) and (E), if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that—

[(I) the Corporation's compliance with subparagraphs (A) and (E) with respect to an insured depository institution for which the Corporation has been appointed receiver would have serious adverse effects on economic conditions or financial stability; and

[(II) any action or assistance under this subparagraph would avoid or mitigate such adverse effects,

the Corporation may take other action or provide assistance under this section for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver as necessary to avoid or mitigate such effects.

[(ii) REPAYMENT OF LOSS.—

[(I) IN GENERAL.—The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) from 1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the Corporation determines to be appropriate.

[(II) TREATMENT OF DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of this clause, sections 7(c)(2) and 18(h) shall apply to depository institution holding companies as if they were insured depository institutions.

[(III) REGULATIONS.—The Corporation shall prescribe such regulations as it deems necessary to implement this clause. In prescribing such regulations, defining terms, and setting the appropriate assessment rate or rates, the Corporation shall establish rates sufficient to cover the losses incurred as a result of the actions of the Corporation under clause (i) and shall consider: the types of entities that benefit from any action taken or assistance provided under this subparagraph; economic conditions, the effects on the industry, and such other factors as the Corporation deems appropriate and relevant to the action taken or the assistance provided. Any funds so collected that exceed actual losses shall be placed in the Deposit Insurance Fund.

[(iii) DOCUMENTATION REQUIRED.—The Secretary of the Treasury shall—

[(I) document any determination under clause (i); and

[(II) retain the documentation for review under clause (iv).

[(iv) GAO REVIEW.—The Comptroller General of the United States shall review and report to the Congress on any determination under clause (i), including—

[(I) the basis for the determination;

[(II) the purpose for which any action was taken pursuant to such clause; and

[(III) the likely effect of the determination and such action on the incentives and conduct of insured depository institutions and uninsured depositors.

[(v) NOTICE.—

[(I) IN GENERAL.—Not later than 3 days after making a determination under clause (i), the Secretary of the Treasury shall provide written notice of any determination under clause (i) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

[(II) DESCRIPTION OF BASIS OF DETERMINATION.—The notice under subclause (I) shall include a description of the basis for any determination under clause (i).]

(H) RULE OF CONSTRUCTION.—No provision of law shall be construed as permitting the Corporation to take any action prohibited by paragraph (4) unless such provision expressly provides, by direct reference to this paragraph, that this paragraph shall not apply with respect to such action.

(5) The Corporation may not use its authority under this subsection to purchase the voting or common stock of an insured depository institution. Nothing in the preceding sentence shall be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect its financial interest.

(6)(A) During any period in which an insured depository institution has received assistance under this subsection and such assistance is still outstanding, such insured depository institution may defer the payment of any State or local tax which is determined on the basis of the deposits held by such insured depository institution or of the interest or dividends paid on such deposits.

(B) When such insured depository institution no longer has any outstanding assistance, such insured depository institution shall pay all taxes which were deferred under subparagraph (A). Such payments shall be made in accordance with a payment plan established by the Corporation, after consultation with the applicable State and local taxing authorities.

(7) The transfer of any assets or liabilities associated with any trust business of an insured depository institution in default under subparagraph (2)(A) shall be effective without any State or Federal approval, assignment, or consent with respect thereto.

(8) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(A) IN GENERAL.—Subject to the least-cost provisions of paragraph (4), the Corporation shall consider providing direct financial assistance under this section for depository institutions before the appointment of a conservator or receiver for such institution only under the following circumstances:

(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

(I) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the depository institution's capital levels are increased; and

(II) it is unlikely that the institution can meet all currently applicable capital standards without assistance.

(ii) OTHER CRITERIA.—The depository institution meets the following criteria:

(I) The appropriate Federal banking agency and the Corporation have determined that, during such period of time preceding the date of such determination as the agency or the Corporation considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders.

(II) The institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.

(B) PUBLIC DISCLOSURE.—Any determination under this paragraph to provide assistance under this section shall be made in writing and published in the Federal Register.

(9) Any assistance provided under this subsection may be in subordination to the rights of depositors and other creditors.

(10) In its annual report to the Congress, the Corporation shall report the total amount it has saved, or estimates it has saved, by exercising the authority provided in this subsection.

(11) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—No provision contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire,

(B) prohibits any person from offering to acquire or acquiring, or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any insured depository institution, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under section 11 or 13, shall be enforceable against or impose any liability on such person, as such enforcement or liability shall be contrary to public policy.

(d) SALE OF ASSETS TO CORPORATION.—

(1) IN GENERAL.–Any conservator, receiver, or liquidator appointed for any insured depository institution in default, including the Corporation acting in such capacity, shall be entitled to offer the assets of such depository institutions for sale to the Corporation or as security for loans from the Corporation.

(2) PROCEEDS.—The proceeds of every sale or loan of assets to the Corporation shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such depository institutions.

(3) RIGHTS AND POWERS OF CORPORATION.—

(A) IN GENERAL.—With respect to any asset acquired or liability assumed pursuant to this section, the Corporation shall have all of the rights, powers, privileges, and authori-

ties of the Corporation as receiver under sections 11 and 15(b).

(B) RULE OF CONSTRUCTION.—Such rights, powers, privileges, and authorities shall be in addition to and not in derogation of any rights, powers, privileges, and authorities otherwise applicable to the Corporation.

(C) FIDUCIARY RESPONSIBILITY.—In exercising any right, power, privilege, or authority described in subparagraph (A), the Corporation shall continue to be subject to the fiduciary duties and obligations of the Corporation as receiver to claimants against the insured depository institution in receivership.

(D) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority described in subparagraph (A) regarding the sale or disposition of assets sold to the Corporation pursuant to paragraph (1), the Corporation shall conduct its operations in a manner which—

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

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

(iii) ensures adequate competition and fair and consistent treatment of offerors;

(iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and

(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(4) LOANS.—The Corporation, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured depository institution which is now or may hereafter be in default.

(e) AGREEMENTS AGAINST INTERESTS OF CORPORATION.—

(1) IN GENERAL.—No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 11, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement—

(A) is in writing,

(B) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,

(C) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(D) has been, continuously, from the time of its execution, an official record of the depository institution.

(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor re-

ferred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.

(f) ASSISTED EMERGENCY INTERSTATE ACQUISITIONS.—(1) This subsection shall apply only to an acquisition of an insured bank or a holding company by an out-of-State bank savings association or out-of-State holding company for which the Corporation provides assistance under subsection (c).

(2)(A) Whenever an insured bank with total assets of $500,000,000 or more (as determined from its most recent report of condition) is in default, the Corporation, as receiver, may, in its discretion and upon such terms and conditions as the Corporation may determine, arrange the sale of assets of the closed bank and the assumption of the liabilities of the closed bank, including the sale of such assets to and the assumption of such liabilities by an insured depository institution located in the State where the closed bank was chartered but established by an out-of-State bank or holding company. Where otherwise lawfully required, a transaction under this subsection must be approved by the primary Federal or State supervisor of all parties thereto.

(B)(i) Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State bank supervisor of the State in which the insured bank in default was chartered.

(ii) The State bank supervisor shall be given a reasonable opportunity, and in no event less than forty-eight hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) If the State supervisor objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.

(3) EMERGENCY INTERSTATE ACQUISITIONS OF INSURED BANKS IN DANGER OF DEFAULT.—

(A) ACQUISITION OF INSURED BANKS IN DANGER OF DEFAULT.—One or more out-of-State banks or out-of-State holding companies may acquire and retain all or part of the shares or assets of, or otherwise acquire and retain—

(i) an insured bank in danger of default which has total assets of $500,000,000 or more; or

(ii) 2 or more affiliated insured banks in danger of default which have aggregate total assets of $500,000,000 or more, if the aggregate total assets of such banks is equal

to or greater than 33 percent of the aggregate total assets of all affiliated insured banks.

(B) ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE.—If one or more out-of-State banks or out-of-State holding companies acquire 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks, any such out-of-State bank or out-of-State holding company may also, as part of the same transaction, acquire and retain the shares or assets of, or otherwise acquire and retain—

(i) the holding company which controls the affiliated insured banks so acquired; or

(ii) any other affiliated insured bank.

(C) REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS.—The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of default which is being acquired has requested in writing that the Corporation assist the acquisition or merger.

(D) CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED.—Notwithstanding paragraph (1), if—

(i) at any time after the date of the enactment of the Financial Institutions Emergency Acquisitions Amendments of 1987, the Corporation provides any assistance under subsection (c) to an insured bank; and

(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible to be acquired by an out-of-State bank or out-of-State holding company under this paragraph,

the insured bank, the holding company, and such other affiliated insured bank shall remain eligible, subject to such terms and conditions as the Corporation (in the Corporation's discretion) may impose, to be acquired by an out-of-State bank or out-of-State holding company under this paragraph as long as any portion of such assistance remains outstanding.

(E) STATE BANK SUPERVISOR APPROVAL.—The Corporation may take no final action in connection with any acquisition under this paragraph unless the State bank supervisor of the State in which the bank in danger of default is located approves the acquisition.

(F) OTHER REQUIREMENTS NOT AFFECTED.—This paragraph does not affect any other requirement under Federal or State law for regulatory approval of an acquisition under this paragraph.

(G) ACQUISITION MAY BE CONDITIONED ON RECEIPT OF CONSIDERATION FOR CORPORATION'S ASSISTANCE.—Any acquisition described in subparagraph (D) may be conditioned on the receipt of such consideration for the Corporation's assistance as the Board of Directors deems appropriate.

(4)(A) ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS.—Section 3(d) of the Bank Holding Company Act of 1956, any provision of State law, and section 408(e)(3) of the National Housing Act shall not apply to prohibit any acquisition under paragraph (2) or

(3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized.

(B) Any subsidiary created by operation of this subsection may retain and operate any existing branch or branches of the institution merged with or acquired under paragraph (2) or (3), but otherwise shall be subject to the conditions upon which a national bank may establish and operate branches in the State in which such insured institution is located.

(C) No insured institution acquired under this subsection shall after it is acquired move its principal office or any branch office which it would be prohibited from moving if the institution were a national bank.

(D) SUBSEQUENT NONEMERGENCY INTERSTATE ACQUISITIONS SUBJECT TO STATE LAW.—

(i) IN GENERAL.—Any out-of-State bank holding company which acquires control of an insured bank in any State under paragraph (2) or (3) may acquire any other insured bank and establish branches in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank or establish branches.

(ii) DELAYED DATE OF APPLICABILITY.—Clause (i) shall not apply with respect to any out-of-State bank holding company referred to in such clause before the earlier of—

(I) the end of the 2-year period beginning on the date the acquisition referred to in such clause with respect to such company is consummated; or

(II) the end of any period established under State law during which such out-of-State bank holding company may not be treated as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State for purposes of acquiring other insured banks or establishing bank branches.

(iii) DETERMINATION OF PRINCIPALLY CONDUCTED.—For purposes of this subparagraph, the State in which the operations of a holding company's insured bank subsidiaries are principally conducted is the State determined under section 3(d) of the Bank Holding Company Act of 1956 with respect to such holding company.

(E) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE.—Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any State to divest any other insured bank or be prevented from acquiring any other bank or holding company.

(5) In determining whether to arrange a sale of assets and assumption of liabilities or an acquisition or a merger under the authority of paragraph (2) or (3), the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the bank in default or the bank in danger of default.

(6)(A) If, after receiving offers, the offer presenting the lowest expense to the Corporation, that is in a form and with conditions acceptable to the Corporation (hereinafter referred to as the "lowest

acceptable offer"), is from an offeror that is not an existing in-State bank of the same type as the bank that is in default or is in danger of default (or, where the bank is an insured bank other than a mutual savings bank, the lowest acceptable offer is not from an in-State holding company), the Corporation shall permit the offeror which made the initial lowest acceptable offer and each offeror who made an offer the estimated cost of which to the Corporation was within 15 per centum or $15,000,000, whichever is less, of the initial lowest acceptable offer to submit a new offer.

(B) In considering authorizations under this subsection, the Corporation shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository institutions. The Corporation shall authorize transactions under this subsection considering the following priorities:

(i) First, between depository institutions of the same type within the same State.

(ii) Second, between depository institutions of the same type—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(iii) Third, between depository institutions of the same type in different States other than the States described in clause (ii).

(iv) Fourth, between depository institutions of different types in the same State.

(v) Fifth, between depository institutions of different types—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(vi) Sixth, between depository institutions of different types in different States other than the States described in clause (v).

(C) MINORITY BANK PRIORITY.—In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled banks before proceeding with the bidding priorities set forth in subparagraph (B).

(D) In determining the cost of offers and reoffers, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers and reoffers.

(7) No sale may be made under the provisions of paragraph (2) or (3)—

(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Corporation finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in

meeting the convenience and needs of the community to be served; or

(C) if in the opinion of the Corporation the acquisition threatens the safety and soundness of the acquirer or does not result in the future viability of the resulting depository institution.

(8) As used in this subsection—

(A) the term "in-State depository institution or in-State holding company" means an existing insured depository institution currently operating in the State in which the bank in default or the bank in danger of default is chartered or a company that is operating an insured depository institution subsidiary in the State in which the bank in default or the bank in danger of default is chartered;

(B) the term "acquire" means to acquire, directly or indirectly, ownership or control through—

(i) an acquisition of shares;

(ii) an acquisition of assets or assumption of liabilities;

(iii) a merger or consolidation; or

(iv) any similar transaction;

(C) the term "affiliated insured bank" means—

(i) when used in connection with a reference to a holding company, an insured bank which is a subsidiary of such holding company; and

(ii) when used in connection with a reference to 2 or more insured banks, insured banks which are subsidiaries of the same holding company; and

(D) the term "subsidiary" has the meaning given to such term in section 2(d) of the Bank Holding Company Act of 1956.

(9) NO ASSISTANCE AUTHORIZED FOR CERTAIN SUBSIDIARIES OF HOLDING COMPANIES.—

(A) IN GENERAL.—The Corporation shall not provide any assistance to a subsidiary, other than a subsidiary that is an insured depository institution, of a holding company in connection with any acquisition under this subsection.

(B) INTERMEDIATE HOLDING COMPANY PERMITTED.—This paragraph does not prohibit an intermediate holding company or an affiliate of an insured depository institution from being a conduit for assistance ultimately intended for an insured bank.

(10) ANNUAL REPORT.—

(A) REQUIRED.—In its annual report to Congress the Corporation shall include a report on the acquisitions under this subsection during the preceding year.

(B) CONTENTS.—The report required under subparagraph (A) shall contain the following information:

(i) The number of acquisitions under this subsection.

(ii) A brief description of each such acquisition and the circumstances under which such acquisition occurred.

(11) DETERMINATION OF TOTAL ASSETS.—For purposes of this subsection, the total assets of any insured bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.

(12) ACQUISITION OF MINORITY BANK BY MINORITY BANK HOLDING COMPANY WITHOUT REGARD TO ASSET SIZE.—

(A) IN GENERAL.—For the purpose of ensuring continued minority control of a minority-controlled bank, paragraphs (2) and (3) shall apply with respect to the acquisition of a minority-controlled bank by an out-of-State minority-controlled depository institution or depository institution holding company without regard to the fact that the total assets of such minority-controlled bank are less than $500,000,000.

(B) DEFINITIONS.—For purposes of this paragraph:

(i) MINORITY BANK.—The term "minority bank" means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act—

(I) more than 50 percent of the ownership or control of which is held by one or more minority individuals; and

(II) more than 50 percent of the net profit or loss of which accrues to minority individuals.

(ii) MINORITY.—The term "minority" means any Black American, Native American, Hispanic American, or Asian American.

(g) Prior to July 1, 1951, the Corporation shall pay out of its capital account to the Secretary of the Treasury an amount equal to 2 per centum simple interest per annum on amounts advanced to the Corporation on stock subscriptions by the Secretary of the Treasury and the Federal Reserve banks, from the time of such advances until the amounts thereof were repaid. The amount payable hereunder shall be paid in two equal installments, the first installment to be paid prior to December 31, 1950.

(h) The powers conferred on the Board of Directors and the Corporation by this section to take action to reopen an insured depository institution in default or to avert the default of an insured depository institution may be used with respect to an insured branch of a foreign bank if, in the judgment of the Board of Directors, the public interest in avoiding the closing of such branch substantially outweighs any additional risk of loss to the Deposit Insurance Fund which the exercise of such powers would entail.

(j) LOAN LOSS AMORTIZATION FOR CERTAIN BANKS.—

(1) ELIGIBILITY.—The appropriate Federal banking agency shall permit an agricultural bank to take the actions referred to in paragraph (2) if it finds that—

(A) there is no evidence that fraud or criminal abuse on the part of the bank led to the losses referred to in paragraph (2); and

(B) the agricultural bank has a plan to restore its capital, not later than the close of the amortization period established under paragraph (2), to a level prescribed by the appropriate Federal banking agency.

(2) SEVEN-YEAR LOSS AMORTIZATION.—(A) Any loss on any qualified agricultural loan that an agricultural bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992, may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(B) An agricultural bank may reappraise any real estate or other property, real or personal, that it acquired coincident to the making of a qualified agricultural loan and that it owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992. Any loss that such bank would otherwise be required to show on its annual financial statements as the result of any such reappraisal may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(3) REGULATIONS.—Not later than 90 days after the date of enactment of this subsection, the appropriate Federal banking agency shall issue regulations implementing this subsection with respect to banks that it supervises, including regulations implementing the capital restoration requirement of paragraph (1)(B).

(4) DEFINITIONS.—As used in this subsection—

(A) the term "agricultural bank" means a bank—

(i) the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) which is located in an area the economy of which is dependent on agriculture;

(iii) which has assets of $100,000,000 or less; and

(iv) which has—

(I) at least 25 percent of its total loans in qualified agricultural loans; or

(II) fewer than 25 percent of its total loans in qualified agricultural loans but which the appropriate Federal banking agency or State bank commissioner recommends to the Corporation for eligibility under this section, or which the Corporation, on its motion, deems eligible; and

(B) the term "qualified agricultural loan" means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

(5) MAINTENANCE OF PORTFOLIO.—As a condition of eligibility under this subsection, the agricultural bank must agree to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986.

(k) EMERGENCY ACQUISITIONS.—

(1) IN GENERAL.—

(A) ACQUISITIONS AUTHORIZED.—

(i) TRANSACTIONS DESCRIBED.—Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize—

(I) a savings association that is eligible for assistance pursuant to subsection (c) to merge or

consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,

(II) any other savings association to acquire control of such savings association, or

(III) any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

(ii) TERMS OF TRANSACTIONS.—Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

(iii) APPROVAL BY APPROPRIATE AGENCY.—Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

(iv) ACQUISITIONS BY SAVINGS ASSOCIATIONS.—Any Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Comptroller of the Currency, hold that savings association as a subsidiary notwithstanding the percentage limitations of section 5(c)(4)(B) of the Home Owners' Loan Act.S

(v) DUAL SERVICE.—Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act may, with the approval of the Corporation, continue for up to 10 years.

(vi) CONTINUED APPLICABILITY OF CERTAIN STATE RESTRICTIONS.—Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of another entity.

(B) CONSULTATION WITH STATE OFFICIAL.—

(i) CONSULTATION REQUIRED.—Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

(ii) PERIOD FOR STATE RESPONSE.—The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) APPROVAL OVER OBJECTION OF STATE OFFICIAL.—If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide

to the official, as soon as practicable, a written certification of its determination.

(2) SOLICITATION OF OFFERS.—

(A) IN GENERAL.—In considering authorizations under this subsection, the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

(B) MINORITY-CONTROLLED INSTITUTIONS.—In the case of a minority-controlled depository institution, the Corporation shall seek an offer from other minority-controlled depository institutions before seeking an offer from other persons or entities.

(3) DETERMINATION OF COSTS.—In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

(4) BRANCHING PROVISIONS.—

(A) IN GENERAL.—If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

(B) RESTRICTIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if—

(I) a savings association described in such subparagraph does not have its home office in the State of the bank holding company bank subsidiary, and

(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the savings association is located.

(ii) TRANSITION PERIOD.—The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).

(5) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(A) ASSISTANCE PROPOSALS.—The Corporation shall consider proposals by savings associations for assistance pursuant to subsection (c) before grounds exist for appoint-

ment of a conservator or receiver for such member under the following circumstances:

(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the future unless the member's tangible capital is increased;

(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

(ii) OTHER CRITERIA.—The member meets the following criteria:

(I) Before enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the member was solvent under applicable regulatory accounting principles but had negative tangible capital.

(II) The member's negative tangible capital position is substantially attributable to its participation in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons.

(III) The member is a qualified thrift lender (as defined in section 10(m) of the Home Owners' Loan Act) or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws, rules, and supervisory directives and orders.

(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member's safety and soundness or contributed to its impaired capital position.

(VI) The member's offices are located in an economically depressed region.

(B) CORPORATION CONSIDERATION OF ASSISTANCE PROPOSAL.—If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

(C) ECONOMICALLY DEPRESSED REGION DEFINED.—For purposes of this paragraph, the term "economically depressed region" means any geographical region which the

Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.

* * * * * * *

SEC. 18. (a) REPRESENTATIONS OF DEPOSIT INSURANCE.—

(1) INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—Each insured depository institution shall display at each place of business maintained by that institution a sign or signs relating to the insurance of the deposits of the institution, in accordance with regulations to be prescribed by the Corporation.

(B) STATEMENT TO BE INCLUDED.—Each sign required under subparagraph (A) shall include a statement that insured deposits are backed by the full faith and credit of the United States Government.

(2) REGULATIONS.—The Corporation shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) PENALTIES.—For each day that an insured depository institution continues to violate paragraph (1) or any regulation issued under paragraph (2), it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.

(4) FALSE ADVERTISING, MISUSE OF FDIC NAMES, AND MISREPRESENTATION TO INDICATE INSURED STATUS.—

(A) PROHIBITION ON FALSE ADVERTISING AND MISUSE OF FDIC NAMES.—No person may represent or imply that any deposit liability, obligation, certificate, or share is insured or guaranteed by the Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation—

(i) by using the terms "Federal Deposit", "Federal Deposit Insurance", "Federal Deposit Insurance Corporation", any combination of such terms, or the abbreviation "FDIC" as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

(ii) by using such terms or any other terms, sign, or symbol as part of an advertisement, solicitation, or other document.

(B) PROHIBITION ON MISREPRESENTATIONS OF INSURED STATUS.—No person may knowingly misrepresent—

(i) that any deposit liability, obligation, certificate, or share is insured, under this Act, if such deposit liability, obligation, certificate, or share is not so insured; or

(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured under this Act, if such deposit liability, obligation, certificate, or share is not so insured, to the extent or in the manner represented.

(C) AUTHORITY OF THE APPROPRIATE FEDERAL BANKING AGENCY.—The appropriate Federal banking agency shall have enforcement authority in the case of a violation of this paragraph by any person for which the agency is the appropriate Federal banking agency, or any institution-affiliated party thereof.

(D) CORPORATION AUTHORITY IF THE APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—

(i) RECOMMENDATION.—The Corporation may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 8 for purposes of enforcement of this paragraph with respect to any person for which the agency is the appropriate Federal banking agency or any institution-affiliated party thereof.

(ii) AGENCY RESPONSE.—If the appropriate Federal banking agency does not, within 30 days of the date of receipt of a recommendation under clause (i), take the enforcement action with respect to this paragraph recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the situation presented, the Corporation may take the recommended enforcement action against such person or institution-affiliated party.

(E) ADDITIONAL AUTHORITY.—In addition to its authority under subparagraphs (C) and (D), for purposes of this paragraph, the Corporation shall have, in the same manner and to the same extent as with respect to a State nonmember insured bank—

(i) jurisdiction over—

(I) any person other than a person for which another agency is the appropriate Federal banking agency or any institution-affiliated party thereof; and

(II) any person that aids or abets a violation of this paragraph by a person described in subclause (I); and

(ii) for purposes of enforcing the requirements of this paragraph, the authority of the Corporation under—

(I) section 10(c) to conduct investigations; and

(II) subsections (b), (c), (d) and (i) of section 8 to conduct enforcement actions.

(F) OTHER ACTIONS PRESERVED.—No provision of this paragraph shall be construed as barring any action otherwise available, under the laws of the United States or any State, to any Federal or State agency or individual.

(b) No insured depository institution shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the payment of any assessment due to the Corporation; and any director or officer of any insured depository institution who participates in the declaration or payment of any such dividend or interest or in any such distribution shall, upon conviction, be fined not more

than $1,000 or imprisoned not more than one year, or both: *Provided,* That, if such default is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment, this subsection shall not apply if the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(c)(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured depository institution shall—

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (including liabilities which would be "deposits" except for the proviso in section 3(l)(5) of this Act) made in, or similar liabilities of, any noninsured bank or institution; or

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured depository institution.

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a Federal savings association;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank; and

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank or a State savings association.

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a "merger transaction") shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published—

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) REPORTS ON COMPETITIVE FACTORS.—

(A) REQUEST FOR REPORT.—In the interests of uniform standards and subject to subparagraph (B), before acting on any application for approval of a merger transaction, the responsible agency shall—

(i) request a report on the competitive factors involved from the Attorney General of the United States; and

(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

(B) FURNISHING OF REPORT.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

(i) not later than 30 calendar days after the date on which the Attorney General received the request; or

(ii) not later than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

(C) EXCEPTIONS.—A responsible agency may not be required to request a report under subparagraph (A) if—

(i) the responsible agency finds that it must act immediately in order to prevent the probable failure of 1 of the insured depository institutions involved in the merger transaction; or

(ii) the merger transaction involves solely an insured depository institution and 1 or more of the affiliates of such depository institution.

(5) The responsible agency shall not approve—

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of its affiliates, and the report on the competitive factors has been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General under paragraph (4)(B)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of

approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this subsection shall exempt any bank or savings association resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

(8) For the purposes of this subsection, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.

(9) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with—

(A) the name and total resources of each bank or savings association involved;

(B) whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and

(C) a statement by the responsible agency of the basis for its approval.

(10) Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organiza-

tion, including approval of any application pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety, soundness, and stability of an insured depository institution. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(11) MONEY LAUNDERING.—In every case, the responsible agency, shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches.

(12) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which the Corporation provides assistance under section 13.

(C) In this paragraph—

(i) the term "interstate merger transaction" means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

(ii) the term "home State" means—

(I) with respect to a national bank, the State in which the main office of the bank is located;

(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.

(d)(1) No State nonmember insured bank shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 6 of this Act.

(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

(3) EXCLUSIVE AUTHORITY FOR ADDITIONAL BRANCHES.—

(A) IN GENERAL.—Effective June 1, 1997, a State nonmember bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in section 44(f)(4)) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of a branch in such State by a State nonmember bank is authorized under this subsection or section 13(f), 13(k), or 44.

(B) RETENTION OF BRANCHES.—In the case of a State nonmember bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in section 44(f)(4)) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in subparagraph (A), to acquire, establish, or commence to operate a branch in such State if—

(i) the bank had no branches in such State; or

(ii) the branch resulted from—

(I) an interstate merger transaction approved pursuant to section 44; or

(II) a transaction after May 31, 1997, pursuant to which the bank received assistance from the Corporation under section 13(c).

(4) STATE "OPT-IN" ELECTION TO PERMIT INTERSTATE BRANCHING THROUGH DE NOVO BRANCHES.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation may approve an application by an insured State nonmember bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if—

(i) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State; and

(ii) the conditions established in, or made applicable to this paragraph by, subparagraph (B) are met.

(B) CONDITIONS ON ESTABLISHMENT AND OPERATION OF INTERSTATE BRANCH.—

(i) ESTABLISHMENT.—An application by an insured State nonmember bank to establish and operate a de novo branch in a host State shall be subject to the same requirements and conditions to which an application for a merger transaction is subject under paragraphs (1), (3), and (4) of section 44(b).

(ii) OPERATION.—Subsections (c) and (d)(2) of section 44 shall apply with respect to each branch of an insured State nonmember bank which is established and operated pursuant to an application approved under

this paragraph in the same manner and to the same extent such provisions of such section apply to a branch of a State bank which resulted from a merger transaction under such section 44.

(C) DE NOVO BRANCH DEFINED.—For purposes of this paragraph, the term "de novo branch" means a branch of a State bank which—

(i) is originally established by the State bank as a branch; and

(ii) does not become a branch of such bank as a result of—

(I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(II) the conversion, merger, or consolidation of any such institution or branch.

(D) HOME STATE DEFINED.—The term "home State" means the State by which a State bank is chartered.

(E) HOST STATE DEFINED.—The term "host State" means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(e) The Corporation may require any insured depository institution to provide protection and indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured depository institution refuses to comply with any such requirement the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.

(f) Whenever any insured depository institution (except a national bank), after written notice of the recommendations of the Corporation based on a report of examination of such insured depository institution by an examiner of the Corporation, shall fail to comply with such recommendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is hereby authorized, to publish only such part of such report of examination as relates to any recommendation not complied with: *Provided,* That notice of intention to make such publication shall be given to the insured depository institution at least ninety days before such publication is made.

(g)

(h) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—

(1) IN GENERAL.—Subject to paragraph (3), any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(2) EXCEPTION IN CASE OF DISPUTE.—Paragraph (1) shall not apply if—

(A) the failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(3) SPECIAL RULE FOR SMALL ASSESSMENT AMOUNTS.—If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (1) shall not exceed $100 for each day that such violation continues.

(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (1) upon a finding that good cause prevented the timely payment of an assessment.

(i)(1) No insured State nonmember bank shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of—

(A) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank;

(B) the Corporation if the resulting bank is to be a State nonmember insured bank; and

(C) the Corporation if the resulting institution is to be an insured State savings association.

(3) Without the prior written consent of the Corporation, no insured depository institution shall convert into a noninsured bank or institution.

(4) In granting or withholding consent under this subsection, the responsible agency shall consider—

(A) the financial history and condition of the bank,

(B) the adequacy of its capital structure,

(C) its future earnings prospects,

(D) the general character and fitness of its management,

(E) the convenience and needs of the community to be served, and

(F) whether or not its corporate powers are consistent with the purposes of this Act.

(j) RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES AND INSIDERS.—

(1) TRANSACTIONS WITH AFFILIATES.—

(A) IN GENERAL.—Sections 23A and 23B of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(B) AFFILIATE DEFINED.—For the purpose of subparagraph (A), any company that would be an affiliate (as defined in sections 23A and 23B) of a nonmember insured bank if the nonmember insured bank were a member bank shall be deemed to be an affiliate of that nonmember insured bank.

(2) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Subsections (g) and (h) of section

22 of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(3) AVOIDING EXTRATERRITORIAL APPLICATION TO FOREIGN BANKS.—

(A) TRANSACTIONS WITH AFFILIATES.—Paragraph (1) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch.

(B) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch, but shall apply with respect to the insured branch.

(C) FOREIGN BANK DEFINED.—For purposes of this paragraph, the term "foreign bank" has the same meaning as in section 1(b)(7) of the International Banking Act of 1978.

(k) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO INSTITUTION-AFFILIATED PARTIES.—

(1) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENTS.—The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) FACTORS TO BE TAKEN INTO ACCOUNT.—The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or covered company that has had a material affect on the financial condition of the institution.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—

(i) the insolvency of the depository institution or covered company;

(ii) the appointment of a conservator or receiver for the depository institution; or

(iii) the troubled condition of the depository institution (as defined in the regulations prescribed pursuant to section 32(f)).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States Code; or

(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the insured depository institution or covered company, and the degree to which—

(i) the payment reasonably reflects compensation earned over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

(3) CERTAIN PAYMENTS PROHIBITED.—No insured depository institution or covered company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

(A) in contemplation of the insolvency of such institution or covered company or after the commission of an act of insolvency; and

(B) with a view to, or has the result of—

(i) preventing the proper application of the assets of the institution to creditors; or

(ii) preferring one creditor over another.

(4) GOLDEN PARACHUTE PAYMENT DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "golden parachute payment" means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or covered company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or covered company that—

(i) is contingent on the termination of such party's affiliation with the institution or covered company; and

(ii) is received on or after the date on which—

(I) the insured depository institution or covered company, or any insured depository institution subsidiary of such covered company, is insolvent;

(II) any conservator or receiver is appointed for such institution;

(III) the institution's appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 32(f));

(IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the Uniform Financial Institutions Rating System; or

(V) the insured depository institution is subject to a proceeding initiated by the Corporation to terminate or suspend deposit insurance for such institution.

(B) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT.—Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be

treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) CERTAIN PAYMENTS NOT INCLUDED.—The term "golden parachute payment" shall not include—

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986 or other nondiscriminatory benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) OTHER DEFINITIONS.—For purposes of this subsection—

(A) INDEMNIFICATION PAYMENT.—Subject to paragraph (6), the term "indemnification payment" means any payment (or any agreement to make any payment) by any insured depository institution or covered company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person—

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or

(iii) is required to take any affirmative action described in section 8(b)(6) with respect to such institution.

(B) LIABILITY OR LEGAL EXPENSE.—The term "liability or legal expense" means—

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) PAYMENT.—The term "payment" includes—

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

(I) the determination, after such date, of the liability for the payment of such amount; or

(II) the liquidation, after such date, of the amount of such payment.

(D) COVERED COMPANY.—The term "covered company" means any depository institution holding company (including any company required to file a report under section 4(f)(6) of the Bank Holding Company Act of 1956), or any other company that controls an insured depository institution.

(6) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT.—No provision of this subsection shall be construed as prohibiting any insured depository institution or covered company, from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the institution or covered company which is described in paragraph (5)(A).

(l) When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling.

(m) ACTIVITIES OF SAVINGS ASSOCIATIONS AND THEIR SUBSIDIARIES.—

(1) PROCEDURES.—When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association—

(A) shall notify the Corporation or the Comptroller of the Currency, as appropriate, not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

(B) shall conduct the activities of the subsidiary in accordance with regulations of the Comptroller of the Currency and orders of the Corporation and the Comptroller of the Currency.

(2) ENFORCEMENT POWERS.—With respect to any subsidiary of an insured savings association:

(A) the Corporation and the Comptroller of the Currency, as appropriate, shall each have, with respect to such

subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 8; and

(B) the Corporation or the Comptroller of the Currency, as appropriate, may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the subsidiary—

(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

(ii) is inconsistent with sound banking principles or with the purposes of this Act.

Upon making any such determination, the Corporation or the Office of the Comptroller of the Currency, as appropriate, shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.

(3) ACTIVITIES INCOMPATIBLE WITH DEPOSIT INSURANCE.—

(A) IN GENERAL.—The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Deposit Insurance Fund. Prior to adopting any such regulation, the Corporation shall, in the case of a Federal savings association, consult with the Comptroller of the Currency and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5, United States Code. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no savings association may engage in the activity directly.

(B) AUTHORITY OF COMPTROLLER OF THE CURRENCY.—This section does not limit the authority of the Comptroller of the Currency to issue regulations to promote safety and soundness, or to enforce compliance as to Federal savings associations with other applicable laws.

(C) ADDITIONAL AUTHORITY OF FDIC TO PREVENT SERIOUS RISKS TO INSURANCE FUND.—Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Deposit Insurance Fund.

(4) "SUBSIDIARY" DEFINED.—As used in this subsection, the term "subsidiary" does not include an insured depository institution.

(5) APPLICABILITY TO CERTAIN SAVINGS BANKS.—Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—

(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or

(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

(n) CALCULATION OF CAPITAL.—No appropriate Federal banking agency shall allow any insured depository institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except to the extent permitted under section 5(t) of the Home Owners' Loan Act.

(o) REAL ESTATE LENDING.—

(1) UNIFORM REGULATIONS.—Not more than 9 months after the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—

(A) secured by liens on interests in real estate; or

(B) made for the purpose of financing the construction of a building or other improvements to real estate.

(2) STANDARDS.—

(A) CRITERIA.—In prescribing standards under paragraph (1), the agencies shall consider—

(i) the risk posed to the Deposit Insurance Fund by such extensions of credit;

(ii) the need for safe and sound operation of insured depository institutions; and

(iii) the availability of credit.

(B) VARIATIONS PERMITTED.—In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—

(i) as may be required by Federal statute;

(ii) as may be warranted, based on the risk to the Deposit Insurance Fund; or

(iii) as may be warranted, based on the safety and soundness of the institutions.

(3) LOAN EVALUATION STANDARD.—No appropriate Federal banking agency shall adversely evaluate an investment or a loan made by an insured depository institution, or consider such a loan to be nonperforming, solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless such investment or loan may affect the institution's safety and soundness.

(4) EFFECTIVE DATE.—The regulations adopted under paragraph (1) shall become effective not later than 15 months after the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

(p) PERIODIC REVIEW OF CAPITAL STANDARDS.—Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to determine whether those standards require sufficient capital to facilitate prompt corrective action

to prevent or minimize loss to the Deposit Insurance Fund, consistent with section 38.

(q) SOVEREIGN RISK.—Section 25C of the Federal Reserve Act shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(r) SUBSIDIARY DEPOSITORY INSTITUTIONS AS AGENTS FOR CERTAIN AFFILIATES.—

(1) IN GENERAL.—Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

(2) BANK ACTING AS AGENT IS NOT A BRANCH.—Notwithstanding any other provision of law, a bank acting as an agent in accordance with paragraph (1) for a depository institution affiliate shall not be considered to be a branch of the affiliate.

(3) PROHIBITIONS ON ACTIVITIES.—A depository institution may not—

(A) conduct any activity as an agent under paragraph (1) or (6) which such institution is prohibited from conducting as a principal under any applicable Federal or State law; or

(B) as a principal, have an agent conduct any activity under paragraph (1) or (6) which the institution is prohibited from conducting under any applicable Federal or State law.

(4) EXISTING AUTHORITY NOT AFFECTED.—No provision of this subsection shall be construed as affecting—

(A) the authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(B) whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other institution.

(5) AGENCY RELATIONSHIP REQUIRED TO BE CONSISTENT WITH SAFE AND SOUND BANKING PRACTICES.—An agency relationship between depository institutions under paragraph (1) or (6) shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate Federal banking agency.

(6) AFFILIATED INSURED SAVINGS ASSOCIATIONS.—An insured savings association which was an affiliate of a bank on July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as agent for such bank under this subsection to the extent such activities are conducted only in—

(A) any State in which—

(i) the bank is not prohibited from operating a branch under any provision of Federal or State law; and

(ii) the savings association maintained an office or branch and conducted business as of July 1, 1994; or

(B) any State in which—

(i) the bank is not expressly prohibited from operating a branch under a State law described in section 44(a)(2); and

(ii) the savings association maintained a main office and conducted business as of July 1, 1994.

(s) PROHIBITION ON CERTAIN AFFILIATIONS.—

(1) IN GENERAL.—No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.

(2) EXCEPTION FOR MEMBERS OF A FEDERAL HOME LOAN BANK.—Paragraph (1) shall not apply with respect to the membership of a depository institution in a Federal home loan bank.

(3) ROUTINE BUSINESS FINANCING.—Paragraph (1) shall not apply with respect to advances or other forms of financial assistance provided by a Government-sponsored enterprise pursuant to the statutes governing such enterprise.

(4) STUDENT LOANS.—

(A) IN GENERAL.—This subsection shall not apply to any arrangement between the Holding Company (or any subsidiary of the Holding Company other than the Student Loan Marketing Association) and a depository institution, if the Secretary approves the affiliation and determines that—

(i) the reorganization of such Association in accordance with section 440 of the Higher Education Act of 1965, as amended, will not be adversely affected by the arrangement;

(ii) the dissolution of the Association pursuant to such reorganization will occur before the end of the 2-year period beginning on the date on which such arrangement is consummated or on such earlier date as the Secretary deems appropriate: *Provided,* That the Secretary may extend this period for not more than 1 year at a time if the Secretary determines that such extension is in the public interest and is appropriate to achieve an orderly reorganization of the Association or to prevent market disruptions in connection with such reorganization, but no such extensions shall in the aggregate exceed 2 years;

(iii) the Association will not purchase or extend credit to, or guarantee or provide credit enhancement to, any obligation of the depository institution;

(iv) the operations of the Association will be separate from the operations of the depository institution; and

(v) until the "dissolution date" (as that term is defined in section 440 of the Higher Education Act of 1965, as amended) has occurred, such depository institution will not use the trade name or service mark "Sallie Mae" in connection with any product or service it offers if the appropriate Federal banking agency for such depository institution determines that—

(I) the depository institution is the only institution offering such product or service using the "Sallie Mae" name; and

(II) such use would result in the depository institution having an unfair competitive advantage over other depository institutions.

(B) TERMS AND CONDITIONS.—In approving any arrangement referred to in subparagraph (A) the Secretary may impose any terms and conditions on such an arrangement that the Secretary considers appropriate, including—

(i) imposing additional restrictions on the issuance of debt obligations by the Association; or

(ii) restricting the use of proceeds from the issuance of such debt.

(C) ADDITIONAL LIMITATIONS.—In the event that the Holding Company (or any subsidiary of the Holding Company) enters into such an arrangement, the value of the Association's "investment portfolio" shall not at any time exceed the lesser of—

(i) the value of such portfolio on the date of the enactment of this subsection; or

(ii) the value of such portfolio on the date such an arrangement is consummated. The term "investment portfolio" shall mean all investments shown on the consolidated balance sheet of the Association other than—

(I) any instrument or assets described in section 439(d) of the Higher Education Act of 1965, as such section existed on the day before the date of the repeal of such section;

(II) any direct noncallable obligations of the United States or any agency thereof for which the full faith and credit of the United States is pledged; or

(III) cash or cash equivalents.

(D) ENFORCEMENT.—The terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 440 of the Higher Education Act of 1965.

(E) DEFINITIONS.—For purposes of this paragraph, the following definition shall apply—

(i) ASSOCIATION; HOLDING COMPANY.—Notwithstanding any provision in section 3, the terms "Association" and "Holding Company" have the same meanings as in section 440(i) of the Higher Education Act of 1965.

(ii) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(5) GOVERNMENT-SPONSORED ENTERPRISE DEFINED.—For purposes of this subsection, the term "Government-sponsored enterprise" has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(t) RECORDKEEPING REQUIREMENTS.—

(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions.

(2) AVAILABILITY TO COMMISSION; CONFIDENTIALITY.—Each appropriate Federal banking agency shall make any information required under paragraph (1) available to the Commission upon request. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any such information. Nothing in this paragraph shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3) DEFINITION.—As used in this subsection the term "Commission" means the Securities and Exchange Commission.

(u) LIMITATION ON CLAIMS.—

(1) IN GENERAL.—No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer—

(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital; and

(B) for that portion of the transfer that is made by an entity covered by section 5(g) of the Bank Holding Company Act of 1956 or section 45 of this Act, the Federal banking agency has followed the procedure set forth in such section.

(2) DEFINITION OF CLAIM.—For purposes of paragraph (1), the term "claim"—

(A) means a cause of action based on Federal or State law that—

(i) provides for the avoidance of preferential or fraudulent transfers or conveyances; or

(ii) provides similar remedies for preferential or fraudulent transfers or conveyances; and

(B) does not include any claim based on actual intent to hinder, delay, or defraud pursuant to such a fraudulent transfer or conveyance law.

(v) LOANS BY INSURED INSTITUTIONS ON THEIR OWN STOCK.—

(1) GENERAL PROHIBITION.—No insured depository institution may make any loan or discount on the security of the shares of its own capital stock.

(2) EXCLUSION.—For purposes of this subsection, an insured depository institution shall not be deemed to be making a loan or discount on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

(w) WRITTEN EMPLOYMENT REFERENCES MAY CONTAIN SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.—

(1) AUTHORITY TO DISCLOSE INFORMATION.—Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

(2) INFORMATION NOT REQUIRED.—Nothing in paragraph (1) shall be construed, by itself, to create any affirmative duty to include any information described in paragraph (1) in any employment reference referred to in paragraph (1).

(3) MALICIOUS INTENT.—Notwithstanding any other provision of this subsection, voluntary disclosure made by an insured depository institution, and any director, officer, employee, or agent of such institution, under this subsection concerning potentially unlawful activity that is made with malicious intent, shall not be shielded from liability from the person identified in the disclosure.

(4) DEFINITION.—For purposes of this subsection, the term "insured depository institution" includes any uninsured branch or agency of a foreign bank.

(x) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

(1) IN GENERAL.—The submission by any person of any information to the [Bureau of Consumer Financial Protection] *Consumer Law Enforcement Agency*, any Federal banking agency, State bank supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such [Bureau] *Agency*, agency, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such [Bureau] *Agency*, agency, supervisor, or authority.

(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to the [Bureau of Consumer Financial Protection] *Consumer Law Enforcement Agency*, any Federal banking agency, State bank supervisor, or foreign banking authority, but for this subsection.

(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

(1) IN GENERAL.—An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve Act), unless—

(A) the transaction is on market terms; and

(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

(2) RULEMAKING.—The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.

(y) STATE LENDING LIMIT TREATMENT OF DERIVATIVES TRANSACTIONS.—An insured State bank may engage in a derivative transaction, as defined in section 5200(b)(3) of the Revised Statutes of the United States (12 U.S.C. 84(b)(3)), only if the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions.

SEC. 19. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

(a) PROHIBITION.—

(1) IN GENERAL.—Except with the prior written consent of the Corporation—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured depository institution;

(ii) own or control, directly or indirectly, any insured depository institution; or

(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and

(B) any insured depository institution may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES.—

(A) IN GENERAL.—If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, 1517, 1956, or 1957 of title 18, United States Code; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

the Corporation may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) EXCEPTION BY ORDER OF SENTENCING COURT.—

(i) IN GENERAL.—On motion of the Corporation, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) PERIOD FOR FILING.—A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(b) PENALTY.—Whoever knowingly violates subsection (a) shall be fined not more than [$1,000,000] *$1,500,000* for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(d) BANK HOLDING COMPANIES.—

(1) IN GENERAL.—Subsections (a) and (b) shall apply to any company (other than a foreign bank) that is a bank holding company and any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, as if such bank holding company or organization were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting "Board of Governors of the Federal Reserve System" for "Corporation" each place that term appears in such subsections.

(2) AUTHORITY OF BOARD.—The Board of Governors of the Federal Reserve System may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

(e) SAVINGS AND LOAN HOLDING COMPANIES.—

(1) IN GENERAL.—Subsections (a) and (b) shall apply to any savings and loan holding company as if such savings and loan holding company were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting "Board of Governors of the Federal Re-

serve System" for "Corporation" each place that term appears in such subsections.

(2) AUTHORITY OF DIRECTOR.—The Board of Governors of the Federal Reserve System may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

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SEC. 26. ASSURING CONSISTENT OVERSIGHT OF SUBSIDIARIES OF HOLDING COMPANIES.

(a) DEFINITIONS.—For purposes of this section:

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

(2) FUNCTIONALLY REGULATED SUBSIDIARY.—The term "functionally regulated subsidiary" has the same meaning as in section 5(c)(5) of the Bank [Holding Company Act] *Holding Company Act of 1956*.

(3) LEAD INSURED DEPOSITORY INSTITUTION.—The term "lead insured depository institution" has the same meaning as in section 2(o)(8) of the Bank [Holding Company Act] *Holding Company Act of 1956*.

(b) EXAMINATION REQUIREMENTS.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board shall examine the activities of a nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of a depository institution holding company that are permissible for the insured depository institution subsidiaries of the depository institution holding company in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted in the lead insured depository institution of the depository institution holding company.

(c) STATE COORDINATION.—

(1) CONSULTATION AND COORDINATION.—If a nondepository institution subsidiary is supervised by a State bank supervisor or other State regulatory authority, the Board, in conducting the examinations required in subsection (b), shall consult and coordinate with such State regulator.

(2) ALTERNATING EXAMINATIONS PERMITTED.—The examinations required under subsection (b) may be conducted in joint or alternating manner with a State regulator, if the Board determines that an examination of a nondepository institution subsidiary conducted by the State carries out the purposes of this section.

(d) APPROPRIATE FEDERAL BANKING AGENCY BACKUP EXAMINATION AUTHORITY.—

(1) IN GENERAL.—In the event that the Board does not conduct examinations required under subsection (b) in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted by the lead insured depository institution subsidiary of the depository institution holding company, the appropriate Federal banking agency for the lead insured depository institution may recommend in writing (which shall include a written explanation of the concerns giving rise to the recommendation) that

the Board perform the examination required under subsection (b).

(2) EXAMINATION BY AN APPROPRIATE FEDERAL BANKING AGENCY.—If the Board does not, before the end of the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), begin an examination as required under subsection (b) or provide a written explanation or plan to the appropriate Federal banking agency making such recommendation responding to the concerns raised by the appropriate Federal banking agency for the lead insured depository institution, the appropriate Federal banking agency for the lead insured depository institution may, subject to the Consumer Financial Protection Act of 2010, examine the activities that are permissible for a depository institution subsidiary conducted by such nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of the depository institution holding company as if the nondepository institution subsidiary were an insured depository institution for which the appropriate Federal banking agency of the lead insured depository institution was the appropriate Federal banking agency, to determine whether the activities—

(A) pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company;

(B) are conducted in accordance with applicable Federal law; and

(C) are subject to appropriate systems for monitoring and controlling the financial, operating, and other material risks of the activities that may pose a material threat to the safety and soundness of the insured depository institution subsidiaries of the holding company.

(3) AGENCY COORDINATION WITH THE BOARD.—An appropriate Federal banking agency that conducts an examination pursuant to paragraph (2) shall coordinate examination of the activities of nondepository institution subsidiaries described in subsection (b) with the Board in a manner that—

(A) avoids duplication;

(B) shares information relevant to the supervision of the depository institution holding company;

(C) achieves the objectives of subsection (b); and

(D) ensures that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by such agency and the Board.

(4) FEE PERMITTED FOR EXAMINATION COSTS.—An appropriate Federal banking agency that conducts an examination or enforcement action pursuant to this section may collect an assessment, fee, or such other charge from the subsidiary as the appropriate Federal banking agency determines necessary or appropriate to carry out the responsibilities of the appropriate Federal banking agency in connection with such examination.

(e) REFERRALS FOR ENFORCEMENT BY APPROPRIATE FEDERAL BANKING AGENCY.—

(1) RECOMMENDATION OF ENFORCEMENT ACTION.—The appropriate Federal banking agency for the lead insured depository institution, based upon its examination of a nondepository institution subsidiary conducted pursuant to subsection (d), or other relevant information, may submit to the Board, in writing, a recommendation that the Board take enforcement action against such nondepository institution subsidiary, together with an explanation of the concerns giving rise to the recommendation, if the appropriate Federal banking agency determines (by a vote of its members, if applicable) that the activities of the nondepository institution subsidiary pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company.

(2) BACK-UP AUTHORITY OF THE APPROPRIATE FEDERAL BANKING AGENCY.—If, within the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), the Board does not take enforcement action against the nondepository institution subsidiary or provide a plan for supervisory or enforcement action that is acceptable to the appropriate Federal banking agency that made the recommendation pursuant to paragraph (1), such agency may take the recommended enforcement action against the nondepository institution subsidiary, in the same manner as if the nondepository institution subsidiary were an insured depository institution for which the agency was the appropriate Federal banking agency.

(f) COORDINATION AMONG APPROPRIATE FEDERAL BANKING AGENCIES.—Each Federal banking agency, prior to or when exercising authority under subsection (d) or (e) shall—

(1) provide reasonable notice to, and consult with, the appropriate Federal banking agency or State bank supervisor (or other State regulatory agency) of the nondepository institution subsidiary of a depository institution holding company that is described in subsection (d) before commencing any examination of the subsidiary;

(2) to the fullest extent possible—

(A) rely on the examinations, inspections, and reports of the appropriate Federal banking agency or the State bank supervisor (or other State regulatory agency) of the subsidiary;

(B) avoid duplication of examination activities, reporting requirements, and requests for information; and

(C) ensure that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by the appropriate Federal banking agencies.

(g) RULE OF CONSTRUCTION.—No provision of this section shall be construed as limiting any authority of the Board, the Corporation, or the Comptroller of the Currency under any other provision of law.

SEC. 27. (a) In order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds

the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater. *A loan that is valid when made as to its maximum rate of interest in accordance with this section shall remain valid with respect to such rate regardless of whether the loan is subsequently sold, assigned, or otherwise transferred to a third party, and may be enforced by such third party notwithstanding any State law to the contrary.*

(b) If the rate prescribed in subsection (a) exceeds the rate such State bank or such insured branch of a foreign bank would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from such State bank or such insured branch of a foreign bank taking, receiving, reserving, or charging such interest.

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SEC. 43. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURERS.—

(1) AUDIT REQUIRED.—Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

(2) PROVIDING COPIES OF AUDIT REPORT.—

(A) PRIVATE DEPOSIT INSURER.—The private deposit insurer shall provide a copy of the audit report—

(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed;

(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed; and

(iii) in the case of depository institutions described in subsection (e)(2)(A) the deposits of which are insured by the private insurer which are members of a Federal home loan bank, to the Federal Housing Finance Agency, not later than 7 days after the audit is completed.

(B) DEPOSITORY INSTITUTION.—Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

(3) ENFORCEMENT BY APPROPRIATE STATE SUPERVISOR.—Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.

(b) DISCLOSURE REQUIRED.—Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

(1) PERIODIC STATEMENTS; ACCOUNT RECORDS.—Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate. a notice that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.

(2) ADVERTISING; PREMISES.—

(A) IN GENERAL.—Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

(B) EXCEPTIONS.—The following need not include a notice that the institution is not federally insured:

(i) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

(ii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

(3) ACKNOWLEDGMENT OF DISCLOSURE.—

(A) NEW DEPOSITORS OBTAINED OTHER THAN THROUGH A CONVERSION OR MERGER.—With respect to any depositor who was not a depositor at the depository institution before the effective date of the Financial Services Regulatory Relief Act of 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of

such depositor only if the depositor has signed a written acknowledgement that—

(i) the institution is not federally insured; and

(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(B) NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after the effective date of the Financial Services Regulatory Relief Act of 2006, receive any deposit for the account of such depositor only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

(C) CURRENT DEPOSITORS.—Receive any deposit after the effective date of the Financial Services Regulatory Relief Act of 2006 for the account of any depositor who was a depositor on that date only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution has complied with the provisions of subparagraph (E) which are applicable as of the date of the deposit.

(D) ALTERNATIVE PROVISION OF NOTICE TO NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—

(i) IN GENERAL.—Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(E) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS.—

(i) IN GENERAL.—Transmit to each depositor who was a depositor before the effective date of the Financial Services Regulatory Relief Act of 2006, and has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(ii) MANNER AND TIMING OF NOTICE.—

(I) FIRST NOTICE.—Make the transmission described in clause (i) via mail not later than three months after the effective date of the Financial Services Regulatory Relief Act of 2006.

(II) SECOND NOTICE.—Make a second transmission described in clause (i) via mail not less than 30 days and not more than three months after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

(c) MANNER AND CONTENT OF DISCLOSURE.—To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the [Bureau] *Agency*, by regulation or order, shall prescribe the manner and content of disclosure required under this section, which shall be presented in such format and in such type size and manner as to be simple and easy to understand.

(d) EXCEPTIONS FOR INSTITUTIONS NOT RECEIVING RETAIL DEPOSITS.—The [Bureau] *Agency* may, by regulation or order, make exceptions to subsection (b) for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

(e) DEFINITIONS.—For purposes of this section:

(1) APPROPRIATE SUPERVISOR.—The "appropriate supervisor" of a depository institution means the agency primarily responsible for supervising the institution.

(2) DEPOSITORY INSTITUTION.—The term "depository institution" includes—

(A) any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

(B) any entity that, as determined by the [Bureau] *Agency*—

(i) is engaged in the business of receiving deposits; and

(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

(3) LACKING FEDERAL DEPOSIT INSURANCE.—A depository institution lacks Federal deposit insurance if the institution is not either—

(A) an insured depository institution; or

(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act.

(4) PRIVATE DEPOSIT INSURER.—The term "private deposit insurer" means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

[(5) BUREAU.—The term "[Bureau] *Agency*" means the [Bureau] *Agency* of Consumer Financial Protection.]

(5) AGENCY.—The term "Agency" means the Consumer Law Enforcement Agency.

(f) ENFORCEMENT.—

(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the [Bureau] *Agency*, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.

(2) BROAD STATE ENFORCEMENT AUTHORITY.—

(A) IN GENERAL.—Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

(B) STATE POWERS.—For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the [Bureau] *Agency* or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the [Bureau] *Agency* or Federal Trade Commission for any violation of this section that is alleged in that complaint.

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SEC. 51. INTERNATIONAL PROCESSES.

(a) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before the Board of Directors participates in a process of setting financial standards as a part of any foreign or multinational entity, the Board of Directors shall—

(1) issue a notice of the process, including the subject matter, scope, and goals of the process, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

(2) make such notice available to the public, including on the website of the Corporation; and

(3) solicit public comment, and consult with the committees described under paragraph (1), with respect to the subject matter, scope, and goals of the process.

(b) PUBLIC REPORTS ON PROCESS.—After the end of any process described under subsection (a), the Board of Directors shall issue a public report on the topics that were discussed at the process and any new or revised rulemakings or policy changes that the Board of Directors believes should be implemented as a result of the process.

(c) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before the Board of Directors participates in a process

of setting financial standards as a part of any foreign or multinational entity, the Board of Directors shall—

(1) issue a notice of agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

(2) make such notice available to the public, including on the website of the Corporation; and

(3) consult with the committees described under paragraph (1) with respect to the nature of the agreement and any anticipated effects such agreement will have on the economy.

(d) DEFINITION.—For purposes of this section, the term "process" shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization).

FEDERAL RESERVE ACT

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SEC. 2B. APPEARANCES BEFORE AND REPORTS TO THE CONGRESS.

(a) APPEARANCES BEFORE THE CONGRESS.—

(1) IN GENERAL.—The Chairman of the Board shall appear before the Congress at [semi-annual] *quarterly* hearings, as specified in paragraph (2), regarding—

(A) the efforts, activities, objectives and plans of the Board and the Federal Open Market Committee with respect to the conduct of monetary policy; and

(B) economic developments and prospects for the future described in the report required in subsection (b).

(2) SCHEDULE.—The Chairman of the Board shall appear—

(A) before the Committee on Banking and Financial Services of the House of Representatives on or about February 20 *and May 20* of even numbered calendar years and on or about July 20 *and October 20* of odd numbered calendar years;

(B) before the Committee on Banking, Housing, and Urban Affairs of the Senate on or about July 20 *and October 20* of even numbered calendar years and on or about February 20 *and May 20* of odd numbered calendar years; and

(C) before either Committee referred to in subparagraph (A) or (B), upon request, following the scheduled appearance of the Chairman before the other Committee under subparagraph (A) or (B).

(b) CONGRESSIONAL REPORT.—The Board shall, concurrent with each [semi-annual] *quarterly* hearing required by this section, submit a written report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services of the House of Representatives, containing a discussion of the conduct of monetary policy and economic developments and prospects for the future, taking into account past and prospective developments in employment, unemployment, produc-

tion, investment, real income, productivity, exchange rates, international trade and payments, and prices.

(c) PUBLIC ACCESS TO INFORMATION.—The Board shall place on its home Internet website, a link entitled "Audit", which shall link to a webpage that shall serve as a repository of information made available to the public for a reasonable period of time, not less than 6 months following the date of release of the relevant information, including—

(1) the reports prepared by the Comptroller General under section 714 of title 31, United States Code;

(2) the annual financial statements prepared by an independent auditor for the Board in accordance with section 11B;

(3) the reports to the Committee on Banking, Housing, and Urban Affairs of the Senate required under section 13(3) (relating to emergency lending authority); and

(4) such other information as the Board reasonably believes is necessary or helpful to the public in understanding the accounting, financial reporting, and internal controls of the Board and the Federal reserve banks.

SEC. 2C. DIRECTIVE POLICY RULES OF THE FEDERAL OPEN MARKET COMMITTEE.

(a) DEFINITIONS.—In this section the following definitions shall apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) DIRECTIVE POLICY RULE.—The term "Directive Policy Rule" means a policy rule developed by the Federal Open Market Committee that meets the requirements of subsection (c) and that provides the basis for the Open Market Operations Directive.

(3) GDP.—The term "GDP" means the gross domestic product of the United States as computed and published by the Department of Commerce.

(4) INTERMEDIATE POLICY INPUT.—The term "Intermediate Policy Input"—

(A) may include any variable determined by the Federal Open Market Committee as a necessary input to guide open-market operations;

(B) shall include an estimate of, and the method of calculation for, the current rate of inflation or current inflation expectations; and

(C) shall include, specifying whether the variable or estimate is historical, current, or a forecast and the method of calculation, at least one of—

(i) an estimate of real GDP, nominal GDP, or potential GDP;

(ii) an estimate of the monetary aggregate compiled by the Board of Governors of the Federal Reserve System and Federal reserve banks; or

(iii) an interactive variable or a net estimate composed of the estimates described in clauses (i) and (ii).

(5) LEGISLATIVE DAY.—The term "legislative day" means a day on which either House of Congress is in session.

(6) OPEN MARKET OPERATIONS DIRECTIVE.—The term "Open Market Operations Directive" means an order to achieve a specified Policy Instrument Target provided to the Federal Reserve Bank of New York by the Federal Open Market Committee pursuant to powers authorized under section 14 of this Act that guide open-market operations.

(7) POLICY INSTRUMENT.—The term "Policy Instrument" means—

(A) the nominal Federal funds rate;

(B) the nominal rate of interest paid on nonborrowed reserves; or

(C) the discount window primary credit interest rate most recently published on the Federal Reserve Statistical Release on selected interest rates (daily or weekly), commonly referred to as the H.15 release.

(8) POLICY INSTRUMENT TARGET.—The term "Policy Instrument Target" means the target for the Policy Instrument specified in the Open Market Operations Directive.

(9) REFERENCE POLICY RULE.—The term "Reference Policy Rule" means a calculation of the nominal Federal funds rate as equal to the sum of the following:

(A) The rate of inflation over the previous four quarters.

(B) One-half of the percentage deviation of the real GDP from an estimate of potential GDP.

(C) One-half of the difference between the rate of inflation over the previous four quarters and two percent.

(D) Two percent.

(b) SUBMITTING A DIRECTIVE POLICY RULE.—Not later than 48 hours after the end of a meeting of the Federal Open Market Committee, the Chairman of the Federal Open Market Committee shall submit to the appropriate congressional committees and the Comptroller General of the United States a Directive Policy Rule and a statement that identifies the members of the Federal Open Market Committee who voted in favor of the Directive Policy Rule.

(c) REQUIREMENTS FOR A DIRECTIVE POLICY RULE.—A Directive Policy Rule shall—

(1) identify the Policy Instrument the Directive Policy Rule is designed to target;

(2) describe the strategy or rule of the Federal Open Market Committee for the systematic quantitative adjustment of the Policy Instrument Target to respond to a change in the Intermediate Policy Inputs;

(3) include a function that comprehensively models the interactive relationship between the Intermediate Policy Inputs;

(4) include the coefficients of the Directive Policy Rule that generate the current Policy Instrument Target and a range of predicted future values for the Policy Instrument Target if changes occur in any Intermediate Policy Input;

(5) describe the procedure for adjusting the supply of bank reserves to achieve the Policy Instrument Target;

(6) include a statement as to whether the Directive Policy Rule substantially conforms to the Reference Policy Rule and, if applicable—

(A) an explanation of the extent to which it departs from the Reference Policy Rule;

(B) a detailed justification for that departure; and

(C) a description of the circumstances under which the Directive Policy Rule may be amended in the future;

(7) include a certification that the Directive Policy Rule is expected to support the economy in achieving stable prices and maximum natural employment over the long term;

(8) include a calculation that describes with mathematical precision the expected annual inflation rate over a 5-year period; and

(9) include a plan to use the most accurate data, subject to all historical revisions, for inputs into the Directive Policy Rule and the Reference Policy Rule.

(d) GAO REPORT.—The Comptroller General of the United States shall compare the Directive Policy Rule submitted under subsection (b) with the rule that was most recently submitted to determine whether the Directive Policy Rule has materially changed. If the Directive Policy Rule has materially changed, the Comptroller General shall, not later than 7 days after each meeting of the Federal Open Market Committee, prepare and submit a compliance report to the appropriate congressional committees specifying whether the Directive Policy Rule submitted after that meeting and the Federal Open Market Committee are in compliance with this section.

(e) CHANGING MARKET CONDITIONS.—

(1) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to require that the plans with respect to the systematic quantitative adjustment of the Policy Instrument Target described under subsection (c)(2) be implemented if the Federal Open Market Committee determines that such plans cannot or should not be achieved due to changing market conditions.

(2) GAO APPROVAL OF UPDATE.—Upon determining that plans described in paragraph (1) cannot or should not be achieved, the Federal Open Market Committee shall submit an explanation for that determination and an updated version of the Directive Policy Rule to the Comptroller General of the United States and the appropriate congressional committees not later than 48 hours after making the determination. The Comptroller General shall, not later than 48 hours after receiving such updated version, prepare and submit to the appropriate congressional committees a compliance report determining whether such updated version and the Federal Open Market Committee are in compliance with this section.

(f) DIRECTIVE POLICY RULE AND FEDERAL OPEN MARKET COMMITTEE NOT IN COMPLIANCE.—

(1) IN GENERAL.—If the Comptroller General of the United States determines that the Directive Policy Rule and the Federal Open Market Committee are not in compliance with this section in the report submitted pursuant to subsection (d), or that the updated version of the Directive Policy Rule and the Federal Open Market Committee are not in compliance with this section in the report submitted pursuant to subsection (e)(2), the Chairman of the Board of Governors of the Federal Reserve System shall, if requested by the chairman of either of the appropriate congressional committees, not later than 7 legis-

lative days after such request, testify before such committee as to why the Directive Policy Rule, the updated version, or the Federal Open Market Committee is not in compliance.

(2) GAO AUDIT.—Notwithstanding subsection (b) of section 714 of title 31, United States Code, upon submitting a report of noncompliance pursuant to subsection (d) or subsection (e)(2) and after the period of 7 legislative days described in paragraph (1), the Comptroller General shall audit the conduct of monetary policy by the Board of Governors of the Federal Reserve System and the Federal Open Market Committee upon request of the appropriate congressional committee. Such committee may specify the parameters of such audit.

(g) CONGRESSIONAL HEARINGS.—The Chairman of the Board of Governors of the Federal Reserve System shall, if requested by the chairman of either of the appropriate congressional committees and not later than 7 legislative days after such request, appear before such committee to explain any change to the Directive Policy Rule.

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STATE BANKS AS MEMBERS.

SEC. 9. Any bank incorporated by special law of any State, operating under the Code of Law for the District of Columbia, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

Upon the conversion of a national bank into a State bank, or the merger or consolidation of a national bank with a State bank which is not a member of the Federal Reserve System, the resulting or continuing State bank may be admitted to membership in the Federal Reserve System by the Board of Governors of the Federal Reserve System in accordance with the provisions of this section, but, otherwise, the Federal Reserve bank stock owned by the national bank shall be canceled and paid for as provided in section 5 of this Act. Upon the merger or consolidation of a national bank with a State member bank under a State charter, the membership of the State bank in the Federal Reserve System shall continue.

Any such State bank which, at the date of the approval of this Act, has established and is operating a branch or branches in conformity with the State law, may retain and operate the same while

remaining or upon becoming a stockholder of such Federal reserve bank; but no such State bank may retain or acquire stock in a Federal reserve bank except upon relinquishment of any branch or branches established after the date of the approval of this Act beyond the limits of the city, town, or village in which the parent bank is situated. *Provided, however,* That nothing herein contained shall prevent any State member bank from establishing and operating branches in the United States or any dependency or insular possession thereof or in any foreign country, on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks except that the approval of the Board of Governors of the Federal Reserve System, instead of the Comptroller of the Currency, shall be obtained before any State member bank may hereafter establish any branch and before any State bank hereafter admitted to membership may retain any branch established after February 25, 1927, beyond the limits of the city, town, or village in which the parent bank is situated. The approval of the Board shall likewise be obtained before any State member bank may establish any new branch within the limits of any such city, town, or village.

In acting upon such applications the Board of Governors of the Federal Reserve System shall consider the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this Act.

Whenever the Board of Governors of the Federal Reserve System shall permit the applying bank to become a stockholder in the Federal reserve bank of the district its stock subscription shall be payable on call of the Board of Governors of the Federal Reserve System, and stock issued to it shall be held subject to the provisions of this Act.

All banks admitted to membership under authority of this section shall be required to comply with the reserve and capital requirements of this Act, to conform to those provisions of law imposed on national banks which prohibit such banks from lending on or purchasing their own stock and which relate to the withdrawal or impairment of their capital stock, and to conform to the provisions of sections 5199(b) and 5204 of the Revised Statutes with respect to the payment of dividends; except that any reference in any such provision to the Comptroller of the Currency shall be deemed for the purposes of this sentence to be a reference to the Board of Governors of the Federal Reserve System. Such banks and the officers, agents, and employees thereof shall also be subject to the provisions of and to the penalties prescribed by sections 334, 656, and 1005 of Title 18, United States Code, and shall be required to make reports of condition and of the payment of dividends to the Federal Reserve bank of which they become a member. Not less than three of such reports shall be made annually on call of the Federal Reserve bank on dates to be fixed by the Board of Governors of the Federal Reserve System. Any bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Board, or submits or publishes any false or mis-

leading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any bank which fails to make or publish such reports within the period of time specified by the Board, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Board may assess a penalty of not more than **[**$1,000,000**]** *$1,500,000* or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph. Such reports of condition shall be in such form and shall contain such information as the Board of Governors of the Federal Reserve System may require.

As a condition of membership such banks shall likewise be subject to examinations made by direction of the Board of Governors of the Federal Reserve System or of the Federal reserve bank by examiners selected or approved by the Board of Governors of the Federal Reserve System.

Whenever the directors of the Federal reserve bank shall approve the examinations made by the State authorities, such examinations and the reports thereof may be accepted in lieu of examinations made by examiners selected or approved by the Board of Governors of the Federal Reserve System: *Provided, however,* That when it deems it necessary the board may order special examinations by examiners of its own selection and shall in all cases approve the form of the report. The expenses of all examinations, other than those made by State authorities, may, in the discretion of the Board of Governors of the Federal Reserve System, be assessed against the banks examined and, when so assessed, shall be paid by the banks examined. The Board of Governors of the Federal Reserve System, at its discretion, may furnish any report of examination or other confidential supervisory information concerning any State member bank or other entity examined under any other authority of the Board, to any Federal or State agency or authority with supervisory or regulatory authority over the examined entity,

to any officer, director, or receiver of the examined entity, and to any other person that the Board determines to be proper.

If at any time it shall appear to the Board of Governors of the Federal Reserve System that a member bank has failed to comply with the provisions of this section or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, or has ceased to exercise banking functions without a receiver or liquidating agent having been appointed therefor, it shall be within the power of the board after hearing to require such bank to surrender its stock in the Federal reserve bank and to forfeit all rights and privileges of membership. The Board of Governors of the Federal Reserve System may restore membership upon due proof of compliance with the conditions imposed by this section.

Any State bank or trust company desiring to withdraw from membership in a Federal reserve bank may do so, after six months' written notice shall have been filed with the Board of Governors of the Federal Reserve System, upon the surrender and cancellation of all of its holdings of capital stock in the Federal reserve bank: *Provided,* That the Board of Governors of the Federal Reserve System, in its discretion and subject to such conditions as it may prescribe, may waive such six months' notice in individual cases and may permit any such State bank or trust company to withdraw from membership in a Federal reserve bank prior to the expiration of six months from the date of the written notice of its intention to withdraw: *Provided, however,* That no Federal reserve bank shall, except under express authority of the Board of Governors of the Federal Reserve System, cancel within the same calendar year more than twenty-five per centum of its capital stock for the purpose of effecting voluntary withdrawals during that year. All such applications shall be dealt with in the order in which they are filed with the board. Whenever a member bank shall surrender its stock holdings in a Federal reserve bank, or shall be ordered to do so by the Board of Governors of the Federal Reserve System, under authority of law, all of its rights and privileges as a member bank shall thereupon cease and determine, and after due provision has been made for any indebtedness due or to become due to the Federal reserve bank it shall be entitled to a refund of its cash paid subscription with interest at the rate of one-half of one per centum per month from date of last dividend, if earned, the amount refunded in no event to exceed the book value of the stock at that time, and shall likewise be entitled to repayment of deposits and of any other balance due from the Federal reserve bank.

No applying bank shall be admitted to membership unless it possesses capital stock and surplus which, in the judgment of the Board of Governors of the Federal Reserve System, are adequate in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities: *Provided,* That no bank engaged in the business of receiving deposits other than trust funds, which does not possess capital stock and surplus in an amount equal to that which would be required for the establishment of a national banking association in the place in which it is located, shall be admitted to membership unless it is, or has been, approved for deposit insurance under the Federal Deposit Insurance Act. The capital stock of a State member

bank shall not be reduced except with the prior consent of the Board.

In order to facilitate the admission to membership in the Federal Reserve System of any State bank which is required under subsection (y) of section 12B of this Act to become a member of the Federal Reserve System in order to be an insured bank or continue to have any part of its deposits insured under such section 12B, the Board of Governors of the Federal Reserve System may waive in whole or in part the requirements of this section relating to the admission of such bank to membership: *Provided,* That, if such bank is admitted with a capital less than that required for the organization of a national bank in the same place and its capital and surplus are not, in the judgment of the Board of Governors of the Federal Reserve System, adequate in relation to its liabilities to depositors and other creditors, the said Board may, in its discretion, require such bank to increase its capital and surplus to such amount as the Board may deem necessary within such period prescribed by the Board as in its judgment shall be reasonable in view of all the circumstances: *Provided, however,* That no such bank shall be required to increase its capital to an amount in excess of that required for the organization of a national bank in the same place. (Omitted from U.S. Code.)

Banks becoming members of the Federal Reserve System under authority of this section shall be subject to the provisions of this section and to those of this Act which relate specifically to member banks, but shall not be subject to examination under the provisions of the first two paragraphs of section fifty-two hundred and forty of the Revised Statutes as amended by section twenty-one of this Act. Subject to the provisions of this Act and to the regulations of the board made pursuant thereto, any bank becoming a member of the Federal Reserve System shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise all corporate powers granted it by the State in which it was created, and shall be entitled to all privileges of member banks, except that the Board of Governors of the Federal Reserve System may limit the activities of State member banks and subsidiaries of State member banks in a manner consistent with section 24 of the Federal Deposit Insurance Act. No Federal reserve bank shall be permitted to discount for any State bank or trust company notes, drafts, or bills of exchange of any one borrower who is liable for borrowed money to such State bank or trust company in an amount greater than that which could be borrowed lawfully from such State bank or trust company were it a national banking association. The Federal reserve bank, as a condition of the discount of notes, drafts, and bills of exchange for such State bank or trust company, shall require a certificate or guaranty to the effect that the borrower is not liable to such bank in excess of the amount provided by this section, and will not be permitted to become liable in excess of this amount while such notes, drafts, or bills of exchange are under discount with the Federal reserve bank.

It shall be unlawful for any officer, clerk, or agent of any bank admitted to membership under authority of this section to certify any check drawn upon such bank unless the person or company drawing the check has on deposit therewith at the time such check is certified an amount of money equal to the amount specified in

such check. Any check so certified by duly authorized officers shall be a good and valid obligation against such bank, but the act of any such officer, clerk, or agent in violation of this section may subject such bank to a forfeiture of its membership in the Federal Reserve System upon hearing by the Board of Governors of the Federal Reserve System.

All banks or trust companies incorporated by special law or organized under the general laws of any State, which are members of the Federal reserve system, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require of the banks and trust companies thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safe keeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the Government.

Any mutual savings bank having no capital stock (including any other banking institution the capital of which consists of weekly or other time deposits which are segregated from all other deposits and are regarded as capital stock for the purposes of taxation and the declaration of dividends), but having surplus and undivided profits not less than the amount of capital required for the organization of a national bank in the same place, may apply for and be admitted to membership in the Federal Reserve System in the same manner and subject to the same provisions of law as State banks and trust companies, except that any such savings banks shall subscribe for capital stock of the Federal reserve bank in an amount equal to six-tenths of 1 per centum of its total deposit liabilities as shown by the most recent report of examination of such savings bank preceding its admission to membership. Thereafter such subscription shall be adjusted semiannually on the same percentage basis in accordance with rules and regulations prescribed by the Board of Governors of the Federal Reserve System. If any such mutual savings bank applying for membership is not permitted by the laws under which it was organized to purchase stock in a Federal reserve bank, it shall, upon admission to the system, deposit with the Federal reserve bank an amount equal to the amount which it would have been required to pay in on account of a subscription to capital stock. Thereafter such deposit shall be adjusted semiannually in the same manner as subscriptions for stock. Such deposits shall be subject to the same conditions with respect to repayment as amounts paid upon subscriptions to capital stock by other member banks and the Federal reserve bank shall pay interest thereon at the same rate as dividends are actually paid on outstanding shares of stock of such Federal reserve bank. If the laws under which any such savings bank was organized be amended so as to authorize mutual savings banks to subscribe for Federal reserve bank stock, such savings bank shall thereupon subscribe for the appropriate amount of stock in the Federal reserve bank, and the deposit hereinbefore provided for in lieu of payment upon capital stock shall be applied upon such subscription. If the laws

under which any such savings bank was organized be not amended at the next session of the legislature following the admission of such savings bank to membership so as to authorize mutual savings banks to purchase Federal reserve bank stock, or if such laws be so amended and such bank fail within six months thereafter to purchase such stock, all of its rights and privileges as a member bank shall be forfeited and its membership in the Federal Reserve System shall be terminated in the manner prescribed elsewhere in this section with respect to State member banks and trust companies. Each such mutual savings bank shall comply with all the provisions of law applicable to State member banks and trust companies, with the regulations of the Board of Governors of the Federal Reserve System and with the conditions of membership prescribed for such savings bank at the time of admission to membership, except as otherwise hereinbefore provided with respect to capital stock.

Each bank admitted to membership under this section shall obtain from each of its affiliates other than member banks and furnish to the Federal reserve bank of its district and to the Board of Governors of the Federal Reserve System not less than three reports during each year. Such reports shall be in such form as the Board of Governors of the Federal Reserve System may prescribe, shall be verified by the oath or affirmation of the president or such other officer as may be designated by the board of directors of such affiliate to verify such reports, and shall disclose the information hereinafter provided for as of dates identical with those fixed by the Board of Governors of the Federal Reserve System for reports of the condition of the affiliated member bank. Each such report of an affiliate shall be transmitted as herein provided at the same time as the corresponding report of the affiliated member bank, except that the Board of Governors of the Federal Reserve System may, in its discretion, extend such time for good cause shown. Each such report shall contain such information as in the judgment of the Board of Governors of the Federal Reserve System shall be necessary to disclose fully the relations between such affiliate and such bank and to enable the Board to inform itself as to the effect of such relations upon the affairs of such bank. The reports of such affiliates shall be published by the bank under the same conditions as govern its own condition reports.

Any such affiliated member bank may be required to obtain from any such affiliate such additional reports as in the opinion of its Federal reserve bank or the Board of Governors of the Federal Reserve System may be necessary in order to obtain a full and complete knowledge of the condition of the affiliated member bank. Such additional reports shall be transmitted to the Federal reserve bank and the Board of Governors of the Federal Reserve System and shall be in such form as the Board of Governors of the Federal Reserve System may prescribe.

Any such affiliated member bank which fails to obtain from any of its affiliates and furnish any report provided for by the two preceding paragraphs of this section shall be subject to a penalty of $100 for each day during which such failure continues, which, by direction of the Board of Governors of the Federal Reserve System, may be collected, by suit or otherwise, by the Federal reserve bank of the district in which such member bank is located.

State member banks shall be subject to the same limitations and conditions with respect to the purchasing, selling, underwriting, and holding of investment securities and stock as are applicable in the case of national banks under paragraph "Seventh" of section 5136 of the Revised Statutes, as amended. This paragraph shall not apply to any interest held by a State member bank in accordance with section 5136A of the Revised Statutes of the United States and subject to the same conditions and limitations provided in such section.

After the date of the enactment of the Banking Act of 1935, no certificate evidencing the stock of any State member bank shall bear any statement purporting to represent the stock of any other corporation, except a member bank or a corporation engaged on June 16, 1934 in holding the bank premises of such member bank, nor shall the ownership, sale, or transfer of any certificate representing the stock of any State member bank be conditioned in any manner whatsoever upon the ownership, sale, or transfer of a certificate representing the stock of any other corporation, except a member bank or a corporation engaged on June 16, 1934 in holding the bank premises of such member bank: *Provided,* That this section shall not operate to prevent the ownership, sale, or transfer of stock of any other corporation being conditioned upon the ownership, sale, or transfer of a certificate representing stock of a State member bank.

In connection with examinations of State member banks, examiners selected or approved by the Board of Governors of the Federal Reserve System shall make such examinations of the affairs of all affiliates of such banks as shall be necessary to disclose fully the relations between such banks and their affiliates and the effect of such relations upon the affairs of such banks. The expense of examination of affiliates of any State member bank may, in the discretion of the Board of Governors of the Federal Reserve System, be assessed against such bank and, when so assessed, shall be paid by such bank. In the event of the refusal to give any information requested in the course of the examination of any such affiliate, or in the event of the refusal to permit such examination, or in the event of the refusal to pay any expense so assessed, the Board of Governors of the Federal Reserve System may, in its discretion, require any or all State member banks affiliated with such affiliate to surrender their stock in the Federal reserve bank and to forfeit all rights and privileges of membership in the Federal Reserve System, as provided in this section.

(23) A State member bank may make investments directly or indirectly, each of which is designed primarily to promote the public welfare, including the welfare of primarily low- and moderate-income communities or families (such as by providing housing, services, or jobs), to the extent permissible under State law. A State member bank shall not make any such investment if the investment would expose the State member bank to unlimited liability. The Board shall limit a State member bank's investment in any 1 project and a State member bank's aggregate investments under this paragraph. The aggregate amount of investments of any State member bank under this paragraph may not exceed an amount equal to the sum of 5 percent of the State member bank's capital stock ac-

tually paid in and unimpaired and 5 percent of the State member bank's unimpaired surplus, unless the Board determines, by order, that a higher amount will pose no significant risk to the Deposit Insurance Fund; and the State member bank is adequately capitalized. In no case shall the aggregate amount of investments of any State member bank under this paragraph exceed an amount equal to the sum of 15 percent of the State member bank's capital stock actually paid in and unimpaired and 15 percent of the State member bank's unimpaired surplus. The foregoing standards and limitations apply to investments under this paragraph made by a State member bank directly and by its subsidiaries.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

SEC. 10. The Board of Governors of the Federal Reserve System (hereinafter referred to as the "Board") shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate, after the date of enactment of the Banking Act of 1935, for terms of fourteen years except as hereinafter provided, but each appointive member of the Federal Reserve Board in office on such date shall continue to serve as a member of the Board until February 1, 1936, and the Secretary of the Treasury and the Comptroller of the Currency shall continue to serve as members of the Board until February 1, 1936. In selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country. In selecting members of the Board, the President shall appoint at least 1 member with demonstrated primary experience working in or supervising community banks having less than $10,000,000,000 in total assets. The members of the Board shall devote their entire time to the business of the Board and shall each receive and annual salary of $15,000, payable monthly, together with actual necessary traveling expenses.

The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank, except that this restriction shall not apply to a member who has served the full term for which he was appointed. Upon the expiration of the term of any appointive member of the Federal Reserve Board in office on the date of enactment of the Banking Act of 1935, the President shall fix the term of the successor to such member at not to exceed fourteen years, as designated by the President at the time of nomination, but in such manner as to provide for the expiration of the term of not more than one member in any two-year period, and thereafter each member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. Of the persons thus appointed, 1 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of 4 years, and 2 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairmen of the Board, each for a term of 4 years, 1 of whom shall serve in the absence of the Chairman, as provided in

the fourth undesignated paragraph of this section, and 1 of whom shall be designated Vice Chairman for Supervision. The Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms. The chairman of the Board, subject to its supervision, shall be its active executive officer. Each member of the Board shall within fifteen days after notice of appointment make and subscribe to the oath of office. Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified. Any person appointed as a member of the Board after the date of enactment of the Banking Act of 1935 shall not be eligible for reappointment as such member after he shall have served a full term of fourteen years.

The Board of Governors of the Federal Reserve System shall have power to levy semiannually upon the Federal reserve banks, in proportion to their capital stock and surplus, an assessment sufficient to pay its estimated expenses and the salaries of its members and employees for the half year succeeding the levying of such assessment, together with any deficit carried forward from the preceding half year, and such assessments may include amounts sufficient to provide for the acquisition by the Board in its own name of such site or building in the District of Columbia as in its judgment alone shall be necessary for the purpose of providing suitable and adequate quarters for the performance of its functions. After September 1, 2000, the Board may also use such assessments to acquire, in its own name, a site or building (in addition to the facilities existing on such date) to provide for the performance of the functions of the Board. After approving such plans, estimates, and specifications as it shall have caused to be prepared, the Board may, notwithstanding any other provision of law, cause to be constructed on any site so acquired by it a building or buildings suitable and adequate in its judgment for its purposes and proceed to take all such steps as it may deem necessary or appropriate in connection with the construction, equipment, and furnishing of such building or buildings. The Board may maintain, enlarge, or remodel any building or buildings so acquired or constructed and shall have sole control of such building or buildings and space therein.

The principal offices of the Board shall be in the District of Columbia. At meetings of the Board the chairman shall preside, and, in his absence, the vice chairman shall preside. In the absence of the chairman and the vice chairman, the Board shall elect a member to act as chairman pro tempore. The Board shall determine and prescribe the manner in which its obligations shall be incurred and its disbursements and expenses allowed and paid, and may leave on deposit in the Federal Reserve banks the proceeds of assessments levied upon them to defray its estimated expenses and the salaries of its members and employees, whose employment, compensation, leave, and expenses shall be governed solely by the provisions of this Act, specific amendments thereof, and rules and regulations of the Board not inconsistent therewith; and funds derived from such assessments shall not be construed to be Government funds or appropriated moneys. No member of the Board of Gov-

ernors of the Federal Reserve System shall be an officer or director of any bank, banking institution, trust company, or Federal Reserve bank or hold stock in any bank, banking institution, or trust company; and before entering upon his duties as a member of the Board of Governors of the Federal Reserve System he shall certify under oath that he has complied with this requirement, and such certification shall be filed with the secretary of the Board. Whenever a vacancy shall occur, other than by expiration of term, among the six members of the Board of Governors of the Federal Reserve System appointed by the President as above provided, a successor shall be appointed by the President, by and with the advice and consent of the Senate, to fill such vacancy, and when appointed he shall hold office for the unexpired term of his predecessor.

The President shall have power to fill all vacancies that may happen on the Board of Governors of the Federal Reserve System during the recess of the Senate by granting commissions which shall expire with the next session of the Senate.

Nothing in this Act contained shall be construed as taking away any powers heretofore vested by law in the Secretary of the Treasury which relate to the supervision, management, and control of the Treasury Department and bureaus under such department, and wherever any power vested by this Act in the Board of Governors of the Federal Reserve System or the Federal reserve agent appears to conflict with the powers of the Secretary of the Treasury, such powers shall be exercised subject to the supervision and control of the Secretary.

The Board of Governors of the Federal Reserve System shall annually make a full report of its operations to the Speaker of the House of Representatives, who shall cause the same to be printed for the information of the Congress. The report required under this paragraph shall include the reports required under section 707 of the Equal Credit Opportunity Act, section 18(f)(7) of the Federal Trade Commission Act, section 114 of the Truth in Lending Act, and the tenth undesignated paragraph of this section.

No Federal Reserve bank may authorize the acquisition or construction of any branch building, or enter into any contract or other obligation for the acquisition or construction of any branch building, without the approval of the Board.

The Board of Governors of the Federal Reserve System shall keep a complete record of the action taken by the Board and by the Federal Open Market Committee upon all questions of policy relating to open-market operations and shall record therein the votes taken in connection with the determination of open-market policies and the reasons underlying the action of the Board and the Committee in each instance. The Board shall keep a similar record with respect to all questions of policy determined by the Board, and shall include in its annual report to the Congress a full account of the action so taken during the preceding year with respect to open-market policies and operations and with respect to the policies determined by it and shall include in such report a copy of the records required to be kept under the provisions of this paragraph.

[(12)**]** *(11)* APPEARANCES BEFORE CONGRESS.—The Vice Chairman for Supervision shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representa-

tives and at [semi-annual] *quarterly* hearings regarding the efforts, activities, objectives, and plans of the Board with respect to the conduct of supervision and regulation of depository institution holding companies and other financial firms supervised by the Board. *In each such appearance, the Vice Chairman for Supervision shall provide written testimony that includes the status of all pending and anticipated rulemakings that are being made by the Board of Governors of the Federal Reserve System. If, at the time of any appearance described in this paragraph, the position of Vice Chairman for Supervision is vacant, the Vice Chairman for the Board of Governors of the Federal Reserve System (who has the responsibility to serve in the absence of the Chairman) shall appear instead and provide the required written testimony. If, at the time of any appearance described in this paragraph, both Vice Chairman positions are vacant, the Chairman of the Board of Governors of the Federal Reserve System shall appear instead and provide the required written testimony.*

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SEC. 11. The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a)(1) To examine at its discretion the accounts, books and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single and combined, and shall furnish full information regarding the character of the money held as reserve and the amount, nature and maturities of the paper and other investments owned or held by Federal reserve banks.

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under section 19 of this Act exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State savings associations that are insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), State nonmember banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) the Comptroller of the Currency in the case of any Federal savings association which is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or which is a member as defined in section 2 of the Federal Home Loan Bank Act, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as other-

wise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

(b) To permit, or, on the affirmative vote of at least five members of the Board of Governors of the Federal Reserve System to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Board of Governors of the Federal Reserve System.

(c) To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirements specified in this Act.

(d) To supervise and regulate through the Secretary of the Treasury the issue and retirement of Federal reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of notes unfit for circulation, and to prescribe rules and regulations under which such notes may be delivered by the Secretary of the Treasury to the Federal reserve agents applying therefor.

(e) To add to the number of cities classified as Reserve cities under existing law in which national banking associations are subject to the Reserve requirements set forth in section twenty of this Act; or to reclassify existing Reserve cities or to terminate their designation as such.

(f) To suspend or remove any officer or director of any Federal reserve bank, the cause of such removal to be forthwith communicated in writing by the Board of Governors of the Federal Reserve System to the removed officer or director and to said bank.

(g) To require the writing off of doubtful or worthless assets upon the books and balance sheets of Federal reserve banks.

(h) To suspend, for the violation of any of the provisions of this Act, the operations of any Federal reserve bank, to take possession thereof, administer the same during the period of suspension, and, when deemed advisable, to liquidate or reorganize such bank.

(i) To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this Act, and make all rules and regulations necessary to enable said board effectively to perform the same.

(j) To exercise general supervision over said Federal reserve banks.

(k) To delegate, by published order or rule and subject to the Administrative Procedure Act, any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to one or more administrative law judges, members or employees of the Board, or Federal Reserve banks. The assignment of responsibility for the performance of any function that the Board determines to delegate shall be a function of the Chairman. The Board shall, upon the vote of one member, review action taken at a delegated level within such time and in such manner as the Board shall by rule prescribe. The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment

of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.

(l) To employ such attorneys, experts, assistants, clerks, or other employees as may be deemed necessary to conduct the business of the board. All salaries and fees shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the members of said board. All such attorneys, experts, assistants, clerks, and other employees shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: *Provided,* That nothing herein shall prevent the President from placing said employees in the classified service. *Each member of the Board of Governors of the Federal Reserve System may employ, at a minimum, 2 individuals, with such individuals selected by such member and the salaries of such individuals set by such member. A member may employ additional individuals as determined necessary by the Board of Governors.*

(n) To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this Act.

(o) AUTHORITY TO APPOINT CONSERVATOR OR RECEIVER.—The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 11(c)(9) of the Federal Deposit Insurance Act.

(p) AUTHORITY.—The Board may act in its own name and through its own attorneys in enforcing any provision of this title, regulations promulgated hereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Board is a party and which involves the Board's regulation or supervision of any bank, bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956), or other entity, or the administration of its operations.

(q) UNIFORM PROTECTION AUTHORITY FOR FEDERAL RESERVE FACILITIES.—

(1) Notwithstanding any other provision of law, to authorize personnel to act as law enforcement officers to protect and safeguard the premises, grounds, property, personnel, including members of the Board, of the Board, or any Federal reserve bank, and operations conducted by or on behalf of the Board or a reserve bank.

(2) The Board may, subject to the regulations prescribed under paragraph (5), delegate authority to a Federal reserve bank to authorize personnel to act as law enforcement officers to protect and safeguard the bank's premises, grounds, property, personnel, and operations conducted by or on behalf of the bank.

(3) Law enforcement officers designated or authorized by the Board or a reserve bank under paragraph (1) or (2) are authorized while on duty to carry firearms and make arrests without warrants for any offense against the United States committed

in their presence, or for any felony cognizable under the laws of the United States committed or being committed within the buildings and grounds of the Board or a reserve bank if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. Such officers shall have access to law enforcement information that may be necessary for the protection of the property or personnel of the Board or a reserve bank.

(4) For purposes of this subsection, the term "law enforcement officers" means personnel who have successfully completed law enforcement training and are authorized to carry firearms and make arrests pursuant to this subsection.

(5) The law enforcement authorities provided for in this subsection may be exercised only pursuant to regulations prescribed by the Board and approved by the Attorney General.

(r)(1) Any action that this Act provides may be taken only upon the affirmative vote of 5 members of the Board may be taken upon the unanimous vote of all members then in office if there are fewer than 5 members in office at the time of the action.

(2)(A) Any action that the Board is otherwise authorized to take under section 13(3) may be taken upon the unanimous vote of all available members then in office, if—

(i) at least 2 members are available and all available members participate in the action;

(ii) the available members unanimously determine that—

(I) unusual and exigent circumstances exist and the borrower is unable to secure adequate credit accommodations from other sources;

(II) action on the matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system of the United States;

(III) despite the use of all means available (including all available telephonic, telegraphic, and other electronic means), the other members of the Board have not been able to be contacted on the matter; and

(IV) action on the matter is required before the number of Board members otherwise required to vote on the matter can be contacted through any available means (including all available telephonic, telegraphic, and other electronic means)**[**; and**]***;*

(iii) any credit extended by a Federal reserve bank pursuant to such action is payable upon demand of the Board**[**.**]***; and*

(iv) the available members secure the affirmative vote of not less than nine presidents of the Federal reserve banks.

(B) The available members of the Board shall document in writing the determinations required by subparagraph (A)(ii), and such written findings shall be included in the record of the action and in the official minutes of the Board, and copies of such record shall be provided as soon as practicable to the members of the Board who were not available to participate in the action and to the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Chairman of the Committee on Financial Services of the House of Representatives.

(s) FEDERAL RESERVE TRANSPARENCY AND RELEASE OF INFORMATION.—

(1) IN GENERAL.—In order to ensure the disclosure in a timely manner consistent with the purposes of this Act of information concerning the borrowers and counterparties participating in emergency credit facilities, discount window lending programs, and open market operations authorized or conducted by the Board or a Federal reserve bank, the Board of Governors shall disclose, as provided in paragraph (2)—

(A) the names and identifying details of each borrower, participant, or counterparty in any credit facility or covered transaction;

(B) the amount borrowed by or transferred by or to a specific borrower, participant, or counterparty in any credit facility or covered transaction;

(C) the interest rate or discount paid by each borrower, participant, or counterparty in any credit facility or covered transaction; and

(D) information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in any credit facility or covered transaction.

(2) MANDATORY RELEASE DATE.—In the case of—

(A) a credit facility, the Board shall disclose the information described in paragraph (1) on the date that is 1 year after the effective date of the termination by the Board of the authorization of the credit facility; and

(B) a covered transaction, the Board shall disclose the information described in paragraph (1) on the last day of the eighth calendar quarter following the calendar quarter in which the covered transaction was conducted.

(3) EARLIER RELEASE DATE AUTHORIZED.—The Chairman of the Board may publicly release the information described in paragraph (1) before the relevant date specified in paragraph (2), if the Chairman determines that such disclosure would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose or conduct of covered transactions.

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

(A) CREDIT FACILITY.—The term "credit facility" [has the same meaning as in section 714(f)(1)(A) of title 31, United States Code] *means a program or facility, including any special purpose vehicle or other entity established by or on behalf of the Board of Governors of the Federal Reserve System or a Federal reserve bank, authorized by the Board of Governors under section 13(3), that is not subject to audit under section 714(e) of title 31, United States Code*.

(B) COVERED TRANSACTION.—The term "covered transaction" means—

(i) any open market transaction with a nongovernmental third party conducted under the first undesignated paragraph of section 14 or subparagraph (a), (b), or (c) of the 2nd undesignated paragraph of such section, after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(ii) any advance made under section 10B after the date of enactment of that Act.

(5) TERMINATION OF CREDIT FACILITY BY OPERATION OF LAW.—A credit facility shall be deemed to have terminated as of the end of the 24-month period beginning on the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board before such date.

(6) CONSISTENT TREATMENT OF INFORMATION.—Except as provided in this subsection or section 13(3)(D), [or in section 714(f)(3)(C) of title 31, United States Code, the information described in paragraph (1) and information concerning the transactions described in section 714(f) of such title,] *the information described in paragraph (1)* shall be confidential, including for purposes of section 552(b)(3) of title 5 of such Code, until the relevant mandatory release date described in paragraph (2), unless the Chairman of the Board determines that earlier disclosure of such information would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose of conduct of the relevant transactions.

(7) PROTECTION OF PERSONAL PRIVACY.—This subsection [and section 13(3)(C), section 714(f)(3)(C) of title 31, United States Code, and], *section 13(3)(C), and* subsection (a) or (c) of section 1109 of the Dodd-Frank Wall Street Reform and Consumer Protection Act shall not be construed as requiring any disclosure of nonpublic personal information (as defined for purposes of section 502 of the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) concerning any individual who is referenced in collateral pledged or assets transferred in connection with a credit facility or covered transaction, unless the person is a borrower, participant, or counterparty under the credit facility or covered transaction.

(8) STUDY OF FOIA EXEMPTION IMPACT.—

(A) STUDY.—The Inspector General of the Board of Governors of the Federal Reserve System shall—

(i) conduct a study on the impact that the exemption from section 552(b)(3) of title 5 (known as the Freedom of Information Act) established under paragraph (6) has had on the ability of the public to access information about the administration by the Board of Governors of emergency credit facilities, discount window lending programs, and open market operations; and

(ii) make any recommendations on whether the exemption described in clause (i) should remain in effect.

(B) REPORT.—Not later than 30 months after the date of enactment of [this section] *this subsection*, the Inspector General of the Board of Governors of the Federal Reserve System shall submit a report on the findings of the study required under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and publish the report on the website of the Board.

(9) RULE OF CONSTRUCTION.—Nothing in this section is meant to affect any pending litigation or lawsuit filed under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), on or before the date of en-

actment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[(s)] *(t)* ASSESSMENTS, FEES, AND OTHER CHARGES FOR CERTAIN COMPANIES.—

(1) IN GENERAL.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to such companies.

(2) COMPANIES.—The companies described in this paragraph are—

(A) all bank holding companies having total consolidated assets of $50,000,000,000 or more;

(B) all savings and loan holding companies having total consolidated assets of $50,000,000,000 or more; and

(C) all nonbank financial companies supervised by the Board under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(u) ETHICS STANDARDS FOR MEMBERS AND EMPLOYEES.—

(1) PROHIBITED AND RESTRICTED FINANCIAL INTERESTS AND TRANSACTIONS.—The members and employees of the Board of Governors of the Federal Reserve System shall be subject to the provisions under section 4401.102 of title 5, Code of Federal Regulations, to the same extent as such provisions apply to an employee of the Securities and Exchange Commission.

(2) TREATMENT OF BROKERAGE ACCOUNTS AND AVAILABILITY OF ACCOUNT STATEMENTS.—The members and employees of the Board of Governors of the Federal Reserve System shall—

(A) disclose all brokerage accounts that the member or employee maintains, as well as any accounts in which the member or employee controls trading or has a financial interest (including managed accounts, trust accounts, investment club accounts, and accounts of spouses or minor children who live with the member or employee); and

(B) with respect to any securities account that the member or employee is required to disclose to the Board of Governors, authorize the brokers and dealers of such account to send duplicate account statements directly to Board of Governors.

(3) PROHIBITIONS RELATED TO OUTSIDE EMPLOYMENT AND ACTIVITIES.—The members and employees of the Board of Governors of the Federal Reserve System shall be subject to the prohibitions related to outside employment and activities described under section 4401.103(c) of title 5, Code of Federal Regulations, to the same extent as such prohibitions apply to an employee of the Securities and Exchange Commission.

(4) ADDITIONAL ETHICS STANDARDS.—The members and employees of the Board of Governors of the Federal Reserve System shall be subject to—

(A) the employee responsibilities and conduct regulations of the Office of Personnel Management under part 735 of title 5, Code of Federal Regulations;

(B) the canons of ethics contained in subpart C of part 200 of title 17, Code of Federal Regulations, to the same ex-

tent as such subpart applies to the employees of the Securities and Exchange Commission; and

(C) the regulations concerning the conduct of members and employees and former members and employees contained in subpart M of part 200 of title 17, Code of Federal Regulations, to the same extent as such subpart applies to the employees of the Securities and Exchange Commission.

(v) DISCLOSURE OF STAFF SALARIES AND FINANCIAL INFORMATION.—The Board of Governors of the Federal Reserve System shall make publicly available, on the website of the Board of Governors, a searchable database that contains the names of all members, officers, and employees of the Board of Governors who receive an annual salary in excess of the annual rate of basic pay for GS–15 of the General Schedule, and—

(1) the yearly salary information for such individuals, along with any nonsalary compensation received by such individuals; and

(2) any financial disclosures required to be made by such individuals.

(w) INTERNATIONAL PROCESSES.—

(1) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before any member or employee of the Board of Governors of the Federal Reserve System participates in a process of setting financial standards as a part of any foreign or multinational entity, the Board of Governors shall—

(A) issue a notice of the process, including the subject matter, scope, and goals of the process, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) make such notice available to the public, including on the website of the Board of Governors; and

(C) solicit public comment, and consult with the committees described under subparagraph (A), with respect to the subject matter, scope, and goals of the process.

(2) PUBLIC REPORTS ON PROCESS.—After the end of any process described under paragraph (1), the Board of Governors shall issue a public report on the topics that were discussed during the process and any new or revised rulemakings or policy changes that the Board of Governors believes should be implemented as a result of the process.

(3) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before any member or employee of the Board of Governors of the Federal Reserve System participates in a process of setting financial standards as a part of any foreign or multinational entity, the Board of Governors shall—

(A) issue a notice of agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) make such notice available to the public, including on the website of the Board of Governors; and

(C) consult with the committees described under subparagraph (A) with respect to the nature of the agreement and

any anticipated effects such agreement will have on the economy.

(4) DEFINITION.—For purposes of this subsection, the term "process" shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization).

* * * * * * *

SEC. 11C. APPROPRIATIONS REQUIREMENT FOR NON-MONETARY POLICY RELATED ADMINISTRATIVE COSTS.

(a) APPROPRIATIONS REQUIREMENT.—

(1) RECOVERY OF COSTS OF ANNUAL APPROPRIATION.—The Board of Governors of the Federal Reserve System and the Federal reserve banks shall collect assessments and other fees, as provided under this Act, that are designed to recover the costs to the Government of the annual appropriation to the Board of Governors of the Federal Reserve System by Congress. The Board of Governors of the Federal Reserve System and the Federal reserve banks may only incur obligations or allow and pay expenses with respect to non-monetary policy related administrative costs pursuant to an appropriations Act.

(2) OFFSETTING COLLECTIONS.—Assessments and other fees described under paragraph (1) for any fiscal year—

(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Board of Governors of the Federal Reserve System; and

(B) except as provided in paragraph (3), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(3) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year an appropriation to the Board of Governors of the Federal Reserve System has not been enacted, the Board of Governors of the Federal Reserve System shall continue to collect (as offsetting collections) the assessments and other fees described under paragraph (1) at the rate in effect during the preceding fiscal year, until 60 days after the date such an appropriation is enacted.

(4) LIMITATION.—This subsection shall only apply to the non-monetary policy related administrative costs of the Board of Governors of the Federal Reserve System.

(b) DEFINITIONS.—For purposes of this section:

(1) MONETARY POLICY.—The term "monetary policy" means a strategy for producing a generally acceptable exchange medium that supports the productive employment of economic resources by reliably serving as both a unit of account and store of value.

(2) NON-MONETARY POLICY RELATED ADMINISTRATIVE COSTS.—The term "non-monetary policy related administrative costs" means administrative costs not related to the conduct of monetary policy, and includes—

(A) direct operating expenses for supervising and regulating entities supervised and regulated by the Board of

Governors of the Federal Reserve System, including conducting examinations, conducting stress tests, communicating with the entities regarding supervisory matters and laws, and regulations;

(B) operating expenses for activities integral to carrying out supervisory and regulatory responsibilities, such as training staff in the supervisory function, research and analysis functions including library subscription services, and collecting and processing regulatory reports filed by supervised institutions; and

(C) support, overhead, and pension expenses related to the items described under subparagraphs (A) and (B).

* * * * * * *

SEC. 12A. (a) There is hereby created a Federal Open Market Committee (hereinafter referred to as the "Committee"), which shall consist of the members of the Board of Governors of the Federal Reserve System and [five] *six* representatives of the Federal Reserve banks to be selected as hereinafter provided. Such representatives shall be presidents or first vice presidents of Federal Reserve banks and, beginning with the election for the term commencing March 1, 1943, shall be elected annually as follows: [One by the board of directors of the Federal Reserve Bank of New York, one by the boards of directors of the Federal Reserve Banks of Boston, Philadelphia, and Richmond, one by the boards of directors of the Federal Reserve Banks of Cleveland and Chicago, one by the boards of directors of the Federal Reserve Banks of Atlanta, Dallas, and St. Louis, and one by the boards of directors of the Federal Reserve Banks of Minneapolis, Kansas City, and San Francisco.] *One by the boards of directors of the Federal Reserve Banks of New York and Boston; one by the boards of directors of the Federal Reserve Banks of Philadelphia and Cleveland; one by the boards of directors of the Federal Reserve Banks of Richmond and Atlanta; one by the boards of directors of the Federal Reserve Banks of Chicago and St. Louis; one by the boards of directors of the Federal Reserve Banks of Minneapolis and Kansas City; and one by the boards of directors of the Federal Reserve Banks of Dallas and San Francisco. In odd numbered calendar years, one representative shall be elected from each of the Federal Reserve Banks of Boston, Philadelphia, Richmond, Chicago, Minneapolis, and Dallas. In even-numbered calendar years, one representative shall be elected from each of the Federal Reserve Banks of New York, Cleveland, Atlanta, St. Louis, Kansas City, and San Francisco.* In such elections each board of directors shall have one vote; and the details of such elections may be governed by regulations prescribed by the committee, which may be amended from time to time. An alternate to serve in the absence of each such representative shall likewise be a president or first vice president of a Federal Reserve bank and shall be elected annually in the same manner. The meetings of said Committee shall be held at Washington, District of Columbia, at least four times each year upon the call of the chairman of the Board of Governors of the Federal Reserve System or at the request of any three members of the Committee.

(b) No Federal Reserve bank shall engage or decline to engage in open-market operations under section 14 of this Act except in accordance with the direction of and regulations adopted by the Com-

mittee. The Committee shall consider, adopt, and transmit to the several Federal Reserve banks, regulations relating to the open-market transactions of such banks.

(c) The time, character, and volume of all purchases and sales of paper described in section 14 of this Act as eligible for open-market operations shall be governed with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.

(d) BLACKOUT PERIOD.—

(1) IN GENERAL.—During a blackout period, the only public communications that may be made by members and staff of the Committee with respect to macroeconomic or financial developments or about current or prospective monetary policy issues are the following:

(A) The dissemination of published data, surveys, and reports that have been cleared for publication by the Board of Governors of the Federal Reserve System.

(B) Answers to technical questions specific to a data release.

(C) Communications with respect to the prudential or supervisory functions of the Board of Governors.

(2) BLACKOUT PERIOD DEFINED.—For purposes of this subsection, and with respect to a meeting of the Committee described under subsection (a), the term "blackout period" means the time period that—

(A) begins immediately after midnight on the day that is one week prior to the date on which such meeting takes place; and

(B) ends at midnight on the day after the date on which such meeting takes place.

(3) EXEMPTION FOR CHAIRMAN OF THE BOARD OF GOVERNORS.—Nothing in this section shall prohibit the Chairman of the Board of Governors of the Federal Reserve System from participating in or issuing public communications.

(e) PUBLIC TRANSCRIPTS OF MEETINGS.—The Committee shall—

(1) record all meetings of the Committee; and

(2) make the full transcript of such meetings available to the public.

POWERS OF FEDERAL RESERVE BANKS.

SEC. 13. Any Federal reserve bank may receive from any of its member banks or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation or other items, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or ma-

turing notes and bills: *Provided,* Such nonmember bank or trust company or other depository institution maintains with the Federal reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve bank, and other factors as the Board may deem appropriate: *Provided further,* That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank or other depository institution from making reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice and protest by such bank as to its own indorsement exclusively, any Federal reserve bank may discount notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Board of Governors of the Federal Reserve System to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act. Nothing in this Act contained shall be construed to prohibit such notes, drafts, and bills of exchange, secured by staple agricultural products, or other goods, wares, or merchandise from being eligible for such discount, and the notes, drafts, and bills of exchange of factors issued as such making advances exclusively to producers of staple agricultural products in their raw state shall be eligible for such discount; but such definition shall not include notes, drafts, or bills covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States. Notes, drafts, and bills admitted to discount under the terms of this paragraph must have a maturity at the time of discount of not more than 90 days, exclusive of grace.

(3)(A) In unusual and exigent circumstances *that pose a threat to the financial stability of the United States*, the Board of Governors of the Federal Reserve System, by the affirmative vote of not less than five members *and by the affirmative vote of not less than nine presidents of the Federal reserve banks*, may authorize any Federal reserve bank, during such periods as the said board may determine, at rates established in accordance with the provisions of section 14, subdivision (d), of this Act, to discount for any *financial institution* participant in any program or facility with broad-based eligibility, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal Reserve bank: *Provided,* That before discounting any such note, draft, or bill of exchange, the Federal reserve bank shall obtain evidence that such *financial institution* participant in any program or facility with broad-based eligibility is unable to secure adequate credit accommodations from other banking institutions. All such discounts for any *financial institu-*

tion participant in any program or facility with broad-based eligibility shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.

(B)(i) As soon as is practicable after the date of enactment of this subparagraph, the Board shall establish, by regulation, in consultation with the Secretary of the Treasury, the policies and procedures governing emergency lending under this paragraph. Such policies and procedures shall be designed to ensure that any emergency lending program or facility is for the purpose of providing liquidity to the financial system, and not to aid a failing financial company, and that the security for emergency loans is sufficient to protect taxpayers from losses and that any such program is terminated in a timely and orderly fashion. The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph. *Federal reserve banks may not accept equity securities issued by the recipient of any loan or other financial assistance under this paragraph as collateral. Not later than 6 months after the date of enactment of this sentence, the Board shall, by rule, establish—*

(I) a method for determining the sufficiency of the collateral required under this paragraph;

(II) acceptable classes of collateral;

(III) the amount of any discount on the value of the collateral that the Federal reserve banks will apply for purposes of calculating the sufficiency of collateral under this paragraph; and

(IV) a method for obtaining independent appraisals of the value of collateral the Federal reserve banks receive.

(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. *A borrower shall not be eligible to borrow from any emergency lending program or facility unless the Board and all Federal banking regulators with jurisdiction over the borrower certify that, at the time the borrower initially borrows under the program or facility, the borrower is not insolvent.* [Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent.] A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy[, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or] *or is subject to resolution under* any other Federal or State insolvency proceeding.

(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy[, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or] *or resolution under* any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

(iv) The Board may not establish any program or facility under this paragraph without the prior approval of the Secretary of the Treasury.

(C) The Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) not later than 7 days after the Board authorizes any loan or other financial assistance under this paragraph, a report that includes—

(I) the justification for the exercise of authority to provide such assistance;

(II) the identity of the recipients of such assistance;

(III) the date and amount of the assistance, and form in which the assistance was provided; and

(IV) the material terms of the assistance, including—

(aa) duration;

(bb) collateral pledged and the value thereof;

(cc) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

(dd) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

(ee) the expected costs to the taxpayers of such assistance; and

(ii) once every 30 days, with respect to any outstanding loan or other financial assistance under this paragraph, written updates on—

(I) the value of collateral;

(II) the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and

(III) the expected or final cost to the taxpayers of such assistance.

(D) The information required to be submitted to Congress under subparagraph (C) related to—

(i) the identity of the *financial institution* participants in an emergency lending program or facility commenced under this paragraph;

(ii) the amounts borrowed by each *financial institution* participant in any such program or facility;

(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,

shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons or Ranking Members of the Committees described in subparagraph (C).

[(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under section 210(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.]

(E) PENALTY RATE.—

(i) IN GENERAL.—Not later than 6 months after the date of enactment of this subparagraph, the Board shall, with respect to a recipient of any loan or other financial assistance under this paragraph, establish by rule a minimum interest rate on the principal amount of any loan or other financial assistance.

(ii) MINIMUM INTEREST RATE DEFINED.—In this subparagraph, the term "minimum interest rate" shall mean the sum of—

(I) the average of the secondary discount rate of all Federal Reserve banks over the most recent 90-day period; and

(II) the average of the difference between a distressed corporate bond yield index (as defined by rule of the Board) and a bond yield index of debt issued by the United States (as defined by rule of the Board) over the most recent 90-day period.

(F) FINANCIAL INSTITUTION PARTICIPANT DEFINED.—For purposes of this paragraph, the term "financial institution participant"—

(i) means a company that is predominantly engaged in financial activities (as defined in section 102(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5311(a))); and

(ii) does not include an agency described in subparagraph (W) of section 5312(a)(2) of title 31, United States Code, or an entity controlled or sponsored by such an agency.

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice, and protest by such bank as to its own indorsement exclusively, and subject to regulations and limitations to be prescribed by the Board of Governors of the Federal Reserve System, any Federal reserve bank may discount or purchase bills of exchange payable at sight or on demand which grow out of the domestic shipment or the exportation of nonperishable, readily marketable agricultural and other staples and are secured by bills of lading or other shipping documents conveying or securing title to such staples: *Provided,* That all such bills of ex-

change shall be forwarded promptly for collection, and demand for payment shall be made with reasonable promptness after the arrival of such staples at their destination: *Provided further,* That no such bill shall in any event be held by or for the account of a Federal reserve bank for a period in excess of ninety days. In discounting such bills Federal reserve banks may compute the interest to be deducted on the basis of the estimated life of each bill and adjust the discount after payment of such bills to conform to the actual life thereof.

The aggregate of notes, drafts, and bills upon which any person, copartnership, association, or corporation is liable as maker, acceptor, indorser, drawer, or guarantor, rediscounted for any member bank, shall at no time exceed the amount for which such person, copartnership, association, or corporation may lawfully become liable to a national banking association under the terms of section 5200 of the Revised Statutes, as amended: *Provided, however,* That nothing in this paragraph shall be construed to change the character or class of paper now eligible for rediscount by Federal reserve banks.

Any Federal reserve bank may discount acceptances of the kinds hereinafter described, which have a maturity at the time of discount of not more than 90 days' sight, exclusive of days of grace, and which are indorsed by at least one member bank: *Provided,* That such acceptances if drawn for an agricultural purpose and secured at the time of acceptance by warehouse receipts or other such documents conveying or securing title covering readily marketable staples may be discounted with a maturity at the time of discount of not more than six months' sight exclusive of days of grace.

(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as "institutions"), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

(i) which grow out of transactions involving the importation or exportation of goods;

(ii) which grow out of transactions involving the domestic shipment of goods; or

(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dol-

lar equivalent as determined by the Board under subparagraph (H).

(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.

Any Federal reserve bank may make advances for periods not exceeding fifteen days to its member banks on their promissory notes secured by the deposit or pledge of bonds, notes, certificates of indebtedness or Treasury bills of the United States, or by the deposit or pledge of debentures or other such obligations of Federal intermediate credit banks which are eligible for purchase by Federal reserve banks under section 13 (a) of this Act, or by the deposit or pledge of bonds issued under the provisions of subsection (c) of section 4 of the Home Owners' Loan Act of 1933, as amended; and any Federal reserve bank may make advances for periods not exceeding ninety days to its member banks on their promissory notes secured by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal reserve banks under the provisions of this Act, or secured by such obligations as are eligible for purchase under section 14(b) of this Act. All such advances shall be made at rates to be established by such Federal reserve banks, such rates to be subject to the review and determination of the Board of Governors of the Federal Reserve System. If any member bank to which any such advance has been made

shall, during the life or continuance of such advance, and despite an official warning of the reserve bank of the district or of the Board of Governors of the Federal Reserve System to the contrary, increase its outstanding loans secured by collateral in the form of stocks, bonds, debentures, or other such obligations, or loans made to members of any organized stock exchange, investment house, or dealer in securities, upon any obligation, note, or bill, secured or unsecured, for the purpose of purchasing and/or carrying stocks, bonds, or other investment securities (except obligations of the United States) such advance shall be deemed immediately due and payable, and such member bank shall be ineligible as a borrower at the reserve bank of the district under the provisions of this paragraph for such period as the Board of Governors of the Federal Reserve System shall determine: *Provided,* That no temporary carrying or clearance loans made solely for the purpose of facilitating the purchase or delivery of securities offered for public subscription shall be included in the loans referred to in this paragraph.

The discount and rediscount and the purchase and sale by any Federal reserve bank of any bills receivable and of domestic and foreign bills of exchange, and of acceptances authorized by this Act, shall be subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System. (Omitted from U.S. Code)

That in addition to the powers not vested by law in national banking associations organized under the laws of the United States any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent: *Provided, however,* That no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *And provided further,* That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

Any member bank may accept drafts or bills of exchange drawn upon it having not more than three months' sight to run, exclusive of days of grace, drawn under regulations to be prescribed by the Board of Governors of the Federal Reserve System by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies, or insular possessions. Such drafts or bills may be acquired by Federal reserve banks in such amounts and subject to such regulations, restrictions, and limitations as may be prescribed by the Board of Governors of the Federal Reserve System: *Provided, however,* That no member bank shall accept such drafts or bills of exchange referred to this paragraph for any one bank to an

amount exceeding in the aggregate ten per centum of the paid-up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security: *Provided further,* That no member bank shall accept such drafts or bills in an amount exceeding at any time the aggregate of one-half of its paid-up and unimpaired capital and surplus. (Omitted from U.S. Code)

Subject to such limitations, restrictions and regulations as the Board of Governors of the Federal Reserve System may prescribe, any Federal reserve bank may make advances to any individual, partnership or corporation on the promissory notes of such individual, partnership or corporation secured by direct obligations of the United States or by any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, any agency of the United States. Such advances shall be made for periods not exceeding 90 days and shall bear interest at rates fixed from time to time by the Federal reserve bank, subject to the review and determination of the Board of Governors of the Federal Reserve System.

Subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System, each Federal Reserve bank may receive deposits from, discount paper endorsed by, and make advances to any branch or agency of a foreign bank in the same manner and to the same extent that it may exercise such powers with respect to a member bank if such branch or agency is maintaining reserves with such Reserve bank pursuant to section 7 of the International Banking Act of 1978. In exercising any such powers with respect to any such branch or agency, each Federal Reserve bank shall give due regard to account balances being maintained by such branch or agency with such Reserve bank and the proportion of the assets of such branch or agency being held as reserves under section 7 of the International Banking Act of 1978. For the purposes of this paragraph, the terms "branch,""agency," and "foreign bank" shall have the same meanings assigned to them in section 1 of the International Banking Act of 1978.

* * * * * * *

SEC. 19. (a) The Board is authorized for the purposes of this section to define the terms used in this section, to determine what shall be deemed a payment of interest, to determine what types of obligations, whether issued directly by a member bank or indirectly by an affiliate of a member bank or by other means, and regardless of the use of the proceeds, shall be deemed a deposit, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this section and to prevent evasions thereof.

(b) RESERVE REQUIREMENTS.—

(1) DEFINITIONS.—The following definitions and rules apply to this subsection, subsection (c), section 11A, the first paragraph of section 13, and the second, thirteenth, and fourteenth paragraphs of section 16:

(A) The term "depository institution" means—

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is

eligible to make application to become an insured bank under section 5 of such Act;

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(iv) any insured credit union as defined in section 101 of the Federal Credit Union Act or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act;

(v) any member as defined in section 2 of the Federal Home Loan Bank Act;

(vi) any savings association (as defined in section 3 of the Federal Deposit Insurance Act) which is an insured depository institution (as defined in such Act) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act; and

(vii) for the purpose of section 13 and the fourteenth paragraph of section 16, any association or entity which is wholly owned by or which consists only of institutions referred to in clauses (i) through (vi).

(B) The term "bank" means any insured or noninsured bank, as defined in section 3 of the Federal Deposit Insurance Act, other than a mutual savings bank or a savings bank as defined in such section.

(C) The term "transaction account" means a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

(D) The term "nonpersonal time deposits" means a transferable time deposit or account or a time deposit or account representing funds deposited to the credit of, or in which any beneficial interest is held by, a depositor who is not a natural person.

(E) The term "reservable liabilities" means transaction accounts, nonpersonal time deposits, and all net balances, loans, assets, and obligations which are, or may be, subject to reserve requirements under paragraph (5).

(F) In order to prevent evasions of the reserve requirements imposed by this subsection, after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the National Credit Union Administration Board, the Board of Governors of the Federal Reserve System is authorized to

determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others.

(2) RESERVE REQUIREMENTS.—(A) Each depository institution shall maintain reserves against its transaction accounts as the Board may prescribe by regulation solely for the purpose of implementing monetary policy—

(i) in a ratio of not greater than 3 percent (and which may be zero) for that portion of its total transaction accounts of $25,000,000 or less, subject to subparagraph (C); and

(ii) in the ratio of 12 per centum, or in such other ratio as the Board may prescribe not greater than 14 per centum (and which may be zero), for that portion of its total transaction accounts in excess of $25,000,000, subject to subparagraph (C).

(B) Each depository institution shall maintain reserves against its nonpersonal time deposits in the ratio of 3 per centum, or in such other ratio not greater than 9 per centum and not less than zero per centum as the Board may prescribe by regulation solely for the purpose of implementing monetary policy.

(C) Beginning in 1981, not later than December 31 of each year the Board shall issue a regulation increasing for the next succeeding calendar year the dollar amount which is contained in subparagraph (A) or which was last determined pursuant to this subparagraph for the purpose of such subparagraph, by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage increase in the total transaction accounts of all depository institutions. The increase in such transaction accounts shall be determined by subtracting the amount of such accounts on June 30 of the preceding calendar year from the amount of such accounts on June 30 of the calendar year involved. In the case of any such 12-month period in which there has been a decrease in the total transaction accounts of all depository institutions, the Board shall issue such a regulation decreasing for the next succeeding calendar year such dollar amount by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage decrease in the total transaction accounts of all depository institutions. The decrease in such transaction accounts shall be determined by subtracting the amount of such accounts on June 30 of the calendar year involved from the amount of such accounts on June 30 of the previous calendar year.

(D) Any reserve requirement imposed under this subsection shall be uniformly applied to all transaction accounts at all depository institutions. Reserve requirements imposed under this subsection shall be uniformly applied to nonpersonal time deposits at all depository institutions, except that such requirements may vary by the maturity of such deposits.

(3) WAIVER OF RATIO LIMITS IN EXTRAORDINARY CIRCUMSTANCES.—Upon a finding by at least 5 members of the Board that extraordinary circumstances require such action,

the Board, after consultation with the appropriate committees of the Congress, may impose, with respect to any liability of depository institutions, reserve requirements outside the limitations as to ratios and as to types of liabilities otherwise prescribed by paragraph (2) for a period not exceeding 180 days, and for further periods not exceeding 180 days each by affirmative action by at least 5 members of the Board in each instance. The Board shall promptly transmit to the Congress a report of any exercise of its authority under this paragraph and the reasons for such exercise of authority.

(4) SUPPLEMENTAL RESERVES.—(A) The Board may, upon the affirmative vote of not less than 5 members, impose a supplemental reserve requirement on every depository institution of not more than 4 per centum of its total transaction accounts. Such supplemental reserve requirement may be imposed only if—

(i) the sole purpose of such requirement is to increase the amount of reserves maintained to a level essential for the conduct of monetary policy;

(ii) such requirement is not imposed for the purpose of reducing the cost burdens resulting from the imposition of the reserve requirements pursuant to paragraph (2);

(iii) such requirement is not imposed for the purpose of increasing the amount of balances needed for clearing purposes; and

(iv) on the date on which the supplemental reserve requirement is imposed, except as provided in paragraph (11), the total amount of reserves required pursuant to paragraph (2) is not less than the amount of reserves that would be required if the initial ratios specified in paragraph (2) were in effect.

(B) The Board may require the supplemental reserve authorized under subparagraph (A) only after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the National Credit Union Administration Board. The Board shall promptly transmit to the Congress a report with respect to any exercise of its authority to require supplemental reserves under subparagraph (A) and such report shall state the basis for the determination to exercise such authority.

(C) If a supplemental reserve under subparagraph (A) has been required of depository institutions for a period of one year or more, the Board shall review and determine the need for continued maintenance of supplemental reserves and shall transmit annual reports to the Congress regarding the need, if any, for continuing the supplemental reserve.

(D) Any supplemental reserve imposed under subparagraph (A) shall terminate at the close of the first 90-day period after such requirement is imposed during which the average amount of reserves required under paragraph (2) are less than the amount of reserves which would be required during such period if the initial ratios specified in paragraph (2) were in effect.

(5) RESERVES RELATED TO FOREIGN OBLIGATIONS OR ASSETS.—Foreign branches, subsidiaries, and international banking fa-

cilities of nonmember depository institutions shall maintain reserves to the same extent required by the Board of foreign branches, subsidiaries, and international banking facilities of member banks. In addition to any reserves otherwise required to be maintained pursuant to this subsection, any depository institution shall maintain reserves in such ratios as the Board may prescribe against—

(A) net balances owed by domestic offices of such depository institution in the United States to its directly related foreign offices and to foreign offices of nonrelated depository institutions;

(B) loans to United States residents made by overseas offices of such depository institution if such depository institution has one or more offices in the United States; and

(C) assets (including participations) held by foreign offices of a depository institution in the United States which were acquired from its domestic offices.

(6) EXEMPTION FOR CERTAIN DEPOSITS.—The requirements imposed under paragraph (2) shall not apply to deposits payable only outside the States of the United States and the District of Columbia, except that nothing in this subsection limits the authority of the Board to impose conditions and requirements on member banks under section 25 of this Act or the authority of the Board under section 7 of the International Banking Act of 1978.

(7) DISCOUNT AND BORROWING.—Any depository institution in which transaction accounts or nonpersonal time deposits are held shall be entitled to the same discount and borrowing privileges as member banks. In the administration of discount and borrowing privileges, the Board and the Federal Reserve banks shall take into consideration the special needs of savings and other depository institutions for access to discount and borrowing facilities consistent with their long-term asset portfolios and the sensitivity of such institutions to trends in the national money markets.

(8) TRANSITIONAL ADJUSTMENTS.—

(A) Any depository institution required to maintain reserves under this subsection which was engaged in business on July 1, 1979, but was not a member of the Federal Reserve System on or after that date, shall maintain reserves against its deposits during the first twelve-month period following the effective date of this paragraph in amounts equal to one-eighth of those otherwise required by this subsection, during the second such twelve-month period in amounts equal to one-fourth of those otherwise required, during the third such twelve-month period in amounts equal to three-eighths of those otherwise required, during the fourth twelve-month period in amounts equal to one-half of those otherwise required, and during the fifth twelve-month period in amounts equal to five-eighths of those otherwise required, during the sixth twelve-month period in amounts equal to three-fourths of those otherwise required, and during the seventh twelve-month period in amounts equal to seven-eighths of those otherwise required. This subparagraph does not apply to

any category of deposits or accounts which are first authorized pursuant to Federal law in any State after April 1, 1980.

(B) With respect to any bank which was a member of the Federal Reserve System during the entire period beginning on July 1, 1979, and ending on the effective date of the Monetary Control Act of 1980, the amount of required reserves imposed pursuant to this subsection on and after the effective date of such Act that exceeds the amount of reserves which would have been required of such bank if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied may, at the discretion of the Board and in accordance with such rules and regulations as it may adopt, be reduced by 75 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 25 per centum during the third year.

(C)(i) With respect to any bank which is a member of the Federal Reserve System on the effective date of the Monetary Control Act of 1980, the amount of reserves which would have been required of such bank if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied that exceeds the amount of required reserves imposed pursuant to this subsection shall, in accordance with such rules and regulations as the Board may adopt, be reduced by 25 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 75 per centum during the third year.

(ii) If a bank becomes a member bank during the four-year period beginning on the effective date of the Monetary Control Act of 1980, and if the amount of reserves which would have been required of such bank, determined as if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied, and as if such bank had been a member during such period, exceeds the amount of reserves required pursuant to this subsection, the amount of reserves required to be maintained by such bank beginning on the date on which such bank becomes a member of the Federal Reserve System shall be the amount of reserves which would have been required of such bank if it had been a member on the day before such effective date, except that the amount of such excess shall, in accordance with such rules and regulations as the Board may adopt, be reduced by 25 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 75 per centum during the third year.

(D)(i) Any bank which was a member bank on July 1, 1979, and which withdrew from membership in the Federal Reserve System during the period beginning on July 1, 1979, and ending on March 31, 1980, shall maintain reserves during the first twelve-month period beginning on the date of enactment of this clause in amounts equal to one-half of those otherwise required by this subsection,

during the second such twelve-month period in amounts equal to two-thirds of those otherwise required, and during the third such twelve-month period in amounts equal to five-sixths of those otherwise required.

(ii) Any bank which withdraws from membership in the Federal Reserve System on or after the date of enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall maintain reserves in the same amount as member banks are required to maintain under this subsection, pursuant to subparagraphs (B) and (C)(i).

(E) This subparagraph applies to any depository institution that, on August 1, 1978, (i) was engaged in business as a depository institution in a State outside the continental limits of the United States, and (ii) was not a member of the Federal Reserve System at any time on or after such date. Such a depository institution shall not be required to maintain reserves against such deposits held or maintained at its offices located in a State outside the continental limits of the United States until the first day of the sixth calendar year which begins after the effective date of the Monetary Control Act of 1980. Such a depository institution shall maintain reserves against such deposits during the sixth calendar year which begins after such effective date in an amount equal to one-eighth of that otherwise required by paragraph (2), during the seventh such year in an amount equal to one-fourth of that otherwise required, during the eighth such year in an amount equal to three-eighths of that otherwise required, during the ninth such year in an amount equal to one-half of that otherwise required, during the tenth such year in an amount equal to five-eighths of that otherwise required, during the eleventh such year in an amount equal to three-fourths of that otherwise required, and during the twelth such year in an amount equal to seven-eighths of that otherwise required.

(9) EXEMPTION.—This subsection shall not apply with respect to any financial institution which—

(A) is organized solely to do business with other financial institutions;

(B) is owned primarily by the financial institutions with which it does business; and

(C) does not do business with the general public.

(10) WAIVERS.—In individual cases, where a Federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Board shall waive the reserve requirement, or waive the penalty for failing to satisfy a reserve requirement, imposed pursuant to this subsection for the depository institution involved when requested by the Federal supervisory authority involved.

(11) ADDITIONAL EXEMPTIONS.—(A)(i) Notwithstanding the reserve requirement ratios established under paragraphs (2) and (5) of this subsection, a reserve ratio of zero per centum shall apply to any combination of reservable liabilities, which do not exceed $2,000,000 (as adjusted under subparagraph (B)), of each depository institution.

(ii) Each depository institution may designate, in accordance with such rules and regulations as the Board shall prescribe, the types and amounts of reservable liabilities to which the reserve ratio of zero per centum shall apply, except that transaction accounts which are designated to be subject to a reserve ratio of zero per centum shall be accounts which would otherwise be subject to a reserve ratio of 3 per centum under paragraph (2).

(iii) The Board shall minimize the reporting necessary to determine whether depository institutions have total reservable liabilities of less than $2,000,000 (as adjusted under subparagraph (B)). Consistent with the Board's responsibility to monitor and control monetary and credit aggregates, depository institutions which have reserve requirements under this subsection equal to zero per centum shall be subject to less overall reporting requirements than depository institutions which have a reserve requirement under this subsection that exceeds zero per centum.

(B)(i) Beginning in 1982, not later than December 31 of each year, the Board shall issue a regulation increasing for the next succeeding calendar year the dollar amount specified in subparagraph (A), as previously adjusted under this subparagraph, by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage increase in the total reservable liabilities of all depository institutions.

(ii) The increase in total reservable liabilities shall be determined by subtracting the amount of total reservable liabilities on June 30 of the preceding calendar year from the amount of total reservable liabilities on June 30 of the calendar year involved. In the case of any such twelve-month period in which there has been a decrease in the total reservable liabilities of all depository institutions, no adjustment shall be made. A decrease in total reservable liabilities shall be determined by subtracting the amount of total reservable liabilities on June 30 of the calendar year involved from the amount of total reservable liabilities on June 30 of the previous calendar year.

(12) EARNINGS ON BALANCES.—

(A) IN GENERAL.—Balances maintained at a Federal Reserve bank by or on behalf of a depository institution may receive earnings to be paid by the Federal Reserve bank at least once each calendar quarter, at a rate or rates *established by the Federal Open Market Committee* not to exceed the general level of short-term interest rates.

(B) REGULATIONS RELATING TO PAYMENTS AND DISTRIBUTIONS.—The Board may prescribe regulations concerning—

(i) the payment of earnings in accordance with this paragraph;

(ii) the distribution of such earnings to the depository institutions which maintain balances at such banks, or on whose behalf such balances are maintained; and

(iii) the responsibilities of depository institutions, Federal Home Loan Banks, and the National Credit Union Administration Central Liquidity Facility with respect to the crediting and distribution of earnings

attributable to balances maintained, in accordance with subsection (c)(1)(A), in a Federal Reserve bank by any such entity on behalf of depository institutions.

(C) DEPOSITORY INSTITUTIONS DEFINED.—For purposes of this paragraph, the term "depository institution", in addition to the institutions described in paragraph (1)(A), includes any trust company, corporation organized under section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978).

(c)(1) Reserves held by a depository institution to meet the requirements imposed pursuant to subsection (b) shall, subject to such rules and regulations as the Board shall prescribe, be in the form of—

(A) balances maintained for such purposes by such depository institution in the Federal Reserve bank of which it is a member or at which it maintains an account, except that (i) the Board may, by regulation or order, permit depository institutions to maintain all or a portion of their required reserves in the form of vault cash, except that any portion so permitted shall be identical for all depository institutions, and (ii) vault cash may be used to satisfy any supplemental reserve requirement imposed pursuant to subsection (b)(4), except that all such vault cash shall be excluded from any computation of earnings pursuant to subsection (b); and

(B) balances maintained by a depository institution in a depository institution which maintains required reserve balances at a Federal Reserve bank, in a Federal Home Loan Bank, or in the National Credit Union Administration Central Liquidity Facility, if such depository institution, Federal Home Loan Bank, or National Credit Union Administration Central Liquidity Facility maintains such funds in the form of balances in a Federal Reserve bank of which it is a member or at which it maintains an account. Balances received by a depository institution from a second depository institution and used to satisfy the reserve requirement imposed on such second depository institution by this section shall not be subject to the reserve requirements of this section imposed on such first depository institution, and shall not be subject to assessments or reserves imposed on such first depository institution pursuant to section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817), section 404 of the National Housing Act (12 U.S.C. 1727), or section 202 of the Federal Credit Union Act (12 U.S.C. 1782).

(2) The balances maintained to meet the reserve requirements of subsection (b) by a depository institution in a Federal Reserve bank or passed through a Federal Home Loan Bank or the National Credit Union Administration Central Liquidity Facility or another depository institution to a Federal Reserve bank may be used to satisfy liquidity requirements which may be imposed under other provisions of Federal or State law.

(d) No member bank shall act as the medium or agent of any nonbanking corporation, partnership, association, business trust, or individual in making loans on the security of stocks, bonds, and

other investment securities to brokers or dealers in stocks, bonds, and other investment securities. Every violation of this provision by any member bank shall be punishable by a fine of not more than $100 per day during the continuance of such violation; and such fine may be collected, by suit or otherwise, by the Federal reserve bank of the district in which such member bank is located.

(e) No member bank shall keep on deposit with any depository institution which is not authorized to have access to Federal Reserve advances under section 10(b) of this Act a sum in excess of 10 per centum of its own paid-up capital and surplus. No member bank shall act as the medium or agent of a nonmember bank in applying for or receiving discounts from a Federal reserve bank under the provisions of this Act, except by permission of the Board of Governors of the Federal Reserve System.

(f) The required balance carried by a member bank with a Federal reserve bank may, under the regulations and subject to such penalties as may be prescribed by the Board of Governors of the Federal Reserve System, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities.

(g) In estimating the reserve balances required by this Act, member banks may deduct from the amount of their gross demand deposits the amounts of balances due from other banks (except Federal Reserve banks and foreign banks) and cash items in process of collection payable immediately upon presentation in the United States, within the meaning of these terms as defined by the Board of Governors of the Federal Reserve System.

(h) National banks, or banks organized under local laws, located in a dependency or insular posssession or any part of the United States outside the continental United States may remain nonmember banks, and shall in that event maintain reserves and comply with all the conditions now provided by law regulating them; or said banks may, with the consent of the Board of Governors of the Federal Reserve System, become member banks of any one of the reserve districts, and shall in that event take stock, maintain reserves, and be subject to all the other provisions of this Act.

(j) The Board may from time to time, after consulting with the Board of Directors of the Federal Deposit Insurance Corporation and the Director of the Office of Thrift Supervision, prescribe rules governing the payment and advertisement of interest on deposits, including limitations on the rates of interest which may be paid by member banks on time and savings deposits. The Board may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities or subject to different conditions regarding withdrawal or repayment, according to the nature or location of member banks or their depositors, or according to such other reasonable bases as the Board may deem desirable in the public interest. No member bank shall pay any time deposit before its maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the said Board, or waive any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement: *Provided,* That the provisions of this paragraph shall not apply to any deposit which is payable only at an office of a member bank located outside of the States of the United States and the District of Columbia. During the period com-

mencing on October 15, 1962, and ending on October 15, 1968, the provisions of this paragraph shall not apply to the rate of interest which may be paid by member banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

(k) No member bank or affiliate thereof, or any successor or assignee of such member bank or affiliate or any endorser, guarantor, or surety of such member bank or affiliate may plead, raise, or claim directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such member bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such member bank or affiliate or to any other person.

(l) CIVIL MONEY PENALTY.—

(1) FIRST TIER.—Any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who, violates any provision of this section, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(2) SECOND TIER.—Notwithstanding paragraph (1), any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who—

(A)(i) commits any violation described in paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such member bank; or

(iii) breaches any fiduciary duty;

(B) which violation, practice, or breach—

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to such member bank; or

(iii) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who—

(A) knowingly—

(i) commits any violation described in paragraph (1);

(ii) engages in any unsafe or unsound practice in conducting the affairs of such member bank; or

(iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to such member bank or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

(A) in the case of any person other than a member bank, an amount not to exceed **[**$1,000,000**]** *$1,500,000*; and

(B) in the case of a member bank, an amount not to exceed the lesser of—

(i) **[**$1,000,000**]** *$1,500,000*; or

(ii) 1 percent of the total assets of such member bank.

(5) ASSESSMENT; ETC.—Any penalty imposed under paragraph (1), (2), or (3) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(6) HEARING.—The member bank or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such member bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

(7) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

(8) VIOLATE DEFINED.—For purposes of this section, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(9) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

(m) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a member bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after the date of the enactment of this subsection).

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SEC. 29. CIVIL MONEY PENALTY.

(a) FIRST TIER.—Any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who, violates any provision of section 22, 23A, or 23B, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(b) SECOND TIER.—Notwithstanding subsection (a), any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who

(1)(A) commits any violation described in subsection (a);

(B) recklessly engages in an unsafe or unsound practice in conducting the affairs of such member bank; or

(C) breaches any fiduciary duty;

(2) which violation, practice, or breach—

(A) is part of a pattern of misconduct;

(B) causes or is likely to cause more than a minimal loss to such member bank; or

(C) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(c) THIRD TIER.—Notwithstanding subsections (a) and (b), any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who—

(1) knowingly—

(A) commits any violation described in subsection (a);

(B) engages in any unsafe or unsound practice in conducting the affairs of such credit union; or

(C) breaches any fiduciary duty; and

(2) knowingly or recklessly causes a substantial loss to such credit union or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subsection (d) for each day during which such violation, practice, or breach continues.

(d) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBSECTION (c).—The maximum daily amount of any civil penalty which may be assessed pursuant to subsection (c) for any violation, practice, or breach described in such subsection is—

(1) in the case of any person other than a member bank, an amount to not exceed **[**$1,000,000**]** *$1,500,000*; and

(2) in the case of a member bank, an amount not to exceed the lesser of—

(A) **[**$1,000,000**]** *$1,500,000*; or

(B) 1 percent of the total assets of such member bank.

(e) ASSESSMENT; ETC.—Any penalty imposed under subsection (a), (b), or (c) shall be assessed and collected by

(1) in the case of a national bank, by the Comptroller of the Currency; and

(2) in the case of a State member bank, by the Board,

in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(f) HEARING.—The member bank or other person against whom any penalty is assessed under this section shall be afforded an agency hearing if such member bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this section.

(g) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(h) VIOLATE DEFINED.—For purposes of this section, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(i) REGULATIONS.—The Comptroller of the Currency and the Board shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

(m) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a member bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after the date of the enactment of this subsection).

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TITLE 11, UNITED STATES CODE

CHAPTER 1—GENERAL PROVISIONS

§ 101. Definitions

In this title the following definitions shall apply:

(1) The term "accountant" means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized.

(2) The term "affiliate" means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, con-

trolled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

(3) The term "assisted person" means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000.

(4) The term "attorney" means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law.

(4A) The term "bankruptcy assistance" means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(6) The term "commodity broker" means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title.

(7) The term "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case.

(7A) The term "commercial fishing operation" means—

(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A).

(7B) The term "commercial fishing vessel" means a vessel used by a family fisherman to carry out a commercial fishing operation.

(8) The term "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose.

(9) The term "corporation"—

(A) includes—

(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

(iii) joint-stock company;

(iv) unincorporated company or association; or

(v) business trust; but

(B) does not include limited partnership.

(9A) The term "covered financial corporation" means any corporation incorporated or organized under any Federal or State law, other than a stockbroker, a commodity broker, or an entity of the kind specified in paragraph (2) or (3) of section 109(b), that is—

(A) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956; or

(B) a corporation that exists for the primary purpose of owning, controlling and financing its subsidiaries, that has total consolidated assets of $50,000,000,000 or greater, and for which, in its most recently completed fiscal year—

(i) annual gross revenues derived by the corporation and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the corporation; or

(ii) the consolidated assets of the corporation and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the corporation.

(10) The term "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim.

(10A) The term "current monthly income"—

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

(11) The term "custodian" means—

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors.

(12) The term "debt" means liability on a claim.

(12A) The term "debt relief agency" means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section

101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

(13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

(13A) The term "debtor's principal residence"—

(A) means a residential structure if used as the principal residence by the debtor, including incidental property, without regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer if used as the principal residence by the debtor.

(14) The term "disinterested person" means a person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

(14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

(15) The term "entity" includes person, estate, trust, governmental unit, and United States trustee.

(16) The term "equity security" means—

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph.

(17) The term "equity security holder" means holder of an equity security of the debtor.

(18) The term "family farmer" means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $3,237,000 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding; the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed $3,237,000 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

(19) The term "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

(19A) The term "family fisherman" means—

(A) an individual or individual and spouse engaged in a commercial fishing operation—

(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) a corporation or partnership—

(i) in which more than 50 percent of the outstanding stock or equity is held by—

(I) 1 family that conducts the commercial fishing operation; or

(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

(III) if such corporation issues stock, such stock is not publicly traded.

(19B) The term "family fisherman with regular annual income" means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title.

(20) The term "farmer" means (except when such term appears in the term "family farmer") person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person.

(21) The term "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

(21A) The term "farmout agreement" means a written agreement in which—

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property.

(21B) The term "Federal depository institutions regulatory agency" means—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation.

(22) The term "financial institution" means—

(A) a Federal reserve bank, or an entity that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer (whether or not a "customer", as defined in section 741) in connection with a securities contract (as defined in section 741) such customer; or

(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940.

(22A) The term "financial participant" means—

(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has gross mark-to-market positions of not less than $100,000,000

(aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition; or

(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991).

(23) The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

(24) The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

(25) The term "forward contract" means—

(A) a contract (other than a commodity contract, as defined in section 761) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in this section) consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages

in connection with any such agreement or transaction, measured in accordance with section 562.

(26) The term "forward contract merchant" means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade.

(27) The term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

(27A) The term "health care business"—

(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

(i) the diagnosis or treatment of injury, deformity, or disease; and

(ii) surgical, drug treatment, psychiatric, or obstetric care; and

(B) includes—

(i) any—

(I) general or specialized hospital;

(II) ancillary ambulatory, emergency, or surgical treatment facility;

(III) hospice;

(IV) home health agency; and

(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

(ii) any long-term care facility, including any—

(I) skilled nursing facility;

(II) intermediate care facility;

(III) assisted living facility;

(IV) home for the aged;

(V) domiciliary care facility; and

(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.

(27B) The term "incidental property" means, with respect to a debtor's principal residence—

(A) property commonly conveyed with a principal residence in the area where the real property is located;

(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

(C) all replacements or additions.

(28) The term "indenture" means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor.

(29) The term "indenture trustee" means trustee under an indenture.

(30) The term "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

(31) The term "insider" includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor.

(32) The term "insolvent" means—

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title;

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's nonpartnership debts; and

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due.

(33) The term "institution-affiliated party"—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act.

(34) The term "insured credit union" has the meaning given it in section 101(7) of the Federal Credit Union Act.

(35) The term "insured depository institution"—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of paragraphs (21B) and (33)(A) of this subsection).

(35A) The term "intellectual property" means—

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17;

to the extent protected by applicable nonbankruptcy law.

(36) The term "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(37) The term "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation.

(38) The term "margin payment" means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments.

(38A) The term "master netting agreement"—

(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a).

(38B) The term "master netting agreement participant" means an entity that, at any time before the date of the filing of the petition, is a party to an outstanding master netting agreement with the debtor.

(39) The term "mask work" has the meaning given it in section 901(a)(2) of title 17.

(39A) The term "median family income" means for any year—

(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year.

(40) The term "municipality" means political subdivision or public agency or instrumentality of a State.

(40A) The term "patient" means any individual who obtains or receives services from a health care business.

(40B) The term "patient records" means any record relating to a patient, including a written document or a record recorded in a magnetic, optical, or other form of electronic medium.

(41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) acquires an asset from a person—

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

(41A) The term "personally identifiable information" means—

(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

(ii) the geographical address of a physical place of residence of such individual;

(iii) an electronic address (including an e-mail address) of such individual;

(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

(v) a social security account number issued to such individual; or

(vi) the account number of a credit card issued to such individual; or

(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically.

(42) The term "petition" means petition filed under section 301, 302, 303 and 1504 of this title, as the case may be, commencing a case under this title.

(42A) The term "production payment" means a term overriding royalty satisfiable in cash or in kind—

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs.

(43) The term "purchaser" means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee.

(44) The term "railroad" means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier.

(45) The term "relative" means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree.

(46) The term "repo participant" means an entity that, at any time before the filing of the petition, has an outstanding repurchase agreement with the debtor.

(47) The term "repurchase agreement" (which definition also applies to a reverse repurchase agreement)—

(A) means—

(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

(B) does not include a repurchase obligation under a participation in a commercial mortgage loan.

(48) The term "securities clearing agency" means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934, or exempt from such registra-

tion under such section pursuant to an order of the Securities and Exchange Commission, or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A.

(48A) The term "securities self regulatory organization" means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934.

(49) The term "security"—

(A) includes—

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) debenture;

(vi) collateral trust certificate;

(vii) pre-organization certificate or subscription;

(viii) transferable share;

(ix) voting-trust certificate;

(x) certificate of deposit;

(xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as "security"; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761 of this title;

(iii) commodity futures contract or forward contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities

Act of 1933 from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered.

(50) The term "security agreement" means agreement that creates or provides for a security interest.

(51) The term "security interest" means lien created by an agreement.

(51A) The term "settlement payment" means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade.

(51B) The term "single asset real estate" means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

(51C) The term "small business case" means a case filed under chapter 11 of this title in which the debtor is a small business debtor.

(51D) The term "small business debtor"—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $2,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,000,000 (excluding debt owed to 1 or more affiliates or insiders).

(52) The term "State" includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.

(53) The term "statutory lien" means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

(53A) The term "stockbroker" means person—

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities—

(i) for the account of others; or

(ii) with members of the general public, from or for such person's own account.

(53B) The term "swap agreement"—

(A) means—

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement;

(III) a currency swap, option, future, or forward agreement;

(IV) an equity index or equity swap, option, future, or forward agreement;

(V) a debt index or debt swap, option, future, or forward agreement;

(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

(VII) a commodity index or a commodity swap, option, future, or forward agreement;

(VIII) a weather swap, option, future, or forward agreement;

(IX) an emissions swap, option, future, or forward agreement; or

(X) an inflation swap, option, future, or forward agreement;

(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference therein); and

(II) is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(iii) any combination of agreements or transactions referred to in this subparagraph;

(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.

(53C) The term "swap participant" means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor.

(56A) The term "term overriding royalty" means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized.

(53D) The term "timeshare plan" means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

(54) The term "transfer" means—

(A) the creation of a lien;

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor's equity of redemption; or

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

(i) property; or

(ii) an interest in property.

(54A) The term "uninsured State member bank" means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(55) The term "United States", when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.

* * * * * * *

§ 103. Applicability of chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 362(o), 555 through 557, and 559 through 562 apply in a case under chapter 15.

(b) Subchapters I and II of chapter 7 of this title apply only in a case under such chapter.

(c) Subchapter III of chapter 7 of this title applies only in a case under such chapter concerning a stockbroker.

(d) Subchapter IV of chapter 7 of this title applies only in a case under such chapter concerning a commodity broker.

(e) SCOPE OF APPLICATION.—Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(f) Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

(g) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

(h) Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

(i) Chapter 13 of this title applies only in a case under such chapter.

(j) Chapter 12 of this title applies only in a case under such chapter.

(k) Chapter 15 applies only in a case under such chapter, except that—

(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

(2) section 1509 applies whether or not a case under this title is pending.

(l) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 concerning a covered financial corporation.

* * * * * * *

§ 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; **[**or**]**

(3)(A) a foreign insurance company, engaged in such business in the United States; or

(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978) in the United States**[**.**]***; or*

(4) a covered financial corporation.

(c) An entity may be a debtor under chapter 9 of this title if and only if such entity—

(1) is a municipality;

(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;

(3) is insolvent;

(4) desires to effect a plan to adjust such debts; and

(5)(A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable; or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

(d) Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), [and] an uninsured State member bank, [or] a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991*, or a covered financial corporation* may be a debtor under chapter 11 of this title.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $250,000 and noncontingent, liquidated, secured debts of less than $750,000, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $250,000 and noncontingent, liquidated, secured debts of less than $750,000 may be a debtor under chapter 13 of this title.

(f) Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies by reason of the requirements of paragraph (1).

(B) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) at any time.

(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 7-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.

(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

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CHAPTER 3—CASE ADMINISTRATION

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SUBCHAPTER II—OFFICERS

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§ 322. Qualification of trustee

(a) Except as provided in subsection (b)(1), a person selected under section 701, 702, 703, 1104, 1163, 1202, or 1302 of this title to serve as trustee in a case under this title qualifies if before seven days after such selection, and before beginning official duties, such person has filed with the court a bond in favor of the United States conditioned on the faithful performance of such official duties.

(b)(1) The United States trustee qualifies wherever such trustee serves as trustee in a case under this title.

(2) [The] *In cases under subchapter V, the United States trustee shall recommend to the court, and in all other cases, the* United States trustee shall determine—

(A) the amount of a bond required to be filed under subsection (a) of this section; and

(B) the sufficiency of the surety on such bond.

(c) A trustee is not liable personally or on such trustee's bond in favor of the United States for any penalty or forfeiture incurred by the debtor.

(d) A proceeding on a trustee's bond may not be commenced after two years after the date on which such trustee was discharged.

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CHAPTER 7—LIQUIDATION

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SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

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§ 726. Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, *in payment of any unpaid fees, costs, and expenses of a special trustee appointed under section 1186, and then* in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of—

(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

(B) the date on which the trustee commences final distribution under this section;

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if—

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

(c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541(a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and such property or proceeds and other property of the estate shall be distributed as follows:

(1) Claims allowed under section 503 of this title shall be paid either from property of the kind specified in section 541(a)(2) of this title, or from other property of the estate, as the interest of justice requires.

(2) Allowed claims, other than claims allowed under section 503 of this title, shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind specified in a particular paragraph of section 507 of this title or subsection (a) of this section, in the following order and manner:

(A) First, community claims against the debtor or the debtor's spouse shall be paid from property of the kind specified in section 541(a)(2) of this title, except to the extent that such property is solely liable for debts of the debtor.

(B) Second, to the extent that community claims against the debtor are not paid under subparagraph (A) of this paragraph, such community claims shall be paid from property of the kind specified in section 541(a)(2) of this title that is solely liable for debts of the debtor.

(C) Third, to the extent that all claims against the debtor including community claims against the debtor are not paid under subparagraph (A) or (B) of this paragraph such claims shall be paid from property of the estate other than property of the kind specified in section 541(a)(2) of this title.

(D) Fourth, to the extent that community claims against the debtor or the debtor's spouse are not paid under subparagraph (A), (B), or (C) of this paragraph, such claims shall be paid from all remaining property of the estate.

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CHAPTER 11—REORGANIZATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.

1101. Definitions for this chapter.

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SUBCHAPTER V—LIQUIDATION, REORGANIZATION, OR RECAPITALIZATION OF A COVERED FINANCIAL CORPORATION

1181. Inapplicability of other sections.
1182. Definitions for this subchapter.
1183. Commencement of a case concerning a covered financial corporation.
1184. Regulators.
1185. Special transfer of property of the estate.
1186. Special trustee.
1187. Temporary and supplemental automatic stay; assumed debt.
1188. Treatment of qualified financial contracts and affiliate contracts.
1189. Licenses, permits, and registrations.
1190. Exemption from securities laws.
1191. Inapplicability of certain avoiding powers.
1192. Consideration of financial stability.

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

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§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

(b)(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances pre-

vent the court from meeting the time limits established by this paragraph.

(4) For purposes of this subsection, the term "cause" includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28;

(L) revocation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

(c) The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.

(d) The court may convert a case under this chapter to a case under chapter 12 or 13 of this title only if—

(1) the debtor requests such conversion;

(2) the debtor has not been discharged under section 1141(d) of this title; and

(3) if the debtor requests conversion to chapter 12 of this title, such conversion is equitable.

(e) Except as provided in subsections (c) and (f), the court, on request of the United States trustee, may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of credi-

tors and the estate if the debtor in a voluntary case fails to file, within fifteen days after the filing of the petition commencing such case or such additional time as the court may allow, the information required by paragraph (1) of section 521(a), including a list containing the names and addresses of the holders of the twenty largest unsecured claims (or of all unsecured claims if there are fewer than twenty unsecured claims), and the approximate dollar amounts of each of such claims.

(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

(g) Notwithstanding section 109(b), the court may convert a case under subchapter V to a case under chapter 7 if—

(1) a transfer approved under section 1185 has been consummated;

(2) the court has ordered the appointment of a special trustee under section 1186; and

(3) the court finds, after notice and a hearing, that conversion is in the best interest of the creditors and the estate.

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SUBCHAPTER II—THE PLAN

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§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(5)(A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor

has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(8) With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a gov-

ernmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

(16) All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

(17) In a case under subchapter V, all payable fees, costs, and expenses of the special trustee have been paid or the plan provides for the payment of all such fees, costs, and expenses on the effective date of the plan.

(18) In a case under subchapter V, confirmation of the plan is not likely to cause serious adverse effects on financial stability in the United States.

(b)(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than

paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

(c) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127(b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has

been revoked under section 1144 of this title. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).

SUBCHAPTER V—LIQUIDATION, REORGANIZATION, OR RECAPITALIZATION OF A COVERED FINANCIAL CORPORATION

§ 1181. Inapplicability of other sections

Sections 303 and 321(c) do not apply in a case under this subchapter concerning a covered financial corporation. Section 365 does not apply to a transfer under section 1185, 1187, or 1188.

§ 1182. Definitions for this subchapter

In this subchapter, the following definitions shall apply:

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

(2) The term "bridge company" means a newly formed corporation to which property of the estate may be transferred under section 1185(a) and the equity securities of which may be transferred to a special trustee under section 1186(a).

(3) The term "capital structure debt" means all unsecured debt of the debtor for borrowed money for which the debtor is the primary obligor, other than a qualified financial contract and other than debt secured by a lien on property of the estate that is to be transferred to a bridge company pursuant to an order of the court under section 1185(a).

(4) The term "contractual right" means a contractual right of a kind defined in section 555, 556, 559, 560, or 561.

(5) The term "qualified financial contract" means any contract of a kind defined in paragraph (25), (38A), (47), or (53B) of section 101, section 741(7), or paragraph (4), (5), (11), or (13) of section 761.

(6) The term "special trustee" means the trustee of a trust formed under section 1186(a)(1).

§ 1183. Commencement of a case concerning a covered financial corporation

(a) A case under this subchapter concerning a covered financial corporation may be commenced by the filing of a petition with the court by the debtor under section 301 only if the debtor states to the

best of its knowledge under penalty of perjury in the petition that it is a covered financial corporation.

(b) The commencement of a case under subsection (a) constitutes an order for relief under this subchapter.

(c) The members of the board of directors (or body performing similar functions) of a covered financial company shall have no liability to shareholders, creditors, or other parties in interest for a good faith filing of a petition to commence a case under this subchapter, or for any reasonable action taken in good faith in contemplation of such a petition or a transfer under section 1185 or section 1186, whether prior to or after commencement of the case.

(d) Counsel to the debtor shall provide, to the greatest extent practicable without disclosing the identity of the potential debtor, sufficient confidential notice to the chief judge of the court of appeals for the circuit embracing the district in which such counsel intends to file a petition to commence a case under this subchapter regarding the potential commencement of such case. The chief judge of such court shall randomly assign to preside over such case a bankruptcy judge selected from among the bankruptcy judges designated by the Chief Justice of the United States under section 298 of title 28.

§ 1184. Regulators

The Board, the Securities Exchange Commission, the Office of the Comptroller of the Currency of the Department of the Treasury, the Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation may raise and may appear and be heard on any issue in any case or proceeding under this subchapter.

§ 1185. Special transfer of property of the estate

(a) On request of the trustee, and after notice and a hearing that shall occur not less than 24 hours after the order for relief, the court may order a transfer under this section of property of the estate, and the assignment of executory contracts, unexpired leases, and qualified financial contracts of the debtor, to a bridge company. Upon the entry of an order approving such transfer, any property transferred, and any executory contracts, unexpired leases, and qualified financial contracts assigned under such order shall no longer be property of the estate. Except as provided under this section, the provisions of section 363 shall apply to a transfer and assignment under this section.

(b) Unless the court orders otherwise, notice of a request for an order under subsection (a) shall consist of electronic or telephonic notice of not less than 24 hours to—

(1) the debtor;

(2) the holders of the 20 largest secured claims against the debtor;

(3) the holders of the 20 largest unsecured claims against the debtor;

(4) counterparties to any debt, executory contract, unexpired lease, and qualified financial contract requested to be transferred under this section;

(5) the Board;

(6) the Federal Deposit Insurance Corporation;

(7) the Secretary of the Treasury and the Office of the Comptroller of the Currency of the Treasury;

(8) the Commodity Futures Trading Commission;

(9) the Securities and Exchange Commission;

(10) the United States trustee or bankruptcy administrator; and

(11) each primary financial regulatory agency, as defined in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, with respect to any affiliate the equity securities of which are proposed to be transferred under this section.

(c) The court may not order a transfer under this section unless the court determines, based upon a preponderance of the evidence, that—

(1) the transfer under this section is necessary to prevent serious adverse effects on financial stability in the United States;

(2) the transfer does not provide for the assumption of any capital structure debt by the bridge company;

(3) the transfer does not provide for the transfer to the bridge company of any property of the estate that is subject to a lien securing a debt, executory contract, unexpired lease or agreement (including a qualified financial contract) of the debtor unless—

(A)(i) the bridge company assumes such debt, executory contract, unexpired lease or agreement (including a qualified financial contract), including any claims arising in respect thereof that would not be allowed secured claims under section 506(a)(1) and after giving effect to such transfer, such property remains subject to the lien securing such debt, executory contract, unexpired lease or agreement (including a qualified financial contract); and

(ii) the court has determined that assumption of such debt, executory contract, unexpired lease or agreement (including a qualified financial contract) by the bridge company is in the best interests of the estate; or

(B) such property is being transferred to the bridge company in accordance with the provisions of section 363;

(4) the transfer does not provide for the assumption by the bridge company of any debt, executory contract, unexpired lease or agreement (including a qualified financial contract) of the debtor secured by a lien on property of the estate unless the transfer provides for such property to be transferred to the bridge company in accordance with paragraph (3)(A) of this subsection;

(5) the transfer does not provide for the transfer of the equity of the debtor;

(6) the trustee has demonstrated that the bridge company is not likely to fail to meet the obligations of any debt, executory contract, qualified financial contract, or unexpired lease assumed and assigned to the bridge company;

(7) the transfer provides for the transfer to a special trustee all of the equity securities in the bridge company and appointment of a special trustee in accordance with section 1186;

(8) after giving effect to the transfer, adequate provision has been made for the fees, costs, and expenses of the estate and special trustee; and

(9) the bridge company will have governing documents, and initial directors and senior officers, that are in the best interest of creditors and the estate.

(d) Immediately before a transfer under this section, the bridge company that is the recipient of the transfer shall—

(1) not have any property, executory contracts, unexpired leases, qualified financial contracts, or debts, other than any property acquired or executory contracts, unexpired leases, or debts assumed when acting as a transferee of a transfer under this section; and

(2) have equity securities that are property of the estate, which may be sold or distributed in accordance with this title.

§ 1186. Special trustee

(a)(1) An order approving a transfer under section 1185 shall require the trustee to transfer to a qualified and independent special trustee, who is appointed by the court, all of the equity securities in the bridge company that is the recipient of a transfer under section 1185 to hold in trust for the sole benefit of the estate, subject to satisfaction of the special trustee's fees, costs, and expenses. The trust of which the special trustee is the trustee shall be a newly formed trust governed by a trust agreement approved by the court as in the best interests of the estate, and shall exist for the sole purpose of holding and administering, and shall be permitted to dispose of, the equity securities of the bridge company in accordance with the trust agreement.

(2) In connection with the hearing to approve a transfer under section 1185, the trustee shall confirm to the court that the Board has been consulted regarding the identity of the proposed special trustee and advise the court of the results of such consultation.

(b) The trust agreement governing the trust shall provide—

(1) for the payment of the fees, costs, expenses, and indemnities of the special trustee from the assets of the debtor's estate;

(2) that the special trustee provide—

(A) quarterly reporting to the estate, which shall be filed with the court; and

(B) information about the bridge company reasonably requested by a party in interest to prepare a disclosure statement for a plan providing for distribution of any securities of the bridge company if such information is necessary to prepare such disclosure statement;

(3) that for as long as the equity securities of the bridge company are held by the trust, the special trustee shall file a notice with the court in connection with—

(A) any change in a director or senior officer of the bridge company;

(B) any modification to the governing documents of the bridge company; and

(C) any material corporate action of the bridge company, including—

(i) recapitalization;

(ii) a material borrowing;

(iii) termination of an intercompany debt or guarantee;

(iv) a transfer of a substantial portion of the assets of the bridge company; or

(v) the issuance or sale of any securities of the bridge company;

(4) that any sale of any equity securities of the bridge company shall not be consummated until the special trustee consults with the Federal Deposit Insurance Corporation and the Board regarding such sale and discloses the results of such consultation with the court;

(5) that, subject to reserves for payments permitted under paragraph (1) provided for in the trust agreement, the proceeds of the sale of any equity securities of the bridge company by the special trustee be held in trust for the benefit of or transferred to the estate;

(6) the process and guidelines for the replacement of the special trustee; and

(7) that the property held in trust by the special trustee is subject to distribution in accordance with subsection (c).

(c)(1) The special trustee shall distribute the assets held in trust—

(A) if the court confirms a plan in the case, in accordance with the plan on the effective date of the plan; or

(B) if the case is converted to a case under chapter 7, as ordered by the court.

(2) As soon as practicable after a final distribution under paragraph (1), the office of the special trustee shall terminate, except as may be necessary to wind up and conclude the business and financial affairs of the trust.

(d) After a transfer to the special trustee under this section, the special trustee shall be subject only to applicable nonbankruptcy law, and the actions and conduct of the special trustee shall no longer be subject to approval by the court in the case under this subchapter.

§ 1187. Temporary and supplemental automatic stay; assumed debt

(a)(1) A petition filed under section 1183 operates as a stay, applicable to all entities, of the termination, acceleration, or modification of any debt, contract, lease, or agreement of the kind described in paragraph (2), or of any right or obligation under any such debt, contract, lease, or agreement, solely because of—

(A) a default by the debtor under any such debt, contract, lease, or agreement; or

(B) a provision in such debt, contract, lease, or agreement, or in applicable nonbankruptcy law, that is conditioned on—

(i) the insolvency or financial condition of the debtor at any time before the closing of the case;

(ii) the commencement of a case under this title concerning the debtor;

(iii) the appointment of or taking possession by a trustee in a case under this title concerning the debtor or by a custodian before the commencement of the case; or

(iv) a credit rating agency rating, or absence or withdrawal of a credit rating agency rating—

(I) of the debtor at any time after the commencement of the case;

(II) of an affiliate during the period from the commencement of the case until 48 hours after such order is entered;

(III) of the bridge company while the trustee or the special trustee is a direct or indirect beneficial holder of more than 50 percent of the equity securities of—

(aa) the bridge company; or

(bb) the affiliate, if all of the direct or indirect interests in the affiliate that are property of the estate are transferred under section 1185; or

(IV) of an affiliate while the trustee or the special trustee is a direct or indirect beneficial holder of more than 50 percent of the equity securities of—

(aa) the bridge company; or

(bb) the affiliate, if all of the direct or indirect interests in the affiliate that are property of the estate are transferred under section 1185.

(2) A debt, contract, lease, or agreement described in this paragraph is—

(A) any debt (other than capital structure debt), executory contract, or unexpired lease of the debtor (other than a qualified financial contract);

(B) any agreement under which the debtor issued or is obligated for debt (other than capital structure debt);

(C) any debt, executory contract, or unexpired lease of an affiliate (other than a qualified financial contract); or

(D) any agreement under which an affiliate issued or is obligated for debt.

(3) The stay under this subsection terminates—

(A) for the benefit of the debtor, upon the earliest of—

(i) 48 hours after the commencement of the case;

(ii) assumption of the debt, contract, lease, or agreement by the bridge company under an order authorizing a transfer under section 1185;

(iii) a final order of the court denying the request for a transfer under section 1185; or

(iv) the time the case is dismissed; and

(B) for the benefit of an affiliate, upon the earliest of—

(i) the entry of an order authorizing a transfer under section 1185 in which the direct or indirect interests in the affiliate that are property of the estate are not transferred under section 1185;

(ii) a final order by the court denying the request for a transfer under section 1185;

(iii) 48 hours after the commencement of the case if the court has not ordered a transfer under section 1185; or

(iv) the time the case is dismissed.

(4) Subsections (d), (e), (f), and (g) of section 362 apply to a stay under this subsection.

(b) A debt, executory contract (other than a qualified financial contract), or unexpired lease of the debtor, or an agreement under which the debtor has issued or is obligated for any debt, may be assumed by a bridge company in a transfer under section 1185 notwithstanding any provision in an agreement or in applicable nonbankruptcy law that—

(1) prohibits, restricts, or conditions the assignment of the debt, contract, lease, or agreement; or

(2) accelerates, terminates, or modifies, or permits a party other than the debtor to terminate or modify, the debt, contract, lease, or agreement on account of—

(A) the assignment of the debt, contract, lease, or agreement; or

(B) a change in control of any party to the debt, contract, lease, or agreement.

(c)(1) A debt, contract, lease, or agreement of the kind described in subparagraph (A) or (B) of subsection (a)(2) may not be accelerated, terminated, or modified, and any right or obligation under such debt, contract, lease, or agreement may not be accelerated, terminated, or modified, as to the bridge company solely because of a provision in the debt, contract, lease, or agreement or in applicable nonbankruptcy law—

(A) of the kind described in subsection (a)(1)(B) as applied to the debtor;

(B) that prohibits, restricts, or conditions the assignment of the debt, contract, lease, or agreement; or

(C) that accelerates, terminates, or modifies, or permits a party other than the debtor to terminate or modify, the debt, contract, lease or agreement on account of—

(i) the assignment of the debt, contract, lease, or agreement; or

(ii) a change in control of any party to the debt, contract, lease, or agreement.

(2) If there is a default by the debtor under a provision other than the kind described in paragraph (1) in a debt, contract, lease or agreement of the kind described in subparagraph (A) or (B) of subsection (a)(2), the bridge company may assume such debt, contract, lease, or agreement only if the bridge company—

(A) shall cure the default;

(B) compensates, or provides adequate assurance in connection with a transfer under section 1185 that the bridge company will promptly compensate, a party other than the debtor to the debt, contract, lease, or agreement, for any actual pecuniary loss to the party resulting from the default; and

(C) provides adequate assurance in connection with a transfer under section 1185 of future performance under the debt, contract, lease, or agreement, as determined by the court under section 1185(c)(4).

§ 1188. Treatment of qualified financial contracts and affiliate contracts

(a) Notwithstanding sections 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 362(o), 555, 556, 559, 560, and 561, a petition filed under section 1183 operates as a stay, during the period specified in section 1187(a)(3)(A), applicable to all entities, of the exercise of a contractual right—

(1) to cause the modification, liquidation, termination, or acceleration of a qualified financial contract of the debtor or an affiliate;

(2) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connec-

tion with a qualified financial contract of the debtor or an affiliate; or

(3) under any security agreement or arrangement or other credit enhancement forming a part of or related to a qualified financial contract of the debtor or an affiliate.

(b)(1) During the period specified in section 1187(a)(3)(A), the trustee or the affiliate shall perform all payment and delivery obligations under such qualified financial contract of the debtor or the affiliate, as the case may be, that become due after the commencement of the case. The stay provided under subsection (a) terminates as to a qualified financial contract of the debtor or an affiliate immediately upon the failure of the trustee or the affiliate, as the case may be, to perform any such obligation during such period.

(2) Any failure by a counterparty to any qualified financial contract of the debtor or any affiliate to perform any payment or delivery obligation under such qualified financial contract, including during the pendency of the stay provided under subsection (a), shall constitute a breach of such qualified financial contract by the counterparty.

(c) Subject to the court's approval, a qualified financial contract between an entity and the debtor may be assigned to or assumed by the bridge company in a transfer under, and in accordance with, section 1185 if and only if—

(1) all qualified financial contracts between the entity and the debtor are assigned to and assumed by the bridge company in the transfer under section 1185;

(2) all claims of the entity against the debtor in respect of any qualified financial contract between the entity and the debtor (other than any claim that, under the terms of the qualified financial contract, is subordinated to the claims of general unsecured creditors) are assigned to and assumed by the bridge company;

(3) all claims of the debtor against the entity under any qualified financial contract between the entity and the debtor are assigned to and assumed by the bridge company; and

(4) all property securing or any other credit enhancement furnished by the debtor for any qualified financial contract described in paragraph (1) or any claim described in paragraph (2) or (3) under any qualified financial contract between the entity and the debtor is assigned to and assumed by the bridge company.

(d) Notwithstanding any provision of a qualified financial contract or of applicable nonbankruptcy law, a qualified financial contract of the debtor that is assumed or assigned in a transfer under section 1185 may not be accelerated, terminated, or modified, after the entry of the order approving a transfer under section 1185, and any right or obligation under the qualified financial contract may not be accelerated, terminated, or modified, after the entry of the order approving a transfer under section 1185 solely because of a condition described in section 1187(c)(1), other than a condition of the kind specified in section 1187(b) that occurs after property of the estate no longer includes a direct beneficial interest or an indirect beneficial interest through the special trustee, in more than 50 percent of the equity securities of the bridge company.

(e) Notwithstanding any provision of any agreement or in applicable nonbankruptcy law, an agreement of an affiliate (including an executory contract, an unexpired lease, qualified financial contract, or an agreement under which the affiliate issued or is obligated for debt) and any right or obligation under such agreement may not be accelerated, terminated, or modified, solely because of a condition described in section 1187(c)(1), other than a condition of the kind specified in section 1187(b) that occurs after the bridge company is no longer a direct or indirect beneficial holder of more than 50 percent of the equity securities of the affiliate, at any time after the commencement of the case if—

(1) all direct or indirect interests in the affiliate that are property of the estate are transferred under section 1185 to the bridge company within the period specified in subsection (a);

(2) the bridge company assumes—

(A) any guarantee or other credit enhancement issued by the debtor relating to the agreement of the affiliate; and

(B) any obligations in respect of rights of setoff, netting arrangement, or debt of the debtor that directly arises out of or directly relates to the guarantee or credit enhancement; and

(3) any property of the estate that directly serves as collateral for the guarantee or credit enhancement is transferred to the bridge company.

§ 1189. Licenses, permits, and registrations

(a) Notwithstanding any otherwise applicable nonbankruptcy law, if a request is made under section 1185 for a transfer of property of the estate, any Federal, State, or local license, permit, or registration that the debtor or an affiliate had immediately before the commencement of the case and that is proposed to be transferred under section 1185 may not be accelerated, terminated, or modified at any time after the request solely on account of—

(1) the insolvency or financial condition of the debtor at any time before the closing of the case;

(2) the commencement of a case under this title concerning the debtor;

(3) the appointment of or taking possession by a trustee in a case under this title concerning the debtor or by a custodian before the commencement of the case; or

(4) a transfer under section 1185.

(b) Notwithstanding any otherwise applicable nonbankruptcy law, any Federal, State, or local license, permit, or registration that the debtor had immediately before the commencement of the case that is included in a transfer under section 1185 shall be valid and all rights and obligations thereunder shall vest in the bridge company.

§ 1190. Exemption from securities laws

For purposes of section 1145, a security of the bridge company shall be deemed to be a security of a successor to the debtor under a plan if the court approves the disclosure statement for the plan as providing adequate information (as defined in section 1125(a)) about the bridge company and the security.

§ 1191. Inapplicability of certain avoiding powers

A transfer made or an obligation incurred by the debtor to an affiliate prior to or after the commencement of the case, including any obligation released by the debtor or the estate to or for the benefit of an affiliate, in contemplation of or in connection with a transfer under section 1185 is not avoidable under section 544, 547, 548(a)(1)(B), or 549, or under any similar nonbankruptcy law.

§ 1192. Consideration of financial stability

The court may consider the effect that any decision in connection with this subchapter may have on financial stability in the United States.

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TITLE 28, UNITED STATES CODE

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PART I—ORGANIZATION OF COURTS

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CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

Sec.
291. Circuit judges.

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298. Judge for a case under subchapter V of chapter 11 of title 11.

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§ 298. Judge for a case under subchapter V of chapter 11 of title 11

(a)(1) Notwithstanding section 295, the Chief Justice of the United States shall designate not fewer than 10 bankruptcy judges to be available to hear a case under subchapter V of chapter 11 of title 11. Bankruptcy judges may request to be considered by the Chief Justice of the United States for such designation.

(2) Notwithstanding section 155, a case under subchapter V of chapter 11 of title 11 shall be heard under section 157 by a bankruptcy judge designated under paragraph (1), who shall be randomly assigned to hear such case by the chief judge of the court of appeals for the circuit embracing the district in which the case is pending. To the greatest extent practicable, the approvals required under section 155 should be obtained.

(3) If the bankruptcy judge assigned to hear a case under paragraph (2) is not assigned to the district in which the case is pending, the bankruptcy judge shall be temporarily assigned to the district.

(b) A case under subchapter V of chapter 11 of title 11, and all proceedings in the case, shall take place in the district in which the case is pending.

(c) In this section, the term "covered financial corporation" has the meaning given that term in section 101(9A) of title 11.

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PART IV—JURISDICTION AND VENUE

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CHAPTER 85—DISTRICT COURTS; JURISDICTION

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§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

(f) This section does not grant jurisdiction to the district court after a transfer pursuant to an order under section 1185 of title 11 of any proceeding related to a special trustee appointed, or to a bridge company formed, in connection with a case under subchapter V of chapter 11 of title 11.

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TITLE 31, UNITED STATES CODE

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SUBTITLE I—GENERAL

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CHAPTER 3—DEPARTMENT OF THE TREASURY

SUBCHAPTER I—ORGANIZATION

Sec.
301. Department of the Treasury.
* * * * * * *
[309. Office of Thrift Supervision.]
* * * * * * *
[313. Federal Insurance Office.]
313. Office of the Independent Insurance Advocate.

SUBCHAPTER I—ORGANIZATION

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[§ 309. Office of Thrift Supervision

[The Office of Thrift Supervision established under section 3(a) of the Home Owners' Loan Act shall be an office in the Department of the Treasury.]

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[§ 313. Federal Insurance Office

[(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Federal Insurance Office.

[(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined under section 3132 of title 5, United States Code.

[(c) FUNCTIONS.—

[(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office, pursuant to the direction of the Secretary, shall have the authority—

[(A) to monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system;

[(B) to monitor the extent to which traditionally underserved communities and consumers, minorities (as such term is defined in section 1204(c) of the Financial Institu-

tions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance;

[(C) to recommend to the Financial Stability Oversight Council that it designate an insurer, including the affiliates of such insurer, as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors pursuant to title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act;

[(D) to assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

[(E) to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating covered agreements (as such term is defined in subsection (r));

[(F) to determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements;

[(G) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance; and

[(H) to perform such other related duties and authorities as may be assigned to the Office by the Secretary.

[(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

[(3) ADVISORY CAPACITY ON COUNCIL.—The Director shall serve

in an advisory capacity on the Financial Stability Oversight Council established under the Financial Stability Act of 2010.

[(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except—

[(1) health insurance, as determined by the Secretary in coordination with the Secretary of Health and Human Services based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91);

[(2) long-term care insurance, except long-term care insurance that is included with life or annuity insurance components, as determined by the Secretary in coordination with the Secretary of Health and Human Services, and in the case of long-term care insurance that is included with such components, the Secretary shall coordinate with the Secretary of Health and Human Services in performing the functions of the Office; and

[(3) crop insurance, as established by the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

[(e) GATHERING OF INFORMATION.—

[(1) IN GENERAL.—In carrying out the functions required under subsection (c), the Office may—

[(A) receive and collect data and information on and from the insurance industry and insurers;

[(B) enter into information-sharing agreements;

[(C) analyze and disseminate data and information; and

[(D) issue reports regarding all lines of insurance except health insurance.

[(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—

[(A) IN GENERAL.—Except as provided in paragraph (3), the Office may require an insurer, or any affiliate of an insurer, to submit such data or information as the Office may reasonably require in carrying out the functions described under subsection (c).

[(B) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, for purposes of subparagraph (A), the term "insurer" means any entity that writes insurance or reinsures risks and issues contracts or policies in 1 or more States.

[(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that the Office may establish, whether by order or rule.

[(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, and may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act), in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

[(5) CONFIDENTIALITY.—

[(A) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State

court) to which the data or information is otherwise subject.

[(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any nonpublicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

[(C) INFORMATION-SHARING AGREEMENT.—Any data or information obtained by the Office may be made available to State insurance regulators, individually or collectively, through an information-sharing agreement that—

[(i) shall comply with applicable Federal law; and

[(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

[(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

[(6) SUBPOENAS AND ENFORCEMENT.—The Director shall have the power to require by subpoena the production of the data or information requested under paragraph (2), but only upon a written finding by the Director that such data or information is required to carry out the functions described under subsection (c) and that the Office has coordinated with such regulator or agency as required under paragraph (4). Subpoenas shall bear the signature of the Director and shall be served by any person or class of persons designated by the Director for that purpose. In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

[(f) PREEMPTION OF STATE INSURANCE MEASURES.—

[(1) STANDARD.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

[(A) results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

[(B) is inconsistent with a covered agreement.

[(2) DETERMINATION.—

[(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the Director shall—

[(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

[(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

[(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

[(iv) provide interested parties a reasonable opportunity to submit written comments to the Office; and

[(v) consider any comments received.

[(B) SCOPE OF REVIEW.—For purposes of this subsection, any determination of the Director regarding State insurance measures, and any preemption under paragraph (1) as a result of such determination, shall be limited to the subject matter contained within the covered agreement involved and shall achieve a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

[(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

[(i) notify the appropriate State of the determination and the extent of the inconsistency;

[(ii) establish a reasonable period of time, which shall not be less than 30 days, before the determination shall become effective; and

[(iii) notify the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate.

[(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Director shall—

[(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

[(B) notify the appropriate State.

[(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

[(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

[(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies, and procedures to implement this section.

[(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually or collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

[(j) SAVINGS PROVISIONS.—Nothing in this section shall—

[(1) preempt—

[(A) any State insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices;

[(B) any State coverage requirements for insurance;

[(C) the application of the antitrust laws of any State to the business of insurance; or

[(D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure results in less favorable treatment of a non-United State insurer than a United States insurer;

[(2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2010; or

[(3) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

[(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.

[(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multinational regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

[(m) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

[(n) ANNUAL REPORTS TO CONGRESS.—

[(1) SECTION 313(F) REPORTS.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on any actions taken by the Office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

[(2) INSURANCE INDUSTRY.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the

Senate on the insurance industry and any other information as deemed relevant by the Director or requested by such Committees.

[(o) REPORTS ON U.S. AND GLOBAL REINSURANCE MARKET.—The Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate—

[(1) a report received not later than September 30, 2012, describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States; and

[(2) a report received not later than January 1, 2013, and updated not later than January 1, 2015, describing the impact of part II of the Nonadmitted and Reinsurance Reform Act of 2010 on the ability of State regulators to access reinsurance information for regulated companies in their jurisdictions.

[(p) STUDY AND REPORT ON REGULATION OF INSURANCE.—

[(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Director shall conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the United States.

[(2) CONSIDERATIONS.—The study and report required under paragraph (1) shall be based on and guided by the following considerations:

[(A) Systemic risk regulation with respect to insurance.

[(B) Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk.

[(C) Consumer protection for insurance products and practices, including gaps in State regulation.

[(D) The degree of national uniformity of State insurance regulation.

[(E) The regulation of insurance companies and affiliates on a consolidated basis.

[(F) International coordination of insurance regulation.

[(3) ADDITIONAL FACTORS.—The study and report required under paragraph (1) shall also examine the following factors:

[(A) The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

[(B) The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

[(C) The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

[(D) The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance.

[(E) The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.

[(F) The potential consequences of subjecting insurance companies to a Federal resolution authority, including the effects of any Federal resolution authority—

[(i) on the operation of State insurance guaranty fund systems, including the loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority;

[(ii) on policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

[(iii) in the case of life insurance companies, on the loss of the special status of separate account assets and separate account liabilities; and

[(iv) on the international competitiveness of insurance companies.

[(G) Such other factors as the Director determines necessary or appropriate, consistent with the principles set forth in paragraph (2).

[(4) REQUIRED RECOMMENDATIONS.—The study and report required under paragraph (1) shall also contain any legislative, administrative, or regulatory recommendations, as the Director determines appropriate, to carry out or effectuate the findings set forth in such report.

[(5) CONSULTATION.—With respect to the study and report required under paragraph (1), the Director shall consult with the State insurance regulators, consumer organizations, representatives of the insurance industry and policyholders, and other organizations and experts, as appropriate.

[(q) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and any other resource of the Department of the Treasury available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

[(r) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

[(1) AFFILIATE.—The term "affiliate" means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

[(2) COVERED AGREEMENT.—The term "covered agreement" means a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that—

[(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

[(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

[(3) INSURER.—The term "insurer" means any person engaged in the business of insurance, including reinsurance.

[(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term "Federal financial regulatory agency" means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the

Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

[(5) NON-UNITED STATES INSURER.—The term "non-United States insurer" means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

[(6) OFFICE.—The term "Office" means the Federal Insurance Office established by this section.

[(7) STATE INSURANCE MEASURE.—The term "State insurance measure" means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

[(8) STATE INSURANCE REGULATOR.—The term "State insurance regulator" means any State regulatory authority responsible for the supervision of insurers.

[(9) SUBSTANTIALLY EQUIVALENT TO THE LEVEL OF PROTECTION ACHIEVED.—The term "substantially equivalent to the level of protection achieved" means the prudential measures of a foreign government, authority, or regulatory entity achieve a similar outcome in consumer protection as the outcome achieved under State insurance or reinsurance regulation.

[(10) UNITED STATES INSURER.—The term "United States insurer" means—

[(A) an insurer that is organized under the laws of a State; or

[(B) a United States branch of a non-United States insurer.

[(s) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office for each fiscal year such sums as may be necessary.]

§ 313. Office of the Independent Insurance Advocate

(a) ESTABLISHMENT.—There is established in the Department of the Treasury a bureau to be known as the Office of the Independent Insurance Advocate (in this section referred to as the "Office").

(b) INDEPENDENT INSURANCE ADVOCATE.—

(1) ESTABLISHMENT OF POSITION.—The chief officer of the Office of the Independent Insurance Advocate shall be known as the Independent Insurance Advocate. The Independent Insurance Advocate shall perform the duties of such office under the general direction of the Secretary of the Treasury.

(2) APPOINTMENT.—The Independent Insurance Advocate shall be appointed by the President, by and with the advice and consent of the Senate, from among persons having insurance expertise.

(3) TERM.—

(A) IN GENERAL.—The Independent Insurance Advocate shall serve a term of 6 years, unless sooner removed by the President upon reasons which shall be communicated to the Senate.

(B) SERVICE AFTER EXPIRATION.—If a successor is not nominated and confirmed by the end of the term of service of the Independent Insurance Advocate, the person serving as Independent Insurance Advocate shall continue to serve until such time a successor is appointed and confirmed.

(C) VACANCY.—An Independent Insurance Advocate who is appointed to serve the remainder of a predecessor's uncompleted term shall be eligible thereafter to be appointed to a full 6 year term.

(D) ACTING OFFICIAL ON FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event of a vacancy in the office of the Independent Insurance Advocate, and pending the appointment and confirmation of a successor, or during the absence or disability of the Independent Insurance Advocate, the Independent Member shall appoint a federal official appointed by the President and confirmed by the Senate from a member agency of the Financial Stability Oversight Council, not otherwise serving on the Council, who shall serve as a member of the Council and act in the place of the Independent Insurance Advocate until such vacancy, absence, or disability concludes.

(4) EMPLOYMENT.—The Independent Insurance Advocate shall be an employee of the Federal Government within the definition of employee under section 2105 of title 5, United States Code.

(c) INDEPENDENCE; OVERSIGHT.—

(1) INDEPENDENCE.—The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Independent Insurance Advocate, and may not intervene in any matter or proceeding before the Independent Insurance Advocate, unless otherwise specifically provided by law.

(2) OVERSIGHT BY INSPECTOR GENERAL.—The Office of the Independent Insurance Advocate shall be an office in the establishment of the Department of the Treasury for purposes of the Inspector General Act of 1978 (5 U.S.C. App.).

(d) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.

(e) BUDGET.—

(1) ANNUAL TRANSMITTAL.—For each fiscal year, the Independent Insurance Advocate shall transmit a budget estimate and request to the Secretary of the Treasury, which shall specify the aggregate amount of funds requested for such fiscal year for the operations of the Office of the Independent Insurance Advocate.

(2) INCLUSIONS.—In transmitting the proposed budget to the President for approval, the Secretary of the Treasury shall include—

(A) an aggregate request for the Independent Insurance Advocate; and

(B) any comments of the Independent Insurance Advocate with respect to the proposal.

(3) PRESIDENT'S BUDGET.—The President shall include in each budget of the United States Government submitted to the Congress—

(A) a separate statement of the budget estimate prepared in accordance with paragraph (1);

(B) the amount requested by the President for the Independent Insurance Advocate; and

(C) any comments of the Independent Insurance Advocate with respect to the proposal if the Independent Insurance Advocate concludes that the budget submitted by the President would substantially inhibit the Independent Insurance Advocate from performing the duties of the office.

(f) ASSISTANCE.—The Secretary of the Treasury shall provide the Independent Insurance Advocate such services, funds, facilities and other support services as the Independent Insurance Advocate may request and as the Secretary may approve.

(g) PERSONNEL.—

(1) EMPLOYEES.—The Independent Insurance Advocate may fix the number of, and appoint and direct, the employees of the Office, in accordance with the applicable provisions of title 5, United States Code. The Independent Insurance Advocate is authorized to employ attorneys, analysts, economists, and other employees as may be deemed necessary to assist the Independent Insurance Advocate to carry out the duties and functions of the Office. Unless otherwise provided expressly by law, any individual appointed under this paragraph shall be an employee as defined in section 2105 of title 5, United States Code, and subject to the provisions of such title and other laws generally applicable to the employees of the Executive Branch.

(2) COMPENSATION.—Employees of the Office shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

(3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Independent Insurance Advocate may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.

(4) DETAILS.—Any employee of the Federal Government may be detailed to the Office with or without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Office shall report to and be subject to oversight by the Independent Insurance Advocate during the assignment to the office, and may be compensated by the branch, department, or agency from which the employee was detailed.

(5) INTERGOVERNMENTAL PERSONNEL.—The Independent Insurance Advocate may enter into agreements under subchapter VI of chapter 33 of title 5, United States Code, with State and local governments, institutions of higher education, Indian tribal governments, and other eligible organizations for the assignment of intermittent, part-time, and full-time personnel, on a reimbursable or non-reimbursable basis.

(h) ETHICS.—

(1) DESIGNATED ETHICS OFFICIAL.—The Legal Counsel of the Financial Stability Oversight Council, or in the absence of a Legal Counsel of the Council, the designated ethics official of any Council member agency, as chosen by the Independent In-

surance Advocate, shall be the ethics official for the Independent Insurance Advocate.

(2) RESTRICTION ON REPRESENTATION.—In addition to any restriction under section 205(c) of title18, United States Code, except as provided in subsections (d) through (i) of section 205 of such title, the Independent Insurance Advocate (except in the proper discharge of official duties) shall not, with or without compensation, represent anyone to or before any officer or employee of—

(A) the Financial Stability Oversight Council on any matter; or

(B) the Department of Justice with respect to litigation involving a matter described in subparagraph (A).

(3) COMPENSATION FOR SERVICES PROVIDED BY ANOTHER.—For purposes of section 203 of title 18, United States Code, and if a special government employee—

(A) the Independent Insurance Advocate shall not be subject to the restrictions of subsection (a)(1) of section 203,of title 18, United States Code, for sharing in compensation earned by another for representations on matters covered by such section; and

(B) a person shall not be subject to the restrictions of subsection (a)(2) of such section for sharing such compensation with the Independent Insurance Advocate.

(i) ADVISORY, TECHNICAL, AND PROFESSIONAL COMMITTEES.—The Independent Insurance Advocate may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office and the members of such committees may be staff of the Office, or other persons, or both.

(j) MISSION AND FUNCTIONS.—

(1) MISSION.—In carrying out the functions under this subsection, the mission of the Office shall be to act as an independent advocate on behalf of the interests of United States policyholders on prudential aspects of insurance matters of importance, and to provide perspective on protecting their interests, separate and apart from any other Federal agency or State insurance regulator.

(2) OFFICE.—The Office shall have the authority—

(A) to coordinate Federal efforts on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating covered agreements (as such term is defined in subsection (q)) in coordination with States (including State insurance commissioners) and the United States Trade Representative;

(B) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance;

(C) to assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

(D) to observe all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system; and

(E) to make determinations and exercise the authority under subsection (m) with respect to covered agreements and State insurance measures.

(3) MEMBERSHIP ON FINANCIAL STABILITY OVERSIGHT COUNCIL.—

(A) IN GENERAL.—The Independent Insurance Advocate shall serve, pursuant to section 111(b)(1)(J) of the Financial Stability Act of 2010 (12 U.S.C. 5321(b)(1)(J)), as a member on the Financial Stability Oversight Council.

(B) AUTHORITY.—To assist the Financial Stability Oversight Council with its responsibilities to monitor international insurance developments, advise the Congress, and make recommendations, the Independent Insurance Advocate shall have the authority—

(i) to regularly consult with international insurance supervisors and international financial stability counterparts;

(ii) to consult with the Board of Governors of the Federal Reserve System and the States with respect to representing the United States, as appropriate, in the International Association of Insurance Supervisors (including to become a non-voting member thereof), particularly on matters of systemic risk;

(iii) to participate at the Financial Stability Board of The Group of Twenty and to join with other members from the United States including on matters related to insurance; and

(iv) to participate with the United States delegation to the Organization for Economic Cooperation and Development and observe and participate at the Insurance and Private Pensions Committee.

(4) LIMITATIONS ON PARTICIPATION IN SUPERVISORY COLLEGES.—The Office may not engage in any activities that it is not specifically authorized to engage in under this section or any other provision of law, including participation in any supervisory college or other meetings or fora for cooperation and communication between the involved insurance supervisors established for the fundamental purpose of facilitating the effectiveness of supervision of entities which belong to an insurance group.

(k) SCOPE.—The authority of the Office as specified and limited in this section shall extend to all lines of insurance except—

(1) health insurance, as determined by the Secretary in coordination with the Secretary of Health and Human Services based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91);

(2) long-term care insurance, except long-term care insurance that is included with life or annuity insurance components, as determined by the Secretary in coordination with the Secretary of Health and Human Services, and in the case of long-term care insurance that is included with such components, the Sec-

retary shall coordinate with the Secretary of Health and Human Services in performing the functions of the Office; and

(3) crop insurance, as established by the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(l) ACCESS TO INFORMATION.—In carrying out the functions required under subsection (j), the Office may coordinate with any relevant Federal agency and any State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources for the provision to the Office of publicly available information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

(m) PREEMPTION PURSUANT TO COVERED AGREEMENTS.—

(1) STANDARDS.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Independent Insurance Advocate determines, in accordance with this subsection, that the measure—

(A) results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

(B) is inconsistent with a covered agreement.

(2) DETERMINATION.—

(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the Independent Insurance Advocate shall—

(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

(iv) provide interested parties a reasonable opportunity to submit written comments to the Office; and

(v) consider any comments received.

(B) SCOPE OF REVIEW.—For purposes of this subsection, any determination of the Independent Insurance Advocate regarding State insurance measures, and any preemption under paragraph (1) as a result of such determination, shall be limited to the subject matter contained within the covered agreement involved and shall achieve a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

(i) notify the appropriate State of the determination and the extent of the inconsistency;

(ii) establish a reasonable period of time, which shall not be less than 30 days, before the determination shall become effective; and

(iii) notify the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate.

(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Independent Insurance Advocate shall—

(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

(B) notify the appropriate State.

(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

(5) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to paragraph (2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

(n) CONSULTATION.—The Independent Insurance Advocate shall consult with State insurance regulators, individually or collectively, to the extent the Independent Insurance Advocate determines appropriate, in carrying out the functions of the Office.

(o) NOTICES AND REQUESTS FOR COMMENT.—In addition to the other functions and duties specified in this section, the Independent Insurance Advocate may prescribe such notices and requests for comment in the Federal Register as are deemed necessary related to and governing the manner in which the duties and authorities of the Independent Insurance Advocate are carried out;

(p) SAVINGS PROVISIONS.—Nothing in this section shall—

(1) preempt—

(A) any State insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices;

(B) any State coverage requirements for insurance;

(C) the application of the antitrust laws of any State to the business of insurance; or

(D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure results in less favorable treatment of a non-United State insurer than a United States insurer; or

(2) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

(q) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, ne-

gotiate, and enter into agreements with foreign governments, authorities, regulators, and multinational regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

(r) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

(s) CONGRESSIONAL TESTIMONY.—The Independent Insurance Advocate shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs at semi-annual hearings and shall provide testimony, which shall include submitting written testimony in advance of such appearances to such committees and to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, on the following matters:

(1) OFFICE ACTIVITIES.—The efforts, activities, objectives, and plans of the Office.

(2) SECTION 313(L) ACTIONS.—Any actions taken by the Office pursuant to subsection (l) (regarding preemption pursuant to covered agreements).

(3) INSURANCE INDUSTRY.—The state of, and developments in, the insurance industry.

(4) U.S. AND GLOBAL INSURANCE AND REINSURANCE MARKETS.—The breadth and scope of the global insurance and reinsurance markets and the critical role such markets plays in supporting insurance in the United States and the ongoing impacts of part II of the Nonadmitted and Reinsurance Reform Act of 2010 on the ability of State regulators to access reinsurance information for regulated companies in their jurisdictions.

(5) OTHER.—Any other matters as deemed relevant by the Independent Insurance Advocate or requested by such Committees.

(t) REPORT UPON END OF TERM OF OFFICE.—Not later than two months prior to the expiration of the term of office, or discontinuation of service, of each individual serving as the Independent Insurance Advocate, the Independent Insurance Advocate shall submit a report to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate setting forth recommendations regarding the Financial Stability Oversight Council and the role, duties, and functions of the Independent Insurance Advocate.

(u) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

(1) AFFILIATE.—The term "affiliate" means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

(2) COVERED AGREEMENT.—The term "covered agreement" means a written bilateral or multilateral agreement regarding

prudential measures with respect to the business of insurance or reinsurance that—

(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

(3) INSURER.—The term "insurer" means any person engaged in the business of insurance, including reinsurance.

(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term "Federal financial regulatory agency" means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

(5) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The term "Financial Stability Oversight Council " means the Financial Stability Oversight Council established under section 111(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321(a)).

(6) MEMBER AGENCY.—The term "member agency" has the meaning given such term in section 111(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321(a)).

(7) NON-UNITED STATES INSURER.—The term "non-United States insurer" means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

(8) OFFICE.—The term "Office" means the Office of the Independent Insurance Advocate established by this section.

(9) STATE INSURANCE MEASURE.—The term "State insurance measure" means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

(10) STATE INSURANCE REGULATOR.—The term "State insurance regulator" means any State regulatory authority responsible for the supervision of insurers.

(11) SUBSTANTIALLY EQUIVALENT TO THE LEVEL OF PROTECTION ACHIEVED.—The term "substantially equivalent to the level of protection achieved" means the prudential measures of a foreign government, authority, or regulatory entity achieve a similar outcome in consumer protection as the outcome achieved under State insurance or reinsurance regulation.

(12) UNITED STATES INSURER.—The term "United States insurer" means—

(A) an insurer that is organized under the laws of a State; or

(B) a United States branch of a non-United States insurer.

§ 314. Covered agreements

(a) AUTHORITY.—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

(b) REQUIREMENTS FOR CONSULTATION WITH CONGRESS.—

(1) IN GENERAL.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

(c) SUBMISSION AND LAYOVER PROVISIONS.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

(1) the Secretary of the Treasury and the United States Trade Representative have caused to be published in the Federal Register, and made available for public comment for a period of not fewer than 30 days and not greater than 90 days (which period may run concurrently with the 90-day period for the covered agreement referred to in paragraph (3)), the proposed text of the covered agreement;

[(1)**]** *(2)* the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

[(2)**]** *(3)* a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.

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SUBCHAPTER II—ADMINISTRATIVE

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§ 325. International affairs authorization

(a) Under regulations prescribed by the Secretary of the Treasury, the Secretary may provide officers and employees of the Department of the Treasury carrying out international affairs duties and powers of the Department with allowances and benefits comparable to those provided under chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4081 et seq.).

(b) The following amounts may be appropriated to the Secretary for the fiscal year ending September 30, 1982:

(1) not more than $22,896,000 to carry out the international affairs duties and powers of the Department (including amounts for official functions and reception and representation expenses).

(2) not more than $1,000,000 for increases in—

(A) pay, under section 5382(c) and subchapter I of chapter 53 of title 5 (except section 5305, or corresponding prior provision of such title), of officers and employees carrying out the duties and powers referred to in clause (1) of this subsection;

(B) departmental contributions attributable to those pay increases; and

(C) allowances and benefits, because of cost of living increases, provided under subsection (a) of this section.

(c) Necessary amounts may be appropriated to the Secretary for each fiscal year beginning after September 30, 1982—

(1) to carry out the international affairs duties and powers of the Department (including amounts for official functions and reception and representation expenses);

(2) for increases in—

(A) pay, under section 5382(c) and subchapter I of chapter 53 of title 5 (except section 5303), of officers and employees carrying out the duties and powers referred to in clause (1) of this subsection;

(B) departmental contributions attributable to those pay increases; and

(C) allowances and benefits, because of cost of living increases, provided under subsection (a) of this section.

(d) INTERNATIONAL PROCESSES.—

(1) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before the Secretary participates in a process of setting financial standards as a part of any foreign or multinational entity, the Secretary shall—

(A) issue a notice of the process, including the subject matter, scope, and goals of the process, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) make such notice available to the public, including on the website of the Department of the Treasury; and

(C) solicit public comment, and consult with the committees described under subparagraph (A), with respect to the subject matter, scope, and goals of the process.

(2) PUBLIC REPORTS ON PROCESS.—After the end of any process described under paragraph (1), the Secretary shall issue a public report on the topics that were discussed at the process and any new or revised rulemakings or policy changes that the Secretary believes should be implemented as a result of the process.

(3) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before the Secretary participates in a process of setting financial standards as a part of any foreign or multinational entity, the Secretary shall—

(A) issue a notice of agreement to the Committee on Financial Services of the House of Representatives and the

Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) make such notice available to the public, including on the website of the Department of the Treasury; and

(C) consult with the committees described under subparagraph (A) with respect to the nature of the agreement and any anticipated effects such agreement will have on the economy.

(4) DEFINITION.—For purposes of this subsection, the term "process" shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization).

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CHAPTER 7—GOVERNMENT ACCOUNTABILITY OFFICE

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SUBCHAPTER II—GENERAL DUTIES AND POWERS

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§ 714. Audit of Financial Institutions Examination Council, Federal Reserve Board, Federal reserve banks, Federal Deposit Insurance Corporation, and Office of Comptroller of the Currency

(a) In this section, "agency" means the Financial Institutions Examination Council, the Board of Governors of the Federal Reserve System (in this section referred to as the "Board"), Federal reserve banks, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

(b) Under regulations of the Comptroller General, the Comptroller General shall audit an agency, but may carry out an onsite examination of an open insured bank or bank holding company only if the appropriate agency has consented in writing. **[**Audits of the Board and Federal reserve banks may not include—**]**

[(1) transactions for or with a foreign central bank, government of a foreign country, or nonprivate international financing organization;

[(2) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, and open market operations;

[(3) transactions made under the direction of the Federal Open Market Committee; or

[(4) a part of a discussion or communication among or between members of the Board and officers and employees of the Federal Reserve System related to clauses (1)-(3) of this subsection.**]**

(c)(1) Except as provided in this subsection, an officer or employee of the Government Accountability Office may not disclose information identifying an open bank, an open bank holding com-

pany, or a customer of an open or closed bank or bank holding company. The Comptroller General may disclose information related to the affairs of a closed bank or closed bank holding company identifying a customer of the closed bank or closed bank holding company only if the Comptroller General believes the customer had a controlling influence in the management of the closed bank or closed bank holding company or was related to or affiliated with a person or group having a controlling influence.

(2) An officer or employee of the Office may discuss a customer, bank, or bank holding company with an official of an agency and may report an apparent criminal violation to an appropriate law enforcement authority of the United States Government or a State.

(3) Except as provided under paragraph (4), an officer or employee of the Government Accountability Office may not disclose to any person outside the Government Accountability Office information obtained in audits or examinations conducted under subsection (e) and maintained as confidential by the Board or the Federal reserve banks.

(4) This subsection shall not—

(A) authorize an officer or employee of an agency to withhold information from any committee or subcommittee of jurisdiction of Congress, or any member of such committee or subcommittee; or

(B) limit any disclosure by the Government Accountability Office to any committee or subcommittee of jurisdiction of Congress, or any member of such committee or subcommittee.

(d)(1) To carry out this section, all records and property of or used by an agency, including samples of reports of examinations of a bank or bank holding company the Comptroller General considers statistically meaningful and workpapers and correspondence related to the reports shall be made available to the Comptroller General. The Comptroller General shall have access to the officers, employees, contractors, and other agents and representatives of an agency and any entity established by an agency at any reasonable time as the Comptroller General may request. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General determines appropriate. The Comptroller General shall give an agency a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out an audit.

(2) The Comptroller General shall prevent unauthorized access to records, copies of any record, or property of or used by an agency or any person or entity described in paragraph (3)(A) that the Comptroller General obtains during an audit.

(3)(A) For purposes of conducting audits and examinations under subsection (e) **[**or (f)**]**, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things or property belonging to or in use by—

(i) any entity established by any action taken by the Board or the Federal Reserve banks described under subsection (e) **[**or (f)**]**;

(ii) any entity participating in or receiving assistance from any action taken by the Board or the Federal Reserve banks

described under subsection (e) [or (f)], to the extent that the access and request relates to that assistance; and

(iii) the officers, directors, employees, independent public accountants, financial advisors and any and all representatives of any entity described under clause (i) or (ii); to the extent that the access and request relates to that assistance;

(B) The Comptroller General shall have access as provided under subparagraph (A) at such time as the Comptroller General may request. The Comptroller General may make and retain copies of books, accounts, and other records provided under subparagraph (A) as the Comptroller General deems appropriate. The Comptroller General shall provide to any person or entity described in subparagraph (A) a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out [a audit] *an audit* or examination under this subsection.

(C) Each contract, term sheet, or other agreement between the Board or any Federal reserve bank (or any entity established by the Board or any Federal reserve bank) and an entity receiving assistance from any action taken by the Board described under subsection (e) [or (f)] shall provide for access by the Comptroller General in accordance with this paragraph.

(e) Notwithstanding subsection (b), the Comptroller General may conduct audits, including onsite examinations when the Comptroller General determines such audits and examinations are appropriate, of any action taken by the Board under [the third undesignated paragraph of section 13] *section 13(3)* of the Federal Reserve Act (12 U.S.C. 343); with respect to a single and specific partnership or corporation.

[(f) AUDITS OF CREDIT FACILITIES OF THE FEDERAL RESERVE SYSTEM.—

[(1) DEFINITIONS.—In this subsection, the following definitions shall apply:

[(A) CREDIT FACILITY.—The term "credit facility" means a program or facility, including any special purpose vehicle or other entity established by or on behalf of the Board of Governors of the Federal Reserve System or a Federal reserve bank, authorized by the Board of Governors under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), that is not subject to audit under subsection (e).

[(B) COVERED TRANSACTION.—The term "covered transaction" means any open market transaction or discount window advance that meets the definition of "covered transaction" in section 11(s) of the Federal Reserve Act.

[(2) AUTHORITY FOR AUDITS AND EXAMINATIONS.—Subject to paragraph (3), and notwithstanding any limitation in subsection (b) on the auditing and oversight of certain functions of the Board of Governors of the Federal Reserve System or any Federal reserve bank, the Comptroller General of the United States may conduct audits, including onsite examinations, of the Board of Governors, a Federal reserve bank, or a credit facility, if the Comptroller General determines that such audits are appropriate, solely for the purposes of assessing, with respect to a credit facility or a covered transaction—

[(A) the operational integrity, accounting, financial reporting, and internal controls governing the credit facility or covered transaction;

[(B) the effectiveness of the security and collateral policies established for the facility or covered transaction in mitigating risk to the relevant Federal reserve bank and taxpayers;

[(C) whether the credit facility or the conduct of a covered transaction inappropriately favors one or more specific participants over other institutions eligible to utilize the facility; and

[(D) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility or to conduct any covered transaction.

[(3) REPORTS AND DELAYED DISCLOSURE.—

[(A) REPORTS REQUIRED.—A report on each audit conducted under paragraph (2) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed.

[(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusions of the Comptroller General with respect to the matters described in paragraph (2) that were audited and are the subject of the report, together with such recommendations for legislative or administrative action relating to such matters as the Comptroller General may determine to be appropriate.

[(C) DELAYED RELEASE OF CERTAIN INFORMATION.—

[(i) IN GENERAL.—The Comptroller General shall not disclose to any person or entity, including to Congress, the names or identifying details of specific participants in any credit facility or covered transaction, the amounts borrowed by or transferred by or to specific participants in any credit facility or covered transaction, or identifying details regarding assets or collateral held or transferred by, under, or in connection with any credit facility or covered transaction, and any report provided under subparagraph (A) shall be redacted to ensure that such names and details are not disclosed.

[(ii) DELAYED RELEASE.—The nondisclosure obligation under clause (i) shall expire with respect to any participant on the date on which the Board of Governors, directly or through a Federal reserve bank, publicly discloses the identity of the subject participant or the identifying details of the subject assets, collateral, or transaction.

[(iii) GENERAL RELEASE.—The Comptroller General shall release a nonredacted version of any report on a credit facility 1 year after the effective date of the termination by the Board of Governors of the authorization for the credit facility. For purposes of this clause, a credit facility shall be deemed to have terminated 24 months after the date on which the credit facility

ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board of Governors.

[(iv) EXCEPTIONS.—The nondisclosure obligation under clause (i) shall not apply to the credit facilities Maiden Lane, Maiden Lane II, and Maiden Lane III.

[(v) RELEASE OF COVERED TRANSACTION INFORMATION.—The Comptroller General shall release a nonredacted version of any report regarding covered transactions upon the release of the information regarding such covered transactions by the Board of Governors of the Federal Reserve System, as provided in section 11(s) of the Federal Reserve Act.]

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SUBTITLE IV—MONEY

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CHAPTER 53—MONETARY TRANSACTIONS

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SUBCHAPTER I—CREDIT AND MONETARY EXPANSION

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§ 5302. Stabilizing exchange rates and arrangements

(a)(1) The Department of the Treasury has a stabilization fund. The fund is available to carry out this section, section 18 of the Bretton Woods Agreement Act (22 U.S.C. 286e-3), and section 3 of the Special Drawing Rights Act (22 U.S.C. 286o), and for investing in obligations of the United States Government those amounts in the fund the Secretary of the Treasury, with the approval of the President, decides are not required at the time to carry out this section. Proceeds of sales and investments, earnings, and interest shall be paid into the fund and are available to carry out this section. However, the fund is not available to pay administrative expenses.

(2) Subject to approval by the President, the fund is under the exclusive control of the Secretary, and may not be used in a way that direct control and custody pass from the President and the Secretary. Decisions of the Secretary are final and may not be reviewed by another officer or employee of the Government.

(b) Consistent with the obligations of the Government in the International Monetary Fund on orderly exchange arrangements and a stable system of exchange rates, the Secretary or an agency designated by the Secretary, with the approval of the President, may deal in gold, foreign exchange, and other instruments of credit and securities the Secretary considers necessary. However, a loan or credit to a foreign entity or government of a foreign country may be made for more than 6 months in any 12-month period only if the President gives Congress a written statement that unique or emergency circumstances require the loan or credit be for more than 6 months.

(c)(1) By the 30th day after the end of each month, the Secretary shall give the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a detailed financial statement on the stabilization fund showing all agreements made or renewed, all transactions occurring during the month, and all projected liabilities.

(2) The Secretary shall report each year to the President and Congress on the operation of the fund.

(d) A repayment of any part of the first subscription payment of the Government to the International Monetary Fund, previously paid from the stabilization fund, shall be deposited in the Treasury as a miscellaneous receipt.

(e) Amounts in the fund may not be used for the establishment of a guaranty program for any nongovernmental entity.

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

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§ 5312. Definitions and application

(a) In this subchapter—

(1) "financial agency" means a person acting for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(2) "financial institution" means—

(A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(B) a commercial bank or trust company;

(C) a private banker;

(D) an agency or branch of a foreign bank in the United States;

(E) any credit union;

(F) a thrift institution;

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

(H) a broker or dealer in securities or commodities;

(I) an investment banker or investment company;

(J) a currency exchange;

(K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;

(L) an operator of a credit card system;

(M) an insurance company;

(N) a dealer in precious metals, stones, or jewels;

(O) a pawnbroker;

(P) a loan or finance company;

(Q) a travel agency;

(R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;

(S) a telegraph company;

(T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;

(U) persons involved in real estate closings and settlements;

(V) the United States Postal Service;

(W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph;

(X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

(i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act);

(Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or

(Z) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

(3) "monetary instruments" means—

(A) United States coins and currency;

(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material; and

(C) as the Secretary of the Treasury shall provide by regulation for purposes of sections 5316 and 5331, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

(4) NONFINANCIAL TRADE OR BUSINESS.—The term "nonfinancial trade or business" means any trade or business other than a financial institution that is subject to the reporting requirements of section 5313 and regulations prescribed under such section.

(5) "person", in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity.

(6) "United States" means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

(b) In this subchapter—

(1) "domestic financial agency" and "domestic financial institution" apply to an action in the United States of a financial agency or institution.

(2) "foreign financial agency" and "foreign financial institution" apply to an action outside the United States of a financial agency or institution.

(c) ADDITIONAL DEFINITIONS.—For purposes of this subchapter, the following definitions shall apply:

(1) CERTAIN INSTITUTIONS INCLUDED IN DEFINITION.—The term "financial institution" (as defined in subsection (a)) includes the following:

(A) Any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act.

(2) FUNDING PORTALS NOT INCLUDED IN DEFINITION.—The term "financial institution" (as defined in subsection (a)) does not include a funding portal (as defined under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

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EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

DIVISION A—EMERGENCY ECONOMIC STABILIZATION

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TITLE I—TROUBLED ASSETS RELIEF PROGRAM

SEC. 101. PURCHASES OF TROUBLED ASSETS.

(a) OFFICES; AUTHORITY.—

(1) AUTHORITY.—The Secretary is authorized to establish the Troubled Asset Relief Program (or "TARP") to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and the policies and procedures developed and published by the Secretary.

(2) COMMENCEMENT OF PROGRAM.—Establishment of the policies and procedures and other similar administrative requirements imposed on the Secretary by this Act are not intended to delay the commencement of the TARP.

(3) ESTABLISHMENT OF TREASURY OFFICE.—

(A) IN GENERAL.—The Secretary shall implement any program under paragraph (1) through an Office of Financial Stability, established for such purpose within the Office of Domestic Finance of the Department of the Treasury, which office shall be headed by an Assistant Secretary of the Treasury, appointed by the President, by and with the advice and consent of the Senate, except that an interim Assistant Secretary may be appointed by the Secretary.

(B) CLERICAL AMENDMENTS.—

(i) TITLE 5.—Section 5315 of title 5, United States Code, is amended in the item relating to Assistant Secretaries of the Treasury, by striking "(9)" and inserting "(10)".

(ii) TITLE 31.—Section 301(e) of title 31, United States Code, is amended by striking "9" and inserting "10".

(b) CONSULTATION.—In exercising the authority under this section, the Secretary shall consult with the Board, the Corporation, the Comptroller of the Currency, [the Director of the Office of Thrift Supervision,] the Chairman of the National Credit Union Administration Board, and the Secretary of Housing and Urban Development.

(c) NECESSARY ACTIONS.—The Secretary is authorized to take such actions as the Secretary deems necessary to carry out the authorities in this Act, including, without limitation, the following:

(1) The Secretary shall have direct hiring authority with respect to the appointment of employees to administer this Act.

(2) Entering into contracts, including contracts for services authorized by section 3109 of title 5, United States Code.

(3) Designating financial institutions as financial agents of the Federal Government, and such institutions shall perform all such reasonable duties related to this Act as financial agents of the Federal Government as may be required.

(4) In order to provide the Secretary with the flexibility to manage troubled assets in a manner designed to minimize cost to the taxpayers, establishing vehicles that are authorized, subject to supervision by the Secretary, to purchase, hold, and sell troubled assets and issue obligations.

(5) Issuing such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes of this Act.

(d) PROGRAM GUIDELINES.—Before the earlier of the end of the 2-business-day period beginning on the date of the first purchase of troubled assets pursuant to the authority under this section or the end of the 45-day period beginning on the date of enactment of this Act, the Secretary shall publish program guidelines, including the following:

(1) Mechanisms for purchasing troubled assets.

(2) Methods for pricing and valuing troubled assets.

(3) Procedures for selecting asset managers.

(4) Criteria for identifying troubled assets for purchase.

(e) PREVENTING UNJUST ENRICHMENT.—In making purchases under the authority of this Act, the Secretary shall take such steps as may be necessary to prevent unjust enrichment of financial in-

stitutions participating in a program established under this section, including by preventing the sale of a troubled asset to the Secretary at a higher price than what the seller paid to purchase the asset. This subsection does not apply to troubled assets acquired in a merger or acquisition, or a purchase of assets from a financial institution in conservatorship or receivership, or that has initiated bankruptcy proceedings under title 11, United States Code.

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SEC. 131. EXCHANGE STABILIZATION FUND REIMBURSEMENT.

(a) REIMBURSEMENT.—The Secretary shall reimburse the Exchange Stabilization Fund established under section 5302 of title 31, United States Code, for any funds that are used for the Treasury Money Market Funds Guaranty Program for the United States money market mutual fund industry, from funds under this Act.

(b) LIMITS ON USE OF EXCHANGE STABILIZATION FUND.—The Secretary is prohibited from using the Exchange Stabilization Fund for the establishment of any future guaranty programs for the United States money market mutual fund industry*, or for the purposes of preventing the liquidation or insolvency of any entity*.

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BANK HOLDING COMPANY ACT OF 1956

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ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g), or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the date of enactment of this Act in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition; or (C) the acquisition, by a company, of control of a bank in a reorganization in which a person or group of persons exchanges their shares of the bank for shares of a newly formed bank holding company and re-

ceives after the reorganization substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law if—

(i) immediately following the acquisition—

(I) the bank holding company meets the capital and other financial standards prescribed by the Board by regulation for such a bank holding company; and

(II) the bank is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act);

(ii) the holding company does not engage in any activities other than those of managing and controlling banks as a result of the reorganization;

(iii) the company provides 30 days prior notice to the Board and the Board does not object to such transaction during such 30-day period; and

(iv) the holding company will not acquire control of any additional bank as a result of the reorganization..

The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after the date of enactment of the Bank Holding Company Act Amendments of 1970 shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b)(1) NOTICE AND HEARING REQUIREMENTS.—[Upon receiving]

(A) IN GENERAL.—Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which

notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. [Notwithstanding any other provision]

(B) IMMEDIATE ACTION.—

(i) IN GENERAL.—Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispense with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing not withstanding any recommended disapproval by the appropriate supervisory authority.

(ii) EXCEPTION.—The Board may not take any action pursuant to clause (i) on an application that would cause any company to become a bank holding company unless such application involves the company acquiring a bank that is critically undercapitalized (as such term is defined under section 38(b) of the Federal Deposit Insurance Act).

(2) WAIVER IN CASE OF BANK IN DANGER OF CLOSING.—If the Board receives a certification described in section 13(f)(8)(D) of the

Federal Deposit Insurance Act from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank.

(c) FACTORS FOR CONSIDERATION BY BOARD.—

(1) COMPETITIVE FACTORS.—The Board shall not approve—

(A) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(2) BANKING AND COMMUNITY FACTORS.—In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

(3) SUPERVISORY FACTORS.—The Board shall disapprove any application under this section by any company if—

(A) the company fails to provide the Board with adequate assurances that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this Act; or

(B) in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.

(4) TREATMENT OF CERTAIN BANK STOCK LOANS.—Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding company having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

(5) MANAGERIAL RESOURCES.—Consideration of the managerial resources of a company or bank under paragraph (2) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.

(6) MONEY LAUNDERING.—In every case, the Board shall take into consideration the effectiveness of the company or companies in combatting money laundering activities, including in overseas branches.

(7) FINANCIAL STABILITY.—In every case, the Board shall take into consideration the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.

(d) INTERSTATE BANKING.—

(1) APPROVALS AUTHORIZED.—

(A) ACQUISITION OF BANKS.—The Board may approve an application under this section by a bank holding company that is well capitalized and well managed to acquire control of, or acquire all or substantially all of the assets of, a bank located in a State other than the home State of such bank holding company, without regard to whether such transaction is prohibited under the law of any State.

(B) PRESERVATION OF STATE AGE LAWS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the Board may not approve an application pursuant to such subparagraph that would have the effect of permitting an out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(ii) SPECIAL RULE FOR STATE AGE LAWS SPECIFYING A PERIOD OF MORE THAN 5 YEARS.—Notwithstanding clause (i), the Board may approve, pursuant to subparagraph (A), the acquisition of a bank that has been in existence for at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(C) SHELL BANKS.—For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank shall be deemed to have been in existence for the same period of time as the bank to be acquired.

(D) EFFECT ON STATE CONTINGENCY LAWS.—No provision of this subsection shall be construed as affecting the applicability of a State law that makes an acquisition of a bank contingent upon a requirement to hold a portion of such bank's assets available for call by a State-sponsored housing entity established pursuant to State law, if—

(i) the State law does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or bank holding companies;

(ii) that State law was in effect as of the date of enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994;

(iii) the Federal Deposit Insurance Corporation has not determined that compliance with such State law would result in an unacceptable risk to the Deposit Insurance Fund; and

(iv) the appropriate Federal banking agency for such bank has not found that compliance with such State law would place the bank in an unsafe or unsound condition.

(2) CONCENTRATION LIMITS.—

(A) NATIONWIDE CONCENTRATION LIMITS.—The Board may not approve an application pursuant to paragraph (1)(A) if the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) STATEWIDE CONCENTRATION LIMITS OTHER THAN WITH RESPECT TO INITIAL ENTRIES.—The Board may not approve an application pursuant to paragraph (1)(A) if—

(i) immediately before the consummation of the acquisition for which such application is filed, the applicant (including any insured depository institution affiliate of the applicant) controls any insured depository institution or any branch of an insured depository institution in the home State of any bank to be acquired or in any host State in which any such bank maintains a branch; and

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant), upon consummation of the acquisition, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

(C) EFFECTIVENESS OF STATE DEPOSIT CAPS.—No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to the extent the application of such limitation does not discriminate against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(D) EXCEPTIONS TO SUBPARAGRAPH (B).—The Board may approve an application pursuant to paragraph (1)(A) without regard to the applicability of subparagraph (B) with respect to any State if—

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or bank holding com-

pany (including all insured depository institutions which are affiliates of the bank or bank holding company) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the acquisition is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(E) DEPOSIT DEFINED.—For purposes of this paragraph, the term "deposit" has the same meaning as in section 3(l) of the Federal Deposit Insurance Act.

(3) COMMUNITY REINVESTMENT COMPLIANCE.—In determining whether to approve an application under paragraph (1)(A), the Board shall—

(A) comply with the responsibilities of the Board regarding such application under section 804 of the Community Reinvestment Act of 1977; and

(B) take into account the applicant's record of compliance with applicable State community reinvestment laws.

(4) APPLICABILITY OF ANTITRUST LAWS.—No provision of this subsection shall be construed as affecting—

(A) the applicability of the antitrust laws; or

(B) the applicability, if any, of any State law which is similar to the antitrust laws.

(5) EXCEPTION FOR BANKS IN DEFAULT OR IN DANGER OF DEFAULT.—The Board may approve an application pursuant to paragraph (1)(A) which involves—

(A) an acquisition of 1 or more banks in default or in danger of default; or

(B) an acquisition with respect to which assistance is provided under section 13(c) of the Federal Deposit Insurance Act;

without regard to subparagraph (B) or (D) of paragraph (1) or paragraph (2) or (3).

(e) Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured depository institution as such term is defined in section 3 of the Federal Deposit Insurance Act.

(f)

(g) MUTUAL BANK HOLDING COMPANY.—

(1) ESTABLISHMENT.—Notwithstanding any provision of Federal law other than this Act, a savings bank or cooperative bank operating in mutual form may reorganize so as to form a holding company.

(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.

* * * * * * *

PENALTIES

SEC. 8. (a) CRIMINAL PENALTY.—

(1) Whoever knowingly violates any provision of this Act or, being a company, violates any regulation or order issued by the Board under this Act, shall be imprisoned not more than 1 year, fined not more than $100,000 per day for each day during which the violation continues, or both.

(2) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this Act shall be imprisoned not more than 5 years, fined not more than [$1,000,000] *$1,500,000* per day for each day during which the violation continues, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

(b) CIVIL MONEY PENALTY.—

(1) PENALTY.—Any company which violates, and any individual who participates in a violation of, any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

(2) ASSESSMENT; ETC.—Any penalty imposed under paragraph (1) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(3) HEARING.—The company or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

(4) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

(5) VIOLATE DEFINED.—For purposes of this section, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

(c) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a bank holding company (including a separation caused by the deregistration of such a company) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party

ceased to be such a party with respect to such holding company (whether such date occurs before, on, or after the date of the enactment of this subsection).

(d) PENALTY FOR FAILURE TO MAKE REPORTS.—

(1) FIRST TIER.—Any company which—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error—

(i) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the Board pursuant to this Act, within the period of time specified by the Board; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The company shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) SECOND TIER.—Any company which—

(A) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the Board pursuant to this Act, within the period of time specified by the Board; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) THIRD TIER.—Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board may, in its discretion, assess a penalty of not more than [$1,000,000] *$1,500,000* or 1 percent of total assets of such company, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) ASSESSMENT; ETC.—Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board in the manner provided in subsection (b) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) HEARING.—Any company against which any penalty is assessed under this subsection shall be afforded an agency hearing if such company submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

* * * * * * *

SEC. 14. CONCENTRATION LIMITS ON LARGE FINANCIAL FIRMS.

(a) DEFINITIONS.—In this section—

(1) the term "Council" means the Financial Stability Oversight Council;

[(2) the term "financial company" means—

[(A) an insured depository institution;

[(B) a bank holding company;

[(C) a savings and loan holding company;

[(D) a company that controls an insured depository institution;

[(E) a nonbank financial company supervised by the Board under title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

[(F) a foreign bank or company that is treated as a bank holding company for purposes of this Act; and]

(2) the term "banking organization" means—

(A) an insured depository institution;

(B) a bank holding company;

(C) a savings and loan holding company;

(D) a company that controls an insured depository institution; and

(E) a foreign bank or company that is treated as a bank holding company for purposes of this Act; and

(3) the term "liabilities" means—

(A) with respect to a United States [financial company] *banking organization—*

(i) the total risk-weighted assets of the [financial company] *banking organization*, as determined under the risk-based capital rules applicable to bank holding companies, as adjusted to reflect exposures that are deducted from regulatory capital; less

(ii) the total regulatory capital of the [financial company] *banking organization* under the risk-based capital rules applicable to bank holding companies; *and*

(B) with respect to a foreign-based [financial company] *banking organization—*

(i) the total risk-weighted assets of the United States operations of the [financial company] *banking organization*, as determined under the applicable risk-based capital rules, as adjusted to reflect exposures that are deducted from regulatory capital; less

(ii) the total regulatory capital of the United States operations of the [financial company] *banking organization*, as determined under the applicable risk-based capital rules[; and].

[(C) with respect to an insurance company or other nonbank financial company supervised by the Board, such assets of the company as the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies.]

(b) CONCENTRATION LIMIT.—Subject to the recommendations by the Council under subsection (e), a [financial company] *banking organization* may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring

[financial company] *banking organization* upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all [financial companies] *banking organizations* at the end of the calendar year preceding the transaction.

(c) EXCEPTION TO CONCENTRATION LIMIT.—With the prior written consent of the Board, the concentration limit under subsection (b) shall not apply to an acquisition—

(1) of a bank in default or in danger of default;

(2) with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)); or

(3) that would result only in a de minimis increase in the liabilities of the [financial company] *banking organization*.

(d) RULEMAKING AND GUIDANCE.—The Board shall issue regulations implementing this section in accordance with the recommendations of the Council under subsection (e), including the definition of terms, as necessary. The Board may issue interpretations or guidance regarding the application of this section to an individual [financial company] *banking organization* or to financial companies in general.

(e) COUNCIL STUDY AND RULEMAKING.—

(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this section, the Council shall—

(A) complete a study of the extent to which the concentration limit under this section would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of United States financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States; and

(B) make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement this section.

(2) RULEMAKING.—Not later than 9 months after the date of completion of the study under paragraph (1), and notwithstanding subsections (b) and (d), the Board shall issue final regulations implementing this section, which shall reflect any recommendations by the Council under paragraph (1)(B).

TITLE 44, UNITED STATES CODE

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CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

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SUBCHAPTER I—FEDERAL INFORMATION POLICY

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§ 3502. Definitions

As used in this subchapter—

(1) the term "agency" means any executive department, military department, Government corporation, Government con-

trolled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

(A) the Government Accountability Office;

(B) Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

(2) the term "burden" means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

(A) reviewing instructions;

(B) acquiring, installing, and utilizing technology and systems;

(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

(D) searching data sources;

(E) completing and reviewing the collection of information; and

(F) transmitting, or otherwise disclosing the information;

(3) the term "collection of information"—

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1);

(4) the term "Director" means the Director of the Office of Management and Budget;

(5) the term "independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, the Bureau of Consumer Financial Protection, [the Office of Financial Research,] Office of the Comptroller of

the Currency, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

(6) the term "information resources" means information and related resources, such as personnel, equipment, funds, and information technology;

(7) the term "information resources management" means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

(8) the term "information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

(9) the term "information technology" has the meaning given that term in section 11101 of title 40 but does not include national security systems as defined in section 11103 of title 40;

(10) the term "person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(11) the term "practical utility" means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

(12) the term "public information" means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public;

(13) the term "recordkeeping requirement" means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

(A) retain such records;

(B) notify third parties, the Federal Government, or the public of the existence of such records;

(C) disclose such records to third parties, the Federal Government, or the public; or

(D) report to third parties, the Federal Government, or the public regarding such records; and

(14) the term "penalty" includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

* * * * * * *

§ 3513. Director review of agency activities; reporting; agency response

(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—

(1) be taken to address information resources management problems identified in the report; and

(2) improve agency performance and the accomplishment of agency missions.

(c) COMPARABLE TREATMENT.—Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the Director of the [Bureau of Consumer Financial Protection] *Consumer Law Enforcement Agency* on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.

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SECURITIES ACT OF 1933

TITLE I—

* * * * * * *

DEFINITIONS

SEC. 2. (a) DEFINITIONS.—When used in this title, unless the context otherwise requires—

(1) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term "sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value.

The terms defined in this paragraph and the term "offer to buy" as used in subsection (c) of section 5 shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 5(c) not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term "research report" means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming

the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 6, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 10) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 10 at the time of such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term "insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term "separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(15) The term "accredited investor" shall mean—

[(i)**]** *(A)* a bank as defined in section 3(a)(2) whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser**[**; or**]** *;*

(B) any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds $1,000,000 (which amount, along with the amounts set forth in subparagraph (C), shall be adjusted for inflation by the Commission every 5 years

to the nearest $10,000 to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics) where, for purposes of calculating net worth under this subparagraph—

(i) the person's primary residence shall not be included as an asset;

(ii) indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(iii) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;

(C) any natural person who had an individual income in excess of $200,000 in each of the 2 most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(D) any natural person who, by reason of their net worth or income, is an accredited investor under section 230.215 of title 17, Code of Federal Regulations (as in effect on the day before the date of enactment of this subparagraph);

(E) any natural person who is currently licensed or registered as a broker or investment adviser by the Commission, the Financial Industry Regulatory Authority, or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), or the securities division of a State or the equivalent State division responsible for licensing or registration of individuals in connection with securities activities;

(F) any natural person the Commission determines, by regulation, to have demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a particular investment, and whose education or job experience is verified by the Financial Industry Regulatory Authority or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934); or

[(ii)**]** *(F)* any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

(16) The terms "security future", "narrow-based security index", and "security futures product" have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(17) The terms "swap" and "security-based swap" have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(18) The terms "purchase" or "sale" of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(19) The term "emerging growth company" means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title;

(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

(b) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

* * * * * * *

EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one

or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of such Code, (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code (other than a person participating in a church plan who is described in section 414(e)(3)(B) of the Internal Revenue Code of 1986), or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code (other than a retirement income account described in section 403(b)(9) of the Internal Revenue

Code of 1986, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of such Code establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account). The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940;

(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual, or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of the Internal Revenue Code of 1954, (ii) a corporation described in section 501(c)(16) of such Code and exempt from tax under section 501(a) of such Code, or (iii) a corporation described in section 501(c)(2) of such Code which is exempt from tax under section 501(a) of such Code and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

(6) Any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7) Certificates issued by a receiver or by a trustee in bankruptcy, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Except with respect to a security exchanged in a case under title 11, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.

(12) Any equity security issued in connection with the acquisition by a holding company of a bank under section 3(a) of the Bank Holding Company Act of 1956 or a savings association under section 10(e) of the Home Owners' Loan Act, if—

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive, after that reorganization, substantially the same proportional share interests in the holding company as they held in the bank or savings association, except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association prior to the transaction, other than as may be required by law; and

(D) the holding company has substantially the same assets and liabilities, on a consolidated basis, as the bank or savings association had prior to the transaction.

For purposes of this paragraph, the term "savings association" means a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(13) Any security issued by or any interest or participation in any church plan, company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

(14) Any security futures product that is—

(A) cleared by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 or exempt from registration under subsection (b)(7) of such section 17A; and

(B) traded on a national securities exchange or a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(b) ADDITIONAL EXEMPTIONS.—

(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $5,000,000.

(2) ADDITIONAL ISSUES.—The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed **[**$50,000,000**]** *$75,000,000, adjusted for inflation by the Commission every 2 years to the nearest $10,000 to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics*.

(B) The securities may be offered and sold publicly.

(C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.

(D) The civil liability provision in section 12(a)(2) shall apply to any person offering or selling such securities.

(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and condi-

tions as the Commission may prescribe in the public interest or for the protection of investors.

(F) The Commission shall require the issuer to file audited financial statements with the Commission annually.

(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements, a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

(3) LIMITATION.—Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.

(4) PERIODIC DISCLOSURES.—Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

(5) ADJUSTMENT.—Not later than 2 years after the date of enactment of the Small Company Capital Formation Act of 2011 and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase [such amount as] *such amount, in addition to the adjustment for inflation provided for under such paragraph (2)(A), as* the Commission determines appropriate. If the Commission determines not to increase [such amount, it] *such amount, in addition to the adjustment for inflation provided for under such paragraph (2)(A), it* shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Af-

fairs of the Senate on its reasons for not increasing the amount.

(c) The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors.

EXEMPTED TRANSACTIONS

SEC. 4. (a) The provisions of section 5 shall not apply to—

(1) transactions by any person other than an issuer, underwriter, or dealer.

(2) transactions by an issuer not involving any public offering.

(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 8 is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 3(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone

acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

[(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

[(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than $1,000,000;

[(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

[(i) the greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000; and

[(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000;

[(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 4A(a); and

[(D) the issuer complies with the requirements of section 4A(b).]

(6) transactions involving the offer or sale of securities by an issuer, provided that—

(A) in the case of a transaction involving an intermediary between the issuer and the investor, such intermediary complies with the requirements under section 4A(a); and

(B) in the case of a transaction not involving an intermediary between the issuer and the investor, the issuer complies with the requirements under section 4A(b).

(7) transactions meeting the requirements of subsection (d).

(8) transactions meeting the requirements of subsection (e).

(b) Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

(c)(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title, solely because—

(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;

(B) that person or any person associated with that person co-invests in such securities; or

(C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

(C) such person is not subject to a statutory disqualification as defined in section 3(a)(39) of this title and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term "ancillary services" means—

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.

[(d) CERTAIN ACCREDITED INVESTOR TRANSACTIONS.—The transactions referred to in subsection (a)(7) are transactions meeting the following requirements:

[(1) ACCREDITED INVESTOR REQUIREMENT.—Each purchaser is an accredited investor, as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor regulation).

[(2) PROHIBITION ON GENERAL SOLICITATION OR ADVERTISING.—Neither the seller, nor any person acting on the seller's behalf, offers or sells securities by any form of general solicitation or general advertising.

[(3) INFORMATION REQUIREMENT.—In the case of a transaction involving the securities of an issuer that is neither subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)), nor exempt from reporting pursuant to section 240.12g3–2(b) of title 17, Code of Federal Regulations, nor a foreign government (as defined in section 230.405 of title 17, Code of Federal Regulations) eligible to register securities under Schedule B, the seller and a prospective purchaser designated by the seller obtain from the issuer, upon request of the seller, and the seller in all cases makes available to a prospective purchaser, the following information (which shall be reasonably current in relation to the date of resale under this section):

[(A) The exact name of the issuer and the issuer's predecessor (if any).

[(B) The address of the issuer's principal executive offices.

[(C) The exact title and class of the security.

[(D) The par or stated value of the security.

[(E) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year.

[(F) The name and address of the transfer agent, corporate secretary, or other person responsible for transferring shares and stock certificates.

[(G) A statement of the nature of the business of the issuer and the products and services it offers, which shall be presumed reasonably current if the statement is as of 12 months before the transaction date.

[(H) The names of the officers and directors of the issuer.

[(I) The names of any persons registered as a broker, dealer, or agent that shall be paid or given, directly or indirectly, any commission or remuneration for such person's participation in the offer or sale of the securities.

[(J) The issuer's most recent balance sheet and profit and loss statement and similar financial statements, which shall—

[(i) be for such part of the 2 preceding fiscal years as the issuer has been in operation;

[(ii) be prepared in accordance with generally accepted accounting principles or, in the case of a foreign private issuer, be prepared in accordance with generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board;

[(iii) be presumed reasonably current if—

[(I) with respect to the balance sheet, the balance sheet is as of a date less than 16 months before the transaction date; and

[(II) with respect to the profit and loss statement, such statement is for the 12 months preceding the date of the issuer's balance sheet; and

[(iv) if the balance sheet is not as of a date less than 6 months before the transaction date, be accompanied by additional statements of profit and loss for the period from the date of such balance sheet to a date less than 6 months before the transaction date.

[(K) To the extent that the seller is a control person with respect to the issuer, a brief statement regarding the nature of the affiliation, and a statement certified by such seller that they have no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.

[(4) ISSUERS DISQUALIFIED.—The transaction is not for the sale of a security where the seller is an issuer or a subsidiary, either directly or indirectly, of the issuer.

[(5) BAD ACTOR PROHIBITION.—Neither the seller, nor any person that has been or will be paid (directly or indirectly) remuneration or a commission for their participation in the offer

or sale of the securities, including solicitation of purchasers for the seller is subject to an event that would disqualify an issuer or other covered person under Rule 506(d)(1) of Regulation D (17 CFR 230.506(d)(1)) or is subject to a statutory disqualification described under section 3(a)(39) of the Securities Exchange Act of 1934.

[(6) BUSINESS REQUIREMENT.—The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that the issuer's primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

[(7) UNDERWRITER PROHIBITION.—The transaction is not with respect to a security that constitutes the whole or part of an unsold allotment to, or a subscription or participation by, a broker or dealer as an underwriter of the security or a redistribution.

[(8) OUTSTANDING CLASS REQUIREMENT.—The transaction is with respect to a security of a class that has been authorized and outstanding for at least 90 days prior to the date of the transaction.

[(e) ADDITIONAL REQUIREMENTS.—

[(1) IN GENERAL.—With respect to an exempted transaction described under subsection (a)(7):

[(A) Securities acquired in such transaction shall be deemed to have been acquired in a transaction not involving any public offering.

[(B) Such transaction shall be deemed not to be a distribution for purposes of section 2(a)(11).

[(C) Securities involved in such transaction shall be deemed to be restricted securities within the meaning of Rule 144 (17 CFR 230.144).

[(2) RULE OF CONSTRUCTION.—The exemption provided by subsection (a)(7) shall not be the exclusive means for establishing an exemption from the registration requirements of section 5.]

(d)(1) The transactions referred to in subsection (a)(7) are transactions where—

(A) each purchaser is an accredited investor, as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor thereto); and

(B) if any securities sold in reliance on subsection (a)(7) are offered by means of any general solicitation or general advertising, all such sales are made through a platform available only to accredited investors.

(2) Securities sold in reliance on subsection (a)(7) shall be deemed to have been acquired in a transaction not involving any public offering.

(3) The exemption provided by this subsection shall not be available for a transaction where the seller is—

(A) an issuer, its subsidiaries or parent;

(B) an underwriter acting on behalf of the issuer, its subsidiaries or parent, which receives compensation from the issuer with respect to such sale; or

(C) a dealer.

(4) A transaction meeting the requirements of this subsection shall be deemed not to be a distribution for purposes of section 2(a)(11).

(e) CERTAIN MICRO-OFFERINGS.—The transactions referred to in subsection (a)(8) are transactions involving the sale of securities by an issuer (including all entities controlled by or under common control with the issuer) that meet all of the following requirements:

(1) PRE-EXISTING RELATIONSHIP.—Each purchaser has a substantive pre-existing relationship with an officer of the issuer, a director of the issuer, or a shareholder holding 10 percent or more of the shares of the issuer.

(2) 35 OR FEWER PURCHASERS.—There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer that are sold in reliance on the exemption provided under subsection (a)(8) during the 12-month period preceding such transaction.

(3) SMALL OFFERING AMOUNT.—The aggregate amount of all securities sold by the issuer, including any amount sold in reliance on the exemption provided under subsection (a)(8), during the 12-month period preceding such transaction, does not exceed $500,000.

[SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.

[(a) REQUIREMENTS ON INTERMEDIARIES.—A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 4(6) shall—

[(1) register with the Commission as—

[(A) a broker; or

[(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

[(2) register with any applicable self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934);

[(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

[(4) ensure that each investor—

[(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

[(B) positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and

[(C) answers questions demonstrating—

[(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

[(ii) an understanding of the risk of illiquidity; and

[(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

[(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding

equity of every issuer whose securities are offered by such person;

[(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

[(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate;

[(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

[(9) take such steps to protect the privacy of information collected from investors as the Commission shall, by rule, determine appropriate;

[(10) not compensate promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor;

[(11) prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services; and

[(12) meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

[(b) REQUIREMENTS FOR ISSUERS.—For purposes of section 4(6), an issuer who offers or sells securities shall—

[(1) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

[(A) the name, legal status, physical address, and website address of the issuer;

[(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

[(C) a description of the business of the issuer and the anticipated business plan of the issuer;

[(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

[(i) $100,000 or less—

[(I) the income tax returns filed by the issuer for the most recently completed year (if any); and

[(II) financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

[(ii) more than $100,000, but not more than $500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

[(iii) more than $500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

[(E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;

[(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

[(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

[(H) a description of the ownership and capital structure of the issuer, including—

[(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

[(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

[(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

[(iv) how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

[(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

[(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

[(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

[(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require

to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

[(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

[(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

[(c) LIABILITY FOR MATERIAL MISSTATEMENTS AND OMISSIONS.—

[(1) ACTIONS AUTHORIZED.—

[(A) IN GENERAL.—Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 4(6) may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

[(B) LIABILITY.—An action brought under this paragraph shall be subject to the provisions of section 12(b) and section 13, as if the liability were created under section 12(a)(2).

[(2) APPLICABILITY.—An issuer shall be liable in an action under paragraph (1), if the issuer—

[(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

[(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

[(3) DEFINITION.—As used in this subsection, the term "issuer" includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.

[(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office per-

forming like functions) of each State and territory of the United States and the District of Columbia.

[(e) RESTRICTIONS ON SALES.—Securities issued pursuant to a transaction described in section 4(6)—

[(1) may not be transferred by the purchaser of such securities during the 1-year period beginning on the date of purchase, unless such securities are transferred—

[(A) to the issuer of the securities;

[(B) to an accredited investor;

[(C) as part of an offering registered with the Commission; or

[(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

[(2) shall be subject to such other limitations as the Commission shall, by rule, establish.

[(f) APPLICABILITY.—Section 4(6) shall not apply to transactions involving the offer or sale of securities by any issuer that—

[(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

[(2) is subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

[(3) is an investment company, as defined in section 3 of the Investment Company Act of 1940, or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act; or

[(4) the Commission, by rule or regulation, determines appropriate.

[(g) RULE OF CONSTRUCTION.—Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(6).

[(h) CERTAIN CALCULATIONS.—

[(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

[(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B) shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.]

SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.

(a) REQUIREMENTS ON INTERMEDIARIES.—For purposes of section 4(a)(6), a person acting as an intermediary in a transaction involving the offer or sale of securities shall comply with the requirements of this subsection if the intermediary—

(1) warns investors, including on the intermediary's website used for the offer and sale of such securities, of the speculative nature generally applicable to investments in startups, emerg-

ing businesses, and small issuers, including risks in the secondary market related to illiquidity;

(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

(4) registers with the Commission and the Financial Industry Regulatory Authority, including by providing the Commission with the intermediary's physical address, website address, and the names of the intermediary and employees of the intermediary, and keep such information up-to-date;

(5) provides the Commission with continuous investor-level access to the intermediary's website;

(6) requires each potential investor to answer questions demonstrating—

(A) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

(B) an understanding of the risk of illiquidity; and

(C) such other areas as the Commission may determine appropriate by rule or regulation, including information relating to the owners' and management's experience, and any related party transactions and conflicts of interest;

(7) carries out a background check on the issuer's principals;

(8) provides the Commission and potential investors with notice of the offering not less than 10 days prior to such offering, not later than the first day securities are offered to potential investors, including—

(A) the issuer's name, legal status, physical address, and website address;

(B) the names of the issuer's principals;

(C) the stated purpose and intended use of the proceeds of the offering sought by the issuer; and

(D) the target offering amount and the deadline to reach the target offering amount;

(9) outsources cash-management functions to a qualified third party custodian, such as a broker or dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934, a trust company, or an insured depository institution;

(10) makes available on the intermediary's website a method of communication that permits the issuer and investors to communicate with one another;

(11) provides the Commission with a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; and

(b) REQUIREMENTS ON ISSUERS IF NO INTERMEDIARY.—For purposes of section 4(a)(6), an issuer who offers or sells securities without an intermediary shall comply with the requirements of this subsection if the issuer—

(1) warns investors, including on the issuer's website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

(4) provides the Commission with the issuer's physical address, website address, and the names of the principals and employees of the issuers, and keeps such information up-to-date;

(5) provides the Commission with continuous investor-level access to the issuer's website;

(6) requires each potential investor to answer questions demonstrating—

(A) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

(B) an understanding of the risk of illiquidity; and

(C) such other areas as the Commission may determine appropriate by rule or regulation;

(7) provides the Commission with notice of the offering not less than 10 days prior to such offering, not later than the first day securities are offered to potential investors, including—

(A) the stated purpose and intended use of the proceeds of the offering sought by the issuer; and

(B) the target offering amount and the deadline to reach the target offering amount;

(8) outsources cash-management functions to a qualified third party custodian, such as a broker or dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934, a trust company, or an insured depository institution;

(9) makes available on the issuer's website a method of communication that permits the issuer and investors to communicate with one another;

(10) does not offer personalized investment advice;

(11) provides the Commission with a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; and

(c) VERIFICATION OF INCOME.—For purposes of section 4(a)(6), an issuer or intermediary may rely on certifications as to annual income provided by the person to whom the securities are sold to verify the investor's income.

(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make the notices described under subsections (a)(9), (a)(13), (b)(8), and (b)(13) and the information described under subsections (a)(4) and (b)(4) available to the States.

(e) RESTRICTION ON SALES.—With respect to a transaction involving the issuance of securities described under section 4(a)(6), a purchaser may not transfer such securities during the 1-year period beginning on the date of purchase, unless such securities are sold to—

(1) the issuer of such securities; or

(2) an accredited investor.

(f) CONSTRUCTION.—

(1) NO REGISTRATION AS BROKER.—With respect to a transaction described under section 4(a)(6) involving an intermediary, such intermediary shall not be required to register as a broker under section 15(a)(1) of the Securities Exchange Act of 1934 solely by reason of participation in such transaction.

(2) NO PRECLUSION OF OTHER CAPITAL RAISING.—Nothing in this section or section 4(a)(6) shall be construed as preventing

an issuer from raising capital through methods not described under section 4(a)(6).

PROHIBITIONS RELATING TO INTERSTATE COMMERCE AND THE MAILS

SEC. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this title, unless such prospectus meets the requirements of section 10; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 10.

(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 8.

(d) LIMITATION.—Notwithstanding any other provision of this section, **[**an emerging growth company or any person authorized to act on behalf of an emerging growth company**]** *an issuer or any person authorized to act on behalf of an issuer* may engage in oral or written communications with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

(e) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract

participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)).

REGISTRATION OF SECURITIES AND SIGNING OF REGISTRATION STATEMENT

SEC. 6. (a) Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this title. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

(b) REGISTRATION FEE.—

(1) FEE PAYMENT REQUIRED.—At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to $92 per $1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (2).

(2) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraph (1) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the ❚target fee collection amount❚ *target offsetting collection amount* for such fiscal year.

(3) PRO RATA APPLICATION.—The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than $1,000,000.

(4) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (2) and published under paragraph (5) shall not be subject to judicial review. ❚An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.❚ *Subject to paragraphs (6)(B) and (7), an ad-*

justed rate prescribed under paragraph (2) shall take effect on the later of—

(A) the first day of the fiscal year to which such rate applies; or

(B) five days after the date on which a regular appropriation to the Commission for such fiscal year is enacted.

(5) PUBLICATION.—The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 13(e) and 14(g) *of the Securities Exchange Act of 1934* for each fiscal year not later than August 31 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

(6) OFFSETTING COLLECTIONS.—Fees collected pursuant to this subsection for any fiscal year—

(A) except as provided in section 31(i)(2) of the Securities Exchange Act of 1934, shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

(B) except as provided in paragraph (7), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(7) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.

[(6)**]** *(8)* DEFINITIONS.—For purposes of this subsection:

(A) **[**TARGET OFFSETTING COLLECTION AMOUNT.—**]** *TARGET OFFSETTING COLLECTION AMOUNT.*—The **[**target fee collection amount**]** *target offsetting collection amount* for each fiscal year is determined according to the following table:

Fiscal year:	**Target [fee]** *offsetting* **collection amount**
2002	$377,000,000
2003	$435,000,000
2004	$467,000,000
2005	$570,000,000
2006	$689,000,000
2007	$214,000,000
2008	$234,000,000
2009	$284,000,000
2010	$334,000,000
2011	$394,000,000
2012	$425,000,000
2013	$455,000,000
2014	$485,000,000
2015	$515,000,000
2016	$550,000,000
2017	$585,000,000
2018	$620,000,000
2019	$660,000,000
2020	$705,000,000
2021 and each fiscal year thereafter	An amount that is equal to the **[**target fee collection amount**]** *target offsetting collection amount* for the prior fiscal year, adjusted by the rate of inflation.

(B) BASELINE ESTIMATE OF THE AGGREGATE MAXIMUM OFFERING PRICES.—The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(c) The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under subsection (b).

(d) The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

(e) [EMERGING GROWTH COMPANIES] *DRAFT REGISTRATION STATEMENTS.*—

[(1) IN GENERAL.—Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 15 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto. An issuer that was an emerging growth company at the time it submitted a confidential registration statement or, in lieu thereof, a publicly filed registration statement for review under this subsection but ceases to be an emerging growth company thereafter shall continue to be treated as an emerging market growth company for the purposes of this subsection through the earlier of the date on which the issuer consummates its initial public offering pursuant to such registrations statement or the end of the 1-year period beginning on the date the company ceases to be an emerging growth company.]

(1) IN GENERAL.—Any issuer, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 15 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto.

(2) CONFIDENTIALITY.—Notwithstanding any other provision of this title, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 24(b)(2) of the Securities Exchange Act of 1934.

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TAKING EFFECT OF REGISTRATION STATEMENTS AND AMENDMENTS THERETO

SEC. 8. (a) Except as hereinafter provided, the effective date of a registration statement shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

(b) If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.

(c) An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d) If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a

time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order the Commission shall so declare and thereupon the stop order shall cease to be effective.

(e) The Commission is hereby empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

(f) Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic notice to the address given in such statement.

(g) PROCEDURE FOR OBTAINING CERTAIN INTELLECTUAL PROPERTY.—The Commission is not authorized to compel under this title a person to produce or furnish source code, including algorithmic trading source code or similar intellectual property, to the Commission unless the Commission first issues a subpoena.

CEASE-AND-DESIST PROCEEDINGS

SEC. 8A. (a) AUTHORITY OF THE COMMISSION.—If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(b) HEARING.—The notice instituting proceedings pursuant to subsection (a) shall fix a hearing date not earlier than 30 days nor

later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(c) TEMPORARY ORDER.—

(1) IN GENERAL.—Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (a), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceeding. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(2) APPLICABILITY.—This subsection shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(d) REVIEW OF TEMPORARY ORDERS.—

(1) COMMISSION REVIEW.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (c), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(2) JUDICIAL REVIEW.—Within—

(A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its prin-

cipal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

(3) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(4) EXCLUSIVE REVIEW.—Section 9(a) of this title shall not apply to a temporary order entered pursuant to this section.

(e) AUTHORITY TO ENTER AN ORDER REQUIRING AN ACCOUNTING AND DISGORGEMENT.—In any cease-and-desist proceeding under subsection (a), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

[(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, or that is required to file reports pursuant to section 15(d) of that Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.**]**

(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds, on the record, after notice and opportunity for hearing, that—

(A) such person—

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

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

(B) such penalty is in the public interest.

(2) MAXIMUM AMOUNT OF PENALTY.—

(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be **[**$7,500**]** *$10,000* for a natural person or **[**$75,000**]** *$100,000* for any other person.

(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be **[**$75,000**]** *$100,000* for a natural person or **[**$375,000**]** *$500,000* for any other person, if the act or omission described in paragraph (1) involved fraud, deceit,

manipulation, or deliberate or reckless disregard of a regulatory requirement.

[(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $150,000 for a natural person or $725,000 for any other person, if—

[(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

[(ii) such act or omission directly or indirectly resulted in—

[(I) substantial losses or created a significant risk of substantial losses to other persons; or

[(II) substantial pecuniary gain to the person who committed the act or omission.]

(C) THIRD TIER.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such act or omission shall not exceed the amount specified in clause (ii) if—

(I) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such act or omission directly or indirectly resulted in—

(aa) substantial losses or created a significant risk of substantial losses to other persons; or

(bb) substantial pecuniary gain to the person who committed the act or omission.

(ii) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in clause (i) is the greatest of—

(I) $300,000 for a natural person or $1,450,000 for any other person;

(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

(III) the amount of losses incurred by victims as a result of the act or omission.

(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such act or omission shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such act or omission, the person who committed the act or omission was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that person.

(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may re-

late to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.

* * * * * * *

SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

(a) SCOPE OF EXEMPTION.—Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:

(1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if such security is—

[(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);**]**

[(B)**]** *(A)* listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards **[**that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A)**]** *that have been approved by the Commission*; **[**or**]**

[(C)**]** *(B)* a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) **[**or (B)**][.]***; or*

(C) a venture security, as defined under section 6(m)(5) of the Securities Exchange Act of 1934.

(2) EXCLUSIVE FEDERAL REGISTRATION OF INVESTMENT COMPANIES.—A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.

(3) SALES TO QUALIFIED PURCHASERS.—A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term "qualified purchaser" differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) paragraph (1) or (3) of section 4, and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(B) section 4(4);

(C) **[**section 4(6)**]** *section 4(a)(6)*;

(D) a rule or regulation adopted pursuant to section 3(b)(2) and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under section 4(2), except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996; **[**or**]**

(G) section 4(a)(7)**[**.**]***; or*

(H) section 4(a)(8).

(c) PRESERVATION OF AUTHORITY.—

(1) FRAUD AUTHORITY.—Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, **[**in connection with securities or securities transactions

[(A) with respect to—

[(i) fraud or deceit; or

[(ii) unlawful conduct by a broker or dealer; and

[(B) in connection to a transaction described under section 4(6), with respect to—

[(i) fraud or deceit; or

[(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.] *, in connection with securities or securities transactions, with respect to—*

(A) fraud or deceit;

(B) unlawful conduct by a broker or dealer; and

(C) with respect to a transaction described under section 4(a)(6), unlawful conduct by an intermediary, issuer, or custodian.

(2) PRESERVATION OF FILING REQUIREMENTS.—

(A) NOTICE FILINGS PERMITTED.—Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) PRESERVATION OF FEES.—

(i) IN GENERAL.—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

(ii) SCHEDULE.—The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

(i) IN GENERAL.—During the period beginning on the date of enactment of the National Securities Markets Improvement Act of 1996 and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) DELAYS.—For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) FEES NOT PERMITTED ON LISTED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a

covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term "State" includes the District of Columbia and the territories of the United States.

(3) ENFORCEMENT OF REQUIREMENTS.—Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

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

(1) OFFERING DOCUMENT.—The term "offering document"—

(A) has the meaning given the term "prospectus" in section 2(a)(10), but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) PREPARED BY OR ON BEHALF OF THE ISSUER.—Not later than 6 months after the date of enactment of the National Securities Markets Improvement Act of 1996, the Commission shall, by rule, define the term "prepared by or on behalf of the issuer" for purposes of this section.

(3) STATE.—The term "State" has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(4) SENIOR SECURITY.—The term "senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

* * * * * * *

INJUNCTIONS AND PROSECUTION OF OFFENSES

SEC. 20. (a) Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this title, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances con-

cerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

(b) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this title. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

(c) Upon application of the Commission, the district courts of the United States and the United States courts of any Territory shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any order of the Commission made in pursuance thereof.

(d) MONEY PENALTIES IN CIVIL ACTIONS.—

(1) AUTHORITY OF COMMISSION.—Whenever it shall appear to the Commission that any person has violated any provision of this title, the rules or regulations thereunder, *a Federal court injunction or a bar obtained or entered by the Commission under this title,* or a cease-and-desist order entered by the Commission pursuant to section 8A of this title, other than by committing a violation subject to a penalty pursuant to section 21A of the Securities Exchange Act of 1934, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) AMOUNT OF PENALTY.—

(A) FIRST TIER.—The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) **[**$5,000**]** *$10,000* for a natural person or **[**$50,000**]** *$100,000* for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) SECOND TIER.—Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) **[**$50,000**]** *$100,000* for a natural person or **[**$250,000**]** *$500,000* for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

[(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) $100,000 for a natural person or $500,000 for any other person, or (ii) the gross

amount of pecuniary gain to such defendant as a result of the violation, if—

[(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

[(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.]

(C) THIRD TIER.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the amount specified in clause (ii) if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(ii) MAXIMUM AMOUNT OF PENALTY.—The amount referred to in clause (i) is the greatest of—

(I) $300,000 for a natural person or $1,450,000 for any other person;

(II) 3 times the gross amount of pecuniary gain to such defendant as a result of the violation; or

(III) the amount of losses incurred by victims as a result of the violation.

(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.

(3) PROCEDURES FOR COLLECTION.—

(A) PAYMENT OF PENALTY TO TREASURY.—A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002 and section 21F of the Securities Exchange Act of 1934.

(B) COLLECTION OF PENALTIES.—If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) REMEDY NOT EXCLUSIVE.—The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) JURISDICTION AND VENUE.—For purposes of section 22 of this title, actions under this section shall be actions to enforce a liability or a duty created by this title.

[(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF A CEASE-AND-DESIST ORDER.—In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 8A, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such an order, each day of the failure to comply with the order shall be deemed a separate offense.]

(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

(A) IN GENERAL.—Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

(B) INJUNCTIONS AND ORDERS.—Subparagraph (A) shall apply with respect to any action to enforce—

(i) a Federal court injunction obtained pursuant to this title;

(ii) an order entered or obtained by the Commission pursuant to this title that bars, suspends, places limitations on the activities or functions of, or prohibits the activities of, a person; or

(iii) a cease-and-desist order entered by the Commission pursuant to section 8A.

(e) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND DIRECTORS.—In any proceeding under subsection (b), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of such Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(f) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.

(g) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

(1) IN GENERAL.—In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(2) DEFINITION.—For purposes of this subsection, the term "person participating in an offering of penny stock" includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

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SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

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DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) The term "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(2) The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

(3)(A) The term "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules. For purposes of sections 6(b)(1), 6(b)(4), 6(b)(6), 6(b)(7), 6(d), 17(d), 19(d), 19(e), 19(g), 19(h), and 21 of this title, the term "member" when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Com-

mission to comply with such rules pursuant to section 6(f) of this title.

(B) The term "member" when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules.

(4) BROKER.—

(A) IN GENERAL.—The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is

a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

(VII) such services are provided by the broker or dealer on a basis in which all customers that receive any services are fully disclosed to the broker or dealer;

(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and—

(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) CERTAIN STOCK PURCHASE PLANS.—

(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates (as defined in section 2 of the Bank Holding Company Act of 1956), if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan.

(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by delivery of written or electronic plan materials by a bank to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Gramm-Leach-Bliley Act; or

(bb) otherwise permitted by the Commission.

(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the In-

vestment Company Act of 1940 that holds itself out as a money market fund.

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(5) of the Securities Act of 1933 or the rules and regulations issued thereunder;

(II) at any time after the date that is 1 year after the date of the enactment of the Gramm-Leach-Bliley Act, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

(III) if the bank is not affiliated with a broker or dealer, does not effect any primary offering described in subclause (I) the aggregate amount of which exceeds 25 percent of the capital of the bank, except that the limitation of this subclause shall not apply with respect to any sale of government securities or municipal securities.

(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

(I) IN GENERAL.—The bank, as part of customary banking activities—

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions;

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the

bank maintains records separately identifying the securities and the customer; or

(ee) serves as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.

(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) IDENTIFIED BANKING PRODUCTS.—The bank effects transactions in identified banking products as defined in section 206 of the Gramm-Leach-Bliley Act.

(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) EXECUTION BY BROKER OR DEALER.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

(i) the bank directs such trade to a registered broker or dealer for execution;

(ii) the trade is a cross trade or other substantially similar trade of a security that—

(I) is made by the bank or between the bank and an affiliated fiduciary; and

(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term "fiduciary capacity" means—

(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uni-

form gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

(iii) in any other similar capacity.

(E) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term "broker" does not include a bank that—

(i) was, on the day before the date of enactment of the Gramm-Leach-Bliley Act, subject to section 15(e); and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(F) JOINT RULEMAKING REQUIRED.—The Commission and the Board of Governors of the Federal Reserve System shall jointly adopt a single set of rules or regulations to implement the exceptions in subparagraph (B).

(5) DEALER.—

(A) IN GENERAL.—The term "dealer" means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise.

(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term "dealer" does not include a person that buys or sells securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by—

(I) the bank;

(II) an affiliate of any such bank other than a broker or dealer; or

(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

(iv) IDENTIFIED BANKING PRODUCTS.—The bank buys or sells identified banking products, as defined in section 206 of the Gramm-Leach-Bliley Act.

(6) The term "bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 2(4) of the Home Owners' Loan Act, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87–722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(7) The term "director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(8) The term "issuer" means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) The term "person" means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

(10) The term "security" means any note, stock, treasury stock, security future, security-based swap,bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(11) The term "equity security" means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(12)(A) The term "exempted security" or "exempted securities" includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940;

(iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph;

(v) any security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;

(vi) solely for purposes of sections 12, 13, 14, and 16 of this title, any security issued by or any interest or partici-

pation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

(vii) such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities".

(B)(i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be "exempted securities" for the purposes of section 17A of this title.

(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be "exempted securities" for the purposes of sections 15 and 17A of this title.

(C) For purposes of subparagraph (A)(iv) of this paragraph, the term "qualified plan" means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, (iii) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (iv) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of such Code, or (II) is a plan funded by an annuity contract described in section 403(b) of such Code.

(13) The terms "buy" and "purchase" each include any contract to buy, purchase, or otherwise acquire. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(14) The terms "sale" and "sell" each include any contract to sell or otherwise dispose of. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date),

assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(15) The term "Commission" means the Securities and Exchange Commission established by section 4 of this title.

(16) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(17) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of this title (other than paragraph (6) thereof).

(19) The terms "investment company,""affiliated person,""insurance company,""separate account," and "company" have the same meanings as in the Investment Company Act of 1940.

(20) The terms "investment adviser" and "underwriter" have the same meanings as in the Investment Advisers Act of 1940.

(21) The term "persons associated with a member" or "associated person of a member" when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

(22)(A) The term "securities information processor" means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term "securities information processor" does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organization, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker,

dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association, or cooperative bank activities, or any common carrier, as defined in section 3 of the Communications Act of 1934, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 3 of that Act, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any security.

(B) The term "exclusive processor" means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

(23)(A) The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by

the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this title; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph 25(E) of this subsection.

(24) The term "participant" when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

(25) The term "transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term "transfer agent" does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

(26) The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 19(b), 19(c), and 23(b) of this title) the Municipal Securities Rulemaking Board established by section 15B of this title.

(27) The term "rules of an exchange", "rules of an association", or "rules of a clearing agency" means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term "rules of a self-regulatory organization" means the rules of an exchange which is a national securities ex-

change, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency, or the rules of the Municipal Securities Rulemaking Board.

(29) The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

(30) The term "municipal securities dealer" means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise; *Provided, however,* That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 15B(b)(2)(H) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

(31) The term "municipal securities broker" means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

(32) The term "person associated with a municipal securities dealer" when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

(33) The term "municipal securities investment portfolio" means all municipal securities held for investment and not for sale as part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph, a subsidiary or a department or division of such subsidiary, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and

(iv) the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the

Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation when the appropriate regulatory agency for such clearing agency is not the Commission;

(ii) the Board of Governors of the Federal Reserve System in the case of a State member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and when the appropriate regulatory agency for such clearing agency is not the Commission;

(iv) the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation.

(E) When used with respect to a national securities exchange or registered securities association, member there-

of, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

(F) When used with respect to a person exercising investment discretion with respect to an account:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iv) the Commission in the case of all other such persons.

(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a Federal branch or Federal agency of a foreign bank (as such terms are used in the International Banking Act of 1978);

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank), a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of

which are insured by the Federal Deposit Insurance Corporation, or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978); and

(iv) the Commission, in the case of all other government securities brokers and government securities dealers.

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

(i) the Comptroller of the Currency, in the case of a national bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

(iv) the Commission in the case of all other such institutions.

As used in this paragraph, the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in section 2 of the Bank Holding Company Act of 1956. As used in this paragraph, the term "savings and loan holding company" has the same meaning as in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

(35) A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and rules and regulations thereunder.

(36) A class of persons or markets is subject to "equal regulation" if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their regulation under this title which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this title.

(37) The term "records" means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(38) The term "market maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a secu-

rity, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or any substantially equivalent foreign statute or regulation, or futures association registered under section 17 of such Act (7 U.S.C. 21), or any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(B) is subject to—

(i) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority—

(I) denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(II) barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or foreign person performing a function substantially equivalent to any of the above;

(ii) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(iii) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(C) by his conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or

(B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission, an appropriate regulatory agency, or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

(D) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph;

(E) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), (C), or (D) of this paragraph; or

(F) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (H), or (G) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) or any other felony within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

(40) The term "financial responsibility rules" means the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules.

(41) The term "mortgage related security" means a security that meets standards of credit-worthiness as established by the Commission, and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such

notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located, or on one or more parcels of real estate upon which is located one or more commercial structures; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgage approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to section 2 of the National Housing Act; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A) (i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument.

(42) The term "government securities" means—

(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

(B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to

constitute exempt securities within the meaning of the laws administered by the Commission;

(D) for purposes of sections 15C and 17A, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association; or

(E) for purposes of sections 15, 15C, and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.

(43) The term "government securities broker" means any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(44) The term "government securities dealer" means any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(45) The term "person associated with a government securities broker or government securities dealer" means any partner, officer, director, or branch manager of such government securities broker or government securities dealer (or any person occupying a similar status or performing similar functions), and any other employee of such government securities broker or government securities dealer who is engaged in the management, direction, supervision, or performance of any activities relating to government securities, and any person directly or indirectly controlling, controlled by, or under common control with such government securities broker or government securities dealer.

(46) The term "financial institution" means—

(A) a bank (as defined in paragraph (6) of this subsection);

(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(47) The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 78a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002, the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(48) The term "registered broker or dealer" means a broker or dealer registered or required to register pursuant to section 15 or 15B of this title, except that in paragraph (3) of this subsection and sections 6 and 15A the term means such a broker or dealer and a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of this title.

(49) The terms "person associated with a transfer agent" and "associated person of a transfer agent" mean any person (except an employee whose functions are solely clerical or ministerial) directly engaged in the management, direction, supervision, or performance of any of the transfer agent's activities with respect to transfer agent functions, and any person directly or indirectly controlling such activities or controlled by the transfer agent in connection with such activities.

(50) The term "foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(51)(A) The term "penny stock" means any equity security other than a security that is—

(i) registered or approved for registration and traded on a national securities exchange that meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(ii) authorized for quotation on an automated quotation system sponsored by a registered securities association, if

such system (I) was established and in operation before January 1, 1990, and (II) meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(iii) issued by an investment company registered under the Investment Company Act of 1940;

(iv) excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph; or

(v) exempted, in whole or in part, conditionally or unconditionally, from the definition of such term by rule, regulation, or order prescribed by the Commission.

(B) The Commission may, by rule, regulation, or order, designate any equity security or class of equity securities described in clause (i) or (ii) of subparagraph (A) as within the meaning of the term "penny stock" if such security or class of securities is traded other than on a national securities exchange or through an automated quotation system described in clause (ii) of subparagraph (A).

(C) In exercising its authority under this paragraph to prescribe rules, regulations, and orders, the Commission shall determine that such rule, regulation, or order is consistent with the public interest and the protection of investors.

(52) The term "foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.

(53)(A) The term "small business related security" means a security that meets standards of credit-worthiness as established by the Commission, and either—

(i) represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company; or

(ii) is secured by an interest in 1 or more promissory notes or leases of personal property (with or without recourse to the issuer or lessee) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes or leases described in clause (i).

(B) For purposes of this paragraph—

(i) an "interest in a promissory note or a lease of personal property" includes ownership rights, certificates of

interest or participation in such notes or leases, and rights designed to assure servicing of such notes or leases, or the receipt or timely receipt of amounts payable under such notes or leases;

(ii) the term "small business concern" means a business that meets the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act;

(iii) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act; and

(iv) the term "insured credit union" has the same meaning as in section 101 of the Federal Credit Union Act.

(54) QUALIFIED INVESTOR.—

(A) DEFINITION.—Except as provided in subparagraph (B), for purposes of this title, the term "qualified investor" means—

(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

(iv) any small business investment company licensed by the United States Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958;

(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

(viii) any associated person of a broker or dealer other than a natural person;

(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

(x) the government of any foreign country;

(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $25,000,000 in investments;

(xii) any natural person who owns and invests on a discretionary basis, not less than $25,000,000 in investments;

(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or

(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

(B) ALTERED THRESHOLDS FOR ASSET-BACKED SECURITIES AND LOAN PARTICIPATIONS.—For purposes of section 3(a)(5)(C)(iii) of this title and section 206(a)(5) of the Gramm-Leach-Bliley Act, the term "qualified investor" has the meaning given such term by subparagraph (A) of this paragraph except that clauses (xi) and (xii) shall be applied by substituting "$10,000,000" for "$25,000,000".

(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a "qualified investor" as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.

(55)(A) The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of this title as in effect on the date of the enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of the enactment of the Futures Trading Act of 1982). The term "security future" does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act (as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

(B) The term "narrow-based security index" means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index's weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and

shall be included in the calculation based on their ranking starting with the lowest ranked security.

(C) Notwithstanding subparagraph (B), an index is not a narrow-based security index if—

(i)(I) it has at least nine component securities;

(II) no component security comprises more than 30 percent of the index's weighting; and

(III) each component security is—

(aa) registered pursuant to section 12 of the Securities Exchange Act of 1934;

(bb) one of 750 securities with the largest market capitalization; and

(cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before the date of the enactment of the Commodity Futures Modernization Act of 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;

(v) no more than 18 months have passed since the date of the enactment of the Commodity Futures Modernization Act of 2000 and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before the date of the enactment of the Commodity Futures Modernization Act of 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Commodity Futures Trading Commission.

(D) Within 1 year after the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Commodity Futures Trading Commission jointly shall adopt rules or regulations that set forth the requirements under clause (iv) of subparagraph (C).

(E) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45

business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (C) shall not be a narrow-based security index for the 3 following calendar months.

(F) For purposes of subparagraphs (B) and (C) of this paragraph—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Commodity Futures Trading Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(56) The term "security futures product" means a security future or any put, call, straddle, option, or privilege on any security future.

(57)(A) The term "margin", when used with respect to a security futures product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(B) The terms "margin level" and "level of margin", when used with respect to a security futures product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(C) The terms "higher margin level" and "higher level of margin", when used with respect to a security futures product, mean a margin level established by a national securities exchange registered pursuant to section 6(g) that is higher than the minimum amount established and in effect pursuant to section 7(c)(2)(B).

(58) AUDIT COMMITTEE.—The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term "registered public accounting firm" has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002.

(60) CREDIT RATING.—The term "credit rating" means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(61) CREDIT RATING AGENCY.—The term "credit rating agency" means any person—

(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "nationally recognized statistical rating organization" means a credit rating agency that—

(A) issues credit ratings certified by qualified institutional buyers, in accordance with section 15E(a)(1)(B)(ix), with respect to—

(i) financial institutions, brokers, or dealers;

(ii) insurance companies;

(iii) corporate issuers;

(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph);

(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

(B) is registered under section 15E.

(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "person associated with" a nationally recognized statistical rating organization means any partner, officer, director, or branch manager of a nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a nationally recognized statistical rating organization, or any employee of a nationally recognized statistical rating organization.

(64) QUALIFIED INSTITUTIONAL BUYER.—The term "qualified institutional buyer" has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.

(79) ASSET-BACKED SECURITY.—The term "asset-backed security"—

(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

(i) a collateralized mortgage obligation;

(ii) a collateralized debt obligation;

(iii) a collateralized bond obligation;

(iv) a collateralized debt obligation of asset-backed securities;

(v) a collateralized debt obligation of collateralized debt obligations; and

(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

(65) ELIGIBLE CONTRACT PARTICIPANT.—The term "eligible contract participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(66) MAJOR SWAP PARTICIPANT.—The term "major swap participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "major security-based swap participant" means any person—

(i) who is not a security-based swap dealer; and

(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

(III) that is a financial entity that—

(aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term "substantial position" at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-

based swap participant for all classes of security-based swaps.

(68) SECURITY-BASED SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "security-based swap" means any agreement, contract, or transaction that—

(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act (without regard to paragraph (47)(B)(x) of such section); and

(ii) is based on—

(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

(II) a single security or loan, including any interest therein or on the value thereof; or

(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term "security-based swap" shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

(C) EXCLUSIONS.—The term "security-based swap" does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in paragraph (29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

(D) MIXED SWAP.—The term "security-based swap" includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occur-

rence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term "index" means an index or group of securities, including any interest therein or based on the value thereof.

(F) TREATMENT OF SECURITY-BASED SWAP TRANSACTIONS BETWEEN AFFILIATES.—

(i) EXEMPTION FROM SECURITY-BASED SWAP RULES.—Except as provided under clause (ii), the Commission may not regulate a security-based swap under this Act if all of the following apply to such security-based swap:

(I) AFFILIATION.—One counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, or a third party, directly or indirectly, holds a majority ownership interest in both counterparties.

(II) FINANCIAL STATEMENTS.—The affiliated counterparty that holds the majority interest in the other counterparty or the third party that, directly or indirectly, holds the majority interests in both affiliated counterparties, reports its financial statements on a consolidated basis under generally accepted accounting principles or International Financial Reporting Standards, or other similar standards, and the financial statements include the financial results of the majority-owned affiliated counterparty or counterparties.

(ii) REQUIREMENTS FOR EXEMPTED SECURITY-BASED SWAPS.—With respect to a security-based swap described under clause (i):

(I) REPORTING REQUIREMENT.—If at least one counterparty is a security-based swap dealer or major security-based swap participant, that counterparty shall report the security-based swap pursuant to section 13A, within such time period as the Commission may by rule or regulation prescribe—

(aa) to a security-based swap data repository; or

(bb) if there is no security-based swap data repository that would accept the agreement, contract or transaction, to the Commission.

(II) RISK MANAGEMENT REQUIREMENT.—If at least one counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap shall be subject to a centralized risk management program pursuant to section 15F(j) that is reasonably designed to monitor and to manage the risks associated with the security-based swap.

(III) ANTI-EVASION REQUIREMENT.—The security-based swap shall not be structured to evade the Dodd-Frank Wall Street Reform and Consumer Protection Act in violation of any rule promulgated by the Commission pursuant to section 761(b)(3) of such Act.

(69) SWAP.—The term "swap" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" means—

(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

(iii) any employee of such security-based swap dealer or major security-based swap participant.

(B) EXCLUSION.—Other than for purposes of section 15F(l)(2), the term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

(71) SECURITY-BASED SWAP DEALER.—

(A) IN GENERAL.—The term "security-based swap dealer" means any person who—

(i) holds themself out as a dealer in security-based swaps;

(ii) makes a market in security-based swaps;

(iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or

(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

(C) EXCEPTION.—The term "security-based swap dealer" does not include a person that enters into security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt.

(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(73) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(74) PRUDENTIAL REGULATOR.—The term "prudential regulator" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(75) SECURITY-BASED SWAP DATA REPOSITORY.—The term "security-based swap data repository" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.

(76) SWAP DEALER.—The term "swap dealer" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(77) SECURITY-BASED SWAP EXECUTION FACILITY.—The term "security-based swap execution facility" means a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(A) facilitates the execution of security-based swaps between persons; and

(B) is not a national securities exchange.

(78) SECURITY-BASED SWAP AGREEMENT.—

(A) IN GENERAL.—For purposes of sections 9, 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term "security-based swap agreement" means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

(B) EXCLUSIONS.—The term "security-based swap agreement" does not include any security-based swap.

(80) EMERGING GROWTH COMPANY.—The term "emerging growth company" means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth

company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

[(80)**]** *(81)* FUNDING PORTAL.—The term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

(A) offer investment advice or recommendations;

(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(D) hold, manage, possess, or otherwise handle investor funds or securities; or

(E) engage in such other activities as the Commission, by rule, determines appropriate.

(82) CHIEF ECONOMIST.—The term "Chief Economist" means the Director of the Division of Economic and Risk Analysis, or an employee of the Commission with comparable authority, as determined by the Commission.

(83) PROXY ADVISORY FIRM.—The term "proxy advisory firm" means any person who is primarily engaged in the business of providing proxy voting research, analysis, or recommendations to clients, which conduct constitutes a solicitation within the meaning of section 14 and the Commission's rules and regulations thereunder, except to the extent that the person is exempted by such rules and regulations from requirements otherwise applicable to persons engaged in a solicitation.

(84) PERSON ASSOCIATED WITH A PROXY ADVISORY FIRM.—The term "person associated with" a proxy advisory firm means any partner, officer, or director of a proxy advisory firm (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a proxy advisory firm, or any employee of a proxy advisory firm, except that persons associated

with a proxy advisory firm whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for purposes or any portion or portions of this Act, persons, including employees controlled by a proxy advisory firm.

(b) The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this title, consistently with the provisions and purposes of this title.

(c) No provision of this title shall apply to, or be deemed to include, any executive department or independent establishment of the United States, or any lending agency which is wholly owned, directly or indirectly, by the United States, or any officer, agent, or employee of any such department, establishment, or agency, acting in the course of his official duty as such, unless such provision makes specific reference to such department, establishment, or agency.

(d) No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a "broker", "dealer", or "municipal securities dealer" solely by reason of buying, selling, or effecting transactions in the issuer's securities.

(e) CHARITABLE ORGANIZATIONS.—

(1) EXEMPTION.—Notwithstanding any other provision of this title, but subject to paragraph (2) of this subsection, a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940, or any trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, shall not be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", or "government securities dealer" for purposes of this title solely because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of—

(A) such a charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the settlors (or potential settlors) or beneficiaries of any such trust or other instrument.

(2) LIMITATION ON COMPENSATION.—The exemption provided under paragraph (1) shall not be available to any charitable organization, or any trustee, director, officer, employee, or volunteer of such a charitable organization, unless each person who, on or after 90 days after the date of enactment of this subsection, solicits donations on behalf of such charitable organization from any donor to a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940, is either a volunteer or is engaged in the overall fund raising activities of a charitable

organization and receives no commission or other special compensation based on the number or the value of donations collected for the fund.

(f) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(g) CHURCH PLANS.—No church plan described in section 414(e) of the Internal Revenue Code of 1986, no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, and no trustee, director, officer or employee of or volunteer for such plan, company, account, person, or entity, acting within the scope of that person's employment or activities with respect to such plan, shall be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", "government securities dealer", "clearing agency", or "transfer agent" for purposes of this title—

(1) solely because such plan, company, person, or entity buys, holds, sells, trades in, or transfers securities or acts as an intermediary in making payments in connection with transactions in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of, or for the account of, any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

(2) if no such person or entity receives a commission or other transaction-related sales compensation in connection with any activities conducted in reliance on the exemption provided by this subsection.

(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

(B) is a member of a national securities association registered under section 15A; and

(C) is subject to such other requirements under this title as the Commission determines appropriate under such rule.

(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term "broker or dealer" includes a funding portal and the term "registered broker or dealer" includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of

such national securities association written specifically for registered funding portals.

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SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.

(a) IN GENERAL.—

(1) STANDARD FOR CLEARING.—It shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under this Act or a clearing agency that is exempt from registration under this Act if the security-based swap is required to be cleared.

(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—

(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.

(b) COMMISSION REVIEW.—

(1) COMMISSION-INITIATED REVIEW.—

(A) The Commission on an ongoing basis shall review each security-based swap, or any group, category, type, or class of security-based swaps to make a determination that such security-based swap, or group, category, type, or class of security-based swaps should be required to be cleared.

(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

(2) SWAP SUBMISSIONS.—

(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type, or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

(B) Any security-based swap or group, category, type, or class of security-based swaps listed for clearing by a clearing agency as of the date of enactment of this subsection shall be considered submitted to the Commission.

(C) The Commission shall—

(i) make available to the public any submission received under subparagraphs (A) and (B);

(ii) review each submission made under subparagraphs (A) and (B), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

(iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement under subsection (a)(1) shall apply to the submission.

(3) DEADLINE.—The Commission shall make its determination under paragraph (2)(C) not later than 90 days after receiving a submission made under paragraphs (2)(A) and (2)(B), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

(4) DETERMINATION.—

(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 17A.

(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

(iv) The effect on competition, including appropriate fees and charges applied to clearing.

(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

(C) In making a determination under subsection (b)(1) or paragraph (2)(C) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

(5) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for a clearing agency's submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type, or class of security-based swaps, that it seeks to accept for clearing. Nothing in this paragraph limits the Commission from making a determination under paragraph (2)(C) for security-based swaps described in paragraph (2)(B).

(c) STAY OF CLEARING REQUIREMENT.—

(1) IN GENERAL.—After making a determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type, or class of security-based swaps) and the clearing arrangement.

(2) DEADLINE.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days

after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type, or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

(3) DETERMINATION.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type, or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type, or class of security-based swaps.

(4) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type, or class of security-based swaps, that it has accepted for clearing.

(d) PREVENTION OF EVASION.—

(1) IN GENERAL.—The Commission shall prescribe rules under this section (and issue interpretations of rules prescribed under this section), as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.

(2) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular security-based swap or any group, category, type, or class of security-based swaps that would otherwise be subject to mandatory clearing but no clearing agency has listed the security-based swap or the group, category, type, or class of security-based swaps for clearing, the Commission shall—

(A) investigate the relevant facts and circumstances;

(B) within 30 days issue a public report containing the results of the investigation; and

(C) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the security-based swap or the group, category, type, or class of security-based swaps.

(3) EFFECT ON AUTHORITY.—Nothing in this subsection—

(A) authorizes the Commission to adopt rules requiring a clearing agency to list for clearing a security-based swap or any group, category, type, or class of security-based swaps if the clearing of the security-based swap or the group, category, type, or class of security-based swaps would threaten the financial integrity of the clearing agency; and

(B) affects the authority of the Commission to enforce the open access provisions of subsection (a)(2) with respect to a security-based swap or the group, category, type, or class of security-based swaps that is listed for clearing by a clearing agency.

(e) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap data repository or the Commission no later than 180 days after the effective date of this section.

(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap data repository or the Commission no later than the later of—

(A) 90 days after such effective date; or

(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

(f) CLEARING TRANSITION RULES.—

(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (e)(1).

(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (e)(2).

(g) EXCEPTIONS.—

(1) IN GENERAL.—The requirements of subsection (a)(1) shall not apply to a security-based swap if 1 of the counterparties to the security-based swap—

(A) is not a financial entity;

(B) is using security-based swaps to hedge or mitigate commercial risk; and

(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

(2) OPTION TO CLEAR.—The application of the clearing exception in paragraph (1) is solely at the discretion of the counterparty to the security-based swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).

(3) FINANCIAL ENTITY DEFINITION.—

(A) IN GENERAL.—For the purposes of this subsection, the term "financial entity" means—

(i) a swap dealer;

(ii) a security-based swap dealer;

(iii) a major swap participant;

(iv) a major security-based swap participant;

(v) a commodity pool as defined in section 1a(10) of the Commodity Exchange Act;

(vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a));

(vii) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(viii) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956.

(B) EXCLUSION.—The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—

(i) depository institutions with total assets of $10,000,000,000 or less;

(ii) farm credit system institutions with total assets of $10,000,000,000 or less; or

(iii) credit unions with total assets of $10,000,000,000 or less.

(4) TREATMENT OF AFFILIATES.—

(A) IN GENERAL.—An affiliate of a person that qualifies for an exception under this subsection (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate—

(i) enters into the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity, and the commercial risk that the affiliate is hedging or mitigating has been transferred to the affiliate;

(ii) is directly and wholly-owned by another affiliate qualified for the exception under this paragraph or an entity that is not a financial entity;

(iii) is not indirectly majority-owned by a financial entity;

(iv) is not ultimately owned by a parent company that is a financial entity; and

(v) does not provide any services, financial or otherwise, to any affiliate that is a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010).

(B) LIMITATION ON QUALIFYING AFFILIATES.—The exception in subparagraph (A) shall not apply if the affiliate is—

(i) a swap dealer;

(ii) a security-based swap dealer;

(iii) a major swap participant;

(iv) a major security-based swap participant;

(v) a commodity pool;

(vi) a bank holding company;

(vii) a private fund, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a));

(viii) an employee benefit plan or government plan, as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(ix) an insured depository institution;

(x) a farm credit system institution;

(xi) a credit union;

(xii) a nonbank financial company supervised by the Board of Governors (as defined under section 102 of the Financial Stability Act of 2010); or

(xiii) an entity engaged in the business of insurance and subject to capital requirements established by an insurance governmental authority of a State, a territory of the United States, the District of Columbia, a country other than the United States, or a political subdivision of a country other than the United States that is engaged in the supervision of insurance companies under insurance law.

(C) LIMITATION ON AFFILIATES' AFFILIATES.—Unless the Commission determines, by order, rule, or regulation, that it is in the public interest, the exception in subparagraph (A) shall not apply with respect to an affiliate if such affiliate is itself affiliated with—

(i) a major security-based swap participant;

(ii) a security-based swap dealer;

(iii) a major swap participant; or

(iv) a swap dealer.

(D) CONDITIONS ON TRANSACTIONS.—With respect to an affiliate that qualifies for the exception in subparagraph (A)—

(i) such affiliate may not enter into any security-based swap other than for the purpose of hedging or mitigating commercial risk; and

(ii) neither such affiliate nor any person affiliated with such affiliate that is not a financial entity may enter into a security-based swap with or on behalf of any affiliate that is a financial entity or otherwise assume, net, combine, or consolidate the risk of security-based swaps entered into by any such financial entity, except one that is an affiliate that qualifies for the exception under subparagraph (A).

(E) TRANSITION RULE FOR AFFILIATES.—An affiliate, subsidiary, or a wholly owned entity of a person that qualifies for an exception under subparagraph (A) and is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the person shall be exempt from the margin requirement described in section 15F(e) and the clearing requirement described in subsection (a) with regard to security-based swaps entered into to mitigate the risk of the financing activities for not less than a 2-year period beginning on the date of enactment of this subparagraph.

(F) RISK MANAGEMENT PROGRAM.—Any security-based swap entered into by an affiliate that qualifies for the exception in subparagraph (A) shall be subject to a centralized risk management program of the affiliate, which is reasonably designed both to monitor and manage the risks associated with the security-based swap and to identify each of the affiliates on whose behalf a security-based swap was entered into.

(5) ELECTION OF COUNTERPARTY.—

(A) SECURITY-BASED SWAPS REQUIRED TO BE CLEARED.—With respect to any security-based swap that is subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

(B) SECURITY-BASED SWAPS NOT REQUIRED TO BE CLEARED.—With respect to any security-based swap that is not subject to the mandatory clearing requirement under subsection (a) and entered into by a security-based swap dealer or a major security-based swap participant with a counterparty that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant, the counterparty—

(i) may elect to require clearing of the security-based swap; and

(ii) shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

(6) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this subsection. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this subsection.

(h) TRADE EXECUTION.—

(1) IN GENERAL.—With respect to transactions involving security-based swaps subject to the clearing requirement of subsection (a)(1), counterparties shall—

(A) execute the transaction on an exchange; or

(B) execute the transaction on a security-based swap execution facility registered under section 3D or a security-based swap execution facility that is exempt from registration under section 3D(e).

(2) EXCEPTION.—The requirements of subparagraphs (A) and (B) of paragraph (1) shall not apply if no exchange or security-based swap execution facility makes the security-based swap available to trade or for security-based swap transactions subject to the clearing exception under subsection (g).

(i) BOARD APPROVAL.—Exemptions from the requirements of this section to clear a security-based swap or execute a security-based swap through a national securities exchange or security-based swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 or that is required to file reports pursuant to section 15(d), only if an appropriate committee of the issuer's board or governing body has reviewed and approved the issuer's decision to enter into security-based swaps that are subject to such exemptions.

(j) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(1) IN GENERAL.—Each registered clearing agency shall designate an individual to serve as a chief compliance officer.

(2) DUTIES.—The chief compliance officer shall—

(A) report directly to the board or to the senior officer of the clearing agency;

(B) in consultation with its board, a body performing a function similar thereto, or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise;

(C) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(D) ensure compliance with this title (including regulations issued under this title) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(E) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

(i) compliance office review;

(ii) look-back;

(iii) internal or external audit finding;

(iv) self-reported error; or

(v) validated complaint; and

(F) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) ANNUAL REPORTS.—

(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

(i) the compliance of the registered clearing agency or security-based swap execution facility of the compliance officer with respect to this title (including regulations under this title); and

(ii) each policy and procedure of the registered clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency).

(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the registered clearing agency that is required to be furnished to the Commission pursuant to this section; and

(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.

(a) REGISTRATION.—

(1) IN GENERAL.—No person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.

(2) DUAL REGISTRATION.—Any person that is registered as a security-based swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap execution facility.

(b) TRADING AND TRADE PROCESSING.—A security-based swap execution facility that is registered under subsection (a) may—

(1) make available for trading any security-based swap; and

(2) facilitate trade processing of any security-based swap.

(c) IDENTIFICATION OF FACILITY USED TO TRADE SECURITY-BASED SWAPS BY NATIONAL SECURITIES EXCHANGES.—A national securities exchange shall, to the extent that the exchange also operates a security-based swap execution facility and uses the same electronic trade execution system for listing and executing trades of security-based swaps on or through the exchange and the facility, identify whether electronic trading of such security-based swaps is taking place on or through the national securities exchange or the security-based swap execution facility.

(d) CORE PRINCIPLES FOR SECURITY-BASED SWAP EXECUTION FACILITIES.—

(1) COMPLIANCE WITH CORE PRINCIPLES.—

(A) IN GENERAL.—To be registered, and maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall comply with—

(i) the core principles described in this subsection; and

(ii) any requirement that the Commission may impose by rule or regulation.

(B) REASONABLE DISCRETION OF SECURITY-BASED SWAP EXECUTION FACILITY.—Unless otherwise determined by the Commission, by rule or regulation, a security-based swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which it complies with the core principles described in this subsection.

(2) COMPLIANCE WITH RULES.—A security-based swap execution facility shall—

(A) establish and enforce compliance with any rule established by such security-based swap execution facility, including—

(i) the terms and conditions of the security-based swaps traded or processed on or through the facility; and

(ii) any limitation on access to the facility;

(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

(i) to provide market participants with impartial access to the market; and

(ii) to capture information that may be used in establishing whether rule violations have occurred; and

(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be

used in entering and executing orders traded or posted on the facility, including block trades.

(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

(4) MONITORING OF TRADING AND TRADE PROCESSING.—The security-based swap execution facility shall—

(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and

(ii) procedures for trade processing of security-based swaps on or through the facilities of the security-based swap execution facility; and

(B) monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(5) ABILITY TO OBTAIN INFORMATION.—The security-based swap execution facility shall—

(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

(B) provide the information to the Commission on request; and

(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

(6) FINANCIAL INTEGRITY OF TRANSACTIONS.—The security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 3C(a)(1).

(7) EMERGENCY AUTHORITY.—The security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any security-based swap or to suspend or curtail trading in a security-based swap.

(8) TIMELY PUBLICATION OF TRADING INFORMATION.—

(A) IN GENERAL.—The security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on security-based swaps to the extent prescribed by the Commission.

(B) CAPACITY OF SECURITY-BASED SWAP EXECUTION FACILITY.—The security-based swap execution facility shall be required to have the capacity to electronically capture

and transmit and disseminate trade information with respect to transactions executed on or through the facility.

(9) RECORDKEEPING AND REPORTING.—

(A) IN GENERAL.—A security-based swap execution facility shall—

(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and

(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this title.

(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for security-based swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap data repositories.

(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the security-based swap execution facility shall not—

(A) adopt any rules or [taking] *take* any actions that result in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading or clearing.

(11) CONFLICTS OF INTEREST.—The security-based swap execution facility shall—

(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(B) establish a process for resolving the conflicts of interest.

(12) FINANCIAL RESOURCES.—

(A) IN GENERAL.—The security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.

(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a security-based swap execution facility shall be considered to be adequate if the value of the financial resources—

(i) enables the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

(ii) exceeds the total amount that would enable the security-based swap execution facility to cover the operating costs of the security-based swap execution facility for a 1-year period, as calculated on a rolling basis.

(13) SYSTEM SAFEGUARDS.—The security-based swap execution facility shall—

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

(i) are reliable and secure; and

(ii) have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for—

(i) the timely recovery and resumption of operations; and

(ii) the fulfillment of the responsibilities and obligations of the security-based swap execution facility; and

(C) periodically conduct tests to verify that the backup resources of the security-based swap execution facility are sufficient to ensure continued—

(i) order processing and trade matching;

(ii) price reporting;

(iii) market surveillance; and

(iv) maintenance of a comprehensive and accurate audit trail.

(14) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(A) IN GENERAL.—Each security-based swap execution facility shall designate an individual to serve as a chief compliance officer.

(B) DUTIES.—The chief compliance officer shall—

(i) report directly to the board or to the senior officer of the facility;

(ii) review compliance with the core principles in this subsection;

(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

(v) ensure compliance with this title and the rules and regulations issued under this title, including rules prescribed by the Commission pursuant to this section;

(vi) establish procedures for the remediation of noncompliance issues found during—

(I) compliance office reviews;

(II) look backs;

(III) internal or external audit findings;

(IV) self-reported errors; or

(V) through validated complaints; and

(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(C) ANNUAL REPORTS.—

(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall

annually prepare and sign a report that contains a description of—

(I) the compliance of the security-based swap execution facility with this title; and

(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the security-based security-based swap execution facility.

(ii) REQUIREMENTS.—The chief compliance officer shall—

(I) submit each report described in clause (i) with the appropriate financial report of the security-based swap execution facility that is required to be submitted to the Commission pursuant to this section; and

(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission.

(f) RULES.—The Commission shall prescribe rules governing the regulation of security-based swap execution facilities under this section.

SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

(a) REGISTRATION REQUIREMENT.—It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a security-based swaps customer to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the customer as the result of such a security-based swap), unless the person shall have registered under this title with the Commission as a broker, dealer, or security-based swap dealer, and the registration shall not have expired nor been suspended nor revoked.

(b) CLEARED SECURITY-BASED SWAPS.—

(1) SEGREGATION REQUIRED.—A broker, dealer, or security-based swap dealer shall treat and deal with all money, securities, and property of any security-based swaps customer received to margin, guarantee, or secure a security-based swap cleared by or [though] *through* a clearing agency (including money, securities, or property accruing to the security-based swaps customer as the result of such a security-based swap) as belonging to the security-based swaps customer.

(2) COMMINGLING PROHIBITED.—Money, securities, and property of a security-based swaps customer described in paragraph (1) shall be separately accounted for and shall not be commingled with the funds of the broker, dealer, or security-based swap dealer or be used to margin, secure, or guarantee any trades or contracts of any security-based swaps customer or person other than the person for whom the same are held.

(c) EXCEPTIONS.—

(1) USE OF FUNDS.—

(A) IN GENERAL.—Notwithstanding subsection (b), money, securities, and property of a security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a clearing agency.

(B) WITHDRAWAL.—Notwithstanding subsection (b), such share of the money, securities, and property described in subparagraph (A) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared security-based swap with a clearing agency, or with any member of the clearing agency, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared security-based swap.

(2) COMMISSION ACTION.—Notwithstanding subsection (b), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may be commingled and deposited as provided in this section with any other money, securities, or property received by the broker, dealer, or security-based swap dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the security-based swaps customer of the broker, dealer, or security-based swap dealer.

(d) PERMITTED INVESTMENTS.—Money described in subsection (b) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

(e) PROHIBITION.—It shall be unlawful for any person, including any clearing agency and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in subsection (b) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing broker, dealer, or security-based swap dealer or any person other than the swaps customer of the broker, dealer, or security-based swap dealer.

(f) SEGREGATION REQUIREMENTS FOR UNCLEARED SECURITY-BASED SWAPS.—

(1) SEGREGATION OF ASSETS HELD AS COLLATERAL IN UNCLEARED SECURITY-BASED SWAP TRANSACTIONS.—

(A) NOTIFICATION.—A security-based swap dealer or major security-based swap participant shall be required to notify the counterparty of the security-based swap dealer or major security-based swap participant at the beginning of a security-based swap transaction that the counterparty

has the right to require segregation of the funds of other property supplied to margin, guarantee, or secure the obligations of the counterparty.

(B) SEGREGATION AND MAINTENANCE OF FUNDS.—At the request of a counterparty to a security-based swap that provides funds or other property to a security-based swap dealer or major security-based swap participant to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall—

(i) segregate the funds or other property for the benefit of the counterparty; and

(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the security-based swap dealer or major security-based swap participant.

(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

(A) apply only to a security-based swap between a counterparty and a security-based swap dealer or major security-based swap participant that is not submitted for clearing to a clearing agency; and

(B)(i) not apply to variation margin payments; or

(ii) not preclude any commercial arrangement regarding—

(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—The segregated account described in paragraph (1) shall be—

(A) carried by an independent third-party custodian; and

(B) designated as a segregated account for and on behalf of the counterparty.

(4) REPORTING REQUIREMENT.—If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall report to the counterparty of the security-based swap dealer or major security-based swap participant on a quarterly basis that the back office procedures of the security-based swap dealer or major security-based swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

(g) BANKRUPTCY.—A security-based swap, as defined in section 3(a)(68) shall be considered to be a security as such term is used in section 101(53A)(B) and subchapter III of title 11, United States Code. An account that holds a security-based swap, other than a portfolio margining account referred to in section 15(c)(3)(C) shall be considered to be a securities account, as that term is defined in section 741 of title 11, United States Code. The definitions of the

terms "purchase" and "sale" in section 3(a)(13) and (14) shall be applied to the terms "purchase" and "sale", as used in section 741 of title 11, United States Code. The term "customer", as defined in section 741 of title 11, United States Code, excludes any person, to the extent that such person has a claim based on any open repurchase agreement, open reverse repurchase agreement, stock borrowed agreement, non-cleared option, or non-cleared security-based swap except to the extent of any margin delivered to or by the customer with respect to which there is a customer protection requirement under section 15(c)(3) or a segregation requirement.

SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title.

(b) APPOINTMENT AND COMPENSATION OF STAFF AND LEASING AUTHORITY.—

(1) APPOINTMENT AND COMPENSATION.—The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5, United States Code.

(2) REPORTING OF INFORMATION.—In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) and Congress of such compensation and benefits and shall seek to maintain comparability with such agencies regarding compensation and benefits.

(3) LEASING AUTHORITY.—Nothwithstanding any other provision of law, the Commission is authorized to enter directly into

leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

(c) Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(e) Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(f) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 21(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) OFFICE OF THE INVESTOR ADVOCATE.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the "Office").

(2) INVESTOR ADVOCATE.—

(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

(i) report directly to the Chairman; and

(ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that investors have with financial service providers and investment products;

(D) analyze the potential impact on investors of—

(i) proposed regulations of the Commission; and

(ii) proposed rules of self-regulatory organizations registered under this title; **[**and**]**

(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors**[**.**]***;*

(F) not take a position on any legislation pending before Congress other than a legislative change proposed by the Investor Advocate pursuant to subparagraph (E);

(G) consult with the Advocate for Small Business Capital Formation on proposed recommendations made under subparagraph (E); and

(H) advise the Advocate for Small Business Capital Formation on issues related to small business investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORTS.—

(A) REPORT ON OBJECTIVES.—

(i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial

Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

(B) REPORT ON ACTIVITIES.—

(i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall include—

(I) appropriate statistical information and full and substantive analysis;

(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

(III) a summary of the most serious problems encountered by investors during the reporting period;

(IV) an inventory of the items described in subclause (III) that includes—

(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(bb) the length of time that each item has remained on such inventory; and

(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

(VI) any other information, as determined appropriate by the Investor Advocate.

(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

(8) OMBUDSMAN.—

(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph [(2)(A)(i)] *(2)(A)(ii)*, [the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate] *the Chairman shall appoint an Ombudsman, who shall report to the Commission*.

(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) REPORT.—The Ombudsman shall submit a semiannual [report to the Investor Advocate] *report to the Commission* that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. [The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).]

(h) EXAMINERS.—

(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

[(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

[(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the "Securities and Exchange Commission Reserve Fund" (referred to in this subsection as the "Reserve Fund").

[(2) RESERVE FUND AMOUNTS.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C.

77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited into the Reserve Fund.

[(B) LIMITATIONS.—For any 1 fiscal year—

[(i) the amount deposited in the Fund may not exceed $50,000,000; and

[(ii) the balance in the Fund may not exceed $100,000,000.

[(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

[(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of $100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

[(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(i) ENFORCEMENT OMBUDSMAN.—

(1) ESTABLISHMENT.—The Commission shall have an Enforcement Ombudsman, who shall be appointed by and report directly to the Commission.

(2) DUTIES.—The Enforcement Ombudsman shall—

(A) act as a liaison between the Commission and any person who is the subject of an investigation (including a preliminary or informal investigation) by the Commission or an administrative or judicial action brought by the Commission in resolving problems that such persons may have with the Commission or the conduct of Commission staff; and

(B) establish safeguards to maintain the confidentiality of communications between the persons described in subparagraph (A) and the Enforcement Ombudsman.

(3) LIMITATION.—In carrying out the duties of the Enforcement Ombudsman under paragraph (2), the Enforcement Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this subsection shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(4) REPORT.—The Enforcement Ombudsman shall submit to the Commission and to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate an annual report

that describes the activities and evaluates the effectiveness of the Enforcement Ombudsman during the preceding year.

(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the "Office").

(2) ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

(i) report directly to the Commission; and

(ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.

(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.

(4) FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall—

(A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned and women-owned small businesses;

(D) analyze the potential impact on small businesses and small business investors of—

(i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and

(ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;

(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;

(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;

(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

(H) advise the Investor Advocate on issues related to small businesses and small business investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORT ON ACTIVITIES.—

(A) IN GENERAL.—Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

(B) CONTENTS.—Each report required under subparagraph (A) shall include—

(i) appropriate statistical information and full and substantive analysis;

(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;

(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned and women-owned small businesses and their investors, during the reporting period;

(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—

(I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(II) the length of time that each item has remained on such inventory; and

(III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and

(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

(C) CONFIDENTIALITY.—No report required by subparagraph (A) may contain confidential information.

(D) INDEPENDENCE.—Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(7) REGULATIONS.—The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.

(8) GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c–1).

(9) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

(j) INTERNATIONAL PROCESSES.—

(1) NOTICE OF PROCESS; CONSULTATION.—At least 30 calendar days before the Commission participates in a process of setting financial standards as a part of any foreign or multinational entity, the Commission shall—

(A) issue a notice of the process, including the subject matter, scope, and goals of the process, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) make such notice available to the public, including on the website of the Commission; and

(C) solicit public comment, and consult with the committees described under subparagraph (A), with respect to the subject matter, scope, and goals of the process.

(2) PUBLIC REPORTS ON PROCESS.—After the end of any process described under paragraph (1), the Commission shall issue a public report on the topics that were discussed at the process

and any new or revised rulemakings or policy changes that the Commission believes should be implemented as a result of the process.

(3) NOTICE OF AGREEMENTS; CONSULTATION.—At least 90 calendar days before the Commission participates in a process of setting financial standards as a part of any foreign or multinational entity, the Commission shall—

(A) issue a notice of agreement to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) make such notice available to the public, including on the website of the Commission; and

(C) consult with the committees described under subparagraph (A) with respect to the nature of the agreement and any anticipated effects such agreement will have on the economy.

(4) DEFINITION.—For purposes of this subsection, the term "process" shall include any official proceeding or meeting on financial regulation of a recognized international organization with authority to set financial standards on a global or regional level, including the Financial Stability Board, the Basel Committee on Banking Supervision (or a similar organization), and the International Association of Insurance Supervisors (or a similar organization).

(k) LIMITATION ON PILOT PROGRAMS.—

(1) IN GENERAL.—Any pilot program established by self-regulatory organizations, either individually or jointly, and filed with the Commission, including under section 11A or 19, shall terminate after the end of the 5-year period beginning on the date that the Commission approved such program, unless the Commission issues a rule to permanently continue such program or approves such program on a permanent basis.

(2) EXTENSION.—With respect to a particular pilot program described under paragraph (1), the Commission may extend the 5-year period described under such paragraph for an additional 3 years if the Commission determines such extension is necessary or appropriate in the public interest or for the protection of investors.

(3) LACK OF STATUTORY AUTHORITY.—If, with respect to a pilot program described under paragraph (1), the Commission determines that the pilot program should continue permanently, but the Commission lacks sufficient statutory authority to permanently continue the program, the Commission shall, not later than 1 year before such pilot program is scheduled to terminate pursuant to paragraph (1), notify the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that the Commission believes the program should continue permanently but does not have sufficient statutory authority to continue the program.

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SEC. 4F. CERTAIN FINDINGS REQUIRED TO APPROVE CIVIL MONEY PENALTIES AGAINST ISSUERS.

The Commission may not seek against or impose on an issuer a civil money penalty for violation of the securities laws unless the publicly available text of the order approving the seeking or imposition of such penalty contains findings, supported by an analysis by the Division of Economic and Risk Analysis and certified by the Chief Economist, of whether—

(1) the alleged violation resulted in direct economic benefit to the issuer; and

(2) the penalty will harm the shareholders of the issuer.

SEC. 4G. ELIMINATION OF AUTOMATIC DISQUALIFICATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, a non-natural person may not be disqualified or otherwise made ineligible to use an exemption or registration provision, engage in an activity, or qualify for any similar treatment under a provision of the securities laws or the rules issued by the Commission under the securities laws by reason of having, or a person described in subsection (b) having, been convicted of any felony or misdemeanor or made the subject of any judicial or administrative order, judgment, or decree arising out of a governmental action (including an order, judgment, or decree agreed to in a settlement), or having, or a person described in subsection (b) having, been suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade, unless the Commission, by order, on the record after notice and an opportunity for hearing, makes a determination that such non-natural person should be so disqualified or otherwise made ineligible for purposes of such provision.

(b) PERSON DESCRIBED.—A person is described in this subsection if the person is—

(1) a natural person who is a director, officer, employee, partner, member, or shareholder of the non-natural person referred to in subsection (a) or is otherwise associated or affiliated with such non-natural person in any way; or

(2) a non-natural person who is associated or affiliated with the non-natural person referred to in subsection (a) in any way.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit any authority of the Commission, by order, on the record after notice and an opportunity for hearing, to prohibit a person from using an exemption or registration provision, engaging in an activity, or qualifying for any similar treatment under a provision of the securities laws, or the rules issued by the Commission under the securities laws, by reason of a circumstance referred to in subsection (a) or any similar circumstance.

SEC. 4H. INTERNAL RISK CONTROLS.

(a) IN GENERAL.—Each of the following entities, in consultation with the Chief Economist, shall develop comprehensive internal risk control mechanisms to safeguard and govern the storage of all market data by such entity, all market data sharing agreements of such entity, and all academic research performed at such entity using market data:

(1) The Commission.

(2) Each national security association required to register under section 15A.

(b) CONSOLIDATED AUDIT TRAIL.—The Commission may not approve a national market system plan pursuant to part 242.613 of title 17, Code of Federal Regulations (or any successor regulation), unless the operator of the consolidated audit trail created by such plan has developed, in consultation with the Chief Economist, comprehensive internal risk control mechanisms to safeguard and govern the storage of all market data by such operator, all market data sharing agreements of such operator, and all academic research performed at such operator using market data.

SEC. 4I. APPLICABILITY OF NOTICE AND COMMENT REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT TO GUIDANCE VOTED ON BY THE COMMISSION.

The notice and comment requirements of section 553 of title 5, United States Code, shall also apply with respect to any Commission statement or guidance, including interpretive rules, general statements of policy, or rules of Commission organization, procedure, or practice, that has the effect of implementing, interpreting, or prescribing law or policy and that is voted on by the Commission.

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NATIONAL SECURITIES EXCHANGES

SEC. 6. (a) An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 19(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) An exchange shall not be registered as a national securities exchange unless the Commission determines that—

(1) Such exchange is so organized and has the capacity to be able to carry out the purposes of this title and to comply, and (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this title, the rules and regulations thereunder, and the rules of the exchange.

(2) Subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof.

(3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

(4) The rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

(6) The rules of the exchange provide that (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(7) The rules of the exchange are in accordance with the provisions of subsection (d) of this section, and in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.

(8) The rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.

(9)(A) The rules of the exchange prohibit the listing of any security issued in a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 14(h)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(i) the right of dissenting limited partners to one of the following:

(I) an appraisal and compensation;

(II) retention of a security under substantially the same terms and conditions as the original issue;

(III) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;

(IV) the use of a committee of limited partners that is independent, as determined in accordance with rules prescribed by the exchange, of the general partner or sponsor, that has been approved by a majority of the outstanding units of each of the participating limited partnerships, and that has such authority as is

necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a recommendation to the limited partners with respect to the proposed transaction; or

(V) other comparable rights that are prescribed by rule by the exchange and that are designed to protect dissenting limited partners;

(ii) the right not to have their voting power unfairly reduced or abridged;

(iii) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(iv) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

(B) As used in this paragraph, the term "dissenting limited partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the exchange, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the exchange during the period during which the offer is outstanding.

(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b–1 et seq.).

(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).

(c)(1) A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.

(2) A national securities exchange may, and in cases in which the Commission, by order, directs as necessary or appropriate in the

public interest or for the protection of investors shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A national securities exchange shall file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member, if the exchange knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the exchange.

(B) A national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

(C) A national securities exchange may bar any person from becoming associated with a member if such person does not agree (i) to supply the exchange with such information with respect to its relationship and dealings with the member as may be specified in the rules of the exchange and (ii) to permit the examination of its books and records to verify the accuracy of any information so supplied.

(4) A national securities exchange may limit (A) the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: *Provided*, *however*, That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated

representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: *And provided further*, That the Commission, in accordance with the provisions of section 19(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this title.

(d)(1) In any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the exchange to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this title, the rules or regulations thereunder, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reasons therefor.

(2) In any proceeding by a national securities exchange to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the exchange or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the exchange to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the exchange or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A national securities exchange may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange, or (C) limit or prohibit any person with respect to access to services offered by the exchange if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member,

if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the exchange. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the exchange in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(e)(1) On and after the date of enactment of the Securities Acts Amendments of 1975, no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members: *Provided*, *however*, That until May 1, 1976, the preceding provisions of this paragraph shall not prohibit any such exchange from imposing or fixing any schedule of commissions, allowances, discounts, or other fees to be charged by its members for acting as broker on the floor of the exchange or as odd-lot dealer: *And provided further*, That the Commission, in accordance with the provisions of section 19(b) of this title as modified by the provisions of paragraph (3) of this subsection, may—

(A) permit a national securities exchange, by rule, to impose a reasonable schedule or fix reasonable rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange prior to November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees are in the public interest; and

(B) permit a national securities exchange, by rule, to impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange after November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees (i) are reasonable in relation to the costs of providing the service for which such fees are charged (and the Commission publishes the standards employed in adjudging reasonableness) and (ii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title, taking into consideration the competitive effects of permitting such schedule or fixed rates weighed against the competitive effects of other lawful actions which the Commission is authorized to take under this title.

(2) Notwithstanding the provisions of section 19(c) of this title, the Commission, by rule, may abrogate any exchange rule which imposes a schedule or fixes rates of commissions, allowances, discounts, or other fees, if the Commission determines that such schedule or fixed rates are no longer reasonable, in the public interest, or necessary to accomplish the purposes of this title.

(3)(A) Before approving or disapproving any proposed rule change submitted by a national securities exchange which would impose a

schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange, the Commission shall afford interested persons (i) an opportunity for oral presentation of data, views, and arguments and (ii) with respect to any such rule concerning transactions effected after November 1, 1976, if the Commission determines there are disputed issues of material fact, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) of this paragraph) such cross-examination as the Commission determines to be appropriate and required for full disclosure and proper resolution of such disputed issues of material fact.

(B) The Commission shall prescribe rules and make rulings concerning any proceeding in accordance with subparagraph (A) of this paragraph designed to avoid unnecessary costs or delay. Such rules or rulings may (i) impose reasonable time limits on each interested person's oral presentations, and (ii) require any cross-examination to which a person may be entitled under subparagraph (A) of this paragraph to be conducted by the Commission on behalf of that person in such manner as the Commission determines to be appropriate and required for full disclosure and proper resolution of disputed issues of material fact.

(C)(i) If any class of persons, the members of which are entitled to conduct (or have conducted) cross-examination under subparagraphs (A) and (B) of this paragraph and which have, in the view of the Commission, the same or similar interests in the proceeding, cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings specifying the manner in which such interests shall be represented and such cross-examination conducted.

(ii) No member of any class of persons with respect to which the Commission has specified the manner in which its interests shall be represented pursuant to clause (i) of this subparagraph shall be denied, pursuant to such clause (i), the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation and there are substantial and relevant issues which would not be presented adequately by group representation.

(D) A transcript shall be kept of any oral presentation and cross-examination.

(E) In addition to the bases specified in subsection 25(a), a reviewing Court may set aside an order of the Commission under section 19(b) approving an exchange rule imposing a schedule or fixing rates of commissions, allowances, discounts, or other fees, if the Court finds—

(1) a Commission determination under subparagraph (A) of this paragraph that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

(2) a Commission rule or ruling under subparagraph (B) of this paragraph limiting the petitioner's cross-examination or rebuttal submissions,

has precluded full disclosure and proper resolution of disputed issues of material fact which were necessary for fair determination by the Commission.

(f) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation, may require—

(1) any person not a member or a designated representative of a member of a national securities exchange effecting transactions on such exchange without the services of another person acting as a broker, or

(2) any broker or dealer not a member of a national securities exchange effecting transactions on such exchange on a regular basis,

to comply with such rules of such exchange as the Commission may specify.

(g) NOTICE REGISTRATION OF SECURITY FUTURES PRODUCT EXCHANGES.—

(1) REGISTRATION REQUIRED.—An exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products if—

(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)), that has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; and

(B) such exchange does not serve as a market place for transactions in securities other than—

(i) security futures products; or

(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act.

(2) REGISTRATION BY NOTICE FILING.—

(A) FORM AND CONTENT.—An exchange required to register only because such exchange lists or trades security futures products may register for purposes of this section by filing with the Commission a written notice in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents concerning such exchange, comparable to the information and documents required for national securities exchanges under section 6(a), as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. If such exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

(B) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if such registration would be subject to suspension or revocation.

(C) TERMINATION.—Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

(3) PUBLIC AVAILABILITY.—The Commission shall promptly publish in the Federal Register an acknowledgment of receipt of all notices the Commission receives under this subsection and shall make all such notices available to the public.

(4) EXEMPTION OF EXCHANGES FROM SPECIFIED PROVISIONS.—

(A) TRANSACTION EXEMPTIONS.—An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security futures products, be required to comply with, the following provisions of this title and the rules thereunder:

(i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.

(ii) Section 8.

(iii) Section 11.

(iv) Subsections (d), (f), and (k) of section 17.

(v) Subsections (a), (f), and (h) of section 19.

(B) RULE CHANGE EXEMPTIONS.—An exchange that registered under paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

(i) such exchange shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange's obligation to enforce the securities laws pursuant to section 19(b)(7);

(ii) such exchange shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(iii) such exchange shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

(5) TRADING IN SECURITY FUTURES PRODUCTS.—

(A) IN GENERAL.—Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—

(i) 1 year after the date of the enactment of the Commodity Futures Modernization Act of 2000; or

(ii) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

(B) PRINCIPAL-TO-PRINCIPAL TRANSACTIONS.—Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

(i) the transaction is entered into—

(I) on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(18)(B)(ii) of the Commodity Exchange Act; and

(II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section 1a(18)) at the time at which the persons enter into the agreement, contract, or transaction; and

(ii) the transaction is entered into on or after the later of—

(I) 8 months after the date of the enactment of the Commodity Futures Modernization Act of 2000; or

(II) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

(h) TRADING IN SECURITY FUTURES PRODUCTS.—

(1) TRADING ON EXCHANGE OR ASSOCIATION REQUIRED.—It shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a).

(2) LISTING STANDARDS REQUIRED.—Except as otherwise provided in paragraph (7), a national securities exchange or a national securities association registered pursuant to section 15A(a) may trade only security futures products that (A) conform with listing standards that such exchange or association files with the Commission under section 19(b) and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act.

(3) REQUIREMENTS FOR LISTING STANDARDS AND CONDITIONS FOR TRADING.—Such listing standards shall—

(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 12 of this title;

(B) require that if the security futures product is not cash settled, the market on which the security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product;

(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to section 15A(a) of this title;

(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;

(E) require that the security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product;

(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) effect transactions in the security futures product;

(G) require that the security futures product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 11(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this title and the rules and regulations thereunder;

(H) require that trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(I) require that procedures be in place for coordinated surveillance among the market on which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

(J) require that the market on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

(K) require that the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded; and

(L) require that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B), except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(4) AUTHORITY TO MODIFY CERTAIN LISTING STANDARD REQUIREMENTS.—

(A) AUTHORITY TO MODIFY.—The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A) or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security futures

products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(B) AUTHORITY TO GRANT EXEMPTIONS.—The Commission and the Commodity Futures Trading Commission, by order, may jointly exempt any person from compliance with the listing standard requirement specified in subparagraph (E) of paragraph (3) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(5) REQUIREMENTS FOR OTHER PERSONS TRADING SECURITY FUTURE PRODUCTS.—It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 15A(a)) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 15A(a) or a national securities exchange of which such person is a member—

(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets trading related securities to detect manipulation and insider trading;

(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

(6) DEFERRAL OF OPTIONS ON SECURITY FUTURES TRADING.—No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after the date of the enactment of this subsection, the Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this Act and the Commodity Exchange Act.

(7) DEFERRAL OF LINKED AND COORDINATED CLEARING.—

(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association registered pursuant to section 15A(a) may trade a security futures product that does not—

(i) conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3); or

(ii) meet the criterion specified in section 2(a)(1)(D)(i)(IV) of the Commodity Exchange Act.

(B) The Commission and the Commodity Futures Trading Commission shall jointly publish in the Federal Reg-

ister a notice of the compliance date no later than 165 days before the compliance date.

(C) For purposes of this paragraph, the term "compliance date" means the later of—

(i) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all national securities exchanges, any national securities associations registered pursuant to section 15A(a), and all other persons equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 15A(a); or

(ii) 2 years after the date on which trading in any security futures product commences under this title.

(i) Consistent with this title, each national securities exchange registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities exchange of the type specified in section 15(c)(3)(B) involving security futures products; and

(2) similar rules of national securities exchanges registered pursuant to section 6(g) and national securities associations registered pursuant to section 15A(k) involving security futures products.

(j) PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.—A national securities exchange registered pursuant to subsection (a) shall implement the procedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title not later than 8 months after the date of receipt of a request from an alternative trading system for such implementation and rules.

(k)(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.

(l) SECURITY-BASED SWAPS.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction

is effected on a national securities exchange registered pursuant to subsection (b).

(m) VENTURE EXCHANGE.—

(1) REGISTRATION.—

(A) IN GENERAL.—A national securities exchange may elect to be treated (or for a listing tier of such exchange to be treated) as a venture exchange by notifying the Commission of such election, either at the time the exchange applies to be registered as a national securities exchange or after registering as a national securities exchange.

(B) DETERMINATION TIME PERIOD.—With respect to a securities exchange electing to be treated (or for a listing tier of such exchange to be treated) as a venture exchange—

(i) at the time the exchange applies to be registered as a national securities exchange, such application and election shall be deemed to have been approved by the Commission unless the Commission denies such application before the end of the 6-month period beginning on the date the Commission received such application; and

(ii) after registering as a national securities exchange, such election shall be deemed to have been approved by the Commission unless the Commission denies such approval before the end of the 6-month period beginning on the date the Commission received notification of such election.

(2) POWERS AND RESTRICTIONS.—A venture exchange—

(A) may only constitute, maintain, or provide a market place or facilities for bringing together purchasers and sellers of venture securities;

(B) may determine the increment to be used for quoting and trading venture securities on the exchange;

(C) shall disseminate last sale and quotation information on terms that are fair and reasonable and not unreasonably discriminatory;

(D) may choose to carry out periodic auctions for the sale of a venture security instead of providing continuous trading of the venture security; and

(E) may not extend unlisted trading privileges to any venture security.

(3) EXEMPTIONS FROM CERTAIN NATIONAL SECURITY EXCHANGE REGULATIONS.—A venture exchange shall not be required to—

(A) comply with any of sections 242.600 through 242.612 of title 17, Code of Federal Regulations;

(B) comply with any of sections 242.300 through 242.303 of title 17, Code of Federal Regulations;

(C) submit any data to a securities information processor; or

(D) use decimal pricing.

(4) TREATMENT OF CERTAIN EXEMPTED SECURITIES.—A security that is exempt from registration pursuant to section 3(b) of the Securities Act of 1933 shall be exempt from section 12(a) of this title with respect to the trading of such security on a venture exchange, if the issuer of such security is in compliance

with all disclosure obligations of such section 3(b) and the regulations issued under such section.

(5) DEFINITIONS.—For purposes of this subsection:

(A) EARLY-STAGE, GROWTH COMPANY.—

(i) IN GENERAL.—The term "early-stage, growth company" means an issuer—

(I) that has not made an initial public offering of any securities of the issuer; and

(II) with a market capitalization of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest $1,000,000) or less.

(ii) TREATMENT WHEN MARKET CAPITALIZATION EXCEEDS THRESHOLD.—

(I) IN GENERAL.—In the case of an issuer that is an early-stage, growth company the securities of which are traded on a venture exchange, such issuer shall not cease to be an early-stage, growth company by reason of the market capitalization of such issuer exceeding the threshold specified in clause (i)(II) until the end of the period of 24 consecutive months during which the market capitalization of such issuer exceeds $2,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest $1,000,000).

(II) EXEMPTIONS.—If an issuer would cease to be an early-stage, growth company under subclause (I), the venture exchange may, at the request of the issuer, exempt the issuer from the market capitalization requirements of this subparagraph for the 1-year period that begins on the day after the end of the 24-month period described in such subclause. The venture exchange may, at the request of the issuer, extend the exemption for 1 additional year.

(B) VENTURE SECURITY.—The term "venture security" means—

(i) securities of an early-stage, growth company that are exempt from registration pursuant to section 3(b) of the Securities Act of 1933; and

(ii) securities of an emerging growth company.

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FOR CONTINUATION OF HOUSE REPORT 115–153, PART 1—SEE BOOK 2