

115TH CONGRESS }  
2d Session

HOUSE OF REPRESENTATIVES

{ REPORT  
115-792

FINANCIAL SERVICES AND GENERAL  
GOVERNMENT APPROPRIATIONS BILL, 2019

---

R E P O R T

OF THE

COMMITTEE ON APPROPRIATIONS

together with

DISSENTING VIEWS

[TO ACCOMPANY H.R. 6258]



JUNE 28, 2018.—Committed to the Committee of the Whole House on  
the State of the Union and ordered to be printed

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BILL, 2019**

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FINANCIAL SERVICES AND GENERAL GOVERNMENT  
APPROPRIATIONS BILL, 2019

JUNE 28, 2018.—Committed to the Committee of the Whole House on the State of  
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Mr. GRAVES of Georgia, from the Committee on Appropriations,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6258]

The Committee on Appropriations submits the following report in  
explanation of the accompanying bill making appropriations for fi-  
nancial services and general government for the fiscal year ending  
September 30, 2019.

INDEX TO BILL AND REPORT

	<i>Page Number</i>	
	<i>Bill</i>	<i>Report</i>
Title I—Department of the Treasury .....	2	4
Title II—Executive Office of the President and Funds Appropriated to the President .....	33	24
Title III—The Judiciary .....	47	32
Title IV—District of Columbia .....	57	37
Title V—Independent Agencies .....	68	42
Administrative Conference of the United States .....	68	42
Bureau of Consumer Financial Protection .....	68	42
Consumer Product Safety Commission .....	68	43
Election Assistance Commission .....	70	44
Federal Communications Commission .....	70	44
Federal Deposit Insurance Corporation—Office of Inspector General ...	72	47
Federal Election Commission .....	72	48
Federal Labor Relations Authority .....	73	48
Federal Trade Commission .....	74	49
General Services Administration .....	75	49

	<i>Page Number</i>	
	<i>Bill</i>	<i>Report</i>
Harry S Truman Scholarship Foundation .....	88	59
Merit Systems Protection Board .....	88	59
National Archives and Records Administration .....	89	60
National Credit Union Administration .....	90	61
Office of Government Ethics .....	91	62
Office of Personnel Management .....	91	62
Office of Special Counsel .....	95	65
Postal Regulatory Commission .....	96	65
Privacy and Civil Liberties Oversight Board .....	96	66
Public Buildings Reform Board .....	97	66
Securities and Exchange Commission .....	97	66
Selective Service System .....	99	68
Small Business Administration .....	100	68
United States Postal Service .....	105	73
United States Tax Court .....	106	75
Title VI—General Provisions—This Act .....	107	75
Title VII—General Provisions—Government-wide: Departments, Agencies, and Corporations .....	122	78
Title VIII—General Provisions—District of Columbia .....	155	81
Title IX—Financial Reform .....	168	83
Title X—Email Privacy .....	294	83
Title XI—Amateur Radio Parity Act .....	305	83
Title XII—Additional General Provision—Spending Reduction Ac- count .....	311	83
House of Representatives Reporting Requirements .....		83
Dissenting Views .....		432

## HIGHLIGHTS OF THE BILL

The Financial Services and General Government Subcommittee has jurisdiction over a diverse group of agencies responsible for regulating the financial and telecommunications industries; collecting taxes and providing taxpayer assistance; supporting the operations of the White House, the Federal Judiciary, and the District of Columbia; managing Federal buildings; and overseeing the Federal workforce. The activities of these agencies impact nearly every American and are integral to the operations of our government.

The bill provides a total of \$23,423,000,000 in discretionary budget authority for fiscal year 2019 which is the same as the fiscal year 2018 discretionary allocation. The bill is \$3,164,000 or 12 percent, below the Administration's request.

### TOTAL BUDGET AUTHORITY (\$ in millions)

	FY 2018 Enacted	FY 2019 Request	FY 2019 Recommendation
Discretionary .....	23,423	26,587	23,423
Mandatory .....	22,388	22,406	22,406

## OPERATING PLAN AND REPROGRAMMING PROCEDURES

The Committee will continue to evaluate reprogrammings proposed by agencies. Although reprogrammings may not change either the total amount available in an account or the purposes for which the appropriation is legally available, they represent a significant departure from budget plans presented to the Committee

in an agency's budget justification and supporting documents, which are the basis of this appropriations Act. The Committee expects agencies' reprogramming requests to explain thoroughly the reasons for the reprogramming and to include an assessment of whether the reprogramming will affect budget requirements for the subsequent fiscal year.

Section 608 of this Act requires agencies or entities funded by the Act to notify the Committee and obtain prior approval from the Committee for any reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose; (5) augments existing programs, projects, or activities in excess of \$5,000,000 or 10 percent, whichever is less; (6) reduces existing programs, projects, or activities by \$5,000,000 or 10 percent, whichever is less; or (7) creates or reorganizes offices, programs, or activities.

Additionally, the Committee expects to be promptly notified of all reprogramming actions which involve less than the above mentioned amounts if such actions would have the effect of significantly changing an agency's funding requirements in future years, or if programs or projects specifically cited in the Committee's reports are affected by the reprogramming. Reprogrammings meeting these criteria must be approved by the Committee regardless of the amount proposed to be reallocated.

Section 608 also requires agencies to consult with the Committees on Appropriations prior to any significant reorganization or restructuring of offices, programs, or activities. This provision applies regardless of whether the reorganization or restructuring involves a reprogramming of funds. Agencies are encouraged to consult with the Committees early in the process so that any questions or concerns the Committees may have can be addressed in a timely manner.

Except in emergency situations, reprogramming requests should be submitted no later than June 28, 2019. Further, the Committee notes that when a Department or agency submits a reprogramming or transfer request to the Committees on Appropriations and does not receive identical responses from the House and Senate, it is the responsibility of the Department or agency to reconcile the House and Senate differences before proceeding and, if reconciliation is not possible, to consider the request to reprogram funds unapproved.

Agencies are directed under section 608 to submit operating plans for the Committee's review within 60 days of the bill's enactment. Each operating plan should include: (1) a table for each appropriation with a separate column to display the President's budget request, adjustments made by Congress, adjustments due to enacted rescissions, if appropriate, and the fiscal year enacted level; (2) a delineation in the table for each appropriation both by object class and program, project, and activity as detailed in the budget appendix for the respective appropriation; and (3) an identification of items of special congressional interest.

## CONGRESSIONAL BUDGET JUSTIFICATIONS

Budget justifications are the primary tool used by the House and Senate Committees on Appropriations to evaluate the resource requirements and fiscal needs of agencies. The Committee is aware that the format and presentation of budget materials is largely left to the agency within presentation objectives set forth by the Office of Management and Budget (OMB). In fact, OMB Circular A-11, part 1 specifically instructs agencies to consult with congressional committees beforehand. The Committee expects that all agencies funded under this Act will heed this directive.

The Committee continues the direction that justifications submitted with the fiscal year 2019 budget request by agencies funded under this Act contain the customary level of detailed data and explanatory statements to support the appropriations requests at the level of detail contained in the funding table included at the end of this report. Among other items, agencies shall provide a detailed discussion of proposed new initiatives, proposed changes in the agency's financial plan from prior year enactment, detailed data on all programs, and comprehensive information on any office or agency restructurings. At a minimum, each agency must also provide adequate justification for funding and staffing changes for each individual office and materials that compare programs, projects, and activities that are proposed for fiscal year 2020 to the fiscal year 2019 enacted levels.

## TITLE I—DEPARTMENT OF THE TREASURY

## DEPARTMENTAL OFFICES

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$201,751,000
Budget request, fiscal year 2019 .....	201,751,000
Recommended in the bill .....	208,751,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+7,000,000
Budget request, fiscal year 2019 .....	+7,000,000

The Departmental Offices' function in the Department of the Treasury is to support the Secretary of the Treasury in his capacity as the chief operating executive of the Department and in his role in determining the tax, economic, and financial management policies of the Federal Government. The Secretary's responsibilities funded by the Salaries and Expenses appropriation include: recommending and implementing domestic and international economic and tax policy; providing recommendations regarding fiscal policy; governing the fiscal operations of the government; managing the public debt; managing development of financial policy; representing the U.S. on international monetary, trade and investment issues; overseeing Treasury Department overseas operations; directing the administrative operations of the Treasury Department; and providing executive oversight of the bureaus within the Treasury Department.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$208,751,000 for Departmental Offices, Salaries and Expenses.



*Financial Transactions.*—The Committee encourages the Department of the Treasury to work with Federal bank regulators, financial institutions, and money service businesses to ensure that legitimate financial transactions move freely and globally. The Committee is frustrated that the Department has failed to report on its efforts to ensure the appropriate flow of legitimate financial transactions and directs the Department to submit a report to the Committees on Appropriations of the House and Senate on this matter not later than 90 days after enactment of this Act.

*Insurance.*—Under P.L. 111–203, the Federal Reserve Board was given authority to oversee certain nonbank holding companies, including a few bank and savings and loan holding companies with insurance affiliates, as well as certain SIFIs, which currently includes one insurance company. P.L. 111–203 also gave the Federal Insurance Office (FIO), within the Department of the Treasury, the authority to consult with the States on international issues and represent the U.S., as appropriate, in the International Association of Insurance Supervisors (IAIS).

The Committee notes that the State-based system of insurance regulation has served our nation well for more than 150 years. Any federal regulation of insurance can take final form only with explicit approval by Congress.

The Committee is concerned about the ongoing discussions held by the IAIS to develop a global Insurance Capital Standard (ICS). The Committee believes the U.S. agencies party to those negotiations must appropriately fulfill their duties to advocate for the U.S. insurance market and the U.S. system of insurance regulation. The Committee also notes the importance of developing a domestic capital standard, pursuant to P.L. 111–203 and P.L. 113–279, that is based on the existing domestic regulatory structure. The Committee believes it essential that a domestic standard should be set before any U.S. agency accedes to any ICS that will or could ultimately be applied to U.S. insurers. Finally, the Committee reminds those Federal agencies party to IAIS or Financial Stability Board (FSB) discussions to not support consolidated group-wide insurance capital standards for domestically-chartered internationally active insurance groups that are inconsistent with current state-based insurance standards, which are designed solely for the protection of the policyholder.

*State-based Insurance.*—The U.S. has a strong history of promoting State-based regulation of the business of insurance. The Committee remains concerned about preemption of these effective State-based regulatory models, including those products that helps consumers manage the risks associated with owning a motor vehicle. Furthermore, the Committee supports these products being regulated by State insurance commissioners and reiterates that they are exempt under the Dodd-Frank Act from direct oversight by the Consumer Financial Protection Bureau (CFPB).

*Puerto Rico.*—Within 90 days of the date of enactment of this Act, the Department is directed to provide a report to the Committees on Appropriations of the House and the Senate describing how the Department has used its authority to provide technical assistance to Puerto Rico in fiscal year 2018 and how it plans to use it in fiscal year 2019.

*Cybersecurity.*—The Committee recognizes the need to protect the financial services sector and its customers from the devastating effects of cyberattacks. While both industry and government have taken significant steps to mitigate this threat, there is more work to be done. The Committee encourages continued coordination to develop consistent and workable cybersecurity safeguards across the financial services sector. Consistent with this goal, the Committee directs the Office of Critical Infrastructure Protection and Compliance Policy (OCIP) to report to the Committees on Appropriations of the House and the Senate, the Committee on Financial Services of the House, and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days of enactment of this Act on the status of this collaboration and ways to improve cybersecurity controls and safeguards.

*Financial Literacy.*—The Committee believes financial literacy is important and that the Department can be helpful to entities, like universities, state and local educational agencies, qualified non-profit agencies, and financial institutions who may want to establish centers of excellence to develop and implement effective standards, training and outreach efforts for financial literacy programs. The Committee encourages the Department to use the Financial Literacy and Education Commission to look into the feasibility of a program to make competitive grants to qualified institutions.

*Committee on Foreign Investment in the United States.*—The Committee expects that CFIUS will enhance its process for monitoring transactions that are not notified to CFIUS to maintain CFIUS's effectiveness in guarding against transactions that pose national security risks. Member agencies of the Committee on Foreign Investment in the United States (CFIUS), working with Treasury, as chair of CFIUS, should conduct an assessment to better understand the staffing levels needed by their agencies to address the current and projected CFIUS workload.

#### OFFICE OF TERRORISM AND FINANCIAL INTELLIGENCE

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$141,778,000
Budget request, fiscal year 2019 .....	159,000,000
Recommended in the bill .....	161,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+19,222,000
Budget request, fiscal year 2019 .....	+2,000,000

Economic and trade sanctions issued and enforced by the Office of Terrorism and Financial Intelligence's (TFI) Office of Foreign Assets Control (OFAC) protect the financial system from being polluted with criminal and illicit activities and counteract national security threats from drug lords, terrorists, weapons of mass destruction proliferators, and rogue nations, among others. In addition to the enforcement of sanctions, TFI also produces vital analysis with regards to foreign intelligence and counterintelligence across all elements of the national security community.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$161,000,000 for the Office of Terrorism and Financial Intelligence to carry out its central role in detecting and defeating security threats. The Com-

mittee expects these additional funds to be used to strengthen the development and enforcement of sanction programs.

*Iran Sanctions Act.*—The Committee directs the Department of the Treasury to report to Congress on the status of implementation and enforcement of non-nuclear, bilateral and multilateral sanctions against Iran and actions taken by the U.S. and international community to enforce such sanctions.

*Sanctions Enforcement in Africa.*—Protracted conflicts in nations such as Sudan, South Sudan, the Central African Republic, and the Democratic Republic of Congo have led to sanctions regimes and international arms embargoes to cut off the money flows that are fueling wars and contributing to regional destabilization. The Committee is concerned about the escalation of conflict and failure to abide by diplomatic agreements in these particular African states, even after sanctions have been imposed. The Committee supports the use of funds to enhance regional expertise and capacity for sanctions investigations, policy development, and enforcement of sanctions.

*Human Rights Sanctions Enforcement.*—Government-sanctioned abuses of human rights around the world have been on the rise as authoritarianism increases. Multiple frameworks for human rights abuse sanctions enforcement exist, including the Sergei Magnitsky Rule of Law Accountability Act, the Global Magnitsky Human Rights Accountability Act, Countering America's Adversaries through Sanctions Act, and the Comprehensive Iran Sanctions Accountability and Divestment Act, among others. These Congressionally mandated sanctions, along with sanctions imposed by Executive Order, are an important tool in discouraging human rights abuses and targeting those who violate human rights norms. The Committee supports robust enforcement of human rights abuse related sanctions and intends for funding to be used to enhance expertise and investigatory capacity for sanctions investigations, policy development, and enforcement of sanctions.

#### CYBERSECURITY ENHANCEMENT ACCOUNT

Appropriation, fiscal year 2018 .....	\$24,000,000
Budget request, fiscal year 2019 .....	25,208,000
Recommended in the bill .....	25,208,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+1,208,000
Budget request, fiscal year 2019 .....	— —

The Cybersecurity Enhancement Account (CEA) is a dedicated account designed to identify and support Department-wide investments for critical IT improvements including the systems identified as High Value Assets.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$25,208,000 for the Cybersecurity Enhancement Account.

The Treasury Chief Information Officer (CIO) is directed to review and approve each investment under the CEA and report to the Committees on Appropriations of the House and the Senate each quarter on the progress of each investment. To ensure the Treasury CIO retains control over the execution of these funds, the agreement does not permit transfers of funds from the CEA.

*Spend Plans.*—The CIO of each Treasury office and bureau must submit a spend plan for each prospective investment under this heading to the Treasury Department CIO for review. The Treasury CIO is directed to review each investment submitted under the CEA heading to improve oversight of these funds across the Department; none of the funds under this heading will be available to fund such an investment without the approval of the Treasury CIO. The spend plans should include how the investment will: enhance Department-wide coordination of cybersecurity efforts and improve the Department's responsiveness to cybersecurity threats; provide bureau and agency leadership with greater visibility into cybersecurity efforts and further encourage information sharing across bureaus; improve identification of cyber threats and better protect information systems from attack; provide a platform to enhance efficient communication, collaboration, and transparency around the common goal of improving not only the cybersecurity of the Treasury Department, but also the Nation's financial sector. The spend plans should detail the type of cybersecurity enhancement the investment represents, and the cost, scope, schedule of the investment, and explain how it complements existing cyber efforts.

#### DEPARTMENT-WIDE SYSTEMS AND CAPITAL INVESTMENTS PROGRAMS

##### (INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$4,426,000
Budget request, fiscal year 2019 .....	4,000,000
Recommended in the bill .....	8,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+3,574,000
Budget request, fiscal year 2019 .....	+4,000,000

The 1997 Treasury and General Government Appropriations Act established this account, which is authorized to be used by or on behalf of Treasury bureaus at the Secretary's discretion to modernize business processes and increase efficiency through technology investments, as well as other activities that involve more than one Treasury bureau or Treasury's interface with other Government agencies.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$8,000,000 for Department-wide Systems and Capital Investments Programs (DSCIP).

#### FUND FOR AMERICA'S KIDS AND GRANDKIDS

Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---
Recommended in the bill .....	\$585,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+585,000,000
Budget request, fiscal year 2019 .....	+585,000,000

The Fund for America's Kids and Grandkids is established to fund activities to further government efficiency, and through those efficiencies reduce the overall cost to operate government programs. Funds are not available until the Secretary of the Treasury certifies in the annual Report of the United States Government that

the Federal government is operating either at a surplus or zero deficit. The 2017 Report issued by the Secretary of the Treasury on February 15, 2018, reported a deficit of approximately \$665,700,000,000.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$585,000,000 for the Fund for America's Kids and Grandkids.

#### OFFICE OF INSPECTOR GENERAL

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$37,044,000
Budget request, fiscal year 2019 .....	36,000,000
Recommended in the bill .....	37,044,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	--
Budget request, fiscal year 2019 .....	+1,044,000

The Office of Inspector General (OIG) provides agency-wide audit and investigative functions to identify and correct operational and administrative deficiencies that create conditions for fraud, waste, and mismanagement. The audit function provides contract, program, and financial statement audit services. Contract audits provide professional advice to agency contracting officials on accounting and financial matters relative to negotiation, award, administration, repricing, and settlement of contracts. Program audits review and evaluate all facets of agency operations. Financial statement audits assess whether financial statements fairly present the agency's financial condition and results of operations, the adequacy of accounting controls, and compliance with laws and regulations. The investigative function provides for the detection and investigation of improper and illegal activities involving programs, personnel, and operations.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$37,044,000 for the OIG. The recommendation fully funds the cost of overseeing the Department's Resources and Ecosystems Sustainability, Tourism Opportunities, and Revived Economy of the Gulf Coast Act (RESTORE Act) activities.

#### TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$169,634,000
Budget request, fiscal year 2019 .....	161,113,000
Recommended in the bill .....	170,834,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+1,200,000
Budget request, fiscal year 2019 .....	+9,721,000

The Office of Treasury Inspector General for Tax Administration (TIGTA) conducts audits, investigations, and evaluations to assess the operations and programs of the IRS and its related entities, the IRS Oversight Board, and the Office of Chief Counsel. The purpose of those audits and investigations is as follows: (1) To promote the economic, efficient, and effective administration of the Nation's tax

laws and to detect and deter fraud and abuse in IRS programs and operations; and (2) to recommend actions to resolve fraud and other serious problems, abuses, and deficiencies in these programs and operations.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$170,834,000 for TIGTA. The Committee appreciates the many issues that TIGTA has brought to its attention and provides funding above the fiscal year request to continue TIGTA's oversight of IRS activities and use of appropriated funds.

#### SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$34,000,000
Budget request, fiscal year 2019 .....	17,500,000
Recommended in the bill .....	28,800,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	- 5,200,000
Budget request, fiscal year 2019 .....	+11,300,000

The Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) was established in the Emergency Economic Stabilization Act of 2008 (Public Law 110-343). Its mission is to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets by the Secretary of the Treasury under programs established pursuant to the Troubled Asset Relief Program (TARP).

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$28,800,000 for SIGTARP.

#### FINANCIAL CRIMES ENFORCEMENT NETWORK

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$115,003,000
Budget request, fiscal year 2019 .....	117,800,000
Recommended in the bill .....	117,800,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+2,797,000
Budget request, fiscal year 2019 .....	- - -

The Financial Crimes Enforcement Network (FinCEN) is responsible for implementing Treasury's anti-money laundering regulations through administration of the Bank Secrecy Act (BSA). It also collects and analyzes information to assist in the investigation of money laundering and other financial crimes. FinCEN supports law enforcement investigative efforts by Federal, State, local and international agencies, and fosters interagency and global cooperation against domestic and international financial crimes.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$117,800,000 for FinCEN. The recommended amount is intended to ensure FinCEN's information is accessible to the law enforcement and in-

telligence communities and to ensure FinCEN can respond to requests for assistance from law enforcement. The data compiled and analyzed by FinCEN is a critical tool for investigating, among other crimes, money laundering, mortgage fraud, drug cartels, and terrorist financing.

*Human Trafficking.*—The Committee appreciates FinCEN's history of supporting law enforcement cases that combat human trafficking, including its 2014 Guidance on Recognizing Activity that May be Associated with Human Smuggling and Human Trafficking to financial institutions, and emphasizes the importance of continuing this effort as part of the bureau's broader mission to detect and disrupt all forms of financial crime. Wherever possible, FinCEN shall marshal its unique expertise in analyzing financial flows for this important effort in the course of ongoing strategic operations, such as the Southwest Border Initiative, and provide the appropriate assistance to law enforcement agencies in their human trafficking investigations.

#### BUREAU OF THE FISCAL SERVICE

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$338,280,000
Budget request, fiscal year 2019 .....	330,837,000
Recommended in the bill .....	338,280,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— — —
Budget request, fiscal year 2019 .....	+7,443,000

The mission of the Bureau of the Fiscal Service is to promote the financial integrity and operational efficiency of the U.S. Government through accounting, borrowing, collections, payments, and shared services. The Fiscal Service is the Federal Government's central financial agent. The Fiscal Service also develops and implements reliable and efficient financial methods and systems to operate the government's cash management, credit management, and debt collection programs in order to maintain government accounts and report on the status of the government's finances. In addition, the Fiscal Service is the primary agency for collecting Federal non-tax debt owed to the government, and is responsible for the conduct of all public debt operations and the promotion of the sale of U.S. securities.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$338,280,000 for the Fiscal Service. Of the funds provided, \$4,210,000 is available until September 30, 2021, for information systems modernization.

*DATA Act.*—Within this appropriation, funding is included for USAspending.gov. The Committee expects the Fiscal Service to meet its transparency goals within USAspending.gov related to the DATA Act and will monitor progress in achieving government spending transparency. The Committee directs the Fiscal Service to meet its transparency goals within USAspending.gov and coordinate with OMB to publish all unclassified vendor contracts and grant awards for all federal agencies on USAspending.gov. The Committee directs the Fiscal Service to display this information online and report to the Committees on Appropriations of the House

and the Senate within 90 days of the enactment of this Act on its progress in achieving government spending transparency.

The Committee is committed to transparency and accountability in federal spending. As such the Committee directs the Fiscal Service to make basic information about the use of financial agents publicly available in a central location, including compensation paid to each financial agent and a description of the services provided.

*Do Not Pay Business Center.*—Do Not Pay (DNP) was established to help federal agencies comply with the Improper Payments Elimination and Recovery Improvement Act of 2012 by supporting efforts to prevent and detect improper payments. DNP helps reduce the number of improper payments by providing agencies streamlined access to relevant data sources when evaluating pre-award, pre-payment eligibility verification process as well as anytime during the payment lifecycle. OMB approves DNPs access to relevant data sources. In order to ensure timely approvals by OMB of new data sources for DNP, including commercial data sources, the Committee encourages Treasury and OMB to identify opportunities to make the data source review process more efficient, including automatically approving requests for new data sources that are pending more than 30 days; creating an approved data source list; identifying publicly available data sources for approval; and creating baseline criteria standards for data sources that automatically trigger approval, as well as any other efforts that will help prevent, reduce, and stop improper payments, and prevent waste, fraud, and abuse.

#### ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$111,439,000
Budget request, fiscal year 2019 .....	114,427,000
Recommended in the bill .....	123,527,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+12,088,000
Budget request, fiscal year 2019 .....	+9,100,000

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the enforcement of laws designed to eliminate certain illicit activities and to regulate lawful activities relating to distilled spirits, beer, wine, and nonbeverage alcohol products, and tobacco. TTB focuses on collecting revenue; reducing taxpayer burden and improving service while preventing diversion; and protecting the public and preventing consumer deception in certain regulated commodities.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$123,527,000 for the TTB. Within this amount, \$5,000,000 is included for increased enforcement of the Federal Alcohol Administration Act (FAA Act).

*Enforcement.*—The Committee has included \$5,000,000 for TTB to increase enforcement efforts for industry trade practice violations. Enforcement of basic trade practice functions, required under the FAA Act, is critical to ensuring a competitive, fair, and safe marketplace. The Committee directs the TTB to report to the Com-



mittees on Appropriations of the House and the Senate, within 60 days of enactment of this Act, on how the additional funding will be used to bolster enforcement, forensic audits, and investigations, particularly in known points in the supply chain that are susceptible to illegal activity.

*Processing Time.*—The Committee will continue to monitor the process for securing basic label and formula approvals required under the FAA Act. The Committee continues to support additional funding for this and expects the TTB to continue to make efforts to shorten processing time for label and formula applications.

*American Viticulture Area.*—The Committee recognizes that the use of American Viticulture Area (AVA) terms help small farmers and wineries grow their businesses by developing regional brands. The AVA system stimulates economic growth in the industry and also provides consumers with valuable information about where their purchases are sourced. The TTB should improve label accuracy to ensure that use of AVA terms are consistent with existing federal laws and regulations governing the use of these protected terms.

## UNITED STATES MINT

### UNITED STATES MINT PUBLIC ENTERPRISE FUND

The United States Mint manufactures coins, receives deposits of gold and silver bullion, and safeguards the Federal Government's holdings of monetary metals. In 1997, Congress established the United States Mint Public Enterprise Fund (Public Law 104–52), which authorized the Mint to use proceeds from the sale of coins to finance the costs of its operations and consolidated all existing Mint accounts into a single fund. Public Law 104–52 also provided that, in certain situations, the levels of capital investments for circulating coins and protective services shall factor into the decisions of the Congress.

### COMMITTEE RECOMMENDATION

The Committee recommends a spending level for capital investments by the Mint for circulating coinage and protective services of \$30,000,000 for fiscal year 2019.

### COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND

#### PROGRAM ACCOUNT

Appropriation, fiscal year 2018 .....	\$250,000,000
Budget request, fiscal year 2019 .....	14,000,000
Recommended in the bill .....	216,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– 34,000,000
Budget request, fiscal year 2019 .....	+202,000,000

The Community Development Financial Institutions (CDFI) Fund provides grants, loans, equity investments, and technical assistance, on a competitive basis, to new and existing CDFIs such as community development banks, community development credit unions, and housing and microenterprise loan funds. Recipients use the funds to support mortgages, small business and economic development lending in underserved and distressed neighborhoods

and to support the availability of financial services in these neighborhoods. The CDFI Fund is also responsible for implementation of the New Markets Tax Credits.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$216,000,000 for the CDFI Fund program. Of the amounts provided, \$121,000,000 is for financial and technical assistance grants, \$3,000,000 is for CDFIs to provide technical and financial assistance to individuals with disabilities, \$13,000,000 is for Native Initiatives, \$19,000,000 is for the Bank Enterprise Award Program, \$15,000,000 is for the Healthy Food Financing Initiative, and \$23,000,000 is for the administrative expenses for all. In addition, the Committee recommends a loan level of \$500,000,000 for the Bond Guarantee Program.

*CDFIs in U.S. Insular Areas.*—The Committee notes the absence of CDFIs serving American Samoa, Northern Mariana Islands and other U.S. insular areas and recommends that the CDFI Fund use its Capacity Building Initiative to expand service, to the extent practical, to these areas.

*CDFIs in the Appalachian Region.*—The Committee recognizes that the Appalachian region continues to face economic hardships and high unemployment stemming from the downturn in the coal market. The Committee encourages the CDFI Fund to focus on opportunities in the region and expand service for businesses and industries that may lead to improved long-term diversification of the economy in Appalachia.

*CDFI Program Integration for Individuals with Disabilities.*—The Committee is pleased to provide dedicated funds for financial and technical assistance grants to position more CDFI's to respond to the housing, transportation, education, and employment needs of underserved, low-income, individuals with disabilities. By increasing the visibility of the disability community, the Committee expects CDFI's to incorporate the needs of the disabled into their business plans and practices.

The Committee directs the CDFI Fund to submit a report every six months until all the funds are obligated, not later than six months after the enactment of the Act to the Committees on Appropriations of the House and the Senate summarizing the progress made toward developing a competitive application pool of CDFIs to compete for funds for individuals with disabilities. Additionally, the report should include the number of awards, amount of each award, types of programs, impact the funding has made on the number of CDFIs serving the disability community, and findings and recommendations to improve upon the implementation of these activities.

#### INTERNAL REVENUE SERVICE

The Committee recommends providing \$11,616,554,000 for the IRS, which is \$186,000,000 above the fiscal year 2018 enacted level. The fiscal year 2019 funding level includes dedicated funds in the amount of \$77,000,000 to assist with the implementation of tax reform for the 2018 filing season. Additionally, the fiscal year

2019 amount incorporates increases to modernize IRS's information technology systems.

In addition, the Committee includes language to:

- Prohibit funds for finalizing any regulation related to the standards used to determine the tax-exempt status of a 501(c)(4) organization;
- Prohibit funds for IRS employee bonuses and awards that do not consider the conduct and tax compliance of such employees;
- Prohibit funds for hiring former IRS employees without considering the employees past conduct and tax compliance;
- Prohibit funds for targeting groups for regulatory scrutiny based on their ideological beliefs;
- Prohibit funds for targeting citizens for exercising their First Amendment rights;
- Prohibit funds for conferences that do not comply with the Treasury Inspector General for Tax Administration's (TIGTA) recommendations regarding conferences;
- Require extensive reporting on IRS spending and information technology; and
- Provide TIGTA with \$170,834,000 for its audit and investigative oversight of the IRS.

The Committee remains concerned with the level of service taxpayers are receiving and continued cybersecurity threats. Targeted reporting is included to assist the Committee monitor and evaluate the IRS's progress in these areas.

A description of the Committee's recommendation by appropriation is provided below.

#### TAXPAYER SERVICES

Appropriation, fiscal year 2018 .....	<sup>1</sup> \$2,506,554,000
Budget request, fiscal year 2019 .....	2,241,000,000
Recommended in the bill .....	2,491,554,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	- 15,000,000
Budget request, fiscal year 2019 .....	+250,554,000

<sup>1</sup>As directed by Public Law 115-141, Division E, Section 113 of the Administrative Provisions—Internal Revenue Service, \$19,000,000 was transferred by the Commissioner of the Internal Revenue Service to the Taxpayer Services which increased the Taxpayer Services fiscal year 2018 level from \$2,506,554 to \$2,525,554,000.

The Taxpayer Services appropriation provides for taxpayer services, including forms and publications; processing tax returns and related documents; filing and account services; taxpayer advocacy services; and assisting taxpayers to understand their tax obligations, correctly file their returns, and pay taxes due in a timely manner.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$2,491,554,000 for Taxpayer Services. Additional funds are provided in provision 113 of this Bill to assist the IRS with implementing the Tax Cuts and Jobs Act. These additional funds will provide a level of funding above the fiscal year 2018 enacted level for taxpayer Services. Within the amount provided, the Committee expects the IRS to sufficiently fund the Taxpayer Advocate Service and accommodate where possible their increased needs associated with the implementation of the Tax Cuts and Jobs Act.

*Synthetic Identity Theft.*—The Committee is concerned about the rising incidence of synthetic identity fraud. In 2018, losses as a result of this fraud are projected to be about \$8,000,000,000. The Committee urges the IRS to remain committed to addressing identity theft and fraud and to mitigate emerging threats.

*Prosecutions of Identity Theft.*—The Committee remains highly concerned about the prosecutions of identity theft. The Committee directs the Treasury Inspector General for Tax Administration (TIGTA) to submit a report to the Committees on Appropriations of the House and the Senate not later than 120 days after the date of enactment of this Act, detailing—(1) current efforts by the Internal Revenue Service to assist with the prosecution of violations of section 1028(a) or 1028A(a) of title 18, United States Code, wherein the defendant misrepresented himself or herself to be engaged in lawful activities on behalf of, or carrying out lawful duties as an officer or employee of the Internal Revenue Service; (2) overall trends in the commission of such offenses; (3) TIGTA’s recommendations regarding what resources are needed to facilitate improved review and prosecution of such cases; and (4) information on what assistance the Internal Revenue Service may offer victims of such offenses.

*Identity Theft Tax Refund Fraud.*—The Committee requires a report, reviewed by the National Taxpayer Advocate, from the IRS that covers 2010–2018 period on: the number of taxpayers who have had their tax return rejected because their Social Security or taxpayer identification number was improperly used by another individual to commit tax fraud; the average time to resolve the situation and provide innocent taxpayers with their refund, when a refund is due; and the number of cases involving taxpayer identification numbers of residents of the territories. The report will also include a discussion on IRS’s progress and plans to expedite resolution for these taxpayers, to prevent non-victims from becoming victims, to educate the public on the threat of identity theft, and to detect, prevent, and combat identity-based tax fraud and actions. The Committee directs the IRS to submit the report to the Committees on Appropriations of the House and the Senate by June 1, 2019.

Since 2015, the Government Accounting Office’s High-Risk List has included IRS’s efforts to address IDT refund fraud. The IRS launched an Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (ISAC) pilot for the 2017 filing season. It aims to allow the IRS, states, and tax preparation industry partners to quickly share information on IDT refund fraud. The Committee agrees with GAO’s recommendations to the IRS to ensure that (1) the ISAC better aligns with leading practices for effective pilot design, and (2) the ISAC Partnership develops an outreach plan to expand membership and improve understanding of the ISAC’s benefits. The Committee looks forward to improved collaboration of the IRS and ISAC to reduce refund fraud.

*Pre-Filled or Simple Tax Returns.*—The Committee believes that converting a voluntary compliance system to a bill presentment model would represent a significant change in the relationship between taxpayers and their government. The simple return model would also strain IRS resources and the data retrieval systems required would create new burdens on employers, particularly small

businesses. In addition, a fundamental conflict of interest seems to be inherent in the nation's tax collector and compliance enforcer taking on the simultaneous role of tax preparer and financial advisor. The Committee expects that the IRS will not begin work on a simple tax return pilot program or associated systems without first seeking specific authorization and appropriations from Congress, and should instead focus on helping Congress and the Administration achieve real tax simplification and reform.

*Safe Harbor.*—The Committee instructs the IRS to follow and apply, the 75 percent math safe harbor test. Section 4052(f)(1) provides a safe harbor test that excludes from the tax previously taxed tractors that are refurbished as long as the restoration cost does not exceed 75-percent of the cost of a comparable new tractor. Therefore, the Committee expects that the IRS apply these long-standing statutory provisions as written and without additional interpretation, modification, or added conditions.

*Individual Mandate.*— In October 2017, the IRS announced for Tax Year 2017, “the IRS will not consider a return complete and accurate if the taxpayer does not report full-year coverage, claim a coverage exemption, or report a shared responsibility payment on the tax return.” The IRS further instructed “to avoid refund and processing delays when filing 2017 tax returns in 2018, taxpayers should indicate whether they and everyone on their return had health coverage, qualified for an exemption from the coverage requirement or are making an individual shared responsibility payment.” The Committee directs the IRS to clarify agency policy regarding “silent returns” before the beginning of the 2018 tax filing season.

*State and Local Pension Plans.*—The Committee recommends that the Secretary of the Treasury and the Commissioner of the IRS initiate a review of the existing regulatory guidance in Revenue Ruling 2006-43, and issue a revised revenue ruling that allows state and local pension plan sponsors to give existing plan participants the choice to make certain elections between pension plans or plan tiers without changing the treatment of employer contributions under 26 U.S.C. 414(h).

*2D bar codes.*—The Committee encourages the Internal Revenue Service (IRS) to require 2D bar codes on 2019 paper tax returns and tax preparer software to produce 2D bar codes on 2019 tax return submissions. The 40 million paper tax returns submitted each year must be manually processed, this is expensive, time-consuming, and creates errors. 2D bar coding increases the quality of the data capture, reduces processing costs and improves fraud and identity theft detection.

*Self-Employed Tax Collection.*—The Committee is concerned a shift towards self-employed and independent contracting within an increasingly gig-based economy will correspondingly increase underpayment and underreporting of self-employed taxes. The Committee directs the IRS to submit a letter briefing the Committees on Appropriations of the House and Senate within 90 days of enactment of this Act, on the IRS's strategy to better-identify and collect in underpayments of self-employed taxes each year.

## ENFORCEMENT

Appropriation, fiscal year 2018 .....	<sup>1</sup> \$4,860,000,000
Budget request, fiscal year 2019 .....	4,832,643,000
Recommended in the bill .....	4,860,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— — —
Budget request, fiscal year 2019 .....	+27,357,000

<sup>1</sup>As directed by Public Law 115-141, Division E, Section 113 of the Administrative Provisions—Internal Revenue Service, \$10,000,000 was transferred by the Commissioner of the Internal Revenue Service to Enforcement which increased the Enforcement Account in fiscal year 2018 from \$4,860,000,000 to \$4,870,000,000.

The Enforcement appropriation provides for the examination of tax returns, both domestic and international; the administrative and judicial settlement of taxpayer appeals of examination findings; technical rulings; monitoring employee pension plans; determining qualifications of organizations seeking tax-exempt status; examining tax returns of exempt organizations; enforcing statutes relating to detection and investigation of criminal violations of the internal revenue laws; identifying underreporting of tax obligations; securing unfiled tax returns; and collecting unpaid accounts.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$4,860,000,000 for Enforcement. Of the funds provided, the Committee recommends not less than \$60,257,000 to support IRS activities under the Interagency Crime and Drug Enforcement program.

*Printed Forms and Instructions.*—The Committee encourages the IRS to continue to provide printed forms and instructions to vulnerable populations, especially in rural communities where internet usage rates are below the national average.

*Improper Payments.*—The Committee believes that confidence and trust within the tax administration system is paramount to a strong voluntary tax compliance system. Each year, the Internal Revenue Service shall present to the Committees of Appropriations of the House and the Senate a report identifying the improper payment rates of refundable credits by tax return preparers and subsequent steps taken by the Internal Revenue Service to correct the compliance errors. The Committee also directs the Internal Revenue service to report to the Committees of Appropriations of the House and the Senate as to how many tax preparers were referred to the Return Preparer Office of the IRS, Criminal Investigations or the Department of Justice.

*Debt Collection.*—The Committee commends the IRS for implementing the private debt collection program through the Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94). The Committee remains concerned, however, that the schedule for release of inactive debts going forward contradicts the explicit language of the authorizing statute and will result in far lower receipts and related compliance funding than the Joint Committee on Taxation estimated would result from the provision. The law requires all inactive debts to be released, excluding only certain debts specified in the law. The Committee reminds the IRS that a substantial amount of revenue for compliance activities can be retained by the IRS through full implementation of the program.

*Tax Gap.*—The IRS estimates, that taxpayers collectively pay a bit more than 80% of the taxes they owe. This difference between

the taxes people and businesses owe and what they pay on time is known as the tax gap which IRS estimated to be \$458 billion, on average, for 2008–2010. The Government Accounting Office recommends that IRS re-establish goals for improving voluntary compliance and develop and document a strategy that outlines how it will use its data to update compliance strategies to address the tax gap.

#### OPERATIONS SUPPORT

Appropriation, fiscal year 2018 .....	<sup>1</sup> \$3,634,000,000
Budget request, fiscal year 2019 .....	4,312,724,000
Recommended in the bill .....	3,988,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+354,000,000
Budget request, fiscal year 2019 .....	– 324,724,000

<sup>1</sup>As directed by Public Law 115–141, Division E, Section 113 of the Administrative Provisions—Internal Revenue Service, \$291,000,000 was transferred by the Commissioner of the Internal Revenue Service to Operations Support which increased Operations Support in fiscal year 2018 from \$3,638,446,000 to \$3,925,000,000.

The Operations Support appropriation provides for overall planning and direction of the IRS, including shared service support related to facilities services, rent payments, printing, postage, and security. Specific activities include headquarters management activities such as strategic planning, communications and liaison, finance, human resources, Equal Employment Opportunity and diversity, research, information technology, and telecommunications.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$3,988,000,000 for Operations Support.

*Obligations and Employment.*—Not later than 45 days after the end of each quarter, the IRS shall submit reports on its activities to the Committees on Appropriations of the House and the Senate. The reports shall include information about the obligations made during the previous quarter by appropriation, object class, office, and activity; the estimated obligations for the remainder of the fiscal year by appropriation, object class, office, and activity; the number of full-time equivalents within each office during the previous quarter; and the estimated number of full-time equivalents within each office for the remainder of the fiscal year.

*Information Technology Reports.*—The Committee directs the IRS to submit quarterly reports on particular major project activities to the Committees on Appropriations of the House and the Senate and the Government Accounting Office (GAO), no later than 30 days following the end of each calendar quarter in fiscal year 2019. The Committee expects the reports to include detailed, plain English explanations of the cumulative expenditures and schedule performance to date, specified by fiscal year; the costs and schedules for the previous 3 months; the anticipated costs and schedules for the upcoming 3 months; and the total expected costs to complete IRS's top five major information technology project activities. In addition, the quarterly report should clearly explain when the project was started; the expected date of completion; the percentage of work completed as compared to planned work; the current and expected state of functionality; any changes in schedule; and current risks unrelated to funding amounts and mitigation strategies. The Committee directs the Department of the Treasury to conduct

a semi-annual review of IRS's IT investments to ensure the cost, schedule, and scope of the projects' goals are transparent. The Committee further directs GAO to review and provide an annual report to the Committees evaluating the cost and schedule of activities of all major IRS information technology projects for the year, with particular focus on the projects about which the IRS is submitting quarterly reports to the Committee.

*Digital Workspace.*—The Committee recognizes that digital workspaces can increase user productivity, enhance cybersecurity & management, while also allowing for workforce flexibility, and urges the Internal Revenue Service to leverage the use of digital workspaces.

#### BUSINESS SYSTEMS MODERNIZATION

Appropriation, fiscal year 2018 .....	\$110,000,000
Budget request, fiscal year 2019 .....	110,000,000
Recommended in the bill .....	200,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+90,000,000
Budget request, fiscal year 2019 .....	+90,000,000

The Business Systems Modernization (BSM) appropriation provides funding to modernize key business systems of the IRS. Funds have been permanently transferred from this account to Operations Support to fund operation and maintenance for the existing infrastructure that will help protect the IRS from cyber threats.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$200,000,000 for BSM. The Committee continues to support IRS in its efforts to modernize its business systems such as CADE 2, the Enterprise Case Management System, and the Return Review Program. These systems enhance IRS's capabilities to better assist the taxpayer, to detect, address, and prevent tax refund fraud as well as web applications that will help the IRS transition to a more serviceable digital government.

*Information Technology Reports.*—The Committee expects the IRS to continue to submit quarterly reports to the Committees and GAO during fiscal year 2019, no later than 30 days following the end of each calendar quarter. The Committee expects the reports to include detailed, plain English explanations of the cumulative expenditures and schedule performance to date, specified by fiscal year; the costs and schedules for the previous 3 months; the anticipated costs and schedules for the upcoming 3 months; and the total expected costs to complete CADE 2, Enterprise Case Management System, and Return Review Program. In addition, the quarterly report should clearly explain when the project was started; the expected date of completion; the percentage of work completed as compared to planned work; the current and expected state of functionality; any changes in schedule; and current risks unrelated to funding amounts and mitigation strategies. The Committee directs the Department of the Treasury to conduct a semi-annual review of CADE 2, Enterprise Case Management System, and Return Review Program to ensure the cost, schedule, and scope goals of the projects are transparent. The Committee further directs GAO to review and provide an annual report to the Committee evalu-



ating the cost and schedule of CADE 2, Enterprise Case Management System, and Return Review Program activities for the year, as well as an assessment of the functionality achieved.

*IRS's IT Investments.*—GAO has highlighted in its May 2018 report (GAO-18-298) that IRS needs to make improvements on delivering major tax processing and fraud detection acquisitions, managing key risks associated with aging legacy systems, and addressing IT workforce gaps. These improvements are critical to IRS's management of its annual \$2,600,000,000 investment in IT. The Committee encourages the IRS to address GAO's recommendations and to prioritize those associated with the Customer Account Data Engine 2 and the Individual Master File.

*Identity Theft and Fraud Detection Filters.*—In order to combat and reduce identity theft and refund fraud, the IRS has implemented a screening process using filters that flag potentially improper tax returns. Although these filters do identify improper returns and prevent improper refunds from being issued, they also have a high degree of inaccuracy with false positive rates averaging 62 percent for its identity theft filters and 66 percent for its refund fraud filters during calendar year 2017 (through September 30), according to the National Taxpayer Advocate. The Committee is concerned with these high rates of false positives and directs the IRS to submit a report to the Committees on Appropriations of the House and the Senate that identifies the number of legitimate filers impacted by the high false positive rates, sets forth a plan to reduce the false positive rates (including an assessment of the benefits of adopting predictive modeling to both improve detection of improper returns and reduce false positives), and addresses the potential cost savings of a lower false positive rate. This report shall be prepared in consultation with the National Taxpayer Advocate and shall be due no later than 90 days after enactment of this Act.

#### ADMINISTRATIVE PROVISIONS—INTERNAL REVENUE SERVICE

##### (INCLUDING TRANSFERS OF FUNDS)

Section 101. The Committee continues a provision that allows for the transfer of five percent of any appropriation made available to the IRS to any other IRS appropriation, upon the advance approval of the Committees on Appropriations of the House and the Senate.

Section 102. The Committee continues a provision that requires the IRS to maintain a training program to include taxpayer rights, dealing courteously with taxpayers, cross-cultural relations, and the impartial application of tax law.

Section 103. The Committee continues a provision that requires the IRS to institute and enforce policies and procedures that will safeguard the confidentiality of taxpayer information and protect taxpayers against identity theft.

Section 104. The Committee continues a provision that makes funds available for improved facilities and increased staffing to provide efficient and effective 1-800 number help line service for taxpayers.

Section 105. The Committee continues a provision that requires the IRS to notify employers of any address change request and to give special consideration to offers in compromise for taxpayers who have been victims of payroll tax preparer fraud.

Section 106. The Committee continues a provision with modifications that prohibits the IRS from targeting U.S. citizens for exercising their First Amendment rights.

Section 107. The Committee continues a provision with modifications that prohibits the IRS from targeting groups based on their ideological beliefs.

Section 108. The Committee continues a provision with modifications that requires the IRS to comply with procedures and policies on conference spending as recommended by the Treasury Inspector General for Tax Administration.

Section 109. The Committee continues a provision with modifications that prohibits funds for giving bonuses to employees or hiring former employees without considering conduct and compliance with Federal tax law.

Section 110. The Committee continues a provision with modifications that prohibits funds to violate the confidentiality of tax returns.

Section 111. The Committee continues a provision with modifications that prohibits funds for pre-populated returns.

Section 112. The Committee includes a new provision to prohibit funds for the IRS to deny tax exemption to a church for participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidates for public office unless the IRS Commissioner consents to such determination, the Commissioner notifies the tax committees of Congress, and the determination of denied tax exemption is effective 90 days after such notification.

Section 113. Provides \$77,000,000 to be used solely for carrying out Public Law 115–97. The IRS is directed to provide the Committees on Appropriations of the House and the Senate no later than 30 days after the enactment of this Act, a detailed spending plan by account and object class for the funds provided. Additionally, the IRS is directed to submit quarterly spending plans broken out by account, and include, minimum, quarterly obligations and total obligations to date; actual and projected staffing levels; and updated timetables.

ADMINISTRATIVE PROVISIONS—DEPARTMENT OF THE TREASURY  
(INCLUDING TRANSFERS OF FUNDS)

Section 114. The Committee continues a provision that authorizes the Department to purchase uniforms, insurance for motor vehicles that are overseas, and motor vehicles that are overseas without regard to the general purchase price limitations; to enter into contracts with the State Department for health and medical services for Treasury employees who are overseas; and to hire experts or consultants.

Section 115. The Committee continues a provision that authorizes transfers, up to two percent, between “Departmental Offices—Salaries and Expenses”, “Office of Inspector General”, “Special Inspector General for the Troubled Asset Relief Program”, “Financial Crimes Enforcement Network”, “Bureau of the Fiscal Service”, and “Alcohol and Tobacco Tax and Trade Bureau” appropriations under certain circumstances.

Section 116. The Committee continues a provision that authorizes transfers, up to two percent, between the Internal Revenue

Service and the Treasury Inspector General for Tax Administration under certain circumstances.

Section 117. The Committee continues a provision that prohibits the Department of the Treasury from undertaking a redesign of the one dollar Federal Reserve note.

Section 118. The Committee includes a provision that provides for transfers from the Bureau of the Fiscal Service to the Debt Collection Fund as necessary for the purposes of debt collection.

Section 119. The Committee continues a provision that requires congressional approval for the construction and operation of a museum by the United States Mint.

Section 120. The Committee continues a provision prohibiting funds in this or any other Act from being used to merge the United States Mint and the Bureau of Engraving and Printing without the approval of the House and the Senate committees of jurisdiction.

Section 121. The Committee continues a provision deeming that funds for the Department of the Treasury's intelligence-related activities are specifically authorized in fiscal year 2019 until enactment of the Intelligence Authorization Act for fiscal year 2019.

Section 122. The Committee continues a provision permitting the Bureau of Engraving and Printing to use \$5,000 from the Industrial Revolving Fund for reception and representation expenses.

Section 123. The Committee continues a provision that requires the Department to submit a capital investment plan.

Section 124. The Committee continues a provision that requires a report on the Department's Franchise Fund.

Section 125. The Committee continues a provision that prohibits the Department from finalizing any regulation related to the standards used to determine the tax-exempt status of a 501(c)(4) organization.

Section 126. The Committee continues a provision that requires quarterly reports of the Office of Financial Research (OFR) and Office of Financial Stability.

Section 127. The Committee includes a new provision that authorizes the Office of Terrorism and Financial Intelligence to reimburse Treasury Departmental Offices for reception and representation expenses to support activities of the Financial Action Task Force.

Section 128. The Committee includes a new provision to prohibit funds to approve, license, facilitate, authorize, or otherwise allow the importation of property confiscated by the Cuban Government.

Section 129. The Committee includes a new provision to prohibit funds to approve or otherwise allow the licensing of a mark, trade name, or commercial name that is substantially similar to one that was used in connection with a business or assets that were confiscated unless expressly consented.

Section 130. The Committee includes a new provision that prohibits the Department from enforcing guidance for U.S. positions on multilateral development banks which engage with developing countries on coal-fired power generation.

Section 131. The Committee continues a provision that requires quarterly reports of the Office of Financial Research (OFR) and Office of Financial Stability.

Section 132. The Committee includes a new provision requiring the OFR to provide public notice of not less than 90 days before issuing a rule, report, or regulation.

Section 133. The Committee includes a new provision that limits the fees available for obligation by the OFR to the amount provided in appropriations acts beginning in fiscal year 2020. The Committee believes that the activities of OFR should be subject to the annual review of Congress.

## TITLE II—EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

Funds appropriated in this title provide for the staff and operations of the White House, along with other organizations within the Executive Office of the President (EOP), which formulate and coordinate policy on behalf of the President, such as the National Security Council and the Office of Management and Budget. The title also includes funding for the Office of National Drug Control Policy and certain expenses of the Vice President.

### THE WHITE HOUSE

#### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$55,000,000
Budget request, fiscal year 2019 .....	55,000,000
Recommended in the bill .....	55,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

The White House Salaries and Expenses account supports staff and administrative services necessary for the direct support of the President.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$55,000,000 for the White House.

### EXECUTIVE RESIDENCE AT THE WHITE HOUSE

#### OPERATING EXPENSES

Appropriation, fiscal year 2018 .....	\$12,917,000
Budget request, fiscal year 2019 .....	13,081,000
Recommended in the bill .....	13,081,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+164,000
Budget request, fiscal year 2019 .....	---

These funds provide for the care, maintenance, staffing and operations of the Executive Residence, including official and ceremonial functions of the President.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$13,081,000 for the Operating Expenses of the Executive Residence. The bill continues the same restrictions on reimbursable expenses for use of the Executive Residence as were included in past years.

## WHITE HOUSE REPAIR AND RESTORATION

Appropriation, fiscal year 2018 .....	\$750,000
Budget request, fiscal year 2019 .....	750,000
Recommended in the bill .....	750,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

The White House repair and restoration account provides for the repair, alteration, and improvement of the Executive Residence at the White House.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$750,000 for White House Repair and Restoration.

## COUNCIL OF ECONOMIC ADVISERS

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$4,187,000
Budget request, fiscal year 2019 .....	4,187,000
Recommended in the bill .....	4,187,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

The Council of Economic Advisers analyzes the national economy and its various segments, advises the President on economic developments, recommends policies for economic growth and stability, appraises economic programs and policies of the Federal Government, and assists in preparation of the annual Economic Report of the President.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$4,187,000 for the Council of Economic Advisers.

## NATIONAL SECURITY COUNCIL AND HOMELAND SECURITY COUNCIL

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$11,800,000
Budget request, fiscal year 2019 .....	13,500,000
Recommended in the bill .....	13,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+1,200,000
Budget request, fiscal year 2019 .....	- 500,000

The National Security Council and the Homeland Security Council have been combined to form the National Security Staff which advises and assists the President in the integration of domestic, foreign, military, intelligence, and economic aspects of national security policy, and serves as the principal means of coordinating executive departments and agencies in the development and implementation of national security and homeland security policies.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$13,000,000 for the National Security Council and Homeland Security Council. The

Committee's recommendation does not include a separate representation and reception appropriation.

#### OFFICE OF ADMINISTRATION

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$100,000,000
Budget request, fiscal year 2019 .....	100,000,000
Recommended in the bill .....	100,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

The Office of Administration is responsible for providing administrative services to the Executive Office of the President. These services include financial, personnel, procurement, information technology, records management, and general office services.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$100,000,000 for the Office of Administration. Of the recommended amount, not to exceed \$12,800,000 is available until expended for modernization of the information technology infrastructure within the Executive Office of the President.

#### OFFICE OF MANAGEMENT AND BUDGET

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$101,000,000
Budget request, fiscal year 2019 .....	103,000,000
Recommended in the bill .....	103,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+2,000,000
Budget request, fiscal year 2019 .....	---

The Office of Management and Budget (OMB) assists the President in the discharge of budgetary, economic, management, and other executive responsibilities.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$103,000,000 for OMB. The recommendation also continues several long-standing provisos, not requested by the President, limiting certain OMB activities.

*Budget Submission.*—The recommendation provides sufficient funds for OMB to consult with Congressional Committees and provide an appropriate number of printed copies of the President's fiscal year 2019 budget request, including documents such as the Appendix, Historical Tables, and Analytical Perspectives.

*Personnel and Obligations Report.*—The Committee continues direction to OMB to provide the Committees on Appropriations of the House and the Senate with quarterly reports on personnel and obligations consisting of on-board staffing levels, estimated staffing levels by office for the remainder of the fiscal year, total obligations incurred to date, estimated total obligations for the remainder of the fiscal year, and a narrative description of current hiring initiatives.

*Unobligated Balances Report.*—OMB is directed to report to the Committees on Appropriations of the House and the Senate within 45 days of the end of each fiscal quarter on available balances at the start of the fiscal year, current year obligations, and resulting unobligated balances for each discretionary account within the Financial Services and General Government subcommittee’s jurisdiction.

*Social Cost of Carbon.*—The Committee continues direction the Office of Information and Regulatory Affairs (OIRA) to rely on instruction included in the Executive Order “Promoting Energy Independence and Economic Growth,” dated March 28, 2018, and ensure that any estimates developed by agencies that include monetizing the value of changes in greenhouse gas emissions resulting from regulations are consistent with Executive Order 12866 and OMB Circular A-4 of September 17, 2003. OIRA should not permit any regulations to be finalized using the Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866, Interagency Working Group on Social Cost of Carbon, United States Government, May 2013, revised August 2016; or the Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide, Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, August 2016.

*Intellectual Property.*—The Committee continues to strongly support the Office of the Intellectual Property Enforcement Coordinator (IPEC), and efforts to reduce online copyright infringement and promote meaningful protection of American intellectual property abroad. The Committee’s recommendation includes no less than three FTEs dedicated solely to the Office of IPEC from OMB.

*Improper Payments.*—The Committee encourages OMB to continue working with agencies across the Federal government to ensure processes are in place to eliminate payments to deceased persons. OMB is again directed to report to the Committees on Appropriations of the House and the Senate within 120 days of enactment of this Act on how it is reducing improper payments to deceased individuals, and what initiatives have proven to be most effective.

*Customer Service.*—The Committee continues to support efforts to improve customer service in accordance with Executive Order 13571—Streamlining Service Delivery and Improving Customer Service. The Committee continues direction to OMB to develop standards to improve customer service for all agencies, and incorporate the standards into the performance plans required under 31 U.S.C. 1115.

*Performance Measures.*—The Committee continues to urge OMB to work with agencies to ensure that agency funding requests in fiscal year 2019 are directly linked to agency performance plans, and highlight examples of where improved performance links to the budget in the fiscal year 2019 budget justifications.

*Online Budget Repository.*—The Committee encourages OMB to develop a central online repository where all Federal agency budgets and their respective justifications are publicly available in a consistent searchable, sortable, and machine readable format.

*Offsetting Collections Report.*—The Committee directs OMB to submit a report to the House and Senate Committees on Appropriations concurrent with the fiscal year 2019 budget submission detailing the offsetting collections derived from non-federal sources that are authorized by law and not subject to appropriations.

*USASpending.gov.*—The Committee encourages OMB to regularly assess the consistency and more importantly the accuracy of the information reported on USASpending.gov by federal agencies.

#### OFFICE OF NATIONAL DRUG CONTROL POLICY

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$18,400,000
Budget request, fiscal year 2019 .....	17,400,000
Recommended in the bill .....	17,400,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– 1,000,000
Budget request, fiscal year 2019 .....	– – –

The Office of National Drug Control Policy (ONDCP) was established by the Anti-Drug Abuse Act of 1988. As the President’s primary source of support for counter-drug policy development and program oversight, ONDCP is responsible for developing and updating a National Drug Control Strategy, developing a National Drug Control Budget, and coordinating and evaluating the implementation of Federal drug control activities. In addition, ONDCP manages several counter-drug programs which are discussed under the “Federal Drug Control Programs” heading below. These programs include the High Intensity Drug Trafficking Areas (HIDTA) program and Drug-Free Communities grants.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$17,400,000 for ONDCP Salaries and Expenses. The Committee expects ONDCP to focus resources on the counter-drug policy development, coordination, and evaluation functions which are the primary mission of the Office and the origins of its existence.

The Committee strongly supports the Office of National Drug Control Policy programs to reduce drug use and drug trafficking, and its unique position as the coordinator of Federal programs. The Committee expects ONDCP to focus resources on the counter-drug policy development, coordination, and evaluation functions, which are the primary mission of the Office and the origins of its existence. To the extent practicable, ONDCP should prioritize discretionary funds to aid States that have identified heroin, cocaine, methamphetamine, and opioid addiction as threats, and are developing community responses to combat those drugs that prioritize treatment and health services over criminal punishment. ONDCP is directed to report to the Committees on Appropriations of the House and the Senate within 90 days of enactment on how its programs are addressing these challenges.

The Committee commends the work that ONDCP has done to aid rural communities in combating the opioid epidemic. More work is still needed to help some of the hardest hit communities in both rural America and Appalachia. The Committee expects ONDCP to coordinate with small and rural law enforcement agencies and de-



velop strategies to improve the effectiveness of drug eradication efforts through shared intelligence, technology, and manpower despite limited resources.

The Committee notes the importance of the High Intensity Drug Trafficking Areas (HIDTA) and the Drug-Free Communities (DFC) grant programs in combating the nation's opioid epidemic. The Committee further notes that the Office of National Drug Control Policy (ONDCP) ensures the HIDTA and DFC programs are equitably managed across federal, state, and local agencies and with the necessary interagency flexibility to address emerging threats. The Committee directs ONDCP to retain operational control over the HIDTA and DFC programs to maintain the interagency benefits needed to address the opioid crisis.

The Committee strongly supports the ONDCP programs to reduce drug use and drug trafficking, and believes it is critical for ONDCP to remain a strong voice in the Executive Office and a visible presence nationally. The Committee emphasizes the importance of a comprehensive approach to combatting the epidemic and so directs ONDCP, in strategy development and resource allocation, to balance public health and public safety. In this balance, the Committee notes the importance of: identifying early intervention opportunities, improving access to preventative and prescriptive treatment, strengthening community and school-based education programs, and supporting long-term recovery.

#### FEDERAL DRUG CONTROL PROGRAMS

##### HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM

###### (INCLUDING TRANSFERS OF FUNDS)

Appropriation, fiscal year 2018 .....	\$280,000,000
Budget request, fiscal year 2019 .....	— —
Recommended in the bill .....	280,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— —
Budget request, fiscal year 2019 .....	+280,000,000

The High Intensity Drug Trafficking Areas (HIDTA) Program provides resources to Federal and State, local, and tribal agencies in designated HIDTAs to combat the production, transportation and distribution of illegal drugs; to seize assets derived from drug trafficking; to address violence in drug-plagued communities; and to disrupt the drug marketplace.

Currently, 28 HIDTAs operate in 49 States plus the District of Columbia, Puerto Rico, and the Virgin Islands. Each HIDTA is managed by an Executive Board comprised of equal numbers of Federal, State, local or tribal officials. Each HIDTA Executive Board is responsible for designing and implementing initiatives for the specific drug trafficking threats in its region. Intelligence and information sharing are key elements of all HIDTA programs.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$280,000,000 for the HIDTA Program. The Committee believes that the HIDTA program has demonstrated its effectiveness and can serve as an important tool in combating problems of drug trafficking and drug-related violence.

The Committee includes language requiring that existing HIDTAs receive funding at least equal to the fiscal year 2018 level unless the Director submits a justification for doing otherwise to the Committees on Appropriations, based on clearly articulated priorities and published performance measures.

The recommendation includes language directing ONDCP to notify the Committees on Appropriations of the initial allocation of HIDTA funds no later than 45 days after enactment, and to notify the Committees of the proposed use of funds no later than 90 days after enactment. The language directs the ONDCP Director to work in consultation with the HIDTA Directors in determining the uses of that discretionary funding.

Finally, the Committee recommendation specifies that up to \$2,700,000 may be used for auditing services and related activities.

#### OTHER FEDERAL DRUG CONTROL PROGRAMS

##### (INCLUDING TRANSFERS OF FUNDS)

Appropriation, fiscal year 2018 .....	\$117,093,000
Budget request, fiscal year 2019 .....	11,843,000
Recommended in the bill .....	118,327,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+1,234,000
Budget request, fiscal year 2019 .....	+106,484,000

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$118,327,000 for Other Federal Drug Control Programs. The recommended level for fiscal year 2019 is distributed among specific programs and activities as follows:

Drug-Free Communities .....	\$100,000,000
Drug court training and technical assistance .....	2,000,000
Model Drug Laws (Section 1105 of P.L. 109–469) .....	1,250,000
CARA Activities (Section 103 of P.L. 114–198) .....	3,000,000
Anti-Doping activities .....	9,500,000
World Anti-Doping Agency dues .....	2,577,000

Within the total for the Drug-Free Communities program, \$2,000,000 is for training authorized by Section 4 of P.L. 107–82.

##### UNANTICIPATED NEEDS

Appropriation, fiscal year 2018 .....	\$798,000
Budget request, fiscal year 2019 .....	1,000,000
Recommended in the bill .....	1,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+202,000
Budget request, fiscal year 2019 .....	— — —

The unanticipated needs account enable the President to meet unanticipated exigencies in support of the national interest, security, or defense.

##### COMMITTEE RECOMMENDATION

The Committee recommends \$1,000,000 for unanticipated needs in fiscal year 2019.

INFORMATION TECHNOLOGY OVERSIGHT AND REFORM  
(INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$19,000,000
Budget request, fiscal year 2019 .....	25,000,000
Recommended in the bill .....	15,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– 4,000,000
Budget request, fiscal year 2019 .....	– 10,000,000

These funds support efforts to make the Federal Government's investments in information technology (IT) more efficient, secure and effective.

COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$15,000,000 for information technology oversight activities.

*Information Technology Investment: Information Sharing.*—The Committee has provided funds through the Information Technology Oversight and Reform (ITOR) account and the new IT Modernization Fund, plus hundreds of millions of dollars across the many subcommittees, agencies, and accounts to improve the government's IT portfolio. Investments are made after numerous hearings, briefings, justifications, and work from auditors like inspector general offices and the Government Accountability Office are presented. Along with the authorizing committees of jurisdiction, the Committee takes the responsibility for improving IT investments while accounting for taxpayer dollars very seriously. It is surprising, then, when staff charged with administering the new IT Modernization Fund refuse to share findings and respond to queries from the very committees that made the Fund possible. The Committee directs OMB and GSA to work more collaboratively with the relevant committees of jurisdiction in order to better evaluate the needs of agencies and opportunities for improving IT across government.

SPECIAL ASSISTANCE TO THE PRESIDENT

SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$4,288,000
Budget request, fiscal year 2019 .....	4,288,000
Recommended in the bill .....	4,288,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

These funds support the executive functions of the Office of the Vice President.

COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$4,288,000 for the Office of the Vice President.

## OFFICIAL RESIDENCE OF THE VICE PRESIDENT

## OPERATING EXPENSES

## (INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$302,000
Budget request, fiscal year 2019 .....	302,000
Recommended in the bill .....	302,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

These funds support the care and operation of the Vice President's residence and specifically support equipment, furnishings, dining facilities, and services required to perform and discharge the Vice President's official duties, functions and obligations.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$302,000 for the Operating Expenses of the Vice President's residence.

ADMINISTRATIVE PROVISIONS—EXECUTIVE OFFICE OF THE  
PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

## (INCLUDING TRANSFER OF FUNDS)

Section 201. The Committee includes language permitting the transfer of not to exceed ten percent of funds between various accounts within the Executive Office of the President, with advance approval of the Committees on Appropriations. The amount of an appropriation shall not be increased by more than 50 percent.

Section 202. The Committee includes language requiring the Director of the Office of Management and Budget to include a statement of budgetary impact with any Executive Order or Presidential Memorandum issued or rescinded during fiscal year 2019 where the regulatory cost exceeds \$100,000,000.

## TITLE III—THE JUDICIARY

The funds recommended by the Committee in title III of the accompanying bill are for the operation and maintenance of United States Courts and include the salaries of judges, probation and pre-trial services officers, public defenders, court clerks, law clerks, and other supporting personnel, as well as security costs, information technology, and other expenses of the Federal Judiciary. The Committee recommends a total of \$7,266,021,000 in discretionary funding for the Judiciary in fiscal year 2019.

In addition to direct appropriations, the Judiciary collects various fees and has certain multiyear funding authorities. The Judiciary uses these non-appropriated funds to offset its direct appropriation requirements. Consistent with prior year practices and section 608 of this Act, the Committee expects the Judiciary to submit a financial plan, within 60 days of enactment of this Act, allocating all sources of available funds including appropriations, fee collections, and carryover balances. This financial plan will be the baseline for purposes of reprogramming notification.

Improving the physical security at buildings occupied by the Judiciary and U.S. Marshals Service (USMS) and ensuring the integ-

urity of the judicial process by providing secure facilities to conduct judicial business is a priority for the Committee. Under the General Services Administration's (GSA) Federal Buildings Fund appropriation, the Committee recommends \$11,500,000 for the Judiciary Capital Security program for alterations to improve physical security in buildings occupied by the Judiciary and USMS.

The Committee notes that a fair and efficient judicial system depends on ensuring citizens have reasonable access to the federal courts. The Committee encourages the Judiciary and the General Services Administration to collaborate with local stakeholders to facilitate continued community access to court services. The Committee further encourages the Judiciary, when developing its space requirements for a particular location, to continue to consider factors including the number of available judges, local facility conditions, security, rental and operating costs, the number and type of proceedings handled in that location, the location's distance to the next closest federal court facility, and the population served in that location.

#### SUPREME COURT OF THE UNITED STATES

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$82,028,000
Budget request, fiscal year 2019 .....	84,359,000
Recommended in the bill .....	84,703,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+2,675,000
Budget request, fiscal year 2019 .....	+344,000

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$84,703,000 for fiscal year 2019 for the salaries and expenses of personnel and the cost of operating the Supreme Court, excluding the care of the building and grounds. The Committee includes bill language making \$1,500,000 available until expended for the purpose of making information technology investments. The Committee directs the Court to include an annual report with its budget justification materials, showing information technology carryover balances and describing expenditures made in the previous fiscal year and planned expenditures in the budget year.

##### CARE OF THE BUILDING AND GROUNDS

Appropriation, fiscal year 2018 .....	\$16,153,000
Budget request, fiscal year 2019 .....	15,999,000
Recommended in the bill .....	15,999,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	- 154,000
Budget request, fiscal year 2019 .....	- - -

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$15,999,000 for fiscal year 2019, to remain available until expended. The Architect of the Capitol has responsibility for these functions and supervises the use of this appropriation.

## UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$31,291,000
Budget request, fiscal year 2019 .....	31,274,000
Recommended in the bill .....	32,016,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+725,000
Budget request, fiscal year 2019 .....	+742,000

## COMMITTEE RECOMMENDATION

The Court of Appeals for the Federal Circuit has exclusive national jurisdiction over a large number of diverse subject areas, including government contracts, patents, trademarks, Federal personnel, and veterans' benefits. The Committee recommends an appropriation of \$32,016,000 for fiscal year 2019.

## UNITED STATES COURT OF INTERNATIONAL TRADE

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$18,889,000
Budget request, fiscal year 2019 .....	19,070,000
Recommended in the bill .....	19,450,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+561,000
Budget request, fiscal year 2019 .....	+380,000

## COMMITTEE RECOMMENDATION

The Court of International Trade has exclusive nationwide jurisdiction of civil actions against the United States and certain civil actions brought by the United States, arising out of import transactions and administration and enforcement of the Federal customs and international trade laws. The Committee recommends an appropriation of \$19,450,000 for fiscal year 2019.

## COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$5,099,061,000
Budget request, fiscal year 2019 .....	5,132,543,000
Recommended in the bill .....	5,167,961,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+68,900,000
Budget request, fiscal year 2019 .....	+35,418,000

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$5,167,961,000 for the operations of the regional courts of appeals, district courts, bankruptcy courts, the Court of Federal Claims, and probation and pretrial services offices.

The Committee recommends a reimbursement of \$8,475,000 for fiscal year 2019 from the Vaccine Injury Compensation Trust Fund to cover expenses of the United States Court of Federal Claims associated with processing cases under the National Childhood Vaccine Injury Act of 1986.

## DEFENDER SERVICES

Appropriation, fiscal year 2018 .....	\$1,078,713,000
Budget request, fiscal year 2019 .....	1,141,489,000
Recommended in the bill .....	1,142,427,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+63,714,000
Budget request, fiscal year 2019 .....	+938,000

## COMMITTEE RECOMMENDATION

This account provides funding for the operation of the Federal Public Defender and Community Defender organizations and for compensation and reimbursement of expenses of panel attorneys appointed pursuant to the Criminal Justice Act for representation in criminal cases. The Committee recommends an appropriation of \$1,142,427,000 for fiscal year 2019.

## FEES OF JURORS AND COMMISSIONERS

Appropriation, fiscal year 2018 .....	\$50,944,000
Budget request, fiscal year 2019 .....	51,233,000
Recommended in the bill .....	49,750,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	-1,194,000
Budget request, fiscal year 2019 .....	-1,483,000

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$49,750,000 for payments to jurors and land commissioners for fiscal year 2019.

## COURT SECURITY

## (INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$586,999,000
Budget request, fiscal year 2019 .....	602,309,000
Recommended in the bill .....	604,460,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+17,461,000
Budget request, fiscal year 2019 .....	+2,151,000

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$604,460,000 for Court Security in fiscal year 2019 to provide for necessary expenses of security and protective services in courtrooms and adjacent areas. The recommendation will provide for the highest priority security needs identified by the courts and the U.S. Marshals Service.

## ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$90,423,000
Budget request, fiscal year 2019 .....	89,867,000
Recommended in the bill .....	92,413,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+1,990,000
Budget request, fiscal year 2019 .....	+2,546,000

## COMMITTEE RECOMMENDATION

The Administrative Office of the United States Courts (AO) provides administrative and management support to the United States

Courts, including the probation and bankruptcy systems. It also supports the Judicial Conference of the United States in determining Federal Judiciary policies, in developing methods to assist the courts to conduct business efficiently and economically, and in enhancing the use of information technology in the courts. The Committee recommends an appropriation of \$92,413,000 for the AO for fiscal year 2019.

#### FEDERAL JUDICIAL CENTER

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$29,265,000
Budget request, fiscal year 2019 .....	29,064,000
Recommended in the bill .....	29,819,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+554,000
Budget request, fiscal year 2019 .....	+755,000

##### COMMITTEE RECOMMENDATION

The Federal Judicial Center (FJC) improves the management of Federal Judicial dockets and court administration through education for judges and staff, and research, evaluation, and planning assistance for the courts and the Judicial Conference. The Committee recommends an appropriation of \$29,819,000 for the FJC for fiscal year 2019.

#### UNITED STATES SENTENCING COMMISSION

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$18,699,000
Budget request, fiscal year 2019 .....	18,548,000
Recommended in the bill .....	18,548,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– 151,000
Budget request, fiscal year 2019 .....	– – –

##### COMMITTEE RECOMMENDATION

The purpose of the U.S. Sentencing Commission is to establish, review, and revise sentencing guidelines, policies, and practices for the Federal criminal justice system. The Commission is also required to monitor the operation of the guidelines and to identify and report necessary changes to the Congress. The Committee recommends \$18,548,000 for the Commission for fiscal year 2019.

#### ADMINISTRATIVE PROVISIONS—THE JUDICIARY

##### (INCLUDING TRANSFER OF FUNDS)

Section 301. The Committee continues language to permit funds for salaries and expenses to be available for employment of experts and consultant services as authorized by 5 U.S.C. 3109.

Section 302. The Committee continues language that permits up to five percent of any appropriation made available for fiscal year 2019 to be transferred between Judiciary appropriations provided that no appropriation shall be decreased by more than five percent or increased by more than ten percent by any such transfer except in certain circumstances. In addition, the language provides that any such transfer shall be treated as a reprogramming of funds



under sections 604 and 608 of the accompanying bill and shall not be available for obligation or expenditure except in compliance with the procedures set forth in those sections.

Section 303. The Committee continues language authorizing not to exceed \$11,000 to be used for official reception and representation expenses incurred by the Judicial Conference of the United States.

Section 304. The Committee continues language through fiscal year 2019 regarding the delegation of authority to the Judiciary for contracts for repairs of less than \$100,000.

Section 305. The Committee continues language to authorize a court security pilot program.

Section 306. The Committee includes language requested by the Judicial Conference of the United States to extend temporary judgeships in the districts of Arizona, California Central, Florida Southern, Kansas, Missouri Eastern, New Mexico, North Carolina Western, and Texas Eastern.

## TITLE IV—DISTRICT OF COLUMBIA

### FEDERAL FUNDS

#### FEDERAL PAYMENT FOR RESIDENT TUITION SUPPORT

Appropriation, fiscal year 2018 .....	\$40,000,000
Budget request, fiscal year 2019 .....	— — —
Recommended in the bill .....	30,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— 10,000,000
Budget request, fiscal year 2019 .....	+30,000,000

The Resident Tuition Support program, also known as the D.C. Tuition Assistance Grant (DCTAG) program, provides up to \$10,000 annually for undergraduate District students to attend eligible four-year public universities and colleges nationwide at in-state tuition rates. Grants of up to \$2,500 per year are available for students to attend private universities and colleges in the D.C. metropolitan area, private Historically Black Colleges and Universities nationwide, and public two-year community colleges nationwide.

#### COMMITTEE RECOMMENDATION

The Committee recommends a Federal payment of \$30,000,000 for the resident tuition support program. The District of Columbia can contribute local funds to this program and is authorized to prioritize applications based on income and need if there is demand for the program beyond the available level of Federal funds.

#### FEDERAL PAYMENT FOR EMERGENCY PLANNING AND SECURITY COSTS IN THE DISTRICT OF COLUMBIA

Appropriation, fiscal year 2018 .....	\$13,000,000
Budget request, fiscal year 2019 .....	12,000,000
Recommended in the bill .....	13,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— — —
Budget request, fiscal year 2019 .....	+1,000,000

As the seat of the national government, the District of Columbia has a unique and significant responsibility for protecting the prop-

erty and personnel of the Federal Government. The Federal Payment for Emergency Planning and Security Costs is provided to help address the impact of the Federal presence on public safety in the District of Columbia.

#### COMMITTEE RECOMMENDATION

The Committee recommends a Federal payment of \$13,000,000 for emergency planning and security costs.

#### FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA COURTS

Appropriation, fiscal year 2018 .....	\$265,400,000
Budget request, fiscal year 2019 .....	244,939,000
Recommended in the bill .....	288,280,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+22,880,000
Budget request, fiscal year 2019 .....	+43,341,000

Under the National Capital Revitalization and Self-Government Improvement Act of 1997, the Federal Government is required to finance the District of Columbia Courts. This Federal payment to the District of Columbia Courts funds the operations of the District of Columbia Court of Appeals, Superior Court, the Court System, and the Capital Improvement Program.

#### COMMITTEE RECOMMENDATION

The Committee recommends a Federal payment of \$288,280,000 for operation of the District of Columbia Courts. The District of Columbia Courts submitted a budget independent of the Administration and requested a total of \$349,693,000 for fiscal year 2019.

The amount recommended by the Committee includes \$14,670,000 for the Court of Appeals; \$122,770,000 for the Superior Court; \$77,016,000 for the Court System; and \$73,824,000 for capital improvements to courthouse facilities. Of the funds for capital improvements, the Committee's recommendation includes funds to complete the Moultrie addition and move the various court offices into the completed building and out of leased space as proposed in the Courts' budget request.

#### FEDERAL PAYMENT FOR DEFENDER SERVICES IN DISTRICT OF COLUMBIA COURTS

##### (INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$49,890,000
Budget request, fiscal year 2019 .....	46,005,000
Recommended in the bill .....	49,890,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— —
Budget request, fiscal year 2019 .....	+3,885,000

The District of Columbia Courts appoint and compensate attorneys to represent persons who are financially unable to obtain such representation.

#### COMMITTEE RECOMMENDATION

The Committee recommends \$49,890,000 for Defender Services in the District of Columbia Courts.

FEDERAL PAYMENT TO THE COURT SERVICES AND OFFENDER  
SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Appropriation, fiscal year 2018 .....	\$244,298,000
Budget request, fiscal year 2019 .....	256,724,000
Recommended in the bill .....	256,724,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+12,426,000
Budget request, fiscal year 2019 .....	--

The Court Services and Offender Supervision Agency (CSOSA) for the District of Columbia is an independent Federal agency created by the National Capital Revitalization and Self-Government Improvement Act of 1997. CSOSA acquired the operational responsibilities for the former District agencies in charge of probation and parole, and houses the Pretrial Services Agency (PSA) for the District of Columbia within its framework.

COMMITTEE RECOMMENDATION

The Committee recommends a Federal payment of \$256,724,000 for CSOSA. Of the amounts provided, \$183,166,000 is for Community Supervision and Sex Offender Registration and \$73,558,000 is for pretrial services. In addition to the regular baseline activities, the Committee's recommendation includes a total of \$13,223,000 to remain available until September 30, 2021, for the costs associated with replacement leases and relocation of the CSOSA and pretrial services offices.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA PUBLIC DEFENDER  
SERVICE

Appropriation, fiscal year 2018 .....	\$41,829,000
Budget request, fiscal year 2019 .....	45,858,000
Recommended in the bill .....	45,858,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+4,029,000
Budget request, fiscal year 2019 .....	--

The Public Defender Service (PDS) for the District of Columbia is an independent organization authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997, whose purpose is to provide legal representation services within the District of Columbia justice system.

COMMITTEE RECOMMENDATION

The Committee recommends a Federal payment of \$45,858,000 for public defender services for the District of Columbia. In addition to the baseline activities, the Committee's recommendation includes \$4,471,000 to remain available until September 30, 2021, for the costs associated with replacement leases and relocation of the PDS offices.

FEDERAL PAYMENT TO THE CRIMINAL JUSTICE COORDINATING  
COUNCIL

Appropriation, fiscal year 2018 .....	\$2,000,000
Budget request, fiscal year 2019 .....	1,900,000
Recommended in the bill .....	2,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	--
Budget request, fiscal year 2019 .....	+100,000

The Criminal Justice Coordinating Council (CJCC) provides a forum for District of Columbia and Federal law enforcement to identify criminal justice issues and solutions, and improve the coordination of their efforts. In addition, the CJCC developed and maintains the Justice Integrated Information System which provides for the seamless sharing of information with Federal and local law enforcement.

#### COMMITTEE RECOMMENDATION

The Committee recommends a Federal payment of \$2,000,000 to the Criminal Justice Coordinating Council.

#### FEDERAL PAYMENT FOR JUDICIAL COMMISSIONS

Appropriation, fiscal year 2018 .....	\$565,000
Budget request, fiscal year 2019 .....	565,000
Recommended in the bill .....	565,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

This appropriation provides funding for the two judicial commissions. The first is the Judicial Nomination Commission (JNC), which recommends a panel of three candidates to the President for each judicial vacancy in the District of Columbia Court of Appeals and Superior Court. From the panel selected by the JNC, the President nominates a person for each vacancy and submits his or her name for confirmation to the Senate. The second commission is the Commission on Judicial Disabilities and Tenure (CJDT), which has jurisdiction over all judges of the Court of Appeals and Superior Court to determine whether a judge's conduct warrants disciplinary action and whether involuntary retirement of a judge for health reasons is warranted. In addition, the CJDT conducts evaluations of judges seeking reappointment and judges who retire and wish to continue service as a senior judge.

#### COMMITTEE RECOMMENDATION

The Committee recommends a Federal payment of \$295,000 for the Commission on Judicial Disabilities and Tenure, and \$270,000 for the Judicial Nomination Commission.

#### FEDERAL PAYMENT FOR SCHOOL IMPROVEMENT

Appropriation, fiscal year 2018 .....	\$45,000,000
Budget request, fiscal year 2019 .....	45,000,000
Recommended in the bill .....	45,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

The Scholarships for Opportunity and Results (SOAR) Act, as reauthorized in the Financial Services and General Government Appropriations Act, 2018, authorizes funds to be evenly divided between District of Columbia Public Schools, Public Charter Schools and Opportunity Scholarships.

#### COMMITTEE RECOMMENDATION

The Committee recommends a Federal payment of \$45,000,000 for school improvement. Based on the statutory funding formula,

\$15,000,000 is provided for District of Columbia Public Schools, \$15,000,000 is provided for public charter schools, and \$15,000,000 is provided for opportunity scholarships.

#### FEDERAL PAYMENT FOR THE DISTRICT OF COLUMBIA NATIONAL GUARD

Appropriation, fiscal year 2018 .....	\$435,000
Budget request, fiscal year 2019 .....	435,000
Recommended in the bill .....	435,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

The Major General David F. Wherley, Jr. District of Columbia National Guard Retention and College Access Program pays for the costs of a tuition assistance program for guard members.

#### COMMITTEE RECOMMENDATION

The Committee recommends a Federal payment of \$435,000 for the Major General David F. Wherley, Jr. District of Columbia National Guard Retention and College Access Program. The Committee acknowledges the unique role of the D.C. National Guard in addressing emergencies that may occur as a result of the presence of the Federal Government.

#### FEDERAL PAYMENT FOR TESTING AND TREATMENT OF HIV/AIDS

Appropriation, fiscal year 2018 .....	\$5,000,000
Budget request, fiscal year 2019 .....	5,000,000
Recommended in the bill .....	5,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

Currently, 2 percent of the population of the District of Columbia has been diagnosed with HIV/AIDS. This percentage surpasses the generally accepted definition of an epidemic, which is 1 percent of the population. Between 2007 and 2015, the number of new HIV infections has dropped by 72 percent.

#### COMMITTEE RECOMMENDATION

The Committee recommendation includes \$5,000,000 for a Federal payment for testing, education, and treatment of HIV/AIDS.

#### DISTRICT OF COLUMBIA FUNDS

The Committee continues to appropriate local funds to the District of Columbia in accordance with and required by Article I, Section 8, clause 17 and Article I, Section 9, clause 7 of the Constitution. The bill provides local funds for the operation of the District of Columbia as approved by the District of Columbia Council and the Mayor.

The Committee includes language that provides the District with the authority to spend their local funds in the following fiscal year in the event of an absence of Federal appropriations. This authority is continued in section 816 of this Act.

## TITLE V—INDEPENDENT AGENCIES

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$3,100,000
Budget request, fiscal year 2019 .....	3,100,000
Recommended in the bill .....	3,100,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— — —
Budget request, fiscal year 2019 .....	— — —

The Administrative Conference of the United States (ACUS) is an independent agency that studies Federal administrative procedures and processes to recommend improvements to the President, Congress and other agencies.

## COMMITTEE RECOMMENDATION

The Committee recommends \$3,100,000 for ACUS.

## BUREAU OF CONSUMER FINANCIAL PROTECTION

## SALARIES AND EXPENSES

The Bureau of Consumer Financial Protection (BCFP) was established under title X of Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) (P.L. 111–203) as a bureau under the Federal Reserve System. The Act consolidated authorities previously shared by seven Federal agencies under Federal consumer protection laws in the BCFP and provided the Bureau with additional authorities to conduct rulemaking, supervision, and enforcement with respect to Federal consumer financial laws. Funding required to support the Bureau’s operations are obtained from transfers from the Federal Reserve System.

## COMMITTEE RECOMMENDATION

The Committee’s recommendation limits transfers to the Bureau from the Federal Reserve to no more than \$485,000,000 in fiscal year 2019, an amount consistent with the budget request. Language is included in title IX which amends the Dodd-Frank Wall Street Reform and Consumer Protection Act to bring the expenses and operations of the Bureau under the jurisdiction of the Committees on Appropriations of the House and the Senate, and also sets the limitation for the fiscal year.

*Small Institutions Exemption.*—The Committee directs the Bureau to report to the Committees on Appropriations of the House and the Senate, the Committee on Financial Services of the House, and the Committee on Banking, Housing, and Urban Affairs of the Senate, within 120 days of enactment of this Act, on how the Bureau has used its authority under Section 1022 in rulemakings to exempt certain classes, any plans to revisit previous rulemakings to more carefully tailor or grant exemptions to rule that have been especially burdensome, and the process for the Bureau to consider exemptions to community institutions in future rulemakings.

*Small Business Data Gathering.*—The Committee remains concerned that the Bureau’s data-collection and reporting mandates, as described under section 1071, Public Law 11–203, are widely ex-

pected to compound existing regulatory and paperwork burdens to small businesses that are often sole proprietors. The Bureau's discretionary authority to demand additional data is unlimited. For example, the Bureau rule for home mortgage disclosures has expanded data requirement for lenders to provide at least 110 different data points they need to collect on every mortgage loan. The Committee encourages the Bureau to utilize cost benefit analysis and stakeholder public comment periods in developing additional any proposals for extensive data collection and reporting requirements. In addition, any regulations or guidance should include an analysis of the impact of any such regulation or guidance particularly on small businesses and other stakeholders including but not necessarily limited to (a) the availability of commercial loans; (b) the affordability of commercial loans; (c) the estimated costs to commercial loan applicants; (d) the estimated compliance costs of collection and reporting; and (e) the possibility of exposure of personally identifiable financial information.

#### CONSUMER PRODUCT SAFETY COMMISSION

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$126,000,000
Budget request, fiscal year 2019 .....	123,450,000
Recommended in the bill .....	127,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+1,000,000
Budget request, fiscal year 2019 .....	+3,550,000

The Consumer Product Safety Act established the Consumer Product Safety Commission (CPSC), an independent Federal regulatory agency, to reduce the risk of injury associated with consumer products.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$127,000,000 for the CPSC for fiscal year 2019.

Within the amount provided under this heading, \$1,300,000 is for the Virginia Graeme Baker Pool and Spa Safety Act grant program. The Committee commends the CPSC for continuing to provide resources for the national and grassroots "Pool Safely" campaign, a safety information and education program designed to reduce child drownings and near drowning injuries and maintain a zero fatality rate for drain entrapments. This multifaceted initiative includes consumer and industry education efforts, press events, partnerships, outreach, and advertising. The committee expects the CPSC to maintain the fiscal year 2018 levels for the "Pool Safely" campaign.

*Voluntary Recall.*—The Committee remains concerned about proposed changes to the voluntary recall system that would serve to negatively impact small businesses. Despite overwhelming opposition, the Commission has failed to withdraw its proposed rule on voluntary recalls. The Committee opposes making unnecessary changes to a recall system that has worked well over the past 40 years, owing to a successful partnership between businesses and the Commission. To that end, the Committee strongly encourages the Commission to withdraw the proposed rule.

*Public Disclosures of Information.*—Section 6(b) of the Consumer Product Safety Act (CPSA) requires CPSC to take reasonable steps to ensure that any disclosure of information relating to a consumer product safety incident is accurate and fair. The Committee remains concerned that the Commission has not withdrawn a proposed rule on section 6(b) that threatens to undermine a successful partnership based on openness and trust between industry and the Commission. The Committee cautions the Commission about making changes to a process that has succeeded in both protecting the consumer against harm and protecting industry against inaccurate disclosures of information before an investigation has been completed. Consequently, the Committee strongly encourages the Commission to withdraw the proposed rule.

ADMINISTRATIVE PROVISION—CONSUMER PRODUCT SAFETY  
COMMISSION

Section 501. The Committee continues language prohibiting funds to finalize, implement, or enforce the proposed rule on recreational off-highway vehicles until a study is completed by the National Academy of Sciences.

ELECTION ASSISTANCE COMMISSION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$10,100,000
Budget request, fiscal year 2019 .....	9,200,000
Recommended in the bill .....	10,100,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— — —
Budget request, fiscal year 2019 .....	+900,000

The Election Assistance Commission (EAC) was established by the Help America Vote Act of 2002 (HAVA) and is charged with implementing provisions of that Act relating to the reform of Federal election administration.

COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$10,100,000 for the salaries and expenses of the EAC, of which \$1,500,000 shall be transferred to the National Institute of Standards and Technology for election reform activities authorized under the Help America Vote Act of 2002.

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$322,035,000
Budget request, fiscal year 2019 .....	333,118,000
Recommended in the bill .....	335,118,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+13,083,000
Budget request, fiscal year 2019 .....	+2,000,000

The mission of the Federal Communications Commission (FCC) is to implement the Communications Act of 1934 and assure the



availability of high quality communications services for all Americans.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$335,118,000 for the salaries and expenses of the FCC, all of which is to be derived from offsetting collections. The Committee also includes a cap of \$130,284,000 for the administration of spectrum auctions.

*Telephone Consumer Protection Act (TCPA).*—Recently, the U.S. Court of Appeals for the D.C. Circuit found that aspects of the FCC’s most recent interpretation of the Telephone Consumer Protection Act (TCPA) in 2015 were arbitrary and capricious. The Committee urges the FCC to clarify the aspects of its 2015 interpretation that were struck down by the court, including reviewing the definition of an automatic dialer and how businesses should treat reassigned numbers.

*Preventing Waste.*—The Committee supports the Lifeline program’s mission of making basic communications services affordable to low-income Americans, and shares the Commission’s objective of minimizing waste, fraud, and abuse in the program. The Committee urges the Commission to ensure that the measures already adopted to combat waste, fraud, and abuse, such as the National Verifier, are swiftly and faithfully implemented.

*Unmanned Aircraft Systems (UAS) Spectrum Report.*—The Committee is aware that the FCC’s Technological Advisory Council (TAC) currently is studying “drone” or UAS issues, including control, monitoring, and payload delivery, and that the National Telecommunications and Information Administration is liaising with the FCC on this process. The TAC is actively reviewing the various spectrum needs for drones (command and control, payload, identification, collision avoidance), considering both the need to make efficient use of the spectrum and the need to avoid causing harmful interference to systems on the ground. As part of this process, the Committee urges the TAC to review: (1) whether small unmanned aircraft systems operations might be permitted to operate on spectrum designated for aviation use, on an unlicensed, shared, or exclusive basis, for operations within the UTM system or outside of such a system; (2) the existence of potential barriers to the use of such spectrum; and (3) other potential spectrum options if spectrum currently designated for aviation operations is unusable for this purpose. Within 90 days of the TAC’s report or submission to FCC’s staff, the Commission shall report to the Committee on the results and recommendations of the TAC.

*Broadcaster Relocation.*—The fiscal year 2018 Omnibus (P.L. 115–141) provided \$1 billion over two years to the TV Broadcaster Relocation Fund to reimburse the service and equipment costs of channel relocation incurred by the broadcast industry, as well as providing financial assistance to FM stations, TV translators, and Low Power stations. The Committee is aware of concerns about the length of time and funds available to broadcasters to repack stations and the Committee intends to monitor this issue closely. Both broadcasters and entities who purchased spectrum participated in good faith to make the incentive auction successful. The Committee supported the Commission’s administration of the incentive auction

and expects the FCC to take into careful consideration any participating entity's concerns.

*Net Neutrality/Open Internet.*—The Committee supports the recent efforts by the FCC to scale back previous actions taken by the Commission to regulate the internet. Imposing heavy-handed economic regulation disincentivizes growth, particularly in areas of the country that need infrastructure investment the most. Government agencies should not get in the way of U.S. innovation, investment, and expansion and the Committee strongly supports the Commission's efforts to support broadband expansion and consumer choice.

*USF High Cost Program.*—The committee appreciates the ongoing commitment of the FCC to its multi-year initiative to modernize and target the focus of the Universal Service Fund (USF), and particularly its High Cost program. Nevertheless, the outcome of these efforts can be troubling particularly with regard to stand-alone broadband services and may conflict with the statutory mandate of providing specific, predictable, and sufficient support to ensure universal consumer access to reasonably comparable services at reasonably comparable rates. The committee strongly supports a comprehensive assessment of what is needed to realistically right size the High Cost USF program budget to allow it to fulfill its statutory mission of universal service, and encourages the agency to consider applying uniform and consistent inflationary growth mechanisms to enable each USF program to carry out its respective objectives.

*Broadband Access.*—The Committee strongly encourages the FCC to continue to work with the Universal Service Administrative Company (USAC) to allocate Universal Service Funds (USF) for broadband expansion in rural and economically disadvantaged areas in order to maximize the use of USF funds. The Committee believes the deployment of broadband in rural and economically disadvantaged areas is a driver of economic development, jobs, and new education opportunities and expects the Commission to prioritize these efforts.

*Territories and Tribal Lands.*—The Committee is concerned about the disparity in access to broadband between the territories, tribal lands, and the 50 states. The Committee encourages the Commission to implement policies that increase broadband access and adoption in these areas.

*Transmissions of Local Television Programming.*—The bipartisan Satellite Television Extension and Localism Reauthorization (STELAR) Act of 2014 was enacted to promote consumers' access to television broadcast station signals that originate in their state of residence, with an emphasis on localism and the cultural and economic importance of local programming. Congress's intent was to ensure Americans have access to local broadcast and media content. The Committee notes that many broadcast stations do not neatly conform to Nielsen-measured designated market area boundaries, preventing many satellite television viewers from accessing local news, politics, sports, and emergency programming. The Committee notes that despite the reforms made in STELAR, many communities continue to struggle with market modification petitions. The Committee is particularly concerned with the lack of clarity regarding the technical and economic feasibility require-

ment. In reviewing this requirement, the FCC should provide a full analysis to ensure decisions on market modification are comprehensively reviewed and STELAR's intent to promote localism is retained. The Committee therefore directs the FCC to adhere to statutory requirements and congressional intent when taking administrative action under STELAR.

*Hurricane Response.*—The Committee is aware that the FCC utilized significant agency resources to resolve communications issues caused by Hurricanes Irma and Maria in Puerto Rico and the U.S. Virgin Islands. The Commission created an intra-agency task force, the Chairman of the FCC made two trips to Puerto Rico to survey the response, the FCC deployed staff on the ground in stricken areas, accelerated USF funding, and expedited approval for experimental licenses. The Committee supports the FCC's efforts to deploy scarce agency resources and focus on the problems inherent in restoring and making more resilient telecommunications services in affected areas. The FCC is directed to submit a report to Congress not later than 90 days after enactment of this Act providing the status of these efforts to re-establish communications capabilities in Puerto Rico and the U.S. Virgin Islands in the aftermath of these two storms. The report must include the number of FCC resources and staff deployed to the territories immediately after Hurricane Maria; the total amount of agency funds used by month to restore telecommunications services in these areas; the level of coordination with other federal agencies and local authorities to restore telecommunications capabilities; the level of outreach to local stakeholders and telecommunications providers; impediments that prevented a rapid restoration of telecommunications services; and lessons learned that will help prepare for another disaster of such magnitude.

#### ADMINISTRATIVE PROVISION—FEDERAL COMMUNICATIONS COMMISSION

Section 510. The Committee continues language prohibiting the FCC from changing rules governing the Universal Service Fund regarding single connection or primary line restrictions.

#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### OFFICE OF THE INSPECTOR GENERAL

Appropriation, fiscal year 2018 .....	\$39,136,000
Budget request, fiscal year 2019 .....	42,982,000
Recommended in the bill .....	42,982,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+3,846,000
Budget request, fiscal year 2019 .....	— — —

Funding for the Office of the Inspector General (OIG) at the Federal Deposit Insurance Corporation (FDIC) is provided pursuant to 31 U.S.C. 1105(a)(25), which requires a separate appropriation for each Office of Inspector General established under section 11(2) of the Inspector General Act of 1978.

## COMMITTEE RECOMMENDATION

The Committee recommends \$42,982,000 from the Deposit Insurance Fund and the Federal Savings and Loan Insurance Corporation (FSLIC) Resolution Fund to finance the OIG.

## FEDERAL ELECTION COMMISSION

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$71,250,000
Budget request, fiscal year 2019 .....	71,250,000
Recommended in the bill .....	71,250,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

The Federal Election Commission (FEC) administers the disclosure of campaign finance information, enforces limitations on contributions and expenditures, and performs other tasks related to Federal elections.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$71,250,000 for the salaries and expenses of the FEC.

Engagement in the political process is one of the hallmarks of our democracy. Americans are increasingly turning to social media platforms, such as Facebook, Instagram, and Twitter to engage in the political process. Indeed, spending on digital political advertising reached a record \$1.4 billion in the 2016 election cycle. Yet, our campaign finance laws do not require any meaningful transparency about who is behind political advertisements run on digital platforms. Therefore, the Committee directs the Commission to report, within 90 days, on how the Commission plans to address the disparity in disclosure requirements for broadcast advertisements and online political advertisements.

## FEDERAL LABOR RELATIONS AUTHORITY

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$26,200,000
Budget request, fiscal year 2019 .....	26,200,000
Recommended in the bill .....	26,200,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

Established by title VII of the Civil Service Reform Act of 1978, the Federal Labor Relations Authority (FLRA) serves as a neutral arbiter in the labor activities of non-postal Federal employees, Departments and agencies, and Federal unions on matters outlined in the Act, including collective bargaining and the settlement of disputes. Establishment of the FLRA gives full recognition to the role of the Federal Government as an employer. Under the Foreign Service Act of 1980, the FLRA also addresses similar issues affecting Foreign Service personnel by providing staff support for the Foreign Service Impasse Disputes Panel and the Foreign Service Labor Relations Board.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$26,200,000 for the FLRA for fiscal year 2019.

## FEDERAL TRADE COMMISSION

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$306,317,000
Budget request, fiscal year 2019 .....	309,700,000
Recommended in the bill .....	311,700,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+5,383,000
Budget request, fiscal year 2019 .....	+2,000,000

The mission of the Federal Trade Commission (FTC) is to enforce a variety of Federal antitrust and consumer protection laws. Appropriations for both the Antitrust Division of the Department of Justice and the Commission are partially financed by Hart-Scott-Rodino Act pre-merger filing fees. The Commission's appropriation is also partially offset by Do-Not-Call registry fees.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$311,700,000 for the salaries and expenses of the FTC. The Congressional Budget Office estimates \$136,000,000 of collections from Hart-Scott-Rodino premerger filing fees and \$17,000,000 of collections from Do-Not-Call list fees which partially offset the appropriation requirement for this account.

*Attorney and Aggregator Advertisements.*—The FTC is encouraged to collaborate with the U.S. Food and Drug Administration as appropriate when assessing whether attorney and aggregator advertisements directly or indirectly misrepresent the safety of prescription drugs or medical devices.

*Content Theft.*—The online theft of creative content poses significant threats to both content creators and American consumers. Piracy directly harms not only the 5.5 million American workers employed by the copyright industries, but it also presents a number of significant risks to American consumers. A recent report found that a full third of the 589 most popular content-theft websites harbored malware, computer viruses, and related cyber-security threats. The Committee directs the FTC to conduct consumer education to raise consumer awareness about how content-theft sites serve as bait to infect devices with malicious software enabling identity theft.

## GENERAL SERVICES ADMINISTRATION

The Committee continues several reporting requirements for the General Services Administration (GSA) for fiscal year 2019.

*Takings and Exchanges.*—Using existing statutory authorities, GSA has been working to dispose of properties that no longer meet the needs of Federal agencies in exchange for assets of like value. Some of these exchanges are very complex in nature and involve multi-year, multi-party, and multi-billion dollar contracts. In addition, GSA also has the statutory authority to take properties. The Committee believes in some instances employing such authorities

can result in savings to the taxpayer when appropriately executed and wants to be kept informed of these activities. In order to provide increased transparency for the use and planned use of these authorities, the Administrator is directed to report to the Committees on Appropriations of the House and the Senate not later than 30 days after the end of each quarter on the use of these authorities. The report shall include a description of all takings and exchange actions that occurred or were considered during the most recently completed quarter of the fiscal year, including the costs, benefits, and risks for each action. The report shall also include the planned or considered use of takings and exchange authorities during the remainder of the fiscal year, including the costs, benefits, and risks of each action.

*Spending Report.*—Within 50 days after the end of each quarter, GSA shall submit spending reports to the Committees on Appropriations of the House and the Senate. The reports shall include actual obligations incurred and estimated obligations for the remainder of the fiscal year for each appropriation in the Federal Buildings Fund and regular discretionary appropriations. The reports shall include obligations by object class, program, project and activity.

*State of the Portfolio.*—Not later than 45 days after the date of enactment of this Act, the Administrator shall submit to the Committees on Appropriations of the House and the Senate a report on the state of the Public Buildings Service's real estate portfolio for fiscal year 2018. The content included in the report shall be comparable to the tabular information provided in past State of the Portfolio reports, including, but not limited to, the number of leases; the number of buildings; amount of square feet, revenue, expenses by type, and vacant space; top customers by square feet and annual rent; completed new construction, completed major repairs and alterations, and disposals, in total and by region where appropriate.

*Land Ports of Entry State of the Portfolio.*—Within 90 days of the date of enactment of this Act, GSA is directed to provide the Committees on Appropriations of the House and the Senate a report on the state of the land ports of entry portfolio. The content of this report shall include, but shall not be limited to, a prioritized list of new construction and major repairs and alterations projects.

*Rental Rates.*—The Committee expects GSA to provide workspace for its customers at commercially-comparable rental rates and at a superior value to the taxpayer. The Committee directs GSA to provide the Committees on Appropriations of the House and the Senate a report describing GSA's methodology for calculating rental rates for Congressional offices located in Federal Courthouses within 45 days of the date of enactment of this Act.

*Historic Courthouses.*—The Committee is concerned that the designs of federal courthouses in historic districts are not being drafted with the historic architecture and context in mind. Therefore, the Committee directs the GSA to update the Committee within 180 days of enactment on courthouse construction projects currently underway, the status of those designs, and whether or not they meet the historical concerns of the surrounding areas. If they do not, the report should include the justification for that decision. For those courthouses that do not meet those criteria, the GSA

should immediately begin working with local authorities to remedy those concerns.

*Utilization of Previously Closed Military Installations under Base Realignment and Closure (BRAC).*—The Committee encourages the GSA to maximize leasing opportunities at previously closed military installations under Base Realignment and Closure (BRAC). The Committee expects an ongoing dialogue with GSA to assess steps taken to promote and advance such an effort.

*Cooperative Purchasing and Multiple Award Schedule (MAS) Agreements.*—The Committee is aware that federal agencies and state and local governments are increasingly utilizing cooperative purchasing and MAS agreements to procure goods and services, including services rendered for construction and renovation projects that involve federal funds. The Committee supports efforts to ensure proper transparency and oversight of such construction projects, which are often complex and site-specific. The Committee directs GSA to enforce any existing federal regulations that require independent design professionals be consulted on new construction and renovation projects. The Committee encourages GSA to work with state and local governments so that cooperative purchasing and MAS agreements that involve federal funding is in the best interest of the government.

#### REAL PROPERTY ACTIVITIES

#### FEDERAL BUILDINGS FUND

#### LIMITATIONS ON AVAILABILITY OF REVENUE

#### (INCLUDING TRANSFERS OF FUNDS)

#### Limitations on Availability of Revenue:

Limitation on availability, fiscal year 2018 .....	\$9,073,938,000
Limitation on availability, budget request, fiscal year 2019 ...	10,131,673,000
Recommended in the bill .....	8,634,574,000
Bill compared with:	
Availability limitation, fiscal year 2018 .....	– 439,364,000
Availability limitation, fiscal year 2019 request .....	– 1,497,099,000

The Federal Buildings Fund (FBF) accounts for the activities of the Public Buildings Service (PBS), which provides space and services for Federal agencies in a relationship similar to that of landlord and tenant. The FBF, established in 1975, replaces direct appropriations with income derived from rent assessments, which approximate commercial rates for comparable space and services. The Committee makes funds available through a process of placing limitations on obligations from the FBF as a way of allocating funds for various FBF activities.

#### COMMITTEE RECOMMENDATION

The Committee recommends a limitation on the availability of funds of \$8,634,574,000 for the FBF.

To carry out the purposes of the FBF, the revenues and collections deposited into the FBF shall be available for necessary expenses in the aggregate amount of \$8,634,574,000 of which: \$275,900,000 is for construction, \$679,934,000 is for repairs and alterations, \$5,430,345,000 is for rental of space, and \$2,253,195,000 is for building operations.

Historically, prior to obligating funding for prospectus-level construction, alterations, or leases, the Administration has waited for the project to be authorized through a resolution approved by the Committee on Transportation and Infrastructure in the House and the Committee on Environment and Public Works in the Senate as required by title 40 of the United States Code and in accordance with the proviso included in the FBF appropriations limiting the obligation of funds to prospectus-level projects approved by the authorizing committees. The Committee supports this process and believes that prospectus-level projects warrant a thorough review from both the Appropriations Committee and the authorizing committees. The Committee expects the Administration to continue to follow this process.

#### CONSTRUCTION AND ACQUISITION

Limitations on Availability of Revenue:		
Limitation on availability, fiscal year 2018 .....		\$692,069,000
Limitation on availability, budget request, fiscal year 2019 ...		1,338,387,000
Recommended in the bill .....		275,900,000
Bill compared with:		
Availability limitation, fiscal year 2018 .....		– 416,169,000
Availability limitation, fiscal year 2019 request .....		– 1,062,487,000

The construction and acquisition fund finances the project cost of design, construction, and management and inspection costs of new Federal facilities.

#### COMMITTEE RECOMMENDATION

The Committee recommends a limitation of \$275,900,000 for the following specific project, as proposed in the budget request, in the amount indicated.

State	Description	Amount
CA .....	Calxico, United States Land Port of Entry .....	\$275,900,000

#### REPAIRS AND ALTERATIONS

Limitations on Availability of Revenue:		
Limitation on availability, fiscal year 2018 .....		\$666,335,000
Limitation on availability, budget request, fiscal year 2019 ...		909,746,000
Recommended in the bill .....		679,934,000
Bill compared with:		
Availability limitation, fiscal year 2018 .....		+13,599,000
Availability limitation, fiscal year 2019 request .....		– 229,812,000

The repairs and alterations activity funds the project cost of design, construction, management and inspection for the repair, alteration, and modernization of existing real estate assets in addition to various special programs.

#### COMMITTEE RECOMMENDATION

The Committee recommends a limitation of \$679,934,000 to remain available until expended for repairs and alterations.

*Major Repairs and Alterations.*—The Committee recommends \$286,344,000 for repairs and alterations projects that exceed the prospectus threshold. The funds are provided to address GSA's highest priority facility needs. The Committee directs GSA to submit a detailed plan, by project, regarding the use of Major Repairs



and Alterations funds, not later than 45 days after enactment. GSA is directed to provide notification to the Committee within 15 days prior to any changes in the use of these funds.

*Basic Repairs and Alterations.*—The Committee recommends \$312,090,000 for non-recurring repairs and alterations projects between \$10,000 and the current prospectus threshold of \$3,095,000.

*Fire and Life Safety.*—The Committee recommends \$30,000,000 to improve building safety, abate hazardous material, and repair structural deficiencies. These projects include, but are not limited to, fire alarm, sprinkler, electrical, ventilation, heating, and elevator systems.

*Judiciary Court Security Program.*—The Committee recommends \$11,500,000 for the construction, acquisition, repair, alteration, and security projects for the Judiciary as prioritized by the Judicial Conference of the United States.

*Consolidation Activities.*—The Committee recommends \$40,000,000 for the cost of consolidating space. Given the reduction in the Federal workforce and Federal agency budgets, the Committee believes that it is prudent to reduce the GSA building inventory, particularly with regard to the thousands of surplus and underutilized buildings. Projects selected for consolidation should result in reduced annual rent paid by the agency, not exceed \$10,000,000 in costs, and have an approved prospectus. GSA is required to submit a spend plan and explanation for each project including estimated savings to the Committees on Appropriations of the House and the Senate before obligating funds.

#### RENTAL OF SPACE

Limitations on Availability of Revenue:	
Limitation on availability, fiscal year 2018 .....	\$5,493,768,000
Limitation on availability, budget request, fiscal year 2019 ...	5,430,345,000
Recommended in the bill .....	5,430,345,000
Bill compared with:	
Availability limitation, fiscal year 2018 .....	– 63,423,000
Availability limitation, fiscal year 2019 request .....	– – –

The rental of space program funds lease payments made to privately-owned buildings, temporary space for Federal employees during major repair and alteration projects, and relocations from Federal buildings due to forced moves and relocations as a result of health and safety conditions.

#### COMMITTEE RECOMMENDATION

The Committee recommends a limitation of \$5,430,345,000 for rental of space. The Committee expects GSA to reduce the amount of leased space in its inventory at a faster pace.

#### BUILDING OPERATIONS

Limitations on Availability of Revenue:	
Limitation on availability, fiscal year 2018 .....	\$2,221,766,000
Limitation on availability, budget request, fiscal year 2019 ...	2,253,195,000
Recommended in the bill .....	2,248,395,000
Bill compared with:	
Availability limitation, fiscal year 2018 .....	+26,629,000
Availability limitation, fiscal year 2019 request .....	– 4,800,000

The building operations account funds services that Federal agencies in GSA-owned buildings and occasionally in GSA-leased

buildings, when not provided by the lessor, directly benefit from such as building security, cleaning, utilities, window washing, snow removal, pest control, and maintenance of heating, air conditioning, ventilating, plumbing, sewage, electrical, elevator, escalator, and fire protection systems. In addition, this account funds all the personnel and administrative expenses for carrying out construction and acquisition, repair and alteration, and leasing activities.

#### COMMITTEE RECOMMENDATION

The Committee recommends a limitation of \$2,248,395,000 for Building Operations and Maintenance. Within this amount, \$1,126,014,000 is for building services and \$1,122,381,000 is for salaries and expenses. Up to five percent of the funds may be transferred between these activities upon the advance notification to the Committees on Appropriations of the House and the Senate. Not later than 60 days after the date of enactment of this Act, the Administrator shall submit a spend plan, by region, regarding the use of these funds to the Committees on Appropriations of the House and Senate.

#### GENERAL ACTIVITIES

##### GOVERNMENT-WIDE POLICY

Appropriation, fiscal year 2018 .....	\$53,499,000
Budget request, fiscal year 2019 .....	65,835,000
Recommended in the bill .....	60,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+6,501,000
Budget request, fiscal year 2019 .....	– 5,835,000

The Office of Government-Wide Policy provides Federal agencies with guidelines, best practices, and performance measures for complying with all the laws, regulations, and executive orders related to: acquisition and procurement, personal and real property management, travel and transportation management, electronic customer service delivery, and use of Federal advisory committees.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$60,000,000 for Government-wide Policy.

*Procurement through Commercial e-Commerce Portals.*—The program to procure commercial products through commercial e-commerce portals is a significant undertaking by GSA that has the potential to change how the government procures commercial off-the-shelf items. The Committee intends to closely monitor GSA's implementation of the program with regards to an e-commerce portal provider serving as a supplier on an e-commerce portal it administers, to ensure that any such arrangement does not result in curtailing competition or reducing participation by the portal's other participating suppliers.

*Building Design.*—The Committee recognizes the importance of mitigating bird deaths due to collisions, and encourages the incorporation of materials and design features for each public building constructed, acquired, or altered by GSA to have at least 90% of the façade material from ground level to 40 feet not be composed of glass or employ one or more of the following: (a) elements

mounted outside the glass that eliminate reflectivity; (b) UV patterned glass; (c) patterned glass which restricts horizontal spaces to less than 2 high or vertical spaces less than 4 wide; and (d) opaque, etched, stained, frosted glass. The Committee recognizes that with the increase in local and state bird friendly building ordinances and guidelines in several states that there is an increasing need for a uniform minimum federal standard.

*Digital Workspace.*—Committee recognizes that digital workspaces can increase user productivity, enhance cybersecurity & management, while also allowing for workforce flexibility, and urges the General Services Administration to leverage the use of digital workspaces as it moves towards shared services and the modernization of its information technology.

#### OPERATING EXPENSES

Appropriation, fiscal year 2018 .....	\$45,645,000
Budget request, fiscal year 2019 .....	49,440,000
Recommended in the bill .....	49,440,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+3,795,000
Budget request, fiscal year 2019 .....	— — —

This account provides appropriations for activities that are not feasible for a user fee arrangement. Included under this heading are personal property utilization and donation activities of the Federal Acquisition Service; real property utilization and disposal activities of the Public Buildings Service; select management and administration activities including support of government-wide emergency management activities; and top-level, agency-wide management communication activities.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$49,440,000 for operating expenses. Within the amount provided under this heading, \$26,890,000 is for Real and Personal Property Management and Disposal, and \$22,550,000 is for the Office of the Administrator.

*Federal Real Property Profile.*—The Committee understands that the GSA Federal Real Property Profile (FRPP) has been making progress on the use of geospatial technology and the transparency of the data. However, the Committee is aware of the problem in gathering Federal real property data created by the exemption language for Federal lands found in Executive Order 13227. This exemption denies GSA the ability of collecting meaningful data from large landholding agencies within the Department of the Interior and the Department of Agriculture. The Committee is also aware that Section 7 of the Executive Order provides flexibility for the Interior and Agriculture Departments to still contribute their data into the FRPP. The Committee expects GSA to increase the transparency, accuracy and accountability with both of these Departments given the expansive amount of data which could be added to the FRPP.

## CIVILIAN BOARD OF CONTRACT APPEALS

Appropriation, fiscal year 2018 .....	\$8,795,000
Budget request, fiscal year 2019 .....	9,301,000
Recommended in the bill .....	9,301,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+506,000
Budget request, fiscal year 2019 .....	---

This account provides appropriations for the Civilian Board of Contract Appeals (CBCA). The CBCA is charged with facilitating the prompt, efficient, and inexpensive resolution of disputes through the use of alternate dispute resolution.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$9,301,000 for the Civilian Board of Contract Appeals.

## OFFICE OF INSPECTOR GENERAL

Appropriation, fiscal year 2018 .....	\$65,000,000
Budget request, fiscal year 2019 .....	67,000,000
Recommended in the bill .....	67,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+2,000,000
Budget request, fiscal year 2019 .....	---

This appropriation provides agency-wide audit and investigative functions to identify and correct GSA management and administrative deficiencies that create conditions for existing or potential instances of fraud, waste, and mismanagement. The audit function provides internal and contract audits. Internal audits review and evaluate all facets of GSA operations and programs, test internal control systems, and develop information to improve operating efficiencies and enhance customer services. Contract audits provide professional advice to GSA contracting officials on accounting and financial matters relative to the negotiation, award, administration, repricing, and settlement of contracts. The investigative function provides for the detection and investigation of improper and illegal activities involving GSA programs, personnel, and operations.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$67,000,000 for the Office of Inspector General.

## ALLOWANCES AND OFFICE STAFF FOR FORMER PRESIDENTS

Appropriation, fiscal year 2018 .....	\$4,754,000
Budget request, fiscal year 2019 .....	4,796,000
Recommended in the bill .....	4,796,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+42,000
Budget request, fiscal year 2019 .....	---

This appropriation provides pensions, office staff, and related expenses for former Presidents Jimmy Carter, George H.W. Bush, William Clinton, and George W. Bush, and Barack Obama.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$4,796,000 for allowances and office staff for former Presidents.

FEDERAL CITIZEN SERVICES FUND  
(INCLUDING TRANSFERS OF FUNDS)

Appropriation, fiscal year 2018 .....	\$50,000,000
Budget request, fiscal year 2019 .....	58,400,000
Recommended in the bill .....	55,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+5,000,000
Budget request, fiscal year 2019 .....	-3,400,000

The Federal Citizen Services Fund (the Fund) appropriation provides for the salaries and expenses of GSA's Office of Citizen Services and Innovative Technologies (OCSIT). The Fund enables citizen access and engagement with government through an array of operational programs and direct citizen facing services. The Fund provides electronic or other methods of access to and understanding of Federal information, benefits, and services to citizens, businesses, local governments, and the media.

COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$55,000,000 for the Federal Citizen Services Fund. The Committee expects the funds provided for these activities, combined with efficiency gains and resource prioritization will result in increased delivery of information to the public and in the ease of transaction with the government.

All the income collected by the Office of Citizen Services and Innovative Technologies (OCSIT) in the form of reimbursements from Federal agencies, user fees for publications ordered by the public, payments from private entities for services rendered, and gifts from the public is available to the OCSIT without regard to fiscal year limitations, but is subject to an annual limitation of \$100,000,000. Any revenues accruing in excess of this amount shall remain in the fund and are not available for expenditure except as authorized in Appropriation Acts.

TECHNOLOGY MODERNIZATION FUND

Appropriation, fiscal year 2018 .....	\$100,000,000
Budget request, fiscal year 2019 .....	210,000,000
Recommended in the bill .....	150,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+50,000,000
Budget request, fiscal year 2019 .....	-60,000,000

This account provides appropriations for the purposes of carrying out actions pursuant to the recommendations of the Technology Modernization Fund Board focusing on legacy information technology systems and infrastructure.

COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$150,000,000 for the Technology Modernization Fund (TMF). The Committee encourages GSA and the TMF Board established by the Modernizing Government Technology Act to prioritize and fund those projects that have the most significant impact on mission enhancement and that most effectively modernize citizen-facing services, including updating public facing websites, modernizing forms and digitizing government processes.

## ASSET PROCEEDS AND SPACE MANAGEMENT FUND

Appropriation, fiscal year 2018 .....	\$5,000,000
Budget request, fiscal year 2019 .....	31,000,000
Recommended in the bill .....	31,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+26,000,000
Budget request, fiscal year 2019 .....	— —

This account provides appropriations for the purposes of carrying out actions pursuant to the recommendations of the Public Buildings Reform Board focusing on civilian real property.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$31,000,000 for the Asset Proceeds and Space Management Fund.

## ENVIRONMENTAL REVIEW IMPROVEMENT FUND

Appropriation, fiscal year 2018 .....	\$1,000,000
Budget request, fiscal year 2019 .....	6,070,000
Recommended in the bill .....	6,070,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+5,070,000
Budget request, fiscal year 2019 .....	— —

This account provides appropriations for the authorized activities of the Environmental Review Improvement Fund and the Federal Permitting Improvement Steering Council. The Council will lead ongoing government-wide efforts to modernize the Federal permitting and review process for major infrastructure projects and work with Federal agency partners to implement and oversee adherence to the statutory requirements set forth in the Federal Assets Sale and Transfer Act of 2016.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$6,070,000 for the Environmental Review Improvement Fund.

## ADMINISTRATIVE PROVISIONS—GENERAL SERVICES ADMINISTRATION

## (INCLUDING TRANSFER OF FUNDS)

Section 520. The Committee continues the provision providing authority for the use of funds for the hire of motor vehicles.

Section 521. The Committee continues the provision providing that funds made available for activities of the Federal Buildings Fund may be transferred between appropriations with advance approval of the Committees on Appropriations of the House and the Senate.

Section 522. The Committee continues the provision requiring funds proposed for developing courthouse construction requests to meet appropriate standards and the priorities of the Judicial Conference.

Section 523. The Committee continues the provision providing that no funds may be used to increase the amount of occupiable square feet, provide cleaning services, security enhancements, or any other service usually provided, to any agency which does not pay the assessed rent.

Section 524. The Committee continues the provision that permits GSA to pay small claims (up to \$250,000) made against the Federal Government.

Section 525. The Committee continues the provision requiring the Administrator to ensure that the delineated area of procurement for all lease agreements is identical to the delineated area included in the prospectus unless prior notice is given to the committees of jurisdiction.

Section 526. The Committee continues the provision requiring a spend plan for certain accounts and programs.

Section 527. The Committee includes a new provision directing the Administrator of the General Services Administration to submit a report on the implementation of Section 846 of the National Defense Authorization Act for fiscal year 2018.

#### HARRY S TRUMAN SCHOLARSHIP FOUNDATION

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$1,000,000
Budget request, fiscal year 2019 .....	— —
Recommended in the bill .....	1,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— —
Budget request, fiscal year 2019 .....	+1,000,000

The Harry S Truman Scholarship Foundation is an independent agency established by Congress in 1975 (Public Law 93–642) to encourage exceptional college students to pursue careers in public service through the Truman Scholarship program. The Truman Scholarship is a merit-based award available to college juniors who plan to pursue careers in Government or elsewhere in public service.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$1,000,000 for the Harry S Truman Scholarship Foundation.

#### MERIT SYSTEMS PROTECTION BOARD

##### SALARIES AND EXPENSES

##### (INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$46,835,000
Budget request, fiscal year 2019 .....	44,490,000
Recommended in the bill .....	46,835,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— —
Budget request, fiscal year 2019 .....	+2,345,000

The Merit Systems Protection Board (MSPB) is an independent, quasi-judicial agency established to protect the civil service merit system. The MSPB adjudicates appeals primarily involving personnel actions, certain Federal employee complaints, and retirement benefits issues. The MSPB reports to the President whether merit systems are sufficiently free of prohibited employment practices.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$44,490,000 for the MSPB. The recommendation includes a transfer of \$2,345,000 from the Civil Service Retirement and Disability Fund.

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## OPERATING EXPENSES

Appropriation, fiscal year 2018 .....	\$384,911,000
Budget request, fiscal year 2019 .....	365,105,000
Recommended in the bill .....	372,400,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– 12,511,000
Budget request, fiscal year 2019 .....	+7,295,000

This appropriation provides National Archives and Records Administration (NARA) with funds for its basic operations for management of the Federal Government's archives and records, services to the public, operation of Presidential libraries, review for declassification of classified security information, and includes funding for the Electronic Records Archives which preserves, stores, and manages digital Federal records for archival purposes, ensuring long-term access.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$372,400,000 for the Operating Expenses of NARA.

*Records Management.*—The Committee encourages NARA to leverage private sector records management capabilities, where private vendors have invested their own capital to develop facilities that are compliant with NARA's stringent building standards. The Committee encourages NARA to identify NARA records management storage facilities that can be cost effectively managed by private records management companies, especially those housing temporary Federal records.

## OFFICE OF INSPECTOR GENERAL

Appropriation, fiscal year 2018 .....	\$4,801,000
Budget request, fiscal year 2019 .....	4,241,000
Recommended in the bill .....	4,823,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+22,000
Budget request, fiscal year 2019 .....	+582,000

The Office of Inspector General (OIG) provides audits and investigations and serves as an independent, internal advocate to promote economy, efficiency, and effectiveness within NARA.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$4,823,000 for the OIG for fiscal year 2019.



## REPAIRS AND RESTORATION

Appropriation, fiscal year 2018 .....	\$7,500,000
Budget request, fiscal year 2019 .....	7,500,000
Recommended in the bill .....	7,500,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	---

This appropriation provides for the repair, alteration, and improvement of Archives facilities and Presidential libraries nationwide. It enables the NARA to maintain its facilities in proper condition for visitors, researchers, and employees, and also maintain the structural integrity of the buildings.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$7,500,000 for repairs and restoration.

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION  
GRANTS PROGRAM

Appropriation, fiscal year 2018 .....	\$6,000,000
Budget request, fiscal year 2019 .....	---
Recommended in the bill .....	6,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	+6,000,000

The National Historical Publications and Records Commission (NHPRC) program provides for grants to preserve and publish records that document American history. Administered within the National Archives and Records Administration, the NHPRC helps State, local, and private institutions preserve non-Federal records, helps publish the papers of major figures in American history, and helps archivists and records managers improve their techniques, training, and ability to serve a range of information users.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$6,000,000 for the NHPRC.

## NATIONAL CREDIT UNION ADMINISTRATION

## COMMUNITY DEVELOPMENT REVOLVING LOAN FUND

Appropriation, fiscal year 2018 .....	\$2,000,000
Budget request, fiscal year 2019 .....	---
Recommended in the bill .....	2,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	+2,000,000

The Community Development Revolving Loan Fund Program (CDRLF) was established in 1979 to assist officially designated "low-income" credit unions in providing basic financial services to low-income communities. Low-interest loans and deposits are made available to assist these credit unions. Loans or deposits are normally repaid in five years, although shorter repayment periods may be considered. Technical assistance grants are also available to low-income credit unions. Earnings generated from the CDRLF are available to fund technical assistance grants in addition to funds

provided for specifically in appropriations acts. Grants are available for improving operations as well as addressing safety and soundness issues.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$2,000,000 for the National Credit Union Administration's CDRLF for technical assistance grants.

*Supporting Community Development Credit Unions.*—Within 180 days of enactment, the Committee directs the Administration to issue a report on its current efforts to support and advance Community Development Credit Unions (CDCUs) in low income communities.

#### OFFICE OF GOVERNMENT ETHICS

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$16,439,000
Budget request, fiscal year 2019 .....	16,294,000
Recommended in the bill .....	17,019,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+580,000
Budget request, fiscal year 2019 .....	+725,000

The Office of Government Ethics (OGE) established by the Ethics in Government Act of 1978, partners with other executive branch Departments and agencies to foster high ethical standards. The OGE issues and monitors rules regulations, and memoranda pertaining to the prevention and resolution of conflicts of interest, post-employment restrictions, standards of conduct, and financial disclosure for executive branch employees. The OGE is also responsible for creating and running an electronic financial disclosure system under the Stop Trading on Congressional Knowledge (STOCK) Act.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$17,019,000 for the OGE.

#### OFFICE OF PERSONNEL MANAGEMENT

##### SALARIES AND EXPENSES

##### (INCLUDING TRANSFER OF TRUST FUNDS)

Appropriation, fiscal year 2018 .....	\$260,755,000
Budget request, fiscal year 2019 .....	265,655,000
Recommended in the bill .....	265,655,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+4,900,000
Budget request, fiscal year 2019 .....	— —

The Office of Personnel Management (OPM) is the Federal agency responsible for management of Federal human resources policy and oversight of the merit civil service system. OPM provides a government-wide policy framework for personnel matters, advises and assists agencies (often on a reimbursable basis), and ensures that agency operations are consistent with requirements of law, with emphasis on such issues as veterans preference. OPM over-

sees examining of applicants for employment; issues regulations and policies on hiring, classification and pay, training, investigations; and many other aspects of personnel management, and operates a reimbursable training program for the Federal Government's managers and executives. OPM is also responsible for administering the retirement, health benefits and life insurance programs affecting most Federal employees, retired Federal employees, and their survivors.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$132,172,000 for the General Fund. The Committee also recommends \$133,483,000 for administrative expenses, to be transferred from the appropriate trust funds.

OPM has struggled for decades to process Federal retirees' pension and disability claims quickly and accurately. As a result, tens of thousands of new retirees wait months to receive their complete annuities—some wait more than a year—and in the meantime they may be constrained by reduced interim pensions. The Committee expects OPM to continue to make retirement processing and disability processing a priority and move to a fully-automated electronic filing system. The Committee believes that the backlog and delays in retirement processing are unacceptable and directs OPM to continue to provide the Committees on Appropriations of the House and the Senate with monthly reports on its progress in addressing the backlog in claims.

*OPM Organizational Changes.*—The Committee would like to remind OPM of their obligation to notify the Committee on Appropriations of the House and the Senate of any reorganizations, restructurings, new programs or elimination of programs as described in Title VI and VII of this Act. These include changes that could impact the National Bureau of Investigations and the Human Solutions program.

*Critical Functions.*—The recent security breaches, focus on system upgrades, and efforts to transition work from the National Background Investigations Bureau to the Department of Defense should not detract OPM from fulfilling its critical functions such as recruiting, retaining, and developing a Federal workforce to serve the American people. OPM serves the Federal workforce by directing human resources and employee management services, and administering retirement benefits, managing healthcare and insurance programs, overseeing merit-based and inclusive hiring in to the civil service, and providing a secure employment process. The Committee reminds OPM's senior management to not lose sight of its mission as it responds to critical IT challenges.

*Recruitment.*—The Committee is concerned with the length of time it often takes the Federal Government to hire qualified employees and directs OPM to continue to find ways to reduce barriers to federal employment and reduce delays in the hiring process. Rigid rules along with long delays in the hiring and interview process discourage top candidates from applying for or accepting Federal positions. Specifically, the Committee encourages OPM to seek input from hiring managers on what challenges they face and what improvements could be made to make the federal hiring process more efficient and effective. The Committee directs the OPM to

report to the Committees on Appropriations of the House and the Senate no later than 90 days after the enactment of this Act on a plan to reduce barriers to Federal employment, reduce delays in the hiring process, and how it intends to improve the overall federal recruitment and hiring process.

As part of OPM's mission to recruit and hire the most talented and diverse Federal workforce, the Committee encourages Federal agencies to increase recruitment efforts within the United States and the territories and at Hispanic Serving Institutions and Historically Black Colleges and Universities.

*Federal Pay Opportunities.*—The Committee is concerned that federal agencies are not taking advantage of the special hiring authorities available. The Director of OPM, together with the Chief Human Capital Officer Council, should track government-wide data to establish a baseline and analyze the extent to which the seven Title 5 special payment authorities are effective in improving employee recruitment and retention, and determine what potential changes may be needed to improve the seven authorities' effectiveness.

*Federal Telework Programs.*—The Committee supports cost savings and productivity improvements from well-managed telework programs in the federal workplace. The Committee therefore urges the federal sector to continue to track successes, compile best practices, and expand upon telework programs where appropriate.

#### OFFICE OF INSPECTOR GENERAL

##### SALARIES AND EXPENSES

##### (INCLUDING TRANSFER OF TRUST FUNDS)

Appropriation, fiscal year 2018 .....	\$30,000,000
Budget request, fiscal year 2019 .....	30,265,000
Recommended in the bill .....	30,265,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+265,000
Budget request, fiscal year 2019 .....	— — —

This appropriation provides for the Office of Inspector General's (OIG) agency-wide audit, investigative, evaluation, and inspection functions, which identify management and administrative deficiencies, fraud, waste and mismanagement. The OIG performs internal agency audits and insurance audits, and offers contract audit services. Internal audits review and evaluate all facets of agency operations, including financial statements. Evaluation and inspection services provide detailed technical evaluations of agency operations. Insurance audits review the operations of health and life insurance carriers, health care providers, and insurance subscribers. Contract auditors provide professional advice to agency contracting officials on accounting and financial matters regarding the negotiation, award, administration, repricing, and settlement of contracts. The investigative function provides for the detection and investigation of improper and illegal activities involving programs, personnel, and operations.

## COMMITTEE RECOMMENDATION

The Committee recommends a general fund appropriation of \$5,000,000 for the OIG. In addition, the recommendation provides \$25,265,000 from appropriate trust funds.

*OPM Organization.*—Of particular interest to the Committee is the transfer of background investigations from OPM's National Background Investigations Bureau (NBIB) to the Department of Defense. Additionally, the Committee is concerned with the Administration's consideration to transfer the Human Resources Solutions program to the General Services Administration (GSA) as well as the Administration's proposal to administer workforce performance budgets through GSA. The Committee encourages the Inspector General to keep a pulse on these initiatives and include updates on these initiatives in their reports to Congress.

## OFFICE OF SPECIAL COUNSEL

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$26,535,000
Budget request, fiscal year 2019 .....	26,252,000
Recommended in the bill .....	26,252,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– 283,000
Budget request, fiscal year 2019 .....	– – –

The Office of Special Counsel (OSC): (1) investigates Federal employee allegations of prohibited personnel practices (including reprisal for whistleblowing) and, when appropriate, prosecutes before the Merit Systems Protection Board; (2) provides a channel for whistleblowing by Federal employees; and (3) enforces the Hatch Act. The Office may transmit whistleblower allegations to the agency head concerned and require an agency investigation and a report to the Congress and the President when appropriate. Additionally, the Office enforces the civilian employment and reemployment rights of military service members under the Uniformed Services Employment and Re-employment Rights Act.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$26,252,000 for the OSC.

## POSTAL REGULATORY COMMISSION

## SALARIES AND EXPENSES

## (INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$15,200,000
Budget request, fiscal year 2019 .....	15,100,000
Recommended in the bill .....	15,200,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– – –
Budget request, fiscal year 2019 .....	+100,000

The Commission establishes and maintains the U.S. Postal Service's ratemaking systems, measures service and performance, ensures accountability, and has enforcement mechanisms, including the authority to issue subpoenas.

## COMMITTEE RECOMMENDATION

The Committee recommends an appropriation, out of the Postal Fund, of \$15,200,000 for the Postal Regulatory Commission (Commission).

## PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$8,000,000
Budget request, fiscal year 2019 .....	5,000,000
Recommended in the bill .....	5,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– 3,000,000
Budget request, fiscal year 2019 .....	– – –

The Privacy and Civil Liberties Oversight Board (the Board) is an independent agency within the Executive Branch whose purpose is to (1) analyze and review actions the Executive Branch takes to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and (2) ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the nation against terrorism. The Board consists of 4 part-time members and full-time chairman.

## COMMITTEE RECOMMENDATION

The Committee recommends \$5,000,000 for the Board.

## PUBLIC BUILDINGS REFORM BOARD

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$5,000,000
Budget request, fiscal year 2019 .....	2,000,000
Recommended in the bill .....	2,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– 3,000,000
Budget request, fiscal year 2019 .....	– – –

The Public Buildings Reform Board was created under the Federal Assets Sale and Transfer Act of 2016 to identify opportunities for the Government to significantly reduce its inventory of civilian real property and reduce cost to the Government.

## COMMITTEE RECOMMENDATION

The Committee recommends \$2,000,000 for the Board.

## SECURITIES AND EXCHANGE COMMISSION

## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$1,896,507,000
Budget request, fiscal year 2019 .....	1,699,052,000
Recommended in the bill .....	1,695,491,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	– 201,016,000
Budget request, fiscal year 2019 .....	– 3,561,000

The primary mission of the Securities and Exchange Commission (SEC) is to protect investors, maintain the integrity of the securi-

ties markets, and assure adequate information on the capital markets is made available to market participants and policy makers. This includes monitoring the rapid evolution of the capital markets, ensuring full disclosure of all appropriate financial information, regulating the Nation's securities markets, and preventing fraud and malpractice in the securities and financial markets.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$1,695,491,000 for SEC salaries and expenses. The Committee's recommendation includes \$37,189,000 for costs associated with relocation under a replacement lease for the Commission's New York Regional Office. The Committee expects the Commission to work closely with the General Services Administration (GSA) and to keep the Committee informed of progress on the replacement lease.

*Business Development Corporations (BDC) Modernization.*—Funding from BDCs has become more important for small businesses as the regulatory overreaction to the financial crisis has restricted bank and other traditional financing options for these companies. The Committee instructs the SEC to modernize the business development company regulatory regime consistent with the Small Business Credit Availability Act as enacted in Public Law 115–141.

*Acquired Fund Fee and Expense Rule.*—The Committee recommends the SEC use its existing authorities to make the necessary regulatory or guidance changes to limit the adverse impacts of the Acquired Fund Fee and Expense Rule (AFFE) on Business Development Corporations (BDC). The SEC issued its acquired fund fees and expenses (AFFE) rule in 2006. In the adopting release, the SEC stated that it “does not believe that the [AFFE] amendments will have an adverse impact of capital formation.” This statement was proven to be inaccurate as a result of actions taken in 2014 by index sponsors such as S&P and Russell to exclude BDCs from their indices. Because index funds no longer invest in BDCs, there has been a decline in market depth and liquidity for BDC shares, reduced institutional ownership in BDCs and less independent third-party research coverage. Each of these items has negatively impacted retail investors owning BDC shares. The SEC has had full authority since 2006 to address these unintended, harmful consequences.

*Cross-Border Harmonization.*—The Committee strongly encourages the SEC to work with the Commodity Futures Trading Commission (CFTC) to harmonize the definition of a “US person” and exempt non-US regulated funds from any definition. Currently, the definition of a “US person” differs between the two agencies, which can result in operational challenges and potentially different regulatory treatment of entities transacting in otherwise similar instruments. Global firms face significant costs and burdens if the SEC's and CFTC's regulatory approaches produce different outcomes regarding whether an entity or transaction would be subject to the Dodd-Frank Act. Derivatives transactions for swaps and security-based swaps that are traded typically by the same trading desk or desks should not be analyzed differently. The Committee urges these agencies to work together in an expeditious manner toward a consistent definition of “US person.”

*Proxy Advisor Reform.*—The Committee is aware of the undue influence of proxy advisory firms—their duopoly status, conflicts of interest, opaque procedures and methodologies, and recommendations that may be based on provable, factual inaccuracies. The SEC Chairman has spoken publicly about the need to address these issues and possibility of revisiting the “Proxy Plumbing” concept release. The Committee strongly encourages the SEC to elevate this issue on the Commission’s agenda to ensure the needs of investors and the capital markets are being met.

*Searchable Data.*—The Committee encourages the SEC to continue its efforts to implement consistent and searchable open data standards for information filed and submitted by publicly-traded companies and financial firms. The Committee continues to recommend that financial regulatory agencies across the U.S. Government take similar steps to update reporting standards commensurate with currently available technology.

#### SELECTIVE SERVICE SYSTEM

##### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$22,900,000
Budget request, fiscal year 2019 .....	26,400,000
Recommended in the bill .....	26,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+3,100,000
Budget request, fiscal year 2019 .....	– 400,000

The Selective Service System was established by the Selective Service Act of 1948. The mission of the System is to be prepared to supply manpower to the Armed Forces adequate to ensure the security of the United States during a time of national emergency. Since 1973, the Armed Forces have relied on volunteers to fill military manpower requirements, but selective service registration was reinstituted in July 1980.

##### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$26,000,000 for the Selective Service System.

#### SMALL BUSINESS ADMINISTRATION

The Small Business Administration (SBA) assists small businesses through programs including loans, grants, and contracting preferences. These programs maintain and strengthen an economy that depends on small businesses for 60 to 80 percent of job creation. SBA programs also serve disadvantaged populations so that these small business enterprises may overcome economic and social obstacles to success.

The recommendation provides a total of \$737,078,000 for the SBA for fiscal year 2019. Detailed guidance for the SBA appropriations accounts is presented below.



## SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$268,500,000
Budget request, fiscal year 2019 .....	265,000,000
Recommended in the bill .....	268,500,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	---
Budget request, fiscal year 2019 .....	+3,500

## COMMITTEE RECOMMENDATION

The Committee recommends \$268,500,000 for the salaries and expenses of the SBA.

*SBIC Program Licensing.*—The Committee is aware of the often slow pace of licensing within the Small Business Investment Company (SBIC) program. The Committee would like to see an expedited and streamline licensing process for known, repeat Small Business Investment Companies that have the same management teams and a proven track record in the SBIC program. A fast track process for repeat licenses should be completed no longer than 60–90 days after an application is submitted to the SBA, which will allow SBA to properly redirect their licensing resources to more first time funds. The SBA should improve their “green light letter” so that it clearly outlines the needed benchmarks for license approval. The SBA should not reduce the amount or type of SBIC program data it has reported for years and should make that data available no less than ten business days after the end of the quarter.

*Loan and Lender Monitoring System.*—The Committee finds that the Loan and Lender Monitoring System (L/LMS) is a vital component of the SBA’s technical capability to provide oversight of its largest lending programs, the 7(a) and 504 loan programs. The Committee is disappointed that SBA allowed this important oversight tool to lapse briefly in February and March 2016. SBA is directed to continue its use of the Loan and Lender Monitoring System to ensure that lenders are employing sound financial risk management techniques to manage and monitor risk within their SBA loan portfolios. SBA is directed to continue to maintain the current capability and capacity of the L/LMS system, and to strongly consider ways to upgrade the system to improve lender oversight. The SBA should look at the impact of consolidating the current exceptions into one with an employee cap of 1,500 and consider revising the methodology for determining employee size for NAICS Codes to use a 36-month rolling average computation.

*National Environmental Policy Act Guidance.*—The Committee encourages the SBA to consider revised guidance on the National Environmental Policy Act-related provisions for Concentrated Animal Feeding Operations loans which were last updated in SOP 90 57. This guidance should provide clarity for farmers and small businesses around application requirements pertaining to environmental review requirements.

## ENTREPRENEURIAL DEVELOPMENT PROGRAMS

Appropriation, fiscal year 2018 .....	\$247,100,000
Budget request, fiscal year 2019 .....	192,450,000
Recommended in the bill .....	251,900,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+4,800,000
Budget request, fiscal year 2019 .....	+59,450,000

The SBA's Entrepreneurial Development Programs support non-credit business assistance to entrepreneurs. The appropriation includes funding for a network of resource partners located throughout the United States that provide training, counseling, and technical assistance to small business entrepreneurs.

## COMMITTEE RECOMMENDATION

The Committee recommendations for Entrepreneurial Development Programs, by program, are displayed in the following table:

## ENTREPRENEURIAL DEVELOPMENT PROGRAMS

[In thousands of dollars]

7(j) Technical Assistance Program (Contracting Assistance) .....	2,800
Entrepreneurship Education .....	6,000
Growth Accelerators .....	1,000
HUBZone Program .....	3,000
Microloan Technical Assistance .....	31,600
National Women's Business Council .....	1,500
Native American Outreach .....	2,000
PRIME Technical Assistance .....	5,000
Regional Innovation Clusters .....	5,000
SCORE .....	11,700
Small Business Development Centers (SBDC) .....	132,600
State Trade & Export Promotion (STEP) .....	18,000
Veterans Outreach* .....	12,300
Women's Business Centers (WBC) .....	18,400

\*Veterans Outreach includes funding for: Boots to Business, Veterans Business Outreach Centers (VBOC), Veteran Women Igniting the Spirit of Entrepreneurship (V-Wise), Entrepreneurship Bootcamp for Veterans with Disabilities (EBV), and Boots to Business reboot.

The SBA shall not reduce these non-credit programs from the amounts specified above and the SBA shall not merge any of the non-credit programs without advance written approval from the Committee. The Committee strongly supports the development programs listed in the table above and will carefully monitor SBA support of these programs.

*Women's Business Centers.*—The Committee notes the absence of WBCs serving many of the U.S. territories and other U.S. insular areas, and recommends that the SBA consider including these areas in WBC services.

*Native American Outreach.*—The Committee directs that Native American Outreach activities be managed by an Assistant Administrator of the Office of Native American Affairs, or through SBA 7(j) management and technical assistance, to continue organizing multi-agency workshops and Native supplier initiative events around the country, and facilitating Native contractors participation in the SBA's 8(a) Business development program, HUB Zone, women business, veteran and service disabled veteran business, and other small business contracting program.

## OFFICE OF INSPECTOR GENERAL

Appropriation, fiscal year 2018 .....	\$19,900,000
Budget request, fiscal year 2019 .....	21,900,000
Recommended in the bill .....	21,900,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+2,000
Budget request, fiscal year 2019 .....	--

## COMMITTEE RECOMMENDATION

The Committee recommends \$21,900,000 for the Office of Inspector General of the SBA.

*Disaster Funding.*—In fiscal year 2018, the SBA, Disaster Loan Program received supplemental funding in the amount of \$1.65 billion to primarily assist with disaster efforts related to hurricanes Harvey, Irma, and Maria. The committee is pleased with SBA's expeditious response to Hurricane Harvey which included having 33 staff for two Disaster Relief Centers up and running within nine days after Hurricane Harvey. The Committee looks forward to the SBA IG's evaluation of SBA's loan processing and issuance of the supplemental funds provided to aid disaster victims.

*Oversight.*—The Committee is concerned about the quality of lender oversight activities at SBA, particularly considering the magnitude of SBA's loan portfolio, and notes that SBA's Office of Inspector General continues to identify weaknesses in SBA's lender oversight process. The Committee agrees with SBA's Inspector General recommendations and supports efforts to strengthen the Office of Credit Monitoring's ability to conduct strong oversight of SBA loan portfolios and the lenders that participate in order to reinforce general program soundness and manage overall risk.

## OFFICE OF ADVOCACY

Appropriation, fiscal year 2018 .....	\$9,120,000
Budget request, fiscal year 2019 .....	9,120,000
Recommended in the bill .....	9,120,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	--
Budget request, fiscal year 2019 .....	--

## COMMITTEE RECOMMENDATION

The Committee recommends \$9,120,000 for the Office of Advocacy of the SBA. The Committee supports the Office's mission to reduce regulatory burdens that Federal policies impose on small businesses and to maximize the benefits small businesses receive from the government.

## BUSINESS LOANS PROGRAM ACCOUNT

## (INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$156,220,000
Budget request, fiscal year 2019 .....	4,000,000
Recommended in the bill .....	159,150,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+2,930,000
Budget request, fiscal year 2019 .....	+155,150,000

The SBA Business Loans Program serves as an important source of capital for America's small businesses. The recommendation supports the 7(a) Business Loan Program at a level of \$30 billion, the

504 certified development company program at a level of \$7.5 billion, Small Business Investment Company (SBIC) debentures, and the Secondary Market Guarantee Program.

#### COMMITTEE RECOMMENDATION

The Committee recommends a total of \$159,150,000 for the Business Loans Program Account. Of the amount appropriated, \$155,150,000 is for administrative expenses related to Business Loan Programs. The amount provided for administrative expenses may be transferred to and merged with the appropriation for SBA salaries and expenses to cover the common overhead expenses associated with business loans. Funding is included to fully support the Microloan program.

#### DISASTER LOANS PROGRAM ACCOUNT

##### (INCLUDING TRANSFERS OF FUNDS)

Appropriation, fiscal year 2018 .....	— —
Budget request, fiscal year 2019 .....	186,458,000
Recommended in the bill .....	31,308,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+31,308,000
Budget request, fiscal year 2019 .....	— 155,150,000

#### COMMITTEE RECOMMENDATION

The Committee recommends a total of \$31,308,000 for Disaster Loan Program administrative expenses which may be transferred and merged with Salaries and Expenses. The Committee provides \$1,000,000 for the Office of Inspector General for audits and reviews of the disaster loans program.

The Committee directs the SBA to continue providing updates on available resources for the disaster loans program on a monthly basis.

*Pre-mitigation activities within the Disaster Loan Program.*—The Committee recognizes the benefit of limiting the financial exposure of the SBA and reducing the claims payments from the National Flood Insurance Program. Therefore the Committee urges the SBA to coordinate with Federal Emergency Management Agency (FEMA) to expand the SBA Disaster Loan Program to allow applicants in areas of high flood or natural disaster risk to utilize loans for pre-disaster mitigation projects that adhere to FEMA's standards of mitigation activities that significantly reduce a structure's long-term flood risk.

#### ADMINISTRATIVE PROVISIONS—SMALL BUSINESS ADMINISTRATION

##### (INCLUDING RESCISSION AND TRANSFER OF FUNDS)

Section 530. The Committee continues a provision for the SBA authorizing transfers of up to five percent of any SBA appropriation to other appropriations, provided that transfers do not increase an appropriation by more than 10 percent. The provision also requires that transfers be treated as a reprogramming of funds.

Section 531. The Committee includes a provision rescinding unobligated balances under the Certified Development Company Program.

Section 532. The Committee includes a provision repealing the Expedited Disaster Assistance Loan Program.

#### UNITED STATES POSTAL SERVICE

##### PAYMENT TO THE POSTAL SERVICE FUND

Appropriation, fiscal year 2018 .....	\$58,118,000
Budget request, fiscal year 2019 .....	55,235,000
Recommended in the bill .....	58,118,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	— — —
Budget request, fiscal year 2019 .....	+2,883,000

The United States Postal Service (USPS) is funded almost entirely by Postal ratepayers rather than taxpayers. Funds provided to the Postal Service in the Payment to the Postal Service Fund include appropriations for revenue forgone, including providing free mail for the blind, and for overseas absentee voting.

##### COMMITTEE RECOMMENDATION

The Committee recommends appropriations totaling \$58,118,000 for Payment to the Postal Service Fund. The recommendation funds free mail for the blind and overseas voting and reconciliation of prior year cost adjustment.

*Rural Post Offices.*—The Committee believes that the United States postal facility network is an asset of significant value. The closure of post offices in rural communities creates an economic burden for people in the United States that depend on the Postal Service for communication and package services. In addition to typical postal services, post offices are part of the identity of rural communities and provide a significant social value. The closure process of post offices does not adequately take into account community input.

*Notification to Congress.*—Title 39 of the U.S. Code requires the Postal Service to provide the public with notice prior to closing or consolidating a post office. The Committee understands that it is the Postal Service's policy to inform Member of Congress' district and Washington, D.C. offices when the public receives notice. The Committee directs the Postal Service to keep Members of Congress informed of Postal Service activities impacting their constituents and expects the Postal Service to ensure that Members of Congress are appropriately informed simultaneously or prior to all public notices.

*Accessibility for Disabled Individuals.*—The Committee notes that under the Architectural Barriers Act, the Postal Service is required to meet accessibility requirements for disabled individuals.

*Multinational Species Conservation Fund Semi-postal Stamp.*—The Committee strongly supports the Multinational Species Conservation Fund Semi-postal Stamp and is aware that the legislative requirement that the stamp be sold by the U.S. Postal Service expires at the end of FY 2018. The Committee understands that more than 30 million copies of the original printing of the stamp remain. As the law permits the U.S. Postal Service to continue to sell the stamp and it can be done at no additional cost to the taxpayer, the Committee directs the U.S. Postal Service to continue to offer the stamp for sale to the public through FY 2020.

*Delivery Complaints.*—The Committee is concerned with the prevalence of reports of irregular delivery, mail delivered during late hours, and other service complaints. The Committee directs the U.S. Postal Service to report to the Committees on Appropriations of the House and the Senate within 180 days of enactment of this Act on the adequacy of current personnel levels, the number of City Carrier Assistants currently employed compared to previous years, and the consolidation of distribution centers. The report shall be accompanied by a comprehensive plan to better provide timely and consistent mail delivery service.

*Mail Theft.*—The Committee is aware that significant mail theft from U.S. Postal Service (USPS) cluster box units continues to be a problem across the country, notably in the City of Bakersfield and in Kern County, CA. The Committee understands USPS has taken action to replace or upgrade certain mailbox units, however, mail theft continues to occur. Out of existing funds, the Committee directs USPS and the United States Postal Inspection Service to aggressively investigate issues concerning increased mail theft in cluster box units in affected communities and adopt a plan to address these crimes. USPS is encouraged to consider upgrading existing mailbox infrastructure, enhancing security at cluster mailboxes and other USPS delivery sites, and replacing keys. Given the importance of protecting U.S. mail, the Committee directs the USPS to report to Congress every six months on its plan and related actions to address this issue.

*Zip Code Reassignment.*—The Committee understands that in response to increasing requests for zip codes and place name changes, the Postal Service has developed a uniform review process. In addition to typical postal purposes, zip codes, city identity and boundaries play an integral role in a host of important areas, such as tax base, federal and state funding, qualifications for federal programs, election ballots, and school systems. The Committee encourages the Postal Service to ensure that decisions regarding reassigning of zip codes take into account all available information and community input.

#### OFFICE OF INSPECTOR GENERAL

#### SALARIES AND EXPENSES

#### (INCLUDING TRANSFER OF FUNDS)

Appropriation, fiscal year 2018 .....	\$245,000,000
Budget request, fiscal year 2019 .....	234,650,000
Recommended in the bill .....	250,000,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+5,000,000
Budget request, fiscal year 2019 .....	+15,350,000

The Office of Inspector General (OIG) conducts audits, reviews and investigations, and keeps Congress informed on the efficiency and economy of United States Postal Service (USPS) programs and operations.

#### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$250,000,000 for the OIG. The Committee provides funding above the budget re-

quest in order for the OIG to continue their aggressive drug interdiction efforts.

## UNITED STATES TAX COURT

### SALARIES AND EXPENSES

Appropriation, fiscal year 2018 .....	\$50,740,000
Budget request, fiscal year 2019 .....	55,563,000
Recommended in the bill .....	51,515,000
Bill compared with:	
Appropriation, fiscal year 2018 .....	+775,000
Budget request, fiscal year 2019 .....	– 4,048,000

The U.S. Tax Court adjudicates controversies involving deficiencies in income, estate, and gift taxes. The Court also has jurisdiction to determine deficiencies in certain excise taxes, to issue declaratory judgments in the areas of qualifications of retirement plans and exemptions of charitable organizations, and to decide certain cases involving disclosure of tax information by the Commissioner of the Internal Revenue Service.

### COMMITTEE RECOMMENDATION

The Committee recommends an appropriation of \$51,515,000 for the U.S. Tax Court.

## TITLE VI—GENERAL PROVISIONS—THIS ACT

Section 601. The Committee continues the provision prohibiting pay and other expenses for non-Federal parties in regulatory or adjudicatory proceedings funded in this Act.

Section 602. The Committee continues the provision prohibiting obligations beyond the current fiscal year and prohibits transfers of funds unless expressly so provided herein.

Section 603. The Committee continues the provision limiting procurement contracts for consulting service expenditures to contracts that are matters of public record and available for public inspection.

Section 604. The Committee continues the provision prohibiting transfer of funds in this Act without express authority.

Section 605. The Committee continues the provision prohibiting the use of funds to engage in activities that would prohibit the enforcement of section 307 of the 1930 Tariff Act.

Section 606. The Committee continues the provision concerning compliance with the Buy American Act.

Section 607. The Committee continues the provision prohibiting the use of funds by any person or entity convicted of violating the Buy American Act.

Section 608. The Committee continues the provision specifying reprogramming procedures. The provision requires that agencies or entities funded by the Act notify the Committee and obtain prior approval from the Committee for any reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose; (5) augments existing programs, projects, or activi-

ties in excess of \$5,000,000 or 10 percent, whichever is less; (6) reduces existing programs, projects, or activities by \$5,000,000 or 10 percent, whichever is less; or (7) reorganizes offices, programs, or activities. The provision directs agencies funded by this Act to consult with the Committee prior to any significant reorganization. The provision also directs the agencies funded by this Act to submit operating plans for the Committee's review within 60 days of the bill's enactment.

Section 609. The Committee continues the provision providing that fifty percent of unobligated balances may remain available through September 30, 2020, for certain purposes.

Section 610. The Committee continues the provision prohibiting funding for the Executive Office of the President to request either a Federal Bureau of Investigation background investigation or Internal Revenue Service determination with respect to section 501(a) of the Internal Revenue Code of 1986, except with the express consent of the individual involved in an investigation or in extraordinary circumstances involving national security.

Section 611. The Committee continues the provision regarding cost accounting standards for contracts under the Federal Employee Health Benefits Program.

Section 612. The Committee continues the provision regarding non-foreign area cost-of-living allowances.

Section 613. The Committee continues the provision prohibiting the expenditure of funds for abortion under the Federal Employees Health Benefits Program.

Section 614. The Committee continues the provision making exceptions to the preceding provision where the life of the mother is in danger or the pregnancy is a result of an act of rape or incest.

Section 615. The Committee continues the provision carried annually since 2004 waiving restrictions on the purchase of non-domestic articles, materials, and supplies in the case of acquisition of information technology by the Federal Government.

Section 616. The Committee continues the provision prohibiting officers or employees of any regulatory agency or commission funded by this Act from accepting travel payments or reimbursements from a person or entity regulated by such agency or commission.

Section 617. The Committee continues the provision permitting the Securities and Exchange Commission and Commodities Futures Trading Commission to fund a joint advisory committee to advise on emerging regulatory issues, notwithstanding section 708 of this Act.

Section 618. The Committee continues the provision requiring certain agencies in this Act to consult with the General Services Administration before seeking new office space or making alterations to existing office space.

Section 619. The Committee continues language providing for several appropriated mandatory accounts. These are accounts where authorizing language requires the payment of funds. The Congressional Budget Office estimates the cost for the following programs addressed in this provision: \$450,000 for Compensation of the President including \$50,000 for expenses, \$190,000,000 for the Judicial Retirement Funds (Judicial Officers' Retirement Fund, Judicial Survivors' Annuities Fund, and the United States Court of Federal Claims Judges' Retirement Fund), \$13,519,000,000 for the



Government Payment for Annuitants, Employee Health Benefits, \$49,000,000 for the Government Payment for Annuitants, Employee Life Insurance, and \$8,060,000,000 for the Payment to the Civil Service Retirement and Disability Fund.

Section 620. The Committee includes language prohibiting funds for the Federal Trade Commission to complete or publish the study, recommendations, or report prepared by the Interagency Working Group on Food Marketed to Children.

Section 621. The Committee includes language to prevent conflicts of interest by prohibiting contractor security clearance related background investigators from undertaking final Federal reviews of their own work.

Section 622. The Committee includes language requiring that the head of any executive branch agency ensure that the Chief Information Officer (CIO) has authority to participate in the budget planning process and approval of the information technology (IT) budget.

Section 623. The Committee continues the provision prohibiting funds in contravention of the Federal Records Act.

Section 624. The Committee includes language prohibiting agencies from requiring Internet Service Providers (ISPs) to disclose electronic communications information in a manner that violates the Fourth Amendment.

Section 625. The Committee continues language relating to Universal Service Fund payments for wireless providers.

Section 626. The Committee includes language prohibiting funds to be used to deny inspectors general access to records.

Section 627. The Committee continues the provision prohibiting any funds made available in this Act from being used to establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

Section 628. The Committee includes language prohibiting funds for the Securities and Exchange Commission to require the disclosure of political contributions to tax exempt organizations, or dues paid to trade associations.

Section 629. The Committee includes a new provision that provides the Archivist of the United States with the authority to force action on records that are past their disposition date or currently unscheduled and do not have a disposition date, and to unilaterally dispose of archival records in NARA's legal custody.

Section 630. The Committee includes new language that prohibits funds for enforcement of the Federal Elections Commission's prior approval requirement for corporate member trade association PACs.

Section 631. The Committee includes language prohibiting funds to pay for an abortion or the administrative expenses in connection with a multi-State qualified health plan offered under a contract under section 1334 of the Patient Protection and Affordable Care Act which provides any benefits or coverage for abortions, except for endangerment of the life of the mother, rape or incest.

Section 632. The Committee includes language prohibiting funds to the Securities and Exchange Commission for the purpose of requiring single ballot proxies.

TITLE VII—GENERAL PROVISIONS—GOVERNMENT-WIDE  
DEPARTMENTS, AGENCIES, AND CORPORATIONS  
(INCLUDING TRANSFER OF FUNDS)

Section 701. The Committee continues the provision requiring agencies to administer a policy designed to ensure that all of its workplaces are free from the illegal use of controlled substances.

Section 702. The Committee continues the provision establishing price limitations on vehicles to be purchased by the Federal Government with an exemption for the purchase of electric, plug-in hybrid electric, and hydrogen fuel cell vehicles.

Section 703. The Committee continues the provision allowing funds made available to agencies for travel to also be used for quarters allowances and cost-of-living allowances.

Section 704. The Committee continues the provision prohibiting the employment of noncitizens with certain exceptions.

Section 705. The Committee continues the provision giving agencies the authority to pay General Services Administration bills for space renovation and other services.

Section 706. The Committee continues, with modification, the provision allowing agencies to finance the costs of recycling and waste prevention programs with proceeds from the sale of materials recovered through such programs.

Section 707. The Committee continues the provision providing that funds made available to corporations and agencies subject to 31 U.S.C. 91 may pay rent and other service costs in the District of Columbia.

Section 708. The Committee continues the provision prohibiting interagency financing of groups absent prior statutory approval.

Section 709. The Committee continues the provision prohibiting the use of funds for enforcing regulations disapproved in accordance with the applicable law of the U.S.

Section 710. The Committee continues the provision limiting the amount of funds that can be used for redecoration of offices under certain circumstances.

Section 711. The Committee continues the provision to allow for interagency funding of national security and emergency telecommunications initiatives.

Section 712. The Committee continues the provision requiring agencies to certify that a Schedule C appointment was not created solely or primarily to detail the employee to the White House.

Section 713. The Committee continues the provision prohibiting the payment of any employee who prohibits, threatens or prevents another employee from communicating with Congress.

Section 714. The Committee continues the provision prohibiting Federal training not directly related to the performance of official duties.

Section 715. The Committee continues the provision prohibiting, other than for normal and recognized executive-legislative relationships, propaganda, publicity and lobbying by executive agency personnel in support or defeat of legislative initiatives.

Section 716. The Committee continues the provision prohibiting any Federal agency from disclosing an employee's home address to

any labor organization, absent employee authorization or court order.

Section 717. The Committee continues the provision prohibiting funds to be used to provide non-public information such as mailing, telephone, or electronic mailing lists to any person or organization outside the government without the approval of the Committees on Appropriations.

Section 718. The Committee continues the provision prohibiting the use of funds for propaganda and publicity purposes not authorized by Congress.

Section 719. The Committee continues the provision directing agency employees to use official time in an honest effort to perform official duties.

Section 720. The Committee continues the provision authorizing the use of funds to finance an appropriate share of the Federal Accounting Standards Advisory Board.

Section 721. The Committee continues the provision authorizing the transfer of funds to the General Services Administration to finance an appropriate share of various government-wide boards and councils and for Federal Government Priority Goals under certain conditions.

Section 722. The Committee continues the provision that permits breastfeeding in a Federal building or on Federal property if the woman and child are authorized to be there.

Section 723. The Committee continues the provision that permits interagency funding of the National Science and Technology Council and provides for a report on the budget and resources of the National Science and Technology Council.

Section 724. The Committee continues the provision requiring documents involving the distribution of Federal funds to indicate the agency providing the funds and the amount provided.

Section 725. The Committee continues the provision prohibiting the use of funds to monitor personal access or use of Internet sites or to collect, review, or obtain any personally identifiable information relating to access to or use of an Internet site.

Section 726. The Committee continues a provision requiring health plans participating in the Federal Employees Health Benefits Program to provide contraceptive coverage and provides exemptions to certain religious plans.

Section 727. The Committee continues language supporting strict adherence to anti-doping activities.

Section 728. The Committee continues a provision allowing funds for official travel to be used by departments and agencies, if consistent with OMB Circular A-126, to participate in the fractional aircraft ownership pilot program.

Section 729. The Committee continues the provision that restricts the use of funds for Federal law enforcement training facilities.

Section 730. The Committee continues the provision that prohibits Executive Branch agencies from creating prepackaged news stories that are broadcast or distributed in the United States unless the story includes a clear notification within the text or audio of such news story that the prepackaged news story was prepared or funded by that executive branch agency. This provision confirms

the opinion of the Government Accountability Office dated February 17, 2005 (B-304272).

Section 731. The Committee continues the provision prohibiting use of funds in contravention of section 552a of title 5, United States Code (the Privacy Act) and regulations implementing that section.

Section 732. The Committee continues the provision prohibiting funds from being used for any Federal Government contract with any foreign incorporated entity which is treated as an inverted domestic corporation.

Section 733. The Committee continues the provision requiring agencies to pay a fee to the Office of Personnel Management for processing retirement of employees who separate under Voluntary Early Retirement Authority or who receive Voluntary Separation Incentive payments.

Section 734. The Committee includes language prohibiting funds to require any entity submitting an offer for a Federal contract or participating in an acquisition to disclose political contributions.

Section 735. The Committee continues the provision prohibiting funds for the painting of a portrait of an employee of the Federal Government, including the President, the Vice President, a Member of Congress, the head of an executive branch agency, or the head of an office of the legislative branch.

Section 736. The Committee continues the provision limiting the pay increases of certain prevailing rate employees.

Section 737. The Committee continues a provision, with modification, requiring agencies to submit reports to Inspectors General concerning expenditures for agency conferences.

Section 738. The Committee continues a provision prohibiting funds to be used to increase, eliminate, or reduce funding for a program or project unless such change is made pursuant to reprogramming or transfer provisions.

Section 739. The Committee continues a provision prohibiting agencies from using funds to implement regulations changing the competitive areas under reductions-in-force for Federal employees.

Section 740. The Committee continues the provision ensuring contractors are not prevented from reporting waste, fraud, or abuse by signing confidentiality agreements that would prohibit such disclosure.

Section 741. The Committee continues the provision prohibiting the expenditure of funds for the implementation of certain non-disclosure agreements unless certain provisions are included in the agreements.

Section 742. The Committee continues the provision prohibiting funds to any corporation with certain unpaid Federal tax liabilities unless an agency has considered suspension or debarment of the corporation and made a determination that further action is not necessary to protect the interests of the Government.

Section 743. The Committee continues the provision prohibiting funds to any corporation that was convicted of a felony criminal violation within the preceding 24 months unless an agency has considered suspension or debarment of the corporation and made a determination that further action is not necessary to protect the interests of the Government.

Section 744. The Committee continues a provision requiring the Bureau of Consumer Financial Protection to notify the Committees on Appropriations of the House and the Senate, the Committee on Financial Services of the House, and the Committee on Banking, Housing, and Urban Affairs of the Senate of requests for a transfer of funds from the Board of Governors of the Federal Reserve System as well as post any such notifications on the Bureau's website.

Section 745. The Committee continues a provision addressing possible technical scorekeeping differences for fiscal year 2019 between the Office of Management and Budget and the Congressional Budget Office.

Section 746. The Committee modifies a provision on the conditions for implementing Executive Order 13690.

Section 747. The Committee includes a new provision prohibiting funds to implement, administer, or enforce a rule issued pursuant to section 13(p) of the Securities Exchange Act of 1934.

Section 748. The Committee continues the provision that prohibits the use of funds to begin or announce a study or a public-private competition regarding the conversion to contractor performance of any function performed by civilian Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy.

Section 749. The Committee continues the provision concerning the non-application of these general provisions to title IV and to title VIII.

## TITLE VIII—GENERAL PROVISIONS—DISTRICT OF COLUMBIA

(INCLUDING TRANSFERS OF FUNDS)

Section 801. The Committee continues language that appropriates funds to refund overpayments of taxes collected and to pay settlements and judgments against the District of Columbia government.

Section 802. The Committee continues language prohibiting the use of Federal funds for publicity or propaganda purposes.

Section 803. The Committee continues language establishing re-programming procedures for Federal and local funds.

Section 804. The Committee continues language prohibiting the use of Federal funds to provide salaries or other costs associated with the offices of United States Senator or Representative.

Section 805. The Committee continues language limiting the use of official vehicles to official duties.

Section 806. The Committee continues language prohibiting the use of Federal funds for any petition drive or civil action which seeks to require Congress to provide for voting representation in Congress for the District of Columbia.

Section 807. The Committee includes language prohibiting the use of Federal funds for needle exchange programs, and programs that support supervised consumption facilities that allow the use of substances on Schedule I of the Controlled Substances Act.

Section 808. The Committee continues language providing for a "conscience clause" on legislation that pertains to contraceptive coverage by health insurance plans.

Section 809. The Committee continues language prohibiting the use of Federal funds to legalize or reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act or any tetrahydrocannabinols derivative.

Language is also included prohibiting local and Federal funds to legalize or reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substance Act or any tetrahydrocannabinols derivative for recreational use.

Section 810. The Committee continues the provision that prohibits the use of funds for any abortion except in the cases of rape or incest or if necessary to save the life of the mother.

Section 811. The Committee continues language requiring the Chief Financial Officer (CFO) to submit a revised operating budget for all agencies in the D.C. government, no later than 30 calendar days after the enactment of this Act that realigns budgeted data with anticipated actual expenditures.

Section 812. The Committee continues language requiring the CFO to submit a revised operating budget for D.C. Public Schools, no later than 30 calendar days after the enactment of this Act that realigns school budgets to actual school enrollment.

Section 813. The Committee continues language allowing the transfer of local funds and capital and enterprise funds.

Section 814. The Committee continues language prohibiting the obligation of Federal funds beyond the current fiscal year and transfers of funds unless expressly provided herein.

Section 815. The Committee continues language providing that not to exceed 50 percent of unobligated balances from Federal appropriations for salaries and expenses may remain available for certain purposes. This provision will apply to the District of Columbia Courts, the Court Services and Offender Supervision Agency, and the District of Columbia Public Defender Service.

Section 816. The Committee continues language appropriating local funds during fiscal year 2020 if there is an absence of a continuing resolution or regular appropriation for the District of Columbia. Funds are provided under the same authorities and conditions and in the same manner and extent as provided for in fiscal year 2019.

Section 817. The Committee includes a new provision prohibiting funds to enact any act, resolution, rule, regulation, guidance, or other law to permit any person to carry out any activity to which subsection (a) of section 3 of the Assisted Suicide Funding Restriction Act of 1997 applies, and repeals the District of Columbia Death With Dignity Act of 2016.

Section 818. The Committee includes a new provision prohibiting funds in this Act from being used to carry out the Reproductive Health Non-Discrimination Amendment Act of 2018 (D.C. Law 20-261).

Section 819. The Committee includes a provision to repeal the Local Budget Autonomy Amendment Act of 2012.

Section 820. The Committee continues language limiting references to "this Act" as referring to only this title and title IV.

## TITLE IX—FINANCIAL REFORM

The bill includes a number of financial services reforms that have been passed by the House of Representatives in the 115th Congress.

## TITLE X—EMAIL PRIVACY ACT

### VOLUNTARY DISCLOSURE CORRECTIONS

The bill includes H.R. 387, the Email Privacy Act, which was passed by the House of Representatives on February 6, 2017.

## TITLE XI—AMATEUR RADIO PARITY ACT

The bill includes H.R. 555, the Amateur Radio Parity Act of 2017, which was passed by the House of Representatives on January 23, 2017.

## TITLE XII—ADDITIONAL GENERAL PROVISIONS

Section 1201. The Committee includes a provision establishing a “Spending Reduction Account” in the bill.

### HOUSE OF REPRESENTATIVES REPORT REQUIREMENTS

The following items are included in accordance with various requirements of the Rules of the House of Representatives:

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the following is a statement of general performance goals and objectives for which this measure authorizes funding:

The Committee on Appropriations considers program performance, including a program’s success in developing and attaining outcome-related goals and objectives, in developing funding recommendations.

#### RESCISSION OF FUNDS

Pursuant to clause 3(f)(2) of rule XIII of the Rules of the House of Representatives, the following table is submitted describing the rescissions recommended in the accompanying bill:

Small Business Administration .....	\$50,000,000
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#### TRANSFER OF FUNDS

Pursuant to clause 3(f)(2) of rule XIII of the Rules of the House of Representatives, the following is submitted describing the transfer of funds provided in the accompanying bill:

#### UNDER TITLE I—DEPARTMENT OF THE TREASURY

Section 101 allows the transfer of five percent of any appropriation made available to the Internal Revenue Service (IRS) to any other IRS appropriation, subject to prior congressional approval.

Section 113 authorizes the transfers of funds to IRS to the Taxpayer Services, Enforcement, or Operations Support, to assist with carrying out Tax Reform initiatives.

Section 115 authorizes transfers, up to two percent, between Departmental Offices, Office of Inspector General, Special Inspector General for Troubled Asset Relief Program, Financial Crimes Enforcement Network, Bureau of the Fiscal Service, and Alcohol and Tobacco Tax and Trade Bureau appropriations under certain circumstances.

Section 116 authorizes transfers, up to two percent, between the IRS and the Treasury Inspector General for Tax Administration under certain circumstances.

Section 118 authorizes the transfer of funds from the Bureau of the Fiscal Service to the Debt Collection Fund as necessary to cover the cost of debt collection.

#### UNDER TITLE II—EXECUTIVE OFFICE OF THE PRESIDENT

Language is included under Federal Drug Control Programs, High Intensity Drug Trafficking Areas Program, which allows for the transfer of funds to Federal departments or agencies and State and local entities.

Language is included under Other Federal Drug Control Programs, allowing the transfers of funds to other Federal departments and agencies to carry out activities.

Language is included under Information Technology Oversight and Reform, allowing the transfer of funds to other agencies to carry out projects.

Language is included under the Official Residence of the Vice President, Operating Expenses, allowing the transfer of funds to other Federal departments or agencies.

Section 201 permits the Executive Office of the President to transfer up to 10 percent of any appropriation, subject to approval of the Committee.

#### UNDER TITLE III—THE JUDICIARY

Language is included under Court Security, allowing funds to be transferred to the United States Marshals Service for courthouse security.

Section 302 permits the Judiciary to transfer up to five percent of any appropriation with certain limitations.

#### UNDER TITLE V—INDEPENDENT AGENCIES

Under Title V, Independent Agencies, a number of transfers are allowed.

(1) Under the Election Assistance Commission, amounts may be transferred to the National Institute of Standards and Technology.

(2) Under the General Services Administration, amounts may be transferred within the Federal Buildings Fund, under certain circumstances, after approval of the Committee on Appropriations.

(3) Under the General Services Administration, Federal Citizens Services Fund, transfers are allowed from the Federal Citizens Services Fund to Federal agencies.

(4) Under the General Services Administration, Federal Citizens Services Fund, transfers are allowed from unobligated funding pro-



vided to the “Electronic Government Fund” to the Federal Citizens Services Fund.

(5) Section 512 permits the General Services Administration to transfer funds in the Federal Buildings Fund after approval of the Committee on Appropriations.

(6) Under Merit Systems Protection Board, an amount is transferred from the Civil Service Retirement and Disability Fund.

(7) Under Office of Personnel Management, amounts from certain trust funds are transferred to the Salaries and Expenses and Office of Inspector General accounts for administrative expenses;

(8) Under the Postal Regulatory Commission, amounts are transferred from the Postal Service Fund;

(9) Under Small Business Administration, Business Loans Program Account, amounts may be transferred to and merged with Salaries and Expenses.

(10) Under Small Business Administration, Disaster Loans Program Account, amounts may be transferred to and merged with the Office of Inspector General, and Salaries and Expenses.

(11) Section 519 permits the Small Business Administration, to transfer funds between appropriations of the Small Business Administration.

(12) Under United States Postal Service, Office of Inspector General, amounts are transferred from the Postal Service Fund.

#### UNDER TITLE VII—GOVERNMENT-WIDE

Section 721 authorizes departments and agencies to transfer funds to the General Services Administration to support certain financial, information technology, procurement, and other management initiatives.

Section 744 authorizes with notification the transfer of funds from the Bureau of Consumer Financial Protection.

#### UNDER TITLE VIII—GENERAL PROVISIONS, DISTRICT OF COLUMBIA

Section 803 authorizes the District of Columbia to transfer local funds and section 813 allows transfer funds between operations and capital accounts.

#### DISCLOSURE OF EARMARKS AND CONGRESSIONALLY DIRECTED SPENDING ITEMS

Neither the bill nor the report contains any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

#### CHANGES IN THE APPLICATION OF EXISTING LAW

Pursuant to clause 3(f)(1)(A) of rule XIII of the Rules of the House of Representatives, the following statements are submitted describing the effect of provisions proposed in the accompanying bill which may be considered, under certain circumstances, to change the application of existing law, either directly or indirectly. The bill provides that appropriations shall remain available for more than one year for a number of programs for which the basic authorizing legislation does not explicitly authorize such extended

availability. In addition, the bill carries language, in some instances, permitting activities not authorized by law, or exempting agencies from certain provisions of law, but which has been carried in appropriations acts for many years.

The bill includes several limitations on official entertainment, reception and representation expenses. Similar provisions have appeared in many previous appropriations Acts. The bill includes a number of limitations on the purchase of automobiles or office furnishings that also have appeared in many previous appropriations Acts. Language is included in several instances permitting certain funds to be credited to the appropriations recommended. Language is also included in several instances permitting funding for services authorized by 5 U.S.C. 3109 and for the hire of passenger motor vehicles.

#### TITLE I—DEPARTMENT OF THE TREASURY

Language is included for Departmental Offices, Salaries and Expenses that provides funds for operation and maintenance of the Treasury Building Annex; hire of passenger motor vehicles; maintenance, repairs, and improvements of, and purchase of commercial insurance policies for real properties leased or owned overseas.

Language is also included designating funds for official reception and representation expenses; unforeseen emergencies of a confidential nature; and extending the period of availability for certain funds.

Language is included for Office of Terrorism and Financial Intelligence, Salaries and Expenses that provides funds combating threats to national security.

Language is included for Cybersecurity Enhancement Account that provides funds for enhanced cybersecurity for systems operated by the Department of the Treasury.

Language is included for Department-wide Systems and Capital Investments Programs that provides funds for equipment, software, and repairs and renovations to buildings owned by the Department of the Treasury.

Language is included for Fund for America's Kids and Grandkids that provides funds for government efficiencies subject to the absence of a budget deficit.

Language is included for the Office of Inspector General, Salaries and Expenses, that provides funds to carry out the provisions of the Inspector General Act of 1978, including official reception and representation expenses, the hire of vehicles, and provides funds for unforeseen emergencies of a confidential nature.

Language is included for the Treasury Inspector General for Tax Administration, Salaries and Expenses that provides funds to carry out the provisions of the Inspector General Act of 1978, including consulting services, official reception and representation expenses, the purchase and hire of motor vehicles, unforeseen emergencies of a confidential nature, and specifies the period of availability for certain funds.

Language is included for the Special Inspector General for the Troubled Asset Relief Program, Salaries and Expenses, that provides funds for the necessary expenses of the SIGTARP in carrying out the provisions of the Emergency Economic Stabilization Act of 2008 (P.L. 110-343).

Language is included for Financial Crimes Enforcement Network, Salaries and Expenses that provides funds for the hire of motor vehicles; travel and training of non-federal and foreign government personnel attending meetings involving domestic or foreign financial law enforcement, intelligence, and regulation; official reception and representation expenses; and assistance to Federal law enforcement agencies with or without reimbursement. Language is also included that extends the availability of certain amounts.

Language is included for the Bureau of the Fiscal Service, Salaries and Expenses, that provides a certain amount for official reception and representation expenses, and extends the availability for systems modernization funds. Language is also included specifying an amount to be derived from the Oil Spill Liability Trust Fund.

Language is included for the Alcohol and Tobacco Tax and Trade Bureau, Salaries and Expenses, that provides funds for the hire of passenger motor vehicles and laboratory assistance to State and local agencies with or without reimbursement. Language is also included that specifies the amounts for official reception and representation expenses and cooperative research and development.

Language is included for the U.S. Mint, United States Mint Public Enterprise Fund, which identifies the source of funding for the operations and activities of the U.S. Mint and specifies the level of funding for circulating coinage and protective service capital investments.

Language is included for the Community Development Financial Institutions Fund Program account that provides specific amounts for: financial and technical assistance; individuals with disabilities; Native American initiatives; Bank Enterprise Awards, Healthy Food Financing Initiatives; and administrative expenses for the program and cost of direct loans. Language is included for clarifying the amount for the Bond Guarantee Program.

Language is included under Internal Revenue Service, Taxpayer Services, that provides funds for pre-filing assistance and education, filing and account services, and taxpayer advocacy services, and dedicating funding for the Tax Counseling for the Elderly Program, low-income taxpayer clinic grants, and Community Volunteer Income Tax Assistance grants.

Language is included for the Internal Revenue Service, Enforcement, that provides funds to determine and collect owed taxes, provide legal and litigation support, conduct criminal investigations, enforce criminal statutes, purchase and hire of vehicles; and designates funding for the Interagency Crime and Drug Enforcement program. Language is included specifying the period of availability for certain funds.

Language is included for the Internal Revenue Service, Operations Support, that provides funds for operating and supporting taxpayer services and tax law enforcement programs; rent; facilities services; printing; postage; physical security; headquarters and other IRS-wide administration activities; research and statistics of income; telecommunications; information technology development, enhancement, operations, maintenance, and security; hire of passenger motor vehicles; and official reception and representation ex-

penses. Language is included specifying the period of availability for certain funds and requiring reports on information technology.

Language is included for the Internal Revenue Service, Business Systems Modernization that provides for the business systems modernization program, including capital asset acquisition of information technology, including management and related contractual costs and IRS labor costs of said acquisitions, contractual costs associated with operations, an extended availability of the funds and requires quarterly reports.

In addition, the bill provides the following administrative provisions:

Section 101. Language is included that allows for the transfer of five percent of any appropriation made available to the IRS to any other IRS appropriation, upon the advance approval of the Committees on Appropriations.

Section 102. Language is included that requires the IRS to maintain a training program in taxpayers' rights, dealing courteously with taxpayers, cross-cultural relations, and the impartial application of tax law.

Section 103. Language is included that requires the IRS to institute and enforce policies and procedures that will safeguard the confidentiality of taxpayer information and protect taxpayers against identity theft.

Section 104. Language is included that makes funds available for improved facilities and increased staffing to provide efficient and effective 1-800 number help line service for taxpayers.

Section 105. Language is included to require the IRS to issue notices to employers of any address change request and to give special consideration to offers in compromise for taxpayers who have been victims of payroll tax preparer fraud.

Section 106. Language is included to prohibit the IRS from targeting U.S. citizens for exercising their First Amendment rights.

Section 107. Language is included to prohibit the use of funds by the IRS to target groups based on their ideological beliefs.

Section 108. Language is included to prohibit the use of funds by the IRS on conferences that do not adhere to recommendations made by the Treasury Inspector General for Tax Administration.

Section 109. Language is included prohibiting funds for IRS employee awards or hiring programs that do not consider employee conduct and Federal tax compliance.

Section 110. Language included to prohibit the use of funds in contravention of section 6103 of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information).

Section 111. Language is included to prohibit funds for pre-populated returns.

Section 112. New language is included to prohibit funds for the IRS to deny tax exemption unless the IRS Commissioner consents to such determination.

Section 113. New language is provided for dedicated funds to assist with the implementation of tax reform.

Section 114. Language is included that authorizes the Department to purchase uniforms, insurance for motor vehicles that are overseas, and motor vehicles that are overseas without regard to the general purchase price limitations; to enter into contracts with

the State Department for health and medical services for Treasury employees that are overseas; and to hire experts or consultants.

Section 115. Language is included that authorizes transfers, up to two percent, between Departmental Offices—Salaries and Expenses, Office of Inspector General, Special Inspector General for the Troubled Asset Relief Program, Financial Crimes Enforcement Network, Bureau of the Fiscal Service, and Alcohol and Tobacco Tax and Trade Bureau, appropriations under certain circumstances.

Section 116. Language is included that authorizes transfers, up to two percent, between the Internal Revenue Service and the Treasury Inspector General for Tax Administration under certain circumstances.

Section 117. Language is included prohibiting the Department of the Treasury from undertaking a redesign of the one dollar Federal Reserve note.

Section 118. Language is included providing for transfers from and reimbursements to Bureau of the Fiscal Service, Salaries and Expenses for the purposes of debt collection.

Section 119. Language is included requiring congressional approval for the construction and operation of a museum by the United States Mint.

Section 120. Language is included prohibiting funds in this or any other Act from being used to merge the U.S. Mint and the Bureau of Engraving and Printing without the approval of the House and Senate committees of jurisdiction.

Section 121. Language is included deeming that funds for the Department of the Treasury's intelligence-related activities are specifically authorized in fiscal year 2019 until enactment of the Intelligence Authorization Act for fiscal year 2019.

Section 122. Language is included permitting the Bureau of Engraving and Printing to use \$5,000 from the Industrial Revolving Fund for reception and representation expenses.

Section 123. Language is included requiring the Department of the Treasury to submit a capital investment plan.

Section 124. Language is included requiring the Department of the Treasury to submit a report on its Franchise Fund.

Section 125. Language is included prohibiting the Department of the Treasury from finalizing any regulation related to the standards used to determine the tax-exempt status of a 501(c)(4) organization.

Section 126. Language is included requiring a quarterly report from both the Office of Financial Research and Office of Financial Stability Oversight.

Section 127. Language is included authorizing the Office of Terrorism and Financial Intelligence to reimburse Treasury Departmental Offices for reception and representation expenses to support activities of the Financial Action Task Force.

Section 128. Language is included prohibiting funds to approve, license, facilitate, authorize, or otherwise allow the importation of property confiscated by the Cuban Government.

Section 129. Language is included prohibiting funds to approve or otherwise allow the licensing of a mark, trade name, or commercial name that is substantially similar to one that was used in con-

nection with a business or assets that were confiscated unless expressly consented.

Section 130. Language is included prohibit the Department from enforcing guidance for U.S. positions on multilateral development banks engaging with developing countries on coal-fired power generation.

Section 131. Language is included that requires quarterly reports of the Office of Financial Research (OFR) and Office of Financial Stability.

Section 132. Language is included requiring the OFR to provide public notice of not less than 90 days before issuing a rule, report, or regulation.

Section 133. Language is included that limits the fees available for obligation by the OFR.

## TITLE II—EXECUTIVE OFFICE OF THE PRESIDENT

Language under The White House, Salaries and Expenses provides funds for services authorized by 5 U.S.C. 3109 and 3 U.S.C. 103, 105 and 107, hire of vehicles, and official reception and representation expenses; and the Office of Policy Development.

Language under Executive Residence at the White House, Operating Expenses provides funds for necessary expenses as authorized by 3 U.S.C. 105, 109, 110, and 112–114.

Language under Executive Residence at The White House, Reimbursable Expenses specifies the authorized use of funds; specifies that reimbursable expenses are the exclusive authority of the Executive Residence to incur obligations and receive offsetting collections; requires the sponsors of political events to make advance payments; requires the national committee of the political party of the President to maintain \$25,000 on deposit; requires the Executive Residence to ensure that amounts owed are billed within 60 days of a reimbursable event and collected within 30 days of the bill notice; authorizes the Executive Residence to charge and assess interest and penalties on late payments; authorizes all reimbursements to be deposited into the Treasury as a miscellaneous receipt; requires a report to the Committee on the reimbursable expenses within 90 days of the end of the fiscal year; requires the Executive Residence to maintain a system for tracking and classifying reimbursable events; and specifies that the Executive Residence is not exempt from the requirements of subchapter I or II of chapter 37 of title 31, United States Code.

Language under White House Repair and Restoration provides funds for the repair, alteration, and improvement of the Executive Residence at the White House; and allows funds to remain available until expended.

Language under Council of Economic Advisors, Salaries and Expenses, is provided for necessary expenses in carrying out the Employment Act of 1946.

Language under National Security Council and Homeland Security Council, Salaries and Expenses provides for services authorized by 5 U.S.C. 3109.

Language under Office of Administration, Salaries and Expenses provides funds for continued modernization of the information resources within the Executive Office of the President, to remain

available until expended, and provides for services authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, and for the hire of vehicles.

Language under Office of Management and Budget, Salaries and Expenses provides funds for expenses; services authorized by 5 U.S.C. 3109; the hire of vehicles; carrying out provisions of chapter 35 of title 44 United States Code and to prepare the budget request; specifies funds for official representation expenses; prohibits the review of agricultural marketing orders; prohibits the use of funds for the purpose of altering the transcript of testimony except for OMB officials; prohibits the use of funds for evaluating or determining if water resource project or study reports submitted by the Chief of Engineers are in compliance with all applicable laws, regulations, and requirements; prohibits the use of funds for altering the Corp of Engineers annual work plan; and specifies the amount of time to perform budgetary policy reviews of water resource matters on which the Chief of Engineers has reported before the report is considered approved, and specifies notification requirements.

Language under Office of National Drug Control Policy, Salaries and Expenses provides for expenses; receptions and representation expenses; participation in joint projects; provision of services to non-profit, research or public organizations or agencies with or without reimbursement; and allows for gifts to be used without fiscal year limitation for the work of the Office.

Language under High Intensity Drug Trafficking Area Program provides funds for expenses, extends the availability of funds, directs the distribution and obligation of funds, allows for the transfer of funds, allows for the reprogramming of unobligated funds, and requires notification on the distribution of funds.

Language under Other Federal Drug Control Programs extends the availability of funds, directs the distribution of funds, and allows for the transfer of funds.

Language under Unanticipated Needs extends the availability of funds.

Language under Information Technology Oversight and Reform provides for the use of funds, extends the availability of funds, and allows for the transfer of funds.

Language under Special Assistance to the President, Salaries and Expenses enables the Vice President to provide assistance to the President, services authorized by 5 U.S.C. 3109 and 3 U.S.C. 106, and the hire of vehicles.

Language under Official Residence of the Vice President, Operating Expenses provides funds for operation and maintenance of the official residence of the Vice President, the hire of vehicles, expenses authorized by 3 U.S.C. 106(b)(2) and provides for the transfer of funds as necessary.

In addition, the bill provides the following administrative provisions:

Section 201. Language is included permitting the transfer of not to exceed ten percent of funds between various accounts within the Executive Office of the President, with advance approval of the Committees on Appropriations. The amount of an appropriation shall not be increased by more than 50 percent.

Section 202. Language is included requiring the Director of the Office of Management and Budget to include a statement of budg-

etary impact with any Executive Order or Presidential Memorandum issued or rescinded during fiscal year 2019.

### TITLE III—THE JUDICIARY

Language is included under Supreme Court, Salaries and Expenses, providing for certain funds to remain available until expended; the hire of passenger motor vehicles, official reception and representation, and miscellaneous expenses. Language is included providing funds for salaries of judges as authorized by law.

Language is included under Supreme Court, Care of the Building and Grounds, permitting funds to remain available until expended.

Language is included under United States Court of Appeals for the Federal Circuit, Salaries and Expenses, for necessary expenses of the court. Language is included providing funds for salaries of judges as authorized by law.

Language is included under United States Court of International Trade, Salaries and Expenses, for necessary expenses of the court. Language is included providing funds for salaries of judges as authorized by law.

Language is included under Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses, providing funds for the salaries of certain judges, and all other employees not otherwise provided for; necessary expenses; the purchase, rental, repair and cleaning of uniforms for Probation and Pretrial Services Office staff; firearms and ammunition; and specifies certain funds remain available for certain periods for specific purposes. Language is included providing funds for salaries of judges as authorized by law. Language is also included providing funding from the Vaccine Injury Compensation Trust Fund for certain purposes.

Language is included under Defender Services, providing for the compensation and reimbursement of expenses for attorneys, investigative, expert and other services, the operation of Federal Defender organizations, travel, training, general administrative expenses and permitting funds to remain available until expended.

Language is included under Fees of Jurors and Commissioners, permitting funds to remain available until expended and specifying limitations for the compensation of land commissioners.

Language is included under Court Security, providing for protective guard services and procurement, installation and maintenance of security systems and equipment, building ingress-egress control, inspection of mail and packages, directed security patrols, perimeter security and services provided by the Federal Protective Services. Language is included permitting certain funds to remain available until expended, which may be transferred to the United States Marshals Service.

Language is included under Administrative Office of the United States Courts, Salaries and Expenses, providing for travel, the hire of passenger motor vehicles, advertising and rent in the District of Columbia. Language is included specifying certain amounts for official reception and representation expenses.

Language is included under Federal Judicial Center, Salaries and Expenses, extending the availability of certain funds for education and training, and specifying certain amounts for official reception and representation expenses.



Language is included under United States Sentencing Commission, Salaries and Expenses, specifying certain amounts for official reception and representation expenses.

In addition, the bill provides the following administrative provisions:

Section 301. Language is included permitting funds for salaries and expenses to be available for the employment of experts and consultant services as authorized by 5 U.S.C. 3109.

Section 302. Language is included permitting up to five percent of any appropriation made available for fiscal year 2019 to be transferred between Judiciary appropriations provided that no appropriation shall be decreased by more than five percent or increased by more than ten percent by any such transfer except in certain circumstances. In addition, the language provides that any such transfer shall be treated as a reprogramming of funds under sections 604 and 608 of the accompanying bill and shall not be available for obligation or expenditure except in compliance with the procedures set forth in those sections.

Section 303. Language is included allowing not to exceed \$11,000 to be used for official reception and representation expenses incurred by the Judicial Conference of the United States.

Section 304. Language is included allowing the delegation of authority to the Judiciary for contracts for repairs of less than \$100,000 through fiscal year 2019.

Section 305. Language is included allowing a court security pilot program.

Section 306. Language is included requested by the Judicial Conference of the United States extending temporary judgeships in Arizona, California Central, Florida Southern, Kansas, Missouri Eastern, New Mexico, North Carolina Western, and Texas Eastern.

#### TITLE IV—DISTRICT OF COLUMBIA

Language is included under Federal Payment for Resident Tuition Support, permitting the amount appropriated to remain available until expended; specifying conditions for the use, award, and financial accounting of funds; and requiring quarterly reports.

Language is included under Federal Payment for Emergency Planning and Security Costs in the District of Columbia, providing that the amount appropriated shall remain available until expended for providing public safety at events, including support of the United States Secret Service, and to respond to terrorist threats or attacks.

Language is included under Federal Payment to the District of Columbia Courts, authorizing official reception and representation expenses; specifying certain amounts for specific purposes; providing all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies; allowing funds made available for capital improvements to remain available until September 30, 2020; providing for the reallocation of funds and providing for certain payments.

Language is included under Federal Payment for Defender Services in the District of Columbia Courts, providing that the amount appropriated shall remain available until expended; specifying who

shall administer these funds; and providing that all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies; and that not more than \$20,000,000 in unobligated funds provided in this account may be transferred to and merged with funds made available under the heading Federal Payment to District of Columbia Courts.

Language is included under Federal Payment to the Court Services and Offender Supervision Agency for the District of Columbia, allowing the transfer and hire of motor vehicles; authorizing official reception and representation expenses; specifying certain amounts for specific purposes and programs; allowing \$13,223,000 to remain available until September 30, 2021 for costs associated with replacement leases; providing that all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies; allowing the use of programmatic incentives for offenders and defendants who successfully meet the terms of their supervision; authorizing the Director to accept, solicit and use on the behalf of the Agency any monetary or nonmonetary gift to support offenders and defendants successfully meeting terms of supervision.

Language is included under Federal Payment to District of Columbia Public Defender Service, allowing the transfer and hire of motor vehicles; providing that all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies; and authorizing the acceptance and use of voluntary and uncompensated services to facilitate the work of the District of Columbia Public Defender Service.

Language is included under Federal Payment to the Criminal Justice Coordinating Council, specifying that the amount appropriated shall remain available until expended to support initiatives related to the coordination of Federal and local criminal justice resources.

Language is included under Federal Payment for Judicial Commissions, specifying certain amounts for certain commissions and allowing for appropriations to remain available until September 30, 2020.

Language is included under Federal Payment for School Improvement, allowing for appropriations to remain available until expended for payments authorized under the Scholarship for Opportunity and Results Act.

Language is included under Federal Payment for the District of Columbia National Guard, providing funds for the National Guard Retention and College Access Program to remain available until expended.

Language is included under Federal Payment for Testing and Treatment of HIV/AIDS for testing and treatment.

Language is included under District of Columbia Funds: (1) providing funds as proposed in the fiscal year 2019 Budget Request Act of 2018 submitted to Congress by the District of Columbia; (2) limits the amount provided in this Act for the District of Columbia

to the amount of the proposed budget or the sum of total revenues; (3) providing conditions for increasing the amount provided; and (4) directing the Chief Financial Officer to ensure the District of Columbia meets all requirements, but prohibits the reprogramming of capital projects.

#### TITLE V—INDEPENDENT AGENCIES

Language is included for the Administrative Conference of the United States, Salaries and Expenses, providing for expenses, including official reception and representation and allowing funds to be available until September 30, 2019.

Language is included for the Consumer Product Safety Commission, Salaries and Expenses, that provides funds for expenses, the hire of motor vehicles, services as authorized by 5 U.S.C. 3109 (with a limitation on rates for individuals), and official reception and representation expenses.

The bill includes the following administrative provisions under the Consumer Product Safety Commission:

Section 501. Language is included prohibiting funds to finalize, implement, or enforce the proposed rule on recreational off-highway vehicles until a study is completed by the National Academy of Sciences.

Language is included for the Election Assistance Commission, Salaries and Expenses, that provides necessary funds, including transfer of funds, for salaries and expenses and to carry out the Help America Vote Act of 2002.

Language is included under the Federal Communications Commission, Salaries and Expenses, permitting funds for uniforms and allowances therefor, official reception and representation expenses, purchase and hire of motor vehicles, special counsel fees, and services as authorized by 5 U.S.C. 3109. Language provides for the assessment and collection of offsetting collections, authorizes retention of such collections, and provides that they remain available until expended. Language prohibits the availability for obligation of excess collections. Language limits the use of proceeds from the use of a competitive bidding system. Language provides funding for the Office of Inspector General.

The bill includes the following administrative provisions under the Federal Communications Commission:

Section 510. Language is included prohibiting the FCC from changing rules governing the Universal Service Fund regarding single connection or primary line restrictions.

Language is included for the Federal Deposit Insurance Corporation, Office of Inspector General, that provides for the funds to be derived from the Deposit Insurance Fund, and the FSLIC Resolution Fund.

Language is included for the Federal Election Commission, Salaries and Expenses, providing for expenses including official reception and representation.

Language is included for the Federal Labor Relations Authority, Salaries and Expenses, that provides funds for services authorized by 5 U.S.C. 3109, the hire of experts and consultants, hire of motor vehicles, reception and representation expenses and the rental of conference rooms; authorizes travel payments to public members of

the Federal Service Impasses Panel; and allows for fees collected to be transferred to and merged with the appropriation.

Language is included for the Federal Trade Commission, Salaries and Expenses, permitting funds for uniforms and allowances therefor, services authorized by 5 U.S.C. 3109, official reception and representation expenses, hire of motor vehicles, and contract for collection services. Language provides for the crediting and retention of certain fees. Language also prohibits funds from being used to implement subsection (e)(2)(B) of section 43 of the Federal Deposit Insurance Act.

Language is included for the General Services Administration, Federal Buildings Fund that allows for revenues and collections to be spent from the Fund; specifies the conditions under which funds made available can be used; limits the availability of funds for certain purposes; specifies funding for construction and acquisition projects; specifies funding for special emphasis programs; provides for certain transfers of funds; requires spending plans; and prohibits excess funds from being available.

Language is included for the General Services Administration, Government-wide Policy, that provides funds for policy and evaluation activities associated with the management of real and personal property assets and certain administrative services; support responsibilities relating to acquisition, telecommunications, motor vehicles, information technology management, and related technology activities; and services authorized by 5 U.S.C. 3109.

Language is included for the General Services Administration, Operating Expenses that provides funds for Government-wide activities associated with personal and real property disposal, and services authorized by 5 U.S.C. 3109; for expenses for activities associated with agency-wide policy direction and management.

Language is included for the General Services Administration, Civilian Board of Contract Appeals for activities associated with the Civilian Board of Contract Appeals.

Language is included for the General Services Administration, Office of Inspector General that makes certain funds available until expended and provides for awards in recognition of efforts that enhance the office. Language is included for services authorized by 5 U.S.C. 3109 and designates funds for information and detection of fraud.

Language is included for the General Services Administration, Allowances and Office Staff for Former Presidents, for carrying out the provisions of 3 U.S.C. 102 note and Public Law 95-138.

Language is included for the General Services Administration, Federal Citizen Services Fund, which provides funds for the Office of Citizen Services and other information technology costs. Language is included allowing for certain transfers to the Federal Citizen Services Fund. Language is also included for the Federal Citizen Services Fund that authorizes funds to be deposited in the Fund and limits the availability of funds in the Fund.

Language is included for the General Services Administration, Technology Modernization Fund, for technology-related modernization activities.

Language is included for the General Services Administration, Asset Proceeds and Space Management Fund for the purposes of

carrying out actions pursuant to recommendations of the Public Buildings Reform Board focusing on civilian real property.

Language is included for the General Services Administration, Environmental Review Improvement Fund for the authorized activities of the Environmental Review Improvement Fund and the Federal Permitting Improvement Steering Council.

In addition, the bill includes the following administrative provisions under the General Services Administration (GSA):

Section 520. Language is included providing authority for the use of funds for the hire of motor vehicles.

Section 521. Language is included providing that funds made available for activities of the Federal Buildings Fund may be transferred between appropriations with advance approval of the Congress to apply to funds provided in prior appropriations Acts.

Section 522. Language is included requiring funds proposed for developing courthouse construction requests to meet appropriate standards and the priorities of the Judicial Conference.

Section 523. Language is included providing that no funds may be used to increase the amount of occupiable square feet, provide cleaning services, security enhancements, or any other service usually provided, to any agency which does not pay the assessed rent.

Section 524. Language is included permitting GSA to pay small claims (up to \$250,000) made against the Federal Government.

Section 525. Language is included requiring the Administrator to ensure that the delineated area of procurement for all lease agreements is identical to the delineated area included in the prospectus unless prior notice is given to the Committees.

Section 526. Language is included requiring a spend plan for certain accounts and programs.

Section 527. Language is included directing the Administrator of the General Services Administration to submit a report on the implementation of Section 846 of the National Defense Authorization Act for fiscal year 2018.

Language is included for the Harry S Truman Scholarship Foundation as established by section 10 of Public Law 93-642.

Language is included for the Merit Systems Protection Board, Salaries and Expenses, that provides funds for services authorized by 5 U.S.C. 3109, rental of conference rooms, hire of passenger motor vehicles, direct procurement of survey printing, official reception and representation expenses, specifies the period of availability for certain funds, provides for administration expenses to adjudicate retirement appeals, and provides for the transfer of some funds.

Language is included for the National Archives and Records Administration, Operating Expenses, that provides funds for uniforms or allowances therefor, as authorized by 5 U.S.C. 5901 et seq., including maintenance, repairs, and cleaning, the hire of passenger motor vehicles, activities of the Public Interest Declassification Board, the review and declassification of documents, and the operations and maintenance of the electronic records archive.

Language is included for the National Archives and Records Administration, Office of Inspector General, that provides funds for the hire of motor vehicles.

Language is included for the National Archives and Records Administration, Repairs and Restoration, that provides funds for the

repair, alteration, improvement, and provision of adequate storage; and provides that funds remain available until expended.

Language is included under the National Archives and Records Administration, National Historical Publications and Records Commission Grants Program, that provides funds for allocations and grants for historical publications and records; and provides that funds remain available until expended.

Language is included under the National Credit Union Administration, Community Development Credit Union Revolving Loan Fund, that provides funds for technical assistance and extends the availability of funds.

Language is included under the Office of Government Ethics, Salaries and Expenses, that provides funds for services authorized by 5 U.S.C. 3109, rental of conference rooms, hire of passenger motor vehicles, and official reception and representation expenses.

Language is included under the Office of Personnel Management, Salaries and Expenses, that provides funds for services authorized by 5 U.S.C. 3109, medical examinations for veterans, rental of conference rooms, hire of passenger motor vehicles, official reception and representation expenses, advances for reimbursements, payment of per diem or subsistence allowances, and the transfer of administrative expenses; directs that provisions shall not affect other authorities; prohibits funds for the Legal Examining Unit; and authorizes the acceptance of donations under certain conditions. Language is also included specifying the period of availability for certain funds and requiring a report on information technology.

Language is included for the Office of Personnel Management, Office of Inspector General, Salaries and Expenses, that provides funds for services authorized by 5 U.S.C. 3109, hire of passenger motor vehicles, rental of conference rooms, and a transfer for administrative expenses.

Language is included for the Office of Special Counsel, Salaries and Expenses, that provides funds for services authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms, and the hire of passenger motor vehicles.

Language is included for the Postal Regulatory Commission, Salaries and Expenses, that provides funds derived from a transfer from the Postal Service Fund.

Language is included for the Privacy and Civil Liberties Oversight Board, Salaries and Expenses, that provides funds authorized by section 1061 of 42 U.S.C. 2000ee.

Language is included for the Public Buildings Reform Board, Salaries and Expenses, that provides funds for carrying out the Federal Assets Sale and Transfer Act of 2016 (P.L. 114–287).

Language is included for the Securities and Exchange Commission, Salaries and Expenses, that provides for rental of space, services, reception and representation expenses, a permanent secretariat for the International Organization of Securities Commissions, and consultations and meetings hosted by the Commission. Language is included designating funds for information technology initiatives, the economics division and a replacement lease for the NY regional office. Language is included that provides for the crediting of offsetting collections. Language provides for the assessment and collection of offsetting collections, authorizes retention of such collections, and provides that they remain available until expended.

Language is included for the Selective Service System, Salaries and Expenses, that provides funds for attendance of meetings, training, hire of passenger motor vehicles, services authorized by 5 U.S.C. 3109, and official reception and representation expenses; authorizes certain exemptions under certain conditions; and prohibits funds used in connection with the induction of any person into the Armed Forces of the United States.

Language is included for the Small Business Administration, Salaries and Expenses, that provides for hire of motor vehicles and official reception and representation expenses. Language is also included to provide authority to charge fees and credit such fees to the account without further appropriation. Language is also included designating funds for lender oversight. Language is also included for the Loan Modernization and Accounting System and co-sponsor activities.

Language is included for the Small Business Administration, Entrepreneurial Development Programs, that provides for supporting entrepreneurial and small business development grant programs. Language is included extending the availability of funds.

Language is included for the Small Business Administration, Office of Inspector General, that provides funds to carry out the provisions of the Inspector General Act of 1978.

Language is included for the Small Business Administration, Office of Advocacy, that provides funds to carry out the provisions of the Independent Office of Advocacy Act of 2003 and the Regulatory Flexibility Act of 1980 and allows funds to remain available until expended.

Language is included for the Small Business Administration, Business Loans Program Account, limiting commitments for certain guaranteed loan programs and for providing for the cost of direct loans and guaranteed loans. Language is also included authorizing the transfer of funds to Salaries and Expenses for administrative expenses.

Language is included for the Small Business Administration Disaster Loan Program Account, that provides for administrative expenses, the transfer of funds to the Office of Inspector General and to Salaries and Expenses and allows funds to remain available until expended.

Section 530 allows for the transfer of funds between Small Business Administration appropriations.

Section 531 rescinds prior year unobligated balances.

Section 532 amends requirements for the Microloan program.

Language is included for the United States Postal Service, Payment to the Postal Service Fund, that provides funds for revenue foregone; stipulates that mail for overseas voting and mail for the blind is free; provides that 6-day delivery shall continue at not less than the 1983 level; prohibits funds in this Act from being used to charge a fee to a child support enforcement agency seeking the address of a postal customer; prohibits funds from being used to consolidate or close small rural and other small post offices.

New language is included that requires the United States Postal Service to maintain and comply with delivery standards for First Class Mail and periodicals effective on July 1, 2012.

Language is included for the United States Postal Service, Office of Inspector General, that provides for transfer from the Postal Service Fund.

Language is included for the United States Tax Court, Salaries and Expenses, that provides funds for contract reporting and services authorized by 5 U.S.C. 3109, and that travel expenses of the judges shall be paid upon the written certificate of the judge.

#### TITLE VI—GENERAL PROVISIONS—THIS ACT

In addition, the bill provides the following provisions under this title:

Section 601. Language is included prohibiting pay and other expenses for non-Federal parties in regulatory or adjudicatory proceedings funded in this Act.

Section 602. Language is included prohibiting obligations beyond the current fiscal year and prohibits transfers of funds unless expressly so provided herein.

Section 603. Language is included limiting procurement contracts for consulting service expenditures to contracts that are matters of public record and available for public inspection.

Section 604. Language is included prohibiting transfer of funds in this Act without express authority.

Section 605. Language is included prohibiting the use of funds to engage in activities that would prohibit the enforcement of section 307 of the 1930 Tariff Act.

Section 606. Language is included concerning compliance with the Buy American Act.

Section 607. Language is included prohibiting the use of funds by any person or entity convicted of violating the Buy American Act.

Section 608. Language is included specifying reprogramming procedures. The provision requires that agencies or entities funded by the Act notify the Committee and obtain prior approval from the Committee for any reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose; (5) augments existing programs, projects, or activities in excess of \$5,000,000 or 10 percent, whichever is less; (6) reduces existing programs, projects, or activities by \$5,000,000 or 10 percent, whichever is less; or (7) reorganizes offices, programs, or activities. The provision also directs the agencies funded by this Act to submit operating plans for the Committee's review within 60 days of the bill's enactment.

Section 609. Language is included providing that fifty percent of unobligated balances may remain available for certain purposes.

Section 610. Language is included prohibiting funding for the Executive Office of the President to request either a Federal Bureau of Investigation background investigation or Internal Revenue Service determination with respect to section 501(a) of the Internal Revenue Code of 1986, except with the express consent of the individual involved in an investigation or in extraordinary circumstances involving national security.



Section 611. Language is included regarding cost accounting standards for contracts under the Federal Employee Health Benefits Program.

Section 612. Language is included regarding non-foreign area cost of living allowances.

Section 613. Language is included prohibiting the expenditure of funds for abortion under the Federal Employees Health Benefits program.

Section 614. Language is included making exceptions to the preceding provision where the life of the mother is in danger or the pregnancy is a result of an act of rape or incest.

Section 615. Language is included waiving restrictions on the purchase of non-domestic articles, materials, and supplies in the case of acquisition of information technology by the Federal government.

Section 616. Language is included prohibiting officers or employees of any regulatory agency or commission funded by this Act from accepting travel payments or reimbursements from a person or entity regulated by such agency or commission.

Section 617. Language is included permitting the Securities and Exchange Commission and Commodities Futures Trading Commission to fund a joint advisory committee to advise on emerging regulatory issues, notwithstanding Section 708 of this Act.

Section 618. Language is included requiring certain agencies in this Act to consult with the General Services Administration before seeking new office space or making alterations to existing office space.

Section 619. Language is included providing for several appropriated mandatory accounts. These are accounts where authorizing language requires the payment of funds. The Congressional Budget Office estimates the cost for the following programs addressed in this provision: \$450,000 for Compensation of the President including \$50,000 for expenses, \$190,000,000 for the Judicial Retirement Funds (Judicial Officers' Retirement Fund, Judicial Survivors' Annuities Fund, and the United States Court of Federal Claims Judges' Retirement Fund), \$13,519,000,000 for the Government Payment for Annuitants, Employee Health Benefits, \$49,000,000 for the Government Payment for Annuitants, Employee Life Insurance, and \$8,060,000,000 for the Payment to the Civil Service Retirement and Disability Fund.

Section 620. Language is included prohibiting funds for the Federal Trade Commission to complete or publish the study, recommendations, or report prepared by the Interagency Working Group on Food Marketed to Children.

Section 621. Language is included preventing conflicts of interest by prohibiting contractor security clearance related background investigators from undertaking final Federal reviews of their own work.

Section 622. Language is included requiring that the head of any executive branch agency ensure that the Chief Information Officer (CIO) has authority to participate in the budget planning process and approval of the information technology (IT) budget.

Section 623. Language is included prohibiting funds in contravention of the Federal Records Act.

Section 624. Language is included prohibiting agencies from requiring Internet Service Providers (ISPs) to disclose electronic communications information in a manner that violates the Fourth Amendment.

Section 625. Language is included relating to Universal Service Fund payments for wireless providers.

Section 626. Language is included prohibiting funds to be used to deny inspectors general access to records.

Section 627. Language is included prohibiting any funds made available in this Act from being used to establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

Section 628. Language is included prohibiting funds for the Securities and Exchange Commission to require the disclosure of political contributions to tax exempt organizations, or dues paid to trade associations.

Section 629. New language is included that provides the Archivist of the United States with the authority to force action on records that are past their disposition date or currently unscheduled and do not have a disposition date, and to unilaterally dispose of archival records in NARA's legal custody.

Section 630. Language is included repealing the Federal Election Commission's prior approval requirement for corporate member trade association PACs.

Section 631. Language is included prohibiting funds to pay for an abortion or the administrative expenses in connection with a multi-State qualified health plan offered under a contract under section 1334 of the Patient Protection and Affordable Care Act which provides any benefits or coverage for abortions, except for endangerment of the life of the mother, rape or incest.

Section 632. Language is included prohibiting funds to the Securities and Exchange Commission for the purpose of requiring single ballot proxies.

#### TITLE VII—GENERAL PROVISIONS—GOVERNMENT-WIDE

In addition, the bill provides the following provisions under this title:

Section 701. Language is included requiring agencies to administer a policy designed to ensure that all of its workplaces are free from the illegal use of controlled substances.

Section 702. Language is included establishing price limitations on vehicles to be purchased by the Federal Government with certain exceptions.

Section 703. Language is included allowing funds made available to agencies for travel to also be used for quarters allowances and cost-of-living allowances.

Section 704. Language is included prohibiting the employment of noncitizens with certain exceptions.

Section 705. Language is included giving agencies the authority to pay General Services Administration bills for space renovation and other services.

Section 706. Language is included allowing agencies to finance the costs of recycling and waste prevention programs with proceeds from the sale of materials recovered through such programs.

Section 707. Language is included providing that funds made available to corporations and agencies subject to 31 U.S.C. 91 may pay rent and other service costs in the District of Columbia.

Section 708. Language is included prohibiting interagency financing of groups absent prior statutory approval.

Section 709. Language is included prohibiting the use of funds for enforcing regulations disapproved in accordance with the applicable law of the U.S.

Section 710. Language is included limiting the amount of funds that can be used for redecoration of offices under certain circumstances.

Section 711. Language is included allowing for interagency funding of national security and emergency telecommunications initiatives.

Section 712. Language is included requiring agencies to certify that a Schedule C appointment was not created solely or primarily to detail the employee to the White House.

Section 713. Language is included prohibiting the payment of any employee who prohibits, threatens or prevents another employee from communicating with Congress.

Section 714. Language is included prohibiting Federal training not directly related to the performance of official duties.

Section 715. Language is included prohibiting, other than for normal and recognized executive-legislative relationships, propaganda, publicity and lobbying by executive agency personnel in support or defeat of legislative initiatives.

Section 716. Language is included prohibiting any Federal agency from disclosing an employee's home address to any labor organization, absent employee authorization or court order.

Section 717. Language is included prohibiting funds to be used to provide non-public information such as mailing, telephone, or electronic mailing lists to any person or organization outside the government without the approval of the Committees on Appropriations.

Section 718. Language is included prohibiting the use of funds for propaganda and publicity purposes not authorized by Congress.

Section 719. Language is included directing agency employees to use official time in an honest effort to perform official duties.

Section 720. Language is included allowing the use of funds to finance an appropriate share of the Federal Accounting Standards Advisory Board.

Section 721. Language is included allowing the transfer of funds to the General Services Administration to finance an appropriate share of various government-wide boards and councils and for Federal Government Priority Goals under certain conditions.

Section 722. Language is included permitting breast feeding in a Federal building or on Federal property if the woman and child are authorized to be there.

Section 723. Language is included permitting interagency funding of the National Science and Technology Council and provides for a report on the budget and resources of the National Science and Technology Council.

Section 724. Language is included requiring documents involving the distribution of Federal funds to indicate the agency providing the funds and the amount provided.

Section 725. Language is included prohibiting the use of funds to monitor personal access or use of Internet sites or to collect, review, or obtain any personally identifiable information relating to access to or use of an Internet site.

Section 726. Language is included requiring health plans participating in the Federal Employees Health Benefits Program to provide contraceptive coverage and provides exemptions to certain religious plans.

Section 727. Language is included supporting strict adherence to anti-doping activities.

Section 728. Language is included allowing funds for official travel to be used by departments and agencies, if consistent with OMB Circular A-126, to participate in the fractional aircraft ownership pilot program.

Section 729. Language is included restricting the use of funds for Federal law enforcement training facilities.

Section 730. Language is included prohibiting Executive Branch agencies from creating prepackaged news stories that are broadcast or distributed in the United States unless the story includes a clear notification within the text or audio of that news story that the prepackaged news story was prepared or funded by that executive branch agency.

Section 731. Language is included prohibiting use of funds in contravention of section 552a of title 5, United States Code (the Privacy Act) and regulations implementing that section.

Section 732. Language is included prohibiting funds from being used for any Federal Government contract with any foreign incorporated entity which is treated as an inverted domestic corporation.

Section 733. Language is included requiring agencies to pay a fee to the Office of Personnel Management for processing retirement of employees who separate under Voluntary Early Retirement Authority or who receive Voluntary Separation Incentive payments.

Section 734. Language is included prohibiting funds to require any entity submitting an offer for a Federal contract or participating in an acquisition to disclose political contributions.

Section 735. Language is included prohibiting funds for the painting of a portrait of an employee of the Federal government including the President, the Vice President, a Member of Congress, the head of an executive branch agency, or the head of an office of the legislative branch.

Section 736. Language is included limiting the pay increases of certain prevailing rate employees.

Section 737. Language is included requiring agencies to submit reports to Inspectors General concerning expenditures for agency conferences.

Section 738. Language is included prohibiting funds to be used to increase, eliminate, or reduce funding for a program or project unless such change is made pursuant to reprogramming or transfer provisions.

Section 739. Language is included prohibiting agencies from using funds to implement regulations changing the competitive areas under reductions-in-force for Federal employees.

Section 740. Language is included ensuring contractors are not prevented from reporting waste, fraud, or abuse by signing confidentiality agreements that would prohibit such disclosure.

Section 741. Language is included prohibiting the expenditure of funds for the implementation of certain nondisclosure agreements unless certain provisions are included in the agreements.

Section 742. Language is included prohibiting funds to any corporation with certain unpaid Federal tax liabilities unless an agency has considered suspension or debarment of the corporation and made a determination that further action is not necessary to protect the interests of the Government.

Section 743. Language is included prohibiting funds to any corporation that was convicted of a felony criminal violation within the preceding 24 months unless an agency has considered suspension or debarment of the corporation and made a determination that further action is not necessary to protect the interests of the Government.

Section 744. Language is included requiring the Bureau of Consumer Financial Protection to notify certain Committees of requests for a transfer of funds from the Federal Reserve System and to post any such notifications on the Bureau's website.

Section 745. The Committee continues a provision addressing possible technical scorekeeping differences for fiscal year 2019 between the Office of Management and Budget and the Congressional Budget Office.

Section 746. Language is included prohibiting funds from implementing, administering, carrying out, modifying, revising, or enforcing Executive Order 13690.

Section 747. New language is included prohibiting funds to implement, administer, or enforce a rule issued pursuant to section 13(p) of the Securities Exchange Act of 1934.

Section 748. Language is included prohibiting the use of funds to begin or announce a study or a public-private competition regarding the conversion to contractor performance of any function performed by civilian Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy.

Section 749. Language is included concerning the non-application of these general provisions to title IV and to title VIII.

#### TITLE VIII—GENERAL PROVISIONS—DISTRICT OF COLUMBIA

In addition, the bill provides the following provisions under this title:

Section 801. Language is included that appropriates funds for refunding overpayments of taxes collected and for paying settlements and judgments against the District of Columbia government.

Section 802. Language is included prohibiting the use of Federal funds for publicity or propaganda purposes.

Section 803. Language is included establishing reprogramming procedures for Federal and local funds.

Section 804. Language is included prohibiting the use of Federal funds to provide salaries or other costs associated with the offices of United States Senator or Representative.

Section 805. Language is included restricting the use of official vehicles to official duties.

Section 806. Language is included prohibiting the use of Federal funds for any petition drive or civil action which seeks to require Congress to provide for voting representation in Congress for the District of Columbia.

Section 807. Language is included prohibiting the use of Federal funds for needle exchange programs and programs that support supervised consumption facilities.

Section 808. Language is included providing for a “conscience clause” on legislation that pertains to contraceptive coverage by health insurance plans.

Section 809. Language is included prohibiting the use of Federal funds to legalize or reduce penalties associated with the possession, use, or distribution on any schedule I substance under the Controlled Substances Act or any tetrahydrocannabinols derivative.

Language is also included prohibiting local and Federal funds to legalize or reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substance Act or any tetrahydrocannabinols derivative for recreational use.

Section 810. Language is included prohibiting the use of funds for abortion except in the cases of rape or incest or if necessary to save the life of the mother.

Section 811. Language is included requiring the Chief Financial Officer (CFO) to submit a revised operating budget for all agencies in the D.C. government, no later than 30 calendar days after the enactment of this Act that realigns budgeted data with anticipated actual expenditures.

Section 812. Language is included requiring the CFO to submit a revised operating budget for D.C. Public Schools, no later than 30 calendar days after the enactment of this Act, that realigns school budgets to actual school enrollment.

Section 813. Language is included allowing the transfer of local funds and capital and enterprise funds.

Section 814. Language is included prohibiting the obligation of Federal funds beyond the current fiscal year and transfers of funds unless expressly provided herein.

Section 815. Language is included providing that not to exceed 50 percent of unobligated balances from Federal appropriations for salaries and expenses may remain available for certain purposes.

Section 816. Language is included appropriating local funds during fiscal year 2020 if there is an absence of a continuing resolution or regular appropriation for the District of Columbia. Funds are provided under the same authorities and conditions and in the same manner and extent as provided for in fiscal year 2019.

Section 817. New language is included prohibiting funds to enact any act, resolution, rule, regulation, guidance, or other law to permit any person to carry out any activity to which subsection (a) of section 3 of the Assisted Suicide Funding Restriction Act of 1997 applies, and repeals the District of Columbia Death With Dignity Act of 2016.

Section 818. New language is included prohibiting funds in this Act from being used to carry out the Reproductive Health Non-Discrimination Amendment Act of 2018 (D.C. Law 20–261).

Section 819. Language is included repealing the Local Budget Autonomy Amendment Act of 2012.

Section 820. Language is included limiting references to “this Act” as referring to only this title and title IV.

#### TITLE IX—FINANCIAL REFORMS

The bill includes a number of financial services reforms that have been passed by the House of Representatives in the 115th Congress.

#### TITLE X—EMAIL PRIVACY ACT

The bill includes H.R. 387, the Email Privacy Act, which was passed by the House of Representatives on February 6, 2017.

#### TITLE XI—AMATEUR RADIO PARITY ACT

The bill includes H.R. 555, the Amateur Radio Parity Act of 2017, which was passed by the House of Representatives on January 23, 2017.

#### TITLE XII—ADDITIONAL GENERAL PROVISIONS

Section 1201. The Committee includes a provision establishing a “Spending Reduction Account” in the bill.

#### APPROPRIATIONS NOT AUTHORIZED BY LAW

Pursuant to clause 3(f)(1)(B) of rule XIII of the Rules of the House of Representatives, the following table lists the appropriations in the accompanying bill which are not authorized by law for the period concerned:

(Dollars in thousands)

Account	Last Year of Authorization	Authorization Level	Appropriation in Last Year of Authorization	Appropriations in this bill
<b>Title I—Department of the Treasury</b>				
Departmental Offices .....	n/a	n/a	n/a	208,751
Office of Terrorism and Financial Intelligence .....	n/a	n/a	n/a	161,000
Cybersecurity Enhancement Account .....	n/a	n/a	n/a	25,208
Department-Wide Systems and Capital Investments Program .....	1997	.....	.....	8,000
Fund for America's Kids and Grandkids .....	n/a	n/a	n/a	585,000
Office of Inspector General .....	.....	.....	.....	37,044
Treasury Inspector General for Tax Administration .....	n/a	n/a	n/a	170,834
Special Inspector General for the Troubles Asset Relief Program .....	.....	.....	.....	28,800
Financial Crimes Enforcement Network .....	2013	100,419	111,788	117,800
Bureau of the Fiscal Service .....	n/a	n/a	n/a	338,280
Alcohol and Trade Tax and Trade Bureau .....	n/a	n/a	n/a	123,527
Community Development and Financial Institutions Fund .....	1998	111,000	80,000	216,000
<b>Internal Revenue Service:</b>				
Taxpayer Services .....	n/a	n/a	n/a	2,491,554
Enforcement .....	n/a	n/a	n/a	4,860,000
Operations Support .....	n/a	n/a	n/a	3,988,000
Business Systems Modernization .....	n/a	n/a	n/a	200,000
<b>Title II—Executive Office of the President</b>				
Office of Management and Budget .....	2003	various	61,988	103,000
<b>Policy:</b>				
Salaries and Expenses .....	2010	n/a	29,575	17,400
High Intensity Drug Trafficking Areas .....	2011	280,000	238,522	280,000
Other Federal Drug Control Programs .....	various	various	n/a	118,327
Information Technology Oversight and Reform .....	n/a	n/a	n/a	15,000

(Dollars in thousands)

Account	Last Year of Authorization	Authorization Level	Appropriation in Last Year of Authorization	Appropriations in this bill
<b>Title IV—District of Columbia</b>				
Federal Payment for Resident Tuition Support ....	2012	such sums	40,000	30,000
Federal Payment for the Judicial Commissions ...	n/a	n/a	n/a	565
Federal Payment for School Improvement .....	2016	60,000	45,000	45,000
Federal Payment for the DC National Guard .....	n/a	n/a	n/a	435
Federal Payment for Testing and Treatment of HIV/AIDS .....	n/a	n/a	n/a	5,000
<b>Title V—Independent Agencies</b>				
Administrative Conference of the United States ..	2011	3,200	2,750	3,100
Consumer Safety Product Commission .....	2014	136,409	118,000	127,000
Election Assistance Commission .....	2005	n/a	13,888	10,100
Federal Communications Commission .....	1991	such sums	115,794	335,118
Federal Election Commission .....	1981	9,400	9,662	71,250
Federal Trade Commission .....	1998	111,000	106,500	158,700
General Services Administration:				
Government-wide Policy .....	n/a	n/a	n/a	60,000
Operations Expenses .....	n/a	n/a	n/a	49,440
Federal Citizen Services Fund .....	n/a	n/a	n/a	55,000
Merit Systems Protection Board .....	2007	such sums	29,110	46,835
National Historical Public Records Commission ..	2009	10,000	11,250	6,000
Office of Government Ethics .....	2007	such sums	11,148	17,019
Securities and Exchange Commission .....	2015	2,250,000	1,500,000	1,695,491

## COMPARISON WITH THE BUDGET RESOLUTION

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and Section 308(a)(1)(A) of the Congressional Budget Act of 1974, the following table compares the levels of new budget authority provided in the bill with the appropriate allocations under section 302(b) of the Budget Act:

BUDGETARY IMPACT OF FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2019 (AS ORDER REPORTED ON 13 JUNE 2018) PREPARED IN CONSULTATION WITH THE CONGRESSIONAL BUDGET OFFICE PURSUANT TO SEC. 308(a), PUBLIC LAW 93–344, AS AMENDED

[In millions of dollars]

	302(b) allocation		This bill	
	Budget Authority	Outlays	Budget Authority	Outlays
Comparison of amounts in the bill with Committee allocations to its subcommittees: Subcommittee on Financial Services				
Mandatory .....			22,406	<sup>1</sup> 22,398
Discretionary .....			23,423	<sup>1</sup> 24,045
General Purpose .....	23,423	24,490		
Overseas Contingency .....	n.a.	n.a.		

<sup>1</sup> Includes outlays from prior-year budget authority.  
n.a.: not applicable

## FIVE-YEAR OUTLAY PROJECTIONS

Pursuant to section 308(a)(1)(B) of the Congressional Budget Act of 1974, the following table contains five-year projections prepared by the Congressional Budget Office of outlays associated with the budget authority provided in the accompanying bill, as provided to the Committee by the Congressional Budget Office:



[In millions of dollars]

	302(b) allocation		This bill	
	Budget Authority	Outlays	Budget Authority	Outlays
Projection of outlays associated with the recommendation:				
2019 .....	n.a.	n.a.	n.a.	<sup>2</sup> 40,141
2020 .....	n.a.	n.a.	n.a.	<sup>2</sup> 3,690
2021 .....	n.a.	n.a.	n.a.	<sup>2</sup> — 67
2022 .....	n.a.	n.a.	n.a.	<sup>2</sup> — 554
2023 and future years .....	n.a.	n.a.	n.a.	<sup>2</sup> — 4,421

<sup>2</sup> Excludes outlays from prior-year budget authority.  
n.a.: not applicable

#### ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Pursuant to section 308(a)(1)(C) of the Congressional Budget Act of 1974, the amounts of financial assistance to State and local governments is as follows:

[In millions of dollars]

	302(b) allocation		This bill	
	Budget Authority	Outlays	Budget Authority	Outlays
Financial assistance to State and local governments for 2019 ..	n.a.	n.a.	727	<sup>2</sup> 166

<sup>2</sup> Excludes outlays from prior-year budget authority.  
n.a.: not applicable

#### PROGRAM DUPLICATION

No provision of this bill 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.

#### DIRECTED RULE MAKING

The bill does not direct any rule making.

#### COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY

The following table provides a detailed summary, for each Department and agency, comparing the amounts recommended in the bill with amounts enacted for fiscal year 2017 and budget estimates presented for fiscal year 2018.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
-----					
TITLE I - DEPARTMENT OF THE TREASURY					
Departmental Offices					
Salaries and Expenses.....	201,751	201,751	208,751	+7,000	+7,000
Office of Terrorism and Financial Intelligence.....	141,778	159,000	161,000	+19,222	+2,000
Cybersecurity Enhancement Account .....	24,000	25,208	25,208	+1,208	---
Department-wide Systems and Capital Investments					
Programs.....	4,426	4,000	8,000	+3,574	+4,000
Fund for America's Kids and Grandkids.....	---	---	585,000	+585,000	+585,000
Office of Inspector General.....	37,044	36,000	37,044	---	+1,044
Treasury Inspector General for Tax Administration....	169,634	161,113	170,834	+1,200	+9,721
Special Inspector General for TARP.....	34,000	17,500	28,800	-5,200	+11,300
Financial Crimes Enforcement Network.....	115,003	117,800	117,800	+2,797	---
-----					
Subtotal, Departmental Offices.....	727,636	722,372	1,342,437	+614,801	+620,065
Treasury Forfeiture Fund (rescission).....	-702,000	---	---	+702,000	---
-----					
Total, Departmental Offices.....	25,636	722,372	1,342,437	+1,316,801	+620,065

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
Bureau of the Fiscal Service.....	338,280	330,837	338,280	---	+7,443
Alcohol and Tobacco Tax and Trade Bureau.....	111,439	114,427	123,527	+12,088	+9,100
Community Development Financial Institutions Fund Program Account.....	250,000	14,000	216,000	-34,000	+202,000
Total, Department of the Treasury, non-IRS.....	725,355	1,181,636	2,020,244	+1,294,889	+838,608
Internal Revenue Service					
Taxpayer Services.....	2,506,554	2,241,000	2,491,554	-15,000	+250,554
Enforcement.....	4,860,000	4,628,000	4,860,000	---	+232,000
Program Integrity.....	---	204,643	---	---	-204,643
Subtotal.....	4,860,000	4,832,643	4,860,000	---	+27,357
Operations Support.....	3,634,000	4,155,796	3,988,000	+354,000	-167,796
Program Integrity.....	---	156,928	---	---	-156,928
Subtotal.....	3,634,000	4,312,724	3,988,000	+354,000	-324,724

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
Business Systems Modernization.....	110,000	110,000	200,000	+90,000	+90,000
General provision (sec. 113).....	320,000	---	77,000	-243,000	+77,000
Total, Internal Revenue Service.....	11,430,554	11,496,367	11,616,554	+186,000	+120,187
	=====	=====	=====	=====	=====
Total, title I, Department of the Treasury.....	12,155,909	12,678,003	13,636,798	+1,480,889	+958,795
Appropriations.....	(12,857,909)	(12,316,432)	(13,636,798)	(+778,889)	(+1,320,366)
Rescissions.....	(-702,000)	---	---	(+702,000)	---
(Mandatory).....	---	---	---	---	---
(Discretionary).....	(12,155,909)	(12,678,003)	(13,636,798)	(+1,480,889)	(+958,795)
	=====	=====	=====	=====	=====

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
-----					
TITLE II - EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT					
The White House					
Salaries and Expenses.....	55,000	55,000	55,000	---	---
Executive Residence at the White House:					
Operating Expenses.....	12,917	13,081	13,081	+164	---
White House Repair and Restoration.....	750	750	750	---	---
Subtotal.....	13,667	13,831	13,831	+164	---
Council of Economic Advisers.....	4,187	4,187	4,187	---	---
National Security Council and Homeland Security Council.....	11,800	13,500	13,000	+1,200	-500
Office of Administration.....	100,000	100,000	100,000	---	---
Total, The White House.....	184,654	186,518	186,018	+1,364	-500

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
Office of Management and Budget.....	101,000	103,000	103,000	+2,000	---
Office of National Drug Control Policy					
Salaries and Expenses.....	18,400	17,400	17,400	-1,000	---
High Intensity Drug Trafficking Areas Program.....	280,000	---	280,000	---	+280,000
Other Federal Drug Control Programs.....	117,093	11,843	118,327	+1,234	+106,484
Total, Office of National Drug Control Policy...	415,493	29,243	415,727	+234	+386,484
Unanticipated Needs.....	798	1,000	1,000	+202	---
Information Technology Oversight and Reform.....	19,000	25,000	15,000	-4,000	-10,000
Special Assistance to the President and Official Residence of the Vice President:					
Salaries and Expenses.....	4,288	4,288	4,288	---	---
Operating Expenses.....	302	302	302	---	---
Subtotal.....	4,590	4,590	4,590	---	---
Total, title II, Executive Office of the President and Funds Appropriated to the President.....	725,535	349,351	725,335	-200	+375,984

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
-----					
TITLE III - THE JUDICIARY					
Supreme Court of the United States					
Salaries and Expenses:					
Salaries of Justices.....	3,000	3,000	3,000	---	---
Other salaries and expenses.....	82,028	84,359	84,703	+2,675	+344
Subtotal.....	85,028	87,359	87,703	+2,675	+344
Care of the Building and Grounds.....	16,153	15,999	15,999	-154	---
Total, Supreme Court of the United States.....	101,181	103,358	103,702	+2,521	+344
United States Court of Appeals for the Federal Circuit					
Salaries and Expenses:					
Salaries of judges.....	3,000	4,000	4,000	+1,000	---
Other salaries and expenses.....	31,291	31,274	32,016	+725	+742
Total, United States Court of Appeals for the Federal Circuit.....	34,291	35,274	36,016	+1,725	+742

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
<hr/>					
United States Court of International Trade					
Salaries and Expenses:					
Salaries of judges.....	1,000	2,000	2,000	+1,000	---
Other salaries and expenses.....	18,889	19,070	19,450	+561	+380
Total, U.S. Court of International Trade.....	19,889	21,070	21,450	+1,561	+380
Courts of Appeals, District Courts, and Other Judicial Services					
Salaries and Expenses:					
Salaries of judges and bankruptcy judges.....	435,000	429,000	429,000	-6,000	---
Other salaries and expenses.....	5,099,061	5,132,543	5,167,961	+68,900	+35,418
Subtotal.....	5,534,061	5,561,543	5,596,961	+62,900	+35,418
Vaccine Injury Compensation Trust Fund.....	8,230	8,475	8,475	+245	---
Defender Services.....	1,078,713	1,141,489	1,142,427	+63,714	+938
Fees of Jurors and Commissioners.....	50,944	51,233	49,750	-1,194	-1,483
Court Security.....	586,999	602,309	604,460	+17,461	+2,151
Total, Courts of Appeals, District Courts, and Other Judicial Services.....	7,258,947	7,365,049	7,402,073	+143,126	+37,024



COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
-----					
Administrative Office of the United States Courts					
Salaries and Expenses.....	90,423	89,867	92,413	+1,990	+2,546
Federal Judicial Center					
Salaries and Expenses.....	29,265	29,064	29,819	+554	+755
United States Sentencing Commission					
Salaries and Expenses.....	18,699	18,548	18,548	-151	---
	=====	=====	=====	=====	=====
Total, title III, the Judiciary.....	7,552,695	7,662,230	7,704,021	+151,326	+41,791
(Mandatory).....	(442,000)	(438,000)	(438,000)	(-4,000)	---
(Discretionary).....	(7,110,695)	(7,224,230)	(7,266,021)	(+155,326)	(+41,791)
	=====	=====	=====	=====	=====

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
-----					
TITLE IV - DISTRICT OF COLUMBIA					
Federal Payment for Resident Tuition Support.....	40,000	---	30,000	-10,000	+30,000
Federal Payment for Emergency Planning and Security Costs in the District of Columbia.....	13,000	12,000	13,000	---	+1,000
Federal Payment to the District of Columbia Courts....	265,400	244,939	288,280	+22,880	+43,341
Federal Payment for Defender Services in District of Columbia Courts.....	49,890	46,005	49,890	---	+3,885
Federal Payment to the Court Services and Offender Supervision Agency for the District of Columbia....	244,298	256,724	256,724	+12,426	---
Federal Payment to the District of Columbia Public Defender Service.....	41,829	45,858	45,858	+4,029	---
Federal Payment to the Criminal Justice Coordinating Council.....	2,000	1,900	2,000	---	+100
Federal Payment for Judicial Commissions.....	565	565	565	---	---
Federal Payment for School Improvement.....	45,000	45,000	45,000	---	---
Federal Payment for the D.C. National Guard.....	435	435	435	---	---
Federal Payment for Testing and Treatment of HIV/AIDS.	5,000	5,000	5,000	---	---
Federal Payment to the District of Columbia Water and Sewer Authority.....	14,000	---	---	-14,000	---
	=====	=====	=====	=====	=====
Total, Title IV, District of Columbia.....	721,417	658,426	736,752	+15,335	+78,326
	=====	=====	=====	=====	=====

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
-----					
TITLE V - OTHER INDEPENDENT AGENCIES					
Administrative Conference of the United States.....	3,100	3,100	3,100	---	---
Consumer Product Safety Commission.....	126,000	123,450	127,000	+1,000	+3,550
Election Assistance Commission.....	10,100	9,200	10,100	---	+900
Election Reform Program.....	380,000	---	---	-380,000	---
Federal Communications Commission					
Salaries and Expenses.....	322,035	333,118	335,118	+13,083	+2,000
Offsetting fee collections.....	-322,035	-333,118	-335,118	-13,083	-2,000
-----					
Direct appropriation.....	---	---	---	---	---
General provision (sec. 511).....	600,000	---	---	-600,000	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
<hr/>					
Federal Deposit Insurance Corporation					
Office of Inspector General (by transfer).....	(39,136)	(42,982)	(42,982)	(+3,846)	---
Deposit Insurance Fund (transfer).....	(-39,136)	(-42,982)	(-42,982)	(-3,846)	---
Federal Election Commission.....	71,250	71,250	71,250	---	---
Federal Labor Relations Authority.....	26,200	26,200	26,200	---	---
Federal Trade Commission					
Salaries and Expenses.....	306,317	309,700	311,700	+5,383	+2,000
Offsetting fee collections (mergers).....	-126,000	-136,000	-136,000	-10,000	---
Offsetting fee collections (telephone).....	-16,000	-17,000	-17,000	-1,000	---
<hr/>					
Direct appropriation.....	164,317	156,700	158,700	-5,617	+2,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
<hr/>					
General Services Administration					
Federal Buildings Fund					
Limitations on Availability of Revenue:					
Construction and acquisition of facilities.....	692,069	1,338,387	275,900	-416,169	-1,062,487
Repairs and alterations.....	666,335	909,746	679,934	+13,599	-229,812
Rental of space.....	5,493,768	5,430,345	5,430,345	-63,423	---
Building operations.....	2,221,766	2,253,195	2,248,395	+26,629	-4,800
Installment Acquisition Payments.....	---	200,000	---	---	-200,000
Subtotal, Limitations on Availability of Revenue.....	9,073,938	10,131,673	8,634,574	-439,364	-1,497,099
Rental income to fund.....	-9,950,519	-10,131,673	-10,131,673	-181,154	---
Total, Federal Buildings Fund .....	-876,581	---	-1,497,099	-620,518	-1,497,099

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
Government-wide Policy.....	53,499	65,835	60,000	+6,501	-5,835
Operating Expenses.....	45,645	49,440	49,440	+3,795	---
Civilian Board of Contract Appeals .....	8,795	9,301	9,301	+506	---
Office of Inspector General.....	65,000	67,000	67,000	+2,000	---
Allowances and Office Staff for Former Presidents.....	4,754	4,796	4,796	+42	---
Federal Citizen Services Fund.....	50,000	58,400	55,000	+5,000	-3,400
Technology Modernization Fund.....	100,000	210,000	150,000	+50,000	-60,000
Asset Proceeds and Space Management Fund.....	5,000	31,000	31,000	+26,000	---
Environmental Review Improvement Fund.....	1,000	6,070	6,070	+5,070	---
GSA - President's Management Council Workforce Fund...	---	50,000	---	---	-50,000
<b>Total, General Services Administration.....</b>	<b>-542,888</b>	<b>551,842</b>	<b>-1,064,492</b>	<b>-521,604</b>	<b>-1,616,334</b>
Harry S Truman Scholarship Foundation.....	1,000	---	1,000	---	+1,000
<b>Merit Systems Protection Board</b>					
Salaries and Expenses.....	44,490	42,145	44,490	---	+2,345
Limitation on administrative expenses.....	2,345	2,345	2,345	---	---
<b>Total, Merit Systems Protection Board.....</b>	<b>46,835</b>	<b>44,490</b>	<b>46,835</b>	<b>---</b>	<b>+2,345</b>
<b>Morris K. Udall and Stewart L. Udall Foundation</b>					
Morris K. Udall and Stewart L. Udall Trust Fund.....	1,975	1,875	---	-1,975	-1,875
Environmental Dispute Resolution Fund.....	3,366	3,200	---	-3,366	-3,200
<b>Total, Morris K. Udall and Stewart L. Udall Foundation.....</b>	<b>5,341</b>	<b>5,075</b>	<b>---</b>	<b>-5,341</b>	<b>-5,075</b>

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
<hr/>					
National Archives and Records Administration					
Operating Expenses.....	384,911	365,105	372,400	-12,511	+7,295
Reduction of debt.....	-25,050	-27,224	-27,224	-2,174	---
Subtotal.....	359,861	337,881	345,176	-14,685	+7,295
Office of Inspector General.....	4,801	4,241	4,823	+22	+582
Repairs and Restoration.....	7,500	7,500	7,500	---	---
National Historical Publications and Records Commission Grants Program.....	6,000	---	6,000	---	+6,000
Total, National Archives and Records Administration.....	378,162	349,622	363,499	-14,663	+13,877
NCUA Community Development Revolving Loan Fund.....	2,000	---	2,000	---	+2,000
Office of Government Ethics.....	16,439	16,294	17,019	+580	+725

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
<hr/>					
Office of Personnel Management					
Salaries and Expenses.....	129,341	132,172	132,172	+2,831	---
Limitation on administrative expenses.....	131,414	133,483	133,483	+2,069	---
Subtotal, Salaries and Expenses.....	260,755	265,655	265,655	+4,900	---
Office of Inspector General.....	5,000	5,000	5,000	---	---
Limitation on administrative expenses.....	25,000	25,265	25,265	+265	---
Subtotal, Office of Inspector General.....	30,000	30,265	30,265	+265	---
Total, Office of Personnel Management.....	290,755	295,920	295,920	+5,165	---
Office of Special Counsel.....	26,535	26,252	26,252	-283	---
Postal Regulatory Commission.....	15,200	15,100	15,200	---	+100
Privacy and Civil Liberties Oversight Board.....	8,000	5,000	5,000	-3,000	---
Public Buildings Reform Board.....	5,000	2,000	2,000	-3,000	---



COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
<hr/>					
Securities and Exchange Commission					
Salaries and Expenses.....	1,652,000	1,658,302	1,658,302	+6,302	---
SEC NYC Regional Office.....	---	40,750	37,189	+37,189	-3,561
Headquarters Lease.....	244,507	---	---	-244,507	---
Subtotal, Securities and Exchange Commission.....	1,896,507	1,699,052	1,695,491	-201,016	-3,561
SEC fees.....	-1,896,507	-1,699,052	-1,695,491	+201,016	+3,561
SEC Reserve Fund (rescission).....	---	-25,000	---	---	+25,000
Selective Service System.....	22,900	26,400	26,000	+3,100	-400

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
<hr/>					
Small Business Administration					
Salaries and expenses.....	268,500	265,000	268,500	---	+3,500
Entrepreneurial Development Programs.....	247,100	192,450	251,900	+4,800	+59,450
Office of Inspector General.....	19,900	21,900	21,900	+2,000	---
Office of Advocacy.....	9,120	9,120	9,120	---	---
Business Loans Program Account:					
Direct loans subsidy.....	3,438	4,000	4,000	+562	---
Guaranteed Loan Subsidy.....	---	-155,150	---	---	+155,150
Administrative expenses.....	152,782	155,150	155,150	+2,368	---
Total, Business loans program account.....	156,220	4,000	159,150	+2,930	+155,150
Disaster Loans Program Account:					
Administrative expenses.....	---	186,458	31,308	+31,308	-155,150
Total, Small Business Administration.....	700,840	678,928	741,878	+41,038	+62,950
United States Postal Service					
Payment to the Postal Service Fund.....	58,118	55,235	58,118	---	+2,883
Office of Inspector General.....	245,000	234,650	250,000	+5,000	+15,350
Total, United States Postal Service.....	303,118	289,885	308,118	+5,000	+18,233

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
United States Tax Court.....	50,740	55,563	51,515	+775	-4,048
	=====	=====	=====	=====	=====
Total, title V, Independent Agencies.....	2,710,944	2,727,271	1,234,094	-1,476,850	-1,493,177
Appropriations.....	(2,710,944)	(2,752,271)	(1,234,094)	(-1,476,850)	(-1,518,177)
Rescissions.....	---	(-25,000)	---	---	(+25,000)
(by transfer).....	(39,136)	(42,982)	(42,982)	(+3,846)	---
(Discretionary).....	(2,710,944)	(2,727,271)	(1,234,094)	(-1,476,850)	(-1,493,177)
	=====	=====	=====	=====	=====
TITLE VI - GENERAL PROVISIONS					
Mandatory appropriations (sec. 619).....	21,800,000	21,818,000	21,818,000	+18,000	---
PCA Oversight Board scholarships (sec. 620) .....	1,000	---	---	-1,000	---
SBA 503 Unobligated balances (sec. 620).....	-2,600	-50,000	-50,000	-47,400	---
Government-wide transfers (sec. 737).....	---	3,000,000	---	---	-3,000,000
	=====	=====	=====	=====	=====
Total, title VI, General Provisions.....	21,798,400	24,768,000	21,768,000	-30,400	-3,000,000
	=====	=====	=====	=====	=====

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
-----					
TITLE IX - OTHER MATTERS					
Other matters.....	---	---	-126,000	-126,000	-126,000
	=====	=====	=====	=====	=====
Total, title IX, Other Matters.....	---	---	-126,000	-126,000	-126,000
	=====	=====	=====	=====	=====
OTHER APPROPRIATIONS					
SUPPLEMENTAL APPROPRIATIONS FOR DISASTER RELIEF REQUIREMENTS (P.L. 115-56)					
SBA, Disaster Loans Program Account.....	450,000	---	---	-450,000	---
	=====	=====	=====	=====	=====
Total, Supplemental Appropriations for Disaster Relief Requirements (P.L. 115-56).....	450,000	---	---	-450,000	---
	=====	=====	=====	=====	=====

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 2018  
AND BUDGET REQUESTS AND AMOUNTS RECOMMENDED IN THE BILL FOR 2019  
(Amounts in thousands)

	FY 2018 Enacted	FY 2019 Request	Bill	Bill vs. Enacted	Bill vs. Request
-----					
BIPARTISAN BUDGET ACT OF 2018 (P.L. 115-123)					
GSA, Federal Buildings Fund (emergency).....	126,951	---	---	-126,951	---
SBA, Office of Inspector General (emergency).....	7,000	---	---	-7,000	---
SBA, Disaster Loans Program Account (emergency).....	1,652,000	---	---	-1,652,000	---
-----					
Total, Bipartisan Budget Act of 2018 (P.L. 115-123).....	1,785,951	---	---	-1,785,951	---
=====					
Total, Other Appropriations.....	2,235,951	---	---	-2,235,951	---
(emergency).....	2,235,951	---	---	-2,235,951	---
=====					
Grand total.....	47,900,851	48,843,281	45,679,000	-2,221,851	-3,164,281
Appropriations.....	(46,369,500)	(48,556,710)	(45,729,000)	(-640,500)	(-2,827,710)
Rescissions.....	(-704,600)	(-75,000)	(-50,000)	(+654,600)	(+25,000)
Emergency.....	(2,235,951)	---	---	(-2,235,951)	---
(by transfer).....	(39,136)	(42,982)	(42,982)	(+3,846)	---
Discretionary total (non-emergency).....	23,422,900	26,587,281	23,423,000	+100	-3,164,281

**FULL COMMITTEE VOTES**

Pursuant to the provisions of clause 3(b) of rule XIII of the House of Representatives, the results of each roll call vote on an amendment or on the motion to report, together with the names of those voting for and those voting against, are printed below:

ROLL CALL NO. 1

Date: June 13, 2018

Measure: Financial Services and General Government Appropriations Bill, FY 2019

Motion by: Mr. Quigley

Description of Motion: To provide \$380 million for election assistance grants offset from the Fund for America's Kids and Grandkids.

Results: Defeated 21 yeas to 30 nays

*Members Voting Yea*

Mr. Aguilar  
Mr. Bishop  
Ms. Clark  
Mr. Cuellar  
Ms. DeLauro  
Ms. Kaptur  
Mr. Kilmer  
Ms. Lee  
Mrs. Lowey  
Ms. McCollum  
Ms. Meng  
Ms. Pingree  
Mr. Pocan  
Mr. Price  
Mr. Quigley  
Ms. Roybal-Allard  
Mr. Ruppersberger  
Mr. Ryan  
Mr. Serrano  
Mr. Visclosky  
Ms. Wasserman Schultz

*Members Voting Nay*

Mr. Aderholt  
Mr. Amodei  
Mr. Calvert  
Mr. Carter  
Mr. Cole  
Mr. Culberson  
Mr. Diaz-Balart  
Mr. Fleischmann  
Mr. Fortenberry  
Mr. Frelinghuysen  
Ms. Granger  
Mr. Graves  
Dr. Harris  
Ms. Herrera Beutler  
Mr. Jenkins  
Mr. Joyce  
Mr. Moolenaar  
Mr. Newhouse  
Mr. Palazzo  
Mrs. Roby  
Mr. Rogers  
Mr. Rooney  
Mr. Rutherford  
Mr. Simpson  
Mr. Stewart  
Mr. Taylor  
Mr. Valadao  
Mr. Womack  
Mr. Yoder  
Mr. Young

**FULL COMMITTEE VOTES**

Pursuant to the provisions of clause 3(b) of rule XIII of the House of Representatives, the results of each roll call vote on an amendment or on the motion to report, together with the names of those voting for and those voting against, are printed below:

ROLL CALL NO. 2

Date: June 13, 2018

Measure: Financial Services and General Government Appropriations Bill, FY 2019

Motion by: Mr. Aguilar

Description of Motion: To make eligible for employment by the Federal Government an alien who is authorized to be employed in the United States pursuant to the Deferred Action for Childhood Arrivals program.

Results: Defeated 24 yeas to 28 nays

*Members Voting Yea*

Mr. Aguilar  
Mr. Bishop  
Mr. Cartwright  
Ms. Clark  
Mr. Cuellar  
Ms. DeLauro  
Mr. Diaz-Balart  
Ms. Kaptur  
Mr. Kilmer  
Ms. Lee  
Mrs. Lowey  
Ms. McCollum  
Ms. Meng  
Ms. Pingree  
Mr. Pocan  
Mr. Price  
Mr. Quigley  
Ms. Roybal-Allard  
Mr. Ruppersberger  
Mr. Ryan  
Mr. Serrano  
Mr. Valadao  
Mr. Visclosky  
Ms. Wasserman Schultz

*Members Voting Nay*

Mr. Aderholt  
Mr. Amodei  
Mr. Calvert  
Mr. Carter  
Mr. Cole  
Mr. Culberson  
Mr. Fleischmann  
Mr. Fortenberry  
Mr. Frelinghuysen  
Ms. Granger  
Mr. Graves  
Dr. Harris  
Ms. Herrera Beutler  
Mr. Jenkins  
Mr. Joyce  
Mr. Moolenaar  
Mr. Newhouse  
Mr. Palazzo  
Mrs. Roby  
Mr. Rogers  
Mr. Rooney  
Mr. Rutherford  
Mr. Simpson  
Mr. Stewart  
Mr. Taylor  
Mr. Womack  
Mr. Yoder  
Mr. Young

**FULL COMMITTEE VOTES**

Pursuant to the provisions of clause 3(b) of rule XIII of the House of Representatives, the results of each roll call vote on an amendment or on the motion to report, together with the names of those voting for and those voting against, are printed below:

ROLL CALL NO. 3

Date: June 13, 2018

Measure: Financial Services and General Government Appropriations Bill, FY 2019

Motion by: Mrs. Lowey

Description of Motion: To strike Section 631 prohibiting funds to pay for an abortion or the administrative expenses in connection with a multi-State qualified health plan offered under a contract under section 1334 of the Patient Protection and Affordable Care Act, which provides any benefits or coverage for abortions, except for endangerment of the life of the mother, rape, or incest.

Results: Defeated 21 yeas to 31 nays

*Members Voting Yea*

Mr. Aguilar  
Mr. Bishop  
Mr. Cartwright  
Ms. Clark  
Ms. DeLauro  
Ms. Kaptur  
Mr. Kilmer  
Ms. Lee  
Mrs. Lowey  
Ms. McCollum  
Ms. Meng  
Ms. Pingree  
Mr. Pocan  
Mr. Price  
Mr. Quigley  
Ms. Roybal-Allard  
Mr. Ruppersberger  
Mr. Ryan  
Mr. Serrano  
Mr. Visclosky  
Ms. Wasserman Schultz

*Members Voting Nay*

Mr. Aderholt  
Mr. Amodei  
Mr. Calvert  
Mr. Carter  
Mr. Cole  
Mr. Cuellar  
Mr. Culberson  
Mr. Diaz-Balart  
Mr. Fleischmann  
Mr. Fortenberry  
Mr. Frelinghuysen  
Ms. Granger  
Mr. Graves  
Dr. Harris  
Ms. Herrera Beutler  
Mr. Jenkins  
Mr. Joyce  
Mr. Moolenaar  
Mr. Newhouse  
Mr. Palazzo  
Mrs. Roby  
Mr. Rogers  
Mr. Rooney  
Mr. Rutherford  
Mr. Simpson  
Mr. Stewart  
Mr. Taylor  
Mr. Valadao  
Mr. Womack  
Mr. Yoder  
Mr. Young



**FULL COMMITTEE VOTES**

Pursuant to the provisions of clause 3(b) of rule XIII of the House of Representatives, the results of each roll call vote on an amendment or on the motion to report, together with the names of those voting for and those voting against, are printed below:

ROLL CALL NO. 4

Date: June 13, 2018

Measure: Financial Services and General Government Appropriations Bill, FY 2019

Motion by: Mr. Price

Description of Motion: To revoke the FCC rule relating to "Restoring Internet Freedom", to restore the previous rule on net neutrality, and to prohibit the FCC from reissuing the rule.

Results: Defeated 22 yeas to 29 nays

*Members Voting Yea*

Mr. Aguilar  
Mr. Bishop  
Mr. Cartwright  
Ms. Clark  
Mr. Cuellar  
Ms. DeLauro  
Ms. Kaptur  
Mr. Kilmer  
Ms. Lee  
Mrs. Lowey  
Ms. McCollum  
Ms. Meng  
Ms. Pingree  
Mr. Pocan  
Mr. Price  
Mr. Quigley  
Ms. Roybal-Allard  
Mr. Ruppersberger  
Mr. Ryan  
Mr. Serrano  
Mr. Visclosky  
Ms. Wasserman Schultz

*Members Voting Nay*

Mr. Aderholt  
Mr. Calvert  
Mr. Carter  
Mr. Cole  
Mr. Culberson  
Mr. Diaz-Balart  
Mr. Fleischmann  
Mr. Fortenberry  
Mr. Frelinghuysen  
Ms. Granger  
Mr. Graves  
Dr. Harris  
Ms. Herrera Beutler  
Mr. Jenkins  
Mr. Joyce  
Mr. Moolenaar  
Mr. Newhouse  
Mr. Palazzo  
Mrs. Roby  
Mr. Rogers  
Mr. Rooney  
Mr. Rutherford  
Mr. Simpson  
Mr. Stewart  
Mr. Taylor  
Mr. Valadao  
Mr. Womack  
Mr. Yoder  
Mr. Young

**FULL COMMITTEE VOTES**

Pursuant to the provisions of clause 3(b) of rule XIII of the House of Representatives, the results of each roll call vote on an amendment or on the motion to report, together with the names of those voting for and those voting against, are printed below:

ROLL CALL NO. 5

Date: June 13, 2018

Measure: Financial Services and General Government Appropriations Bill, FY 2019

Motion by: Ms. Lee

Description of Motion: To limit the bill's prohibition on the use of fund for abortions so that it would not apply to local District of Columbia funds.

Results: Defeated 22 yeas to 29 nays

*Members Voting Yea*

Mr. Aguilar  
Mr. Bishop  
Mr. Cartwright  
Ms. Clark  
Mr. Cuellar  
Ms. DeLauro  
Ms. Kaptur  
Mr. Kilmer  
Ms. Lee  
Mrs. Lowey  
Ms. McCollum  
Ms. Meng  
Ms. Pingree  
Mr. Pocan  
Mr. Price  
Mr. Quigley  
Ms. Roybal-Allard  
Mr. Ruppersberger  
Mr. Ryan  
Mr. Serrano  
Mr. Visclosky  
Ms. Wasserman Schultz

*Members Voting Nay*

Mr. Aderholt  
Mr. Amodei  
Mr. Calvert  
Mr. Carter  
Mr. Cole  
Mr. Culberson  
Mr. Diaz-Balart  
Mr. Fleischmann  
Mr. Fortenberry  
Mr. Frelinghuysen  
Mr. Graves  
Dr. Harris  
Ms. Herrera Beutler  
Mr. Jenkins  
Mr. Joyce  
Mr. Moolenaar  
Mr. Newhouse  
Mr. Palazzo  
Mrs. Roby  
Mr. Rogers  
Mr. Rooney  
Mr. Rutherford  
Mr. Simpson  
Mr. Stewart  
Mr. Taylor  
Mr. Valadao  
Mr. Womack  
Mr. Yoder  
Mr. Young

## FULL COMMITTEE VOTES

Pursuant to the provisions of clause 3(b) of rule XIII of the House of Representatives, the results of each roll call vote on an amendment or on the motion to report, together with the names of those voting for and those voting against, are printed below:

ROLL CALL NO. 6

Date: June 13, 2018

Measure: Financial Services and General Government Appropriations Bill, FY 2019

Motion by: Ms. Wasserman Schultz

Description of Motion: To strike Section 112 prohibiting funds for the Internal Revenue Service (IRS) to determine that a church is not exempt from taxation for participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidates for public office unless the IRS Commissioner consents to such determination, the Commissioner notifies the tax committees of Congress, and the determination is effective 90 days after such notification.

Results: Defeated 21 yeas to 28 nays

*Members Voting Yea*

Mr. Aguilar  
Mr. Bishop  
Mr. Cartwright  
Ms. Clark  
Mr. Cuellar  
Ms. DeLauro  
Ms. Kaptur  
Mr. Kilmer  
Ms. Lee  
Mrs. Lowey  
Ms. McCollum  
Ms. Meng  
Ms. Pingree  
Mr. Pocan  
Mr. Price  
Mr. Quigley  
Ms. Roybal-Allard  
Mr. Ryan  
Mr. Serrano  
Mr. Visclosky  
Ms. Wasserman Schultz

*Members Voting Nay*

Mr. Aderholt  
Mr. Calvert  
Mr. Carter  
Mr. Cole  
Mr. Culberson  
Mr. Diaz-Balart  
Mr. Fleischmann  
Mr. Fortenberry  
Mr. Frelinghuysen  
Mr. Graves  
Dr. Harris  
Ms. Herrera Beutler  
Mr. Jenkins  
Mr. Joyce  
Mr. Moolenaar  
Mr. Newhouse  
Mr. Palazzo  
Mrs. Roby  
Mr. Rogers  
Mr. Rooney  
Mr. Rutherford  
Mr. Simpson  
Mr. Stewart  
Mr. Taylor  
Mr. Valadao  
Mr. Womack  
Mr. Yoder  
Mr. Young

**FULL COMMITTEE VOTES**

Pursuant to the provisions of clause 3(b) of rule XIII of the House of Representatives, the results of each roll call vote on an amendment or on the motion to report, together with the names of those voting for and those voting against, are printed below:

ROLL CALL NO. 7

Date: June 13, 2018

Measure: Financial Services and General Government Appropriations Bill, FY 2019

Motion by: Ms. McCollum

Description of Motion: To prohibit a pay increase for the Vice President, employees receiving pay at an Executive Schedule rate and holding a political appointment, and certain other government employees.

Results: Defeated 21 yeas to 27 nays

*Members Voting Yea*

Mr. Aguilar  
Mr. Bishop  
Mr. Cartwright  
Ms. Clark  
Mr. Cuellar  
Ms. DeLauro  
Ms. Kaptur  
Mr. Kilmer  
Ms. Lee  
Mrs. Lowey  
Ms. McCollum  
Ms. Meng  
Ms. Pingree  
Mr. Pocan  
Mr. Price  
Mr. Quigley  
Ms. Roybal-Allard  
Mr. Ryan  
Mr. Serrano  
Mr. Visclosky  
Ms. Wasserman Schultz

*Members Voting Nay*

Mr. Aderholt  
Mr. Calvert  
Mr. Carter  
Mr. Cole  
Mr. Culberson  
Mr. Diaz-Balart  
Mr. Fleischmann  
Mr. Fortenberry  
Mr. Frelinghuysen  
Mr. Graves  
Dr. Harris  
Ms. Herrera Beutler  
Mr. Jenkins  
Mr. Joyce  
Mr. Moolenaar  
Mr. Newhouse  
Mr. Palazzo  
Mrs. Roby  
Mr. Rogers  
Mr. Rutherford  
Mr. Simpson  
Mr. Stewart  
Mr. Taylor  
Mr. Valadao  
Mr. Womack  
Mr. Yoder  
Mr. Young

**FULL COMMITTEE VOTES**

Pursuant to the provisions of clause 3(b) of rule XIII of the House of Representatives, the results of each roll call vote on an amendment or on the motion to report, together with the names of those voting for and those voting against, are printed below:

ROLL CALL NO. 8

Date: June 13, 2018

Measure: Financial Services and General Government Appropriations Bill, FY 2018

Motion by: Mr. Rogers

Description of Motion: To report the bill to the House, as amended.

Results: Adopted 28 yeas to 20 nays

*Members Voting Yea*

Mr. Aderholt  
Mr. Calvert  
Mr. Carter  
Mr. Cole  
Mr. Cuellar  
Mr. Culberson  
Mr. Diaz-Balart  
Mr. Fleischmann  
Mr. Fortenberry  
Mr. Frelinghuysen  
Mr. Graves  
Dr. Harris  
Ms. Herrera Beutler  
Mr. Jenkins  
Mr. Joyce  
Mr. Moolenaar  
Mr. Newhouse  
Mr. Palazzo  
Mrs. Roby  
Mr. Rogers  
Mr. Rutherford  
Mr. Simpson  
Mr. Stewart  
Mr. Taylor  
Mr. Valadao  
Mr. Womack  
Mr. Yoder  
Mr. Young

*Members Voting Nay*

Mr. Aguilar  
Mr. Bishop  
Mr. Cartwright  
Ms. Clark  
Ms. DeLauro  
Ms. Kaptur  
Mr. Kilmer  
Ms. Lee  
Mrs. Lowey  
Ms. McCollum  
Ms. Meng  
Ms. Pingree  
Mr. Pocan  
Mr. Price  
Mr. Quigley  
Ms. Roybal-Allard  
Mr. Ryan  
Mr. Serrano  
Mr. Visclosky  
Ms. Wasserman Schultz

## COMPLIANCE WITH RULE XIII, CL. 3(e) (RAMSEYER RULE)

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 italic, existing law in which no change is proposed is shown in roman):

## 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 italic, and existing law in which no change is proposed is shown in roman):

# **DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT**

(Public Law 111-203)

\* \* \* \* \*

## **TITLE I—FINANCIAL STABILITY**

\* \* \* \* \*

### **Subtitle B—Office of Financial Research**

\* \* \* \* \*

#### **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 *as provided for in appropriation Acts*, 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)] (2) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Financial Research Fund shall not be subject to apportionment for purposes 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.—] *ASSESSMENT SCHEDULE.*—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.

\* \* \* \* \*

## JUDICIAL IMPROVEMENTS ACT OF 1990

### TITLE II—FEDERAL JUDGESHIPS

\* \* \* \* \*

#### SEC. 203. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the western district of Arkansas;

(2) 2 additional district judges for the northern district of California;

(3) 5 additional district judges for the central district of California;

(4) 1 additional district judge for the southern district of California;

(5) 2 additional district judges for the district of Connecticut;

(6) 2 additional district judges for the middle district of Florida;

(7) 1 additional district judge for the northern district of Florida;

- (8) 1 additional district judge for the southern district of Florida;
- (9) 1 additional district judge for the middle district of Georgia;
- (10) 1 additional district judge for the northern district of Illinois;
- (11) 1 additional district judge for the southern district of Iowa;
- (12) 1 additional district judge for the western district of Louisiana;
- (13) 1 additional district judge for the district of Maine;
- (14) 1 additional district judge for the district of Massachusetts;
- (15) 1 additional district judge for the southern district of Mississippi;
- (16) 1 additional district judge for the eastern district of Missouri;
- (17) 1 additional district judge for the district of New Hampshire;
- (18) 3 additional district judges for the district of New Jersey;
- (19) 1 additional district judge for the district of New Mexico;
- (20) 1 additional district judge for the southern district of New York;
- (21) 3 additional district judges for the eastern district of New York;
- (22) 1 additional district judge for the middle district of North Carolina;
- (23) 1 additional district judge for the southern district of Ohio;
- (24) 1 additional district judge for the northern district of Oklahoma;
- (25) 1 additional district judge for the western district of Oklahoma;
- (26) 1 additional district judge for the district of Oregon;
- (27) 3 additional district judges for the eastern district of Pennsylvania;
- (28) 1 additional district judge for the middle district of Pennsylvania;
- (29) 1 additional district judge for the district of South Carolina;
- (30) 1 additional district judge for the eastern district of Tennessee;
- (31) 1 additional district judge for the western district of Tennessee;
- (32) 1 additional district judge for the middle district of Tennessee;
- (33) 2 additional district judges for the northern district of Texas;
- (34) 1 additional district judge for the eastern district of Texas;
- (35) 5 additional district judges for the southern district of Texas;
- (36) 3 additional district judges for the western district of Texas;



- (37) 1 additional district judge for the district of Utah;
- (38) 1 additional district judge for the eastern district of Washington;
- (39) 1 additional district judge for the northern district of West Virginia;
- (40) 1 additional district judge for the southern district of West Virginia; and
- (41) 1 additional district judge for the district of Wyoming.

(b) EXISTING JUDGESHIPS.—(1) The existing district judgeships for the western district of Arkansas, the northern district of Illinois, the northern district of Indiana, the district of Massachusetts, the western district of New York, the eastern district of North Carolina, the northern district of Ohio, and the western district of Washington authorized by section 202(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98–353, 98 Stat. 347–348) shall, as of the effective date of this title, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(2)(A) The existing 2 district judgeships for the eastern and western districts of Arkansas (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be district judgeships for the eastern district of Arkansas only, and the incumbents of such judgeships shall hold the offices under section 133 of title 28, United States Code, as amended by this title.

(B) The existing district judgeship for the northern and southern districts of Iowa (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be a district judgeship for the northern district of Iowa only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(C) The existing district judgeship for the northern, eastern, and western districts of Oklahoma (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) and the occupant of which has his or her official duty station at Oklahoma City on the date of the enactment of this title, shall be a district judgeship for the western district of Oklahoma only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

- (1) 1 additional district judge for the eastern district of California;
- (2) 1 additional district judge for the district of Hawaii;
- (3) 1 additional district judge for the central district of Illinois;
- (4) 1 additional district judge for the southern district of Illinois;
- (5) 1 additional district judge for the district of Kansas;
- (6) 1 additional district judge for the western district of Michigan;

- (7) 1 additional district judge for the eastern district of Missouri;
- (8) 1 additional district judge for the district of Nebraska;
- (9) 1 additional district judge for the northern district of New York;
- (10) 1 additional district judge for the northern district of Ohio;
- (11) 1 additional district judge for the eastern district of Pennsylvania; and
- (12) 1 additional district judge for the eastern district of Virginia.

Except with respect to the district of Kansas, the western district of Michigan, the eastern district of Pennsylvania, the district of Hawaii, and the northern district of Ohio, the first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 10 years or more after the confirmation date of the judge named to fill the temporary judgeship created by this subsection, shall not be filled. The first vacancy in the office of district judge in the district of Kansas occurring ~~27 years and 6 months~~ *28 years and 6 months* or more after the confirmation date of the judge named to fill the temporary judgeship created for such district under this subsection, shall not be filled. The first vacancy in the office of district judge in the western district of Michigan, occurring after December 1, 1995, shall not be filled. The first vacancy in the office of district judge in the eastern district of Pennsylvania, occurring 5 years or more after the confirmation date of the judge named to fill the temporary judgeship created for such district under this subsection, shall not be filled. The first vacancy in the office of district judge in the northern district of Ohio occurring 19 years or more after the confirmation date of the judge named to fill the temporary judgeship created under this subsection shall not be filled. The first vacancy in the office of the district judge in the district of Hawaii occurring 24 years and 6 months or more after the confirmation date of the judge named to fill the temporary judgeship created under this subsection shall not be filled. For districts named in this subsection for which multiple judgeships are created by this Act, the last of those judgeships filled shall be the judgeships created under this section.

\* \* \* \* \*

## TRANSPORTATION, TREASURY, HOUSING AND URBAN DEVELOPMENT, THE JUDICIARY, THE DISTRICT OF COLUMBIA, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2006

### DIVISION A—TRANSPORTATION, TREASURY, HOUSING AND URBAN DEVELOPMENT, THE JUDICIARY, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2006

\* \* \* \* \*

## TITLE IV—THE JUDICIARY

\* \* \* \* \*

SEC. 406. The existing judgeship for the eastern district of Missouri authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650, 104 Stat. 5089) as amended by Public Law 105–53, as of the effective date of this Act, shall be extended. The first vacancy in the office of district judge in this district occurring **[25 years and 6 months]** *26 years and 6 months* or more after the confirmation date of the judge named to fill the temporary judgeship created by section 203(c) shall not be filled.

\* \* \* \* \*

## 21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

\* \* \* \* \*

### DIVISION A—21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT

\* \* \* \* \*

#### TITLE III—MISCELLANEOUS

\* \* \* \* \*

#### SEC. 312. ADDITIONAL FEDERAL JUDGESHIPS.

##### (a) PERMANENT DISTRICT JUDGES FOR THE DISTRICT COURTS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 5 additional district judges for the southern district of California;

(B) 1 additional district judge for the western district of North Carolina; and

(C) 2 additional district judges for the western district of Texas.

(2) [Omitted—Amendatory]

##### (b) DISTRICT JUDGESHIPS FOR THE CENTRAL AND SOUTHERN DISTRICTS OF ILLINOIS, THE NORTHERN DISTRICT OF NEW YORK, AND THE EASTERN DISTRICT OF VIRGINIA.—

(1) CONVERSION OF TEMPORARY JUDGESHIPS TO PERMANENT JUDGESHIPS.—The existing district judgeships for the central district and the southern district of Illinois, the northern district of New York, and the eastern district of Virginia authorized by section 203(c) (3), (4), (9), and (12) of the Judicial Improvements Act of 1990 (Public Law 101–650, 28 U.S.C. 133 note) shall be authorized under section 133 of title 28, United States Code, and the incumbents in such offices shall hold the offices under section 133 of title 28, United States Code (as amended by this section).

(2) [Omitted—Amendatory]

(3) EFFECTIVE DATE.—With respect to the central or southern district of Illinois, the northern district of New York, or the eastern district of Virginia, this subsection shall take effect on the earlier of—

(A) the date on which the first vacancy in the office of district judge occurs in such district; or

(B) July 15, 2003.

## (c) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 1 additional district judge for the northern district of Alabama;

(B) 1 additional judge for the district of Arizona;

(C) 1 additional judge for the central district of California;

(D) 1 additional judge for the southern district of Florida;

(E) 1 additional district judge for the district of New Mexico;

(F) 1 additional district judge for the western district of North Carolina; and

(G) 1 additional district judge for the eastern district of Texas.

(2) VACANCIES NOT FILLED.—The first vacancy in the office of district judge in each of the offices of district judge authorized by this subsection, except in the case of *the northern district of Alabama*, the central district of California, and the western district of North Carolina, occurring **[16 years]** *17 years* or more after the confirmation date of the judge named to fill the temporary district judgeship created in the applicable district by this subsection, shall not be filled. *The first vacancy in the office of district judge in the northern district of Alabama occurring 16 years or more after the confirmation date of the judge named to fill the temporary district judgeship created in that district by this subsection, shall not be filled.* The first vacancy in the office of district judge in the central district of California occurring **[15 years and 6 months]** *16 years and 6 months* or more after the confirmation date of the judge named to fill the temporary district judgeship created in that district by this subsection, shall not be filled. The first vacancy in the office of district judge in the western district of North Carolina occurring **[14 years]** *15 years* or more after the confirmation date of the judge named to fill the temporary district judgeship created in that district by this subsection, shall not be filled.

(3) EFFECTIVE DATE.—This subsection shall take effect on July 15, 2003.

## (d) EXTENSION OF TEMPORARY FEDERAL DISTRICT COURT JUDGESHIP FOR THE NORTHERN DISTRICT OF OHIO.—

(1) IN GENERAL.—[Omitted—Amendatory]

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of enactment of this Act.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this section.

\* \* \* \* \*

**PUBLIC LAW 110-246**

AN ACT To provide for the continuation of agricultural and other programs of the Department of Agriculture through fiscal year 2012, and for other purposes.

\* \* \* \* \*

## **TITLE XII—CROP INSURANCE AND DISASTER ASSISTANCE PROGRAMS**

\* \* \* \* \*

### **Subtitle B—Small Business Disaster Loan Program**

\* \* \* \* \*

#### **PART II—DISASTER LENDING**

\* \* \* \* \*

##### **[SEC. 12085. EXPEDITED DISASTER ASSISTANCE LOAN PROGRAM.**

[(a) DEFINITION.—In this section, the term “program” means the expedited disaster assistance business loan program established under subsection (b).

[(b) CREATION OF PROGRAM.—The Administrator shall take such administrative action as is necessary to establish and implement an expedited disaster assistance business loan program under which the Administration may, on an expedited basis, guarantee timely payment of principal and interest, as scheduled on any loan made to an eligible small business concern under paragraph (9) of section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as added by this Act.

[(c) CONSULTATION REQUIRED.—In establishing the program, the Administrator shall consult with—

[(1) appropriate personnel of the Administration (including District Office personnel of the Administration);

[(2) appropriate technical assistance providers (including small business development centers);

[(3) appropriate lenders and credit unions;

[(4) the Committee on Small Business and Entrepreneurship of the Senate; and

[(5) the Committee on Small Business of the House of Representatives.

[(d) RULES.—

[(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall issue rules in final form establishing and implementing the program in accordance with this section. Such rules shall apply as provided for in this section, beginning 90 days after their issuance in final form.

[(2) CONTENTS.—The rules promulgated under paragraph (1) shall—

[(A) identify whether appropriate uses of funds under the program may include—

- [(i) paying employees;
- [(ii) paying bills and other financial obligations;
- [(iii) making repairs;
- [(iv) purchasing inventory;
- [(v) restarting or operating a small business concern in the community in which it was conducting operations prior to the applicable major disaster, or to a neighboring area, county, or parish in the disaster area; or
- [(vi) covering additional costs until the small business concern is able to obtain funding through insurance claims, Federal assistance programs, or other sources; and

[(B) set the terms and conditions of any loan made under the program, subject to paragraph (3).

[(3) TERMS AND CONDITIONS.—A loan guaranteed by the Administration under this section—

[(A) shall be for not more than \$150,000;

[(B) shall be a short-term loan, not to exceed 180 days, except that the Administrator may extend such term as the Administrator determines necessary or appropriate on a case-by-case basis;

[(C) shall have an interest rate not to exceed 300 basis points above the interest rate established by the Board of Governors of the Federal Reserve System that 1 bank charges another for reserves that are lent on an overnight basis on the date the loan is made;

[(D) shall have no prepayment penalty;

[(E) may only be made to a borrower that meets the requirements for a loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act;

[(F) may be refinanced as part of any subsequent disaster assistance provided under section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act;

[(G) may receive expedited loss verification and loan processing, if the applicant is—

[(i) a major source of employment in the disaster area (which shall be determined in the same manner as under section 7(b)(3)(B) of the Small Business Act (15 U.S.C. 636(b)(3)(B))); or

[(ii) vital to recovery efforts in the region (including providing debris removal services, manufactured housing, or building materials); and

[(H) shall be subject to such additional terms as the Administrator determines necessary or appropriate.

[(e) REPORT TO CONGRESS.—Not later than 5 months after the date of enactment of this Act, the Administrator shall report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the progress of the Administrator in establishing the program.

[(f) AUTHORIZATION.—There are authorized to be appropriated to the Administrator such sums as are necessary to carry out this section.]

\* \* \* \* \*

## TITLE 44, UNITED STATES CODE

\* \* \* \* \*

### CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

\* \* \* \* \*

#### § 2107. Acceptance of records for historical preservation

(a) IN GENERAL.—When it appears to the Archivist to be in the public interest, the Archivist may—

(1) accept for deposit with the National Archives of the United States the records of a Federal agency, the Congress, the Architect of the Capitol, or the Supreme Court determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government;

(2) direct and effect the transfer of records of a Federal agency determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government to the National Archives of the United States, as soon as practicable, and at a time mutually agreed upon by the Archivist and the head of that Federal agency not later than thirty years after such records were created or received by that agency, unless [the head of such agency has certified in writing to the Archivist] *the Archivist determines, after consulting with the head of such agency*, that such records must be retained in the custody of such agency for use in the conduct of the regular business of the agency;

(3) direct and effect, with the approval of the head of the originating Federal agency, or if the existence of the agency has been terminated, with the approval of the head of that agency's successor in function, if any, the transfer of records, deposited or approved for deposit with the National Archives of the United States to public or educational institutions or associations; title to the records to remain vested in the United States unless otherwise authorized by Congress; and

(4) transfer materials from private sources authorized to be received by the Archivist by section 2111 of this title.

(b) EARLY TRANSFER OF RECORDS.—The Archivist—

(1) in consultation with the head of the originating Federal agency, is authorized to accept a copy of the records described in subsection (a)(2) that have been in existence for less than thirty years; and

(2) may not disclose any such records until the expiration of—

(A) the thirty-year period described in paragraph (1);

(B) any longer period established by the Archivist by order; or

(C) any shorter period agreed to by the originating Federal agency.

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## **CHAPTER 29—RECORDS MANAGEMENT BY THE ARCHIVIST OF THE UNITED STATES AND BY THE ADMINISTRATOR OF GENERAL SERVICES**

\* \* \* \* \*

### **§ 2904. General responsibilities for records management**

(a) The Archivist shall provide guidance and assistance to Federal agencies with respect to ensuring—

- (1) economical and effective records management;
- (2) adequate and proper documentation of the policies and transactions of the Federal Government; and
- (3) proper records disposition.

(b) The Administrator shall provide guidance and assistance to Federal agencies to ensure economical and effective processing of mail by Federal agencies.

(c) In carrying out the responsibilities under subsection (a), the Archivist shall have the responsibility—

- (1) to promulgate standards, procedures, and guidelines with respect to records management and the conduct of records management studies;
- (2) to conduct research with respect to the improvement of records management practices and programs;
- (3) to collect and disseminate information on training programs, technological developments, and other activities relating to records management;
- (4) to establish such interagency committees and boards as may be necessary to provide an exchange of information among Federal agencies with respect to records management;
- (5) to direct the continuing attention of Federal agencies and the Congress on the need for adequate policies governing records management;
- (6) to conduct records management studies and, in the Archivist's discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management;
- (7) to conduct inspections or surveys of the records and the records management programs and practices within and between Federal agencies;
- (8) to report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget in January of each year and at such other times as the Archivist deems desirable—

(A) on the results of activities conducted pursuant to paragraphs (1) through (7) of this section,

(B) on evaluations of responses by Federal agencies to any recommendations resulting from inspections or studies conducted under paragraphs (6) and (7) of this section, and



(C) to the extent practicable, estimates of costs to the Federal Government resulting from the failure of agencies to implement such recommendations.

(d) The Archivist shall promulgate regulations requiring all Federal agencies to transfer all [digital or electronic] records to the National Archives of the United States in digital or electronic form to the greatest extent possible.

(e) The Administrator, in carrying out subsection (b), shall have the responsibility to promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for processing mail at Federal facilities.

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## CHAPTER 33—DISPOSAL OF RECORDS

\* \* \* \* \*

### **§ 3303a. Examination by Archivist of lists and schedules of records lacking preservation value; disposal of records**

(a) The Archivist shall examine the lists and schedules submitted to the Archivist under section 3303 of this title. If the Archivist determines that any of the records listed in a list or schedule submitted to the Archivist do not, or will not after the lapse of the period specified, have sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government, the Archivist may, after publication of notice in the Federal Register and an opportunity for interested persons to submit comment thereon—

(1) notify the agency to that effect; and

(2) empower the agency to dispose of those records in accordance with regulations promulgated under section 3302 of this title.

(b) Authorizations granted under lists and schedules submitted to the Archivist under section 3303 of this title, and schedules promulgated by the Archivist under subsection (d) of this section, shall be mandatory, subject to section 2909 of this title. As between an authorization granted under lists and schedules submitted to the Archivist under section 3303 of this title and an authorization contained in a schedule promulgated under subsection (d) of this section, application of the authorization providing for the shorter retention period shall be required, subject to section 2909 of this title.

(c) The Archivist may request advice and counsel from the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate with respect to the disposal of any particular records under this chapter whenever the Archivist considers that—

(1) those particular records may be of special interest to the Congress; or

(2) consultation with the Congress regarding the disposal of those particular records is in the public interest.

However, this subsection does not require the Archivist to request such advice and counsel as a regular procedure in the general disposal of records under this chapter.

(d) The Archivist shall promulgate schedules authorizing the disposal, after the lapse of specified periods of time, of records of a specified form or character common to several or all agencies if such records will not, at the end of the periods specified, have sufficient administrative, legal, research, or other value to warrant their further preservation by the United States Government.

(e) The Archivist may approve and effect the disposal of records that are in the Archivist's legal custody, provided that records that had been in the custody of another existing agency may not be disposed of without [the written consent of] *advance notice* to the head of the agency.

(f) The Archivist shall make an annual report to the Congress concerning the disposal of records under this chapter, including general descriptions of the types of records disposed of and such other information as the Archivist considers appropriate to keep the Congress fully informed regarding the disposal of records under this chapter.

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#### **§ 3308. Disposal of similar records where prior disposal was authorized**

When it appears to the Archivist that an agency has in its custody, or is accumulating, records of the same form or character as those of the same agency previously authorized to be disposed of, he may [empower] *direct* the head of the agency to dispose of the records, after they have been in existence a specified period of time, in accordance with regulations promulgated under section 3302 of this title and without listing or scheduling them.

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### **DEATH WITH DIGNITY ACT OF 2016**

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### **LOCAL BUDGET AUTONOMY AMENDMENT ACT OF 2012**

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#### **DISTRICT OF COLUMBIA HOME RULE ACT**

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#### **TITLE IV—THE DISTRICT CHARTER**

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#### **PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT**

##### **Subpart 1—Budget and Financial Management**

\* \* \* \* \*

##### **GENERAL AND SPECIAL FUNDS**

SEC. 450. [The General Fund] (a) *IN GENERAL.—The General Fund* of the District shall be composed of those District revenues

which on the effective date of this title are paid into the Treasury of the United States and credited either to the General Fund of the District or its miscellaneous receipts, but shall not include any revenues which are applied by law to any special fund existing on the date of enactment of this title. The Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District. All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund, except that all money received by the District of Columbia Courts shall be deposited in the Treasury of the United States or the Crime Victims Fund.

(b) *APPLICATION OF FEDERAL APPROPRIATIONS PROCESS.*—*Nothing in this Act shall be construed as creating a continuing appropriation of the General Fund described in subsection (a). All funds provided for the District of Columbia shall be appropriated on an annual fiscal year basis through the Federal appropriations process. For each fiscal year, the District shall be subject to all applicable requirements of subchapter III of chapter 13 and subchapter II of chapter 15 of title 31, United States Code (commonly known as the “Anti-Deficiency Act”), the Budget and Accounting Act of 1921, and all other requirements and restrictions applicable to appropriations for such fiscal year.*

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## TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

\* \* \* \* \*

### BUDGET PROCESS; LIMITATIONS ON BORROWING AND SPENDING

SEC. 603. (a) Nothing in this Act shall be construed as making any change in [existing] law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the Federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government[.], or as authorizing the District of Columbia to make any such change.

(b)(1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 17 percent of the District revenues (less any fees or revenues directed to servicing revenue bonds, any revenues, charges, or fees dedicated for the purposes of water and sewer facilities described in section 490(a) (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes), retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale or general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will

be issued. Treasury capital project loans include all borrowing from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of title VI of the District of Columbia Revenue Act of 1939.

(2) Obligations incurred pursuant to the authority contained in the District of Columbia Stadium Act of 1957 (71 Stat. 619; D.C. Code title 2, chapter 17, subchapter II), obligations incurred by the agencies transferred or established by sections 201 and 202, whether incurred before or after such transfer or establishment, and obligations incurred pursuant to general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

(3) The 17 percent limitation specified in paragraph (1) shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 14 percent of the District revenues (less any fees or revenues directed to servicing revenue bonds, any revenues, charges, or fees dedicated for the purposes of water and sewer facilities described in section 490(a) (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes), retirement, contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued.

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds (less the allocable portion of principal and interest to be paid during the year on general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects) and such Treasury loans.

(C) Determine the amount of principal and interest to be paid during each fiscal year over the term of the proposed general obligation bond or such Treasury loan to be issued.

(D) If in any one fiscal year the sum arrived at by adding subparagraphs (B) and (C) exceeds the amount determined under subparagraph (A), then the proposed general obligation bond or such Treasury loan in subparagraph (C) cannot be issued.

(c) Except as provided in subsection (f), the Council shall not approve any budget which would result in expenditures being made by the District Government, during any fiscal year, in excess of all resources which the Mayor estimates will be available from all funds available to the District for such fiscal year. The budget shall identify any tax increases which shall be required in order to balance the budget as submitted. The Council shall be required to adopt such tax increases to the extent its budget is approved.

(d) Except as provided in subsection (f), the Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provision of subsection 603(c).

(e) Nothing in this Act shall be construed as affecting the applicability to the District government of the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665), the so-called Anti-Deficiency Act.

(f) In the case of a fiscal year which is a control year (as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995), the Council may not approve, and the Mayor may not forward to the President, any budget which is not consistent with the financial plan and budget established for the fiscal year under subtitle A of title II of such Act.

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## FAIR CREDIT REPORTING ACT

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## TITLE VI—CONSUMER CREDIT REPORTING

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### SEC. 623. RESPONSIBILITIES OF FURNISHERS OF INFORMATION TO CONSUMER REPORTING AGENCIES.

(a) DUTY OF FURNISHERS OF INFORMATION TO PROVIDE ACCURATE INFORMATION.—

(1) PROHIBITION.—

(A) REPORTING INFORMATION WITH ACTUAL KNOWLEDGE OF ERRORS.—A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

(B) REPORTING INFORMATION AFTER NOTICE AND CONFIRMATION OF ERRORS.—A person shall not furnish information relating to a consumer to any consumer reporting agency if—

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) NO ADDRESS REQUIREMENT.—A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(D) DEFINITION.—For purposes of subparagraph (A), the term “reasonable cause to believe that the information is inaccurate” means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

(2) DUTY TO CORRECT AND UPDATE INFORMATION.—A person who—

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) DUTY TO PROVIDE NOTICE OF DISPUTE.—If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) DUTY TO PROVIDE NOTICE OF CLOSED ACCOUNTS.—A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) DUTY TO PROVIDE NOTICE OF DELINQUENCY OF ACCOUNTS.—(A) IN GENERAL.—A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action.

(B) RULE OF CONSTRUCTION.—For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—

(i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or

(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.

(6) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED INFORMATION.—

(A) REASONABLE PROCEDURES.—A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605B relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

(B) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

(7) NEGATIVE INFORMATION.—

(A) NOTICE TO CONSUMER REQUIRED.—

(i) IN GENERAL.—If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.—After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

(B) TIME OF NOTICE.—

(i) IN GENERAL.—The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.—If the notice is provided to the customer prior to furnishing the negative information to a consumer

reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

(C) COORDINATION WITH OTHER DISCLOSURES.—The notice required under subparagraph (A)—

(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

(ii) must be clear and conspicuous.

(D) MODEL DISCLOSURE.—

(i) DUTY OF BUREAU.—The Bureau shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph may be construed to require a financial institution to use any such model form prescribed by the Bureau.

(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the Bureau under this subparagraph, or the financial institution uses any such model form and rearranges its format.

(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.—No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

(F) SAFE HARBOR.—A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

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

(i) NEGATIVE INFORMATION.—The term “negative information” means information concerning a customer’s delinquencies, late payments, insolvency, or any form of default.

(ii) CUSTOMER; FINANCIAL INSTITUTION.—The terms “customer” and “financial institution” have the same meanings as in section 509 Public Law 106–102.

(8) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

(A) IN GENERAL.—The Bureau shall, in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration, prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained



in a consumer report on the consumer, based on a direct request of a consumer.

(B) CONSIDERATIONS.—In prescribing regulations under subparagraph (A), the agencies shall weigh—

- (i) the benefits to consumers with the costs on furnishers and the credit reporting system;
- (ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;
- (iii) whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and
- (iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 403(3), including entities that would be a credit repair organization, but for section 403(3)(B)(i), are able to circumvent the prohibition in subparagraph (G).

(C) APPLICABILITY.—Subparagraphs (D) through (G) shall apply in any circumstance identified under the regulations promulgated under subparagraph (A).

(D) SUBMITTING A NOTICE OF DISPUTE.—A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

- (i) identifies the specific information that is being disputed;
- (ii) explains the basis for the dispute; and
- (iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

(E) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—After receiving a notice of dispute from a consumer pursuant to subparagraph (D), the person that provided the information in dispute to a consumer reporting agency shall—

- (i) conduct an investigation with respect to the disputed information;
- (ii) review all relevant information provided by the consumer with the notice;
- (iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and
- (iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

(F) FRIVOLOUS OR IRRELEVANT DISPUTE.—

(i) IN GENERAL.—This paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—

(I) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or

(II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting agency under subsection (b), with respect to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

(ii) NOTICE OF DETERMINATION.—Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

(iii) CONTENTS OF NOTICE.—A notice under clause (ii) shall include—

(I) the reasons for the determination under clause (i); and

(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(G) EXCLUSION OF CREDIT REPAIR ORGANIZATIONS.—This paragraph shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in section 403(3), or an entity that would be a credit repair organization, but for section 403(3)(B)(i).

(9) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.

(b) DUTIES OF FURNISHERS OF INFORMATION UPON NOTICE OF DISPUTE.—

(1) IN GENERAL.—After receiving notice pursuant to section 611(a)(2) of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2);

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

- (i) modify that item of information;
- (ii) delete that item of information; or
- (iii) permanently block the reporting of that item of information.

(2) DEADLINE.—A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 611(a)(1) within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) LIMITATION ON LIABILITY.—Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of—

(1) subsection (a) of this section, including any regulations issued thereunder;

(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617, as applicable, for violations of subsection (b) of this section; or

(3) subsection (e) of section 615.

(d) LIMITATION ON ENFORCEMENT.—The provisions of law described in paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 621 by the Federal agencies and officials and the State officials identified in section 621.

(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

(1) GUIDELINES.—The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621—

(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Bureau shall—

(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.

(f) *FULL-FILE CREDIT REPORTING.*—

(1) *IN GENERAL.*—*Subject to the limitation in paragraph (2) and notwithstanding any other provision of law, a person or the Secretary of Housing and Urban Development may furnish to a consumer reporting agency information relating to the performance of a consumer in making payments—*

*(A) under a lease agreement with respect to a dwelling, including such a lease in which the Department of Housing and Urban Development provides subsidized payments for occupancy in a dwelling; or*

*(B) pursuant to a contract for a utility or telecommunications service.*

(2) *LIMITATION.*—*Information about a consumer's usage of any utility services provided by a utility or telecommunication firm may be furnished to a consumer reporting agency only to the extent that such information relates to payment by the consumer for the services of such utility or telecommunication service or other terms of the provision of the services to the consumer, including any deposit, discount, or conditions for interruption or termination of the services.*

(3) *PAYMENT PLAN.*—*An energy utility firm may not report payment information to a consumer reporting agency with respect to an outstanding balance of a consumer as late if—*

*(A) the energy utility firm and the consumer have entered into a payment plan (including a deferred payment agreement, an arrearage management program, or a debt forgiveness program) with respect to such outstanding balance; and*

*(B) the consumer is meeting the obligations of the payment plan, as determined by the energy utility firm.*

(4) *DEFINITIONS.*—*In this subsection, the following definitions shall apply:*

*(A) ENERGY UTILITY FIRM.*—*The term “energy utility firm” means an entity that provides gas or electric utility services to the public.*

*(B) UTILITY OR TELECOMMUNICATION FIRM.*—*The term “utility or telecommunication firm” means an entity that provides utility services to the public through pipe, wire,*

*landline, wireless, cable, or other connected facilities, or radio, electronic, or similar transmission (including the extension of such facilities).*

\* \* \* \* \*

## CONSUMER CREDIT PROTECTION ACT

\* \* \* \* \*

## TITLE VI—CONSUMER CREDIT REPORTING

\* \* \* \* \*

### SEC. 623. RESPONSIBILITIES OF FURNISHERS OF INFORMATION TO CONSUMER REPORTING AGENCIES.

(a) DUTY OF FURNISHERS OF INFORMATION TO PROVIDE ACCURATE INFORMATION.—

(1) PROHIBITION.—

(A) REPORTING INFORMATION WITH ACTUAL KNOWLEDGE OF ERRORS.—A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.

(B) REPORTING INFORMATION AFTER NOTICE AND CONFIRMATION OF ERRORS.—A person shall not furnish information relating to a consumer to any consumer reporting agency if—

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) NO ADDRESS REQUIREMENT.—A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(D) DEFINITION.—For purposes of subparagraph (A), the term “reasonable cause to believe that the information is inaccurate” means having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.

(2) DUTY TO CORRECT AND UPDATE INFORMATION.—A person who—

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person’s transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency

complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) DUTY TO PROVIDE NOTICE OF DISPUTE.—If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) DUTY TO PROVIDE NOTICE OF CLOSED ACCOUNTS.—A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) DUTY TO PROVIDE NOTICE OF DELINQUENCY OF ACCOUNTS.—(A) IN GENERAL.—A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account, which shall be the month and year of the commencement of the delinquency on the account that immediately preceded the action.

(B) RULE OF CONSTRUCTION.—For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—

(i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date to a consumer reporting agency as the date of delinquency; or

(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.

(6) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED INFORMATION.—

(A) REASONABLE PROCEDURES.—A person that furnishes information to any consumer reporting agency shall have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605B relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information.

(B) INFORMATION ALLEGED TO RESULT FROM IDENTITY THEFT.—If a consumer submits an identity theft report to a person who furnishes information to a consumer reporting agency at the address specified by that person for receiving such reports stating that information maintained by such person that purports to relate to the consumer resulted from identity theft, the person may not furnish such information that purports to relate to the consumer to any consumer reporting agency, unless the person subsequently knows or is informed by the consumer that the information is correct.

(7) NEGATIVE INFORMATION.—

(A) NOTICE TO CONSUMER REQUIRED.—

(i) IN GENERAL.—If any financial institution that extends credit and regularly and in the ordinary course of business furnishes information to a consumer reporting agency described in section 603(p) furnishes negative information to such an agency regarding credit extended to a customer, the financial institution shall provide a notice of such furnishing of negative information, in writing, to the customer.

(ii) NOTICE EFFECTIVE FOR SUBSEQUENT SUBMISSIONS.—After providing such notice, the financial institution may submit additional negative information to a consumer reporting agency described in section 603(p) with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer.

(B) TIME OF NOTICE.—

(i) IN GENERAL.—The notice required under subparagraph (A) shall be provided to the customer prior to, or no later than 30 days after, furnishing the negative information to a consumer reporting agency described in section 603(p).

(ii) COORDINATION WITH NEW ACCOUNT DISCLOSURES.—If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.

(C) COORDINATION WITH OTHER DISCLOSURES.—The notice required under subparagraph (A)—

(i) may be included on or with any notice of default, any billing statement, or any other materials provided to the customer; and

(ii) must be clear and conspicuous.

(D) MODEL DISCLOSURE.—

(i) DUTY OF BUREAU.—The Bureau shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph may be construed to require a financial institution to use any such model form prescribed by the Bureau.

(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the Bureau under this subparagraph, or the financial institution uses any such model form and rearranges its format.

(E) USE OF NOTICE WITHOUT SUBMITTING NEGATIVE INFORMATION.—No provision of this paragraph shall be construed as requiring a financial institution that has provided a customer with a notice described in subparagraph (A) to furnish negative information about the customer to a consumer reporting agency.

(F) SAFE HARBOR.—A financial institution shall not be liable for failure to perform the duties required by this paragraph if, at the time of the failure, the financial institution maintained reasonable policies and procedures to comply with this paragraph or the financial institution reasonably believed that the institution is prohibited, by law, from contacting the consumer.

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

(i) NEGATIVE INFORMATION.—The term “negative information” means information concerning a customer’s delinquencies, late payments, insolvency, or any form of default.

(ii) CUSTOMER; FINANCIAL INSTITUTION.—The terms “customer” and “financial institution” have the same meanings as in section 509 Public Law 106–102.

(8) ABILITY OF CONSUMER TO DISPUTE INFORMATION DIRECTLY WITH FURNISHER.—

(A) IN GENERAL.—The Bureau shall, in consultation with the Federal Trade Commission, the Federal banking agencies, and the National Credit Union Administration, prescribe regulations that shall identify the circumstances under which a furnisher shall be required to reinvestigate a dispute concerning the accuracy of information contained in a consumer report on the consumer, based on a direct request of a consumer.

(B) CONSIDERATIONS.—In prescribing regulations under subparagraph (A), the agencies shall weigh—

(i) the benefits to consumers with the costs on furnishers and the credit reporting system;

(ii) the impact on the overall accuracy and integrity of consumer reports of any such requirements;

(iii) whether direct contact by the consumer with the furnisher would likely result in the most expeditious resolution of any such dispute; and



(iv) the potential impact on the credit reporting process if credit repair organizations, as defined in section 403(3), including entities that would be a credit repair organization, but for section 403(3)(B)(i), are able to circumvent the prohibition in subparagraph (G).

(C) APPLICABILITY.—Subparagraphs (D) through (G) shall apply in any circumstance identified under the regulations promulgated under subparagraph (A).

(D) SUBMITTING A NOTICE OF DISPUTE.—A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that—

- (i) identifies the specific information that is being disputed;
- (ii) explains the basis for the dispute; and
- (iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.

(E) DUTY OF PERSON AFTER RECEIVING NOTICE OF DISPUTE.—After receiving a notice of dispute from a consumer pursuant to subparagraph (D), the person that provided the information in dispute to a consumer reporting agency shall—

- (i) conduct an investigation with respect to the disputed information;
- (ii) review all relevant information provided by the consumer with the notice;
- (iii) complete such person's investigation of the dispute and report the results of the investigation to the consumer before the expiration of the period under section 611(a)(1) within which a consumer reporting agency would be required to complete its action if the consumer had elected to dispute the information under that section; and
- (iv) if the investigation finds that the information reported was inaccurate, promptly notify each consumer reporting agency to which the person furnished the inaccurate information of that determination and provide to the agency any correction to that information that is necessary to make the information provided by the person accurate.

(F) FRIVOLOUS OR IRRELEVANT DISPUTE.—

(i) IN GENERAL.—This paragraph shall not apply if the person receiving a notice of a dispute from a consumer reasonably determines that the dispute is frivolous or irrelevant, including—

- (I) by reason of the failure of a consumer to provide sufficient information to investigate the disputed information; or
- (II) the submission by a consumer of a dispute that is substantially the same as a dispute previously submitted by or for the consumer, either directly to the person or through a consumer reporting agency under subsection (b), with respect

to which the person has already performed the person's duties under this paragraph or subsection (b), as applicable.

(ii) NOTICE OF DETERMINATION.—Upon making any determination under clause (i) that a dispute is frivolous or irrelevant, the person shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the person.

(iii) CONTENTS OF NOTICE.—A notice under clause (ii) shall include—

(I) the reasons for the determination under clause (i); and

(II) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(G) EXCLUSION OF CREDIT REPAIR ORGANIZATIONS.—This paragraph shall not apply if the notice of the dispute is submitted by, is prepared on behalf of the consumer by, or is submitted on a form supplied to the consumer by, a credit repair organization, as defined in section 403(3), or an entity that would be a credit repair organization, but for section 403(3)(B)(i).

(9) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.

(b) DUTIES OF FURNISHERS OF INFORMATION UPON NOTICE OF DISPUTE.—

(1) IN GENERAL.—After receiving notice pursuant to section 611(a)(2) of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 611(a)(2);

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

- (i) modify that item of information;
- (ii) delete that item of information; or
- (iii) permanently block the reporting of that item of information.

(2) DEADLINE.—A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 611(a)(1) within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) LIMITATION ON LIABILITY.—Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of—

(1) subsection (a) of this section, including any regulations issued thereunder;

(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617, as applicable, for violations of subsection (b) of this section; **[or]**

(3) *subsection (f) of this section, including any regulations issued thereunder; or*

**[(3)]** (4) subsection (e) of section 615.

(d) LIMITATION ON ENFORCEMENT.—The provisions of law described in paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 621 by the Federal agencies and officials and the State officials identified in section 621.

(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

(1) GUIDELINES.—The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621—

(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Bureau shall—

(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.

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## SECURITIES EXCHANGE ACT OF 1934

### TITLE I—REGULATION OF SECURITIES EXCHANGES

\* \* \* \* \*

#### 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 Commission 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 Investment 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 uniform 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 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; 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 uncondi-

tionally 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 home-stead 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 deter-

mines 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 exchange, 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 thereof, 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 security, 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-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term “index” means an index or group of se-

curities, including any interest therein or based on the value thereof.

(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(1)(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 himself 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.

(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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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.—Notwithstanding 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.

(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), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(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 semi-annual report to the Investor Advocate 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.
- (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 small businesses, women-owned small businesses, *rural-area small businesses*, and small businesses affected by hurricanes or other natural disasters;

(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 small businesses, women-owned small businesses, *rural-area small businesses*, and small businesses affected by hurricanes or other natural disasters 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-regu-

latory 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.

\* \* \* \* \*

#### **SEC. 4F. 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 securities association registered pursuant to section 15A.*

(3) *The operator of the consolidated audit trail created by a national market system plan approved pursuant to section 242.613 of title 17, Code of Federal Regulations (or any successor regulation).*

(b) **CONSOLIDATED AUDIT TRAIL PROHIBITED FROM ACCEPTING MARKET DATA UNTIL MECHANISMS DEVELOPED.**—The operator described in paragraph (3) of subsection (a) may not accept market data (or shall cease accepting market data) until the operator has developed the mechanisms required by such subsection. Any requirement for a person to provide market data to the operator shall not apply during any time when the operator is prohibited by this subsection from accepting such data.

(c) **TREATMENT OF PREVIOUSLY DEVELOPED MECHANISMS.**—The development of comprehensive internal risk control mechanisms re-

*quired by subsection (a) may occur, in whole or in part, before the date of the enactment of this section, if such development and such mechanisms meet the requirements of such subsection (including consultation with the Chief Economist).*

\* \* \* \* \*

#### REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a)(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(b)(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership. The Commission shall deny such registration if it does not make such



a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

(2)(A) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

(B) Any person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on the date of enactment of the Securities Acts Amendments of 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this title.

(C) Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this title and the rules and regulations thereunder: *Provided, however,* That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.

(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person asso-

ciated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer municipal advisor,, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code, or a violation of a substantially equivalent foreign statute.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer municipal advisor,, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign

statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker, dealer, security-based swap dealer, or a major security-based swap participant;

(G) has been found by a foreign financial regulatory authority to have—

(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade;

(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign

financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of this subsection;

(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(B) It shall be unlawful—

(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a broker or dealer in contravention of such order, or to participate in an offering of penny stock in contravention of such order;

(ii) for any broker or dealer to permit such a person, without the consent of the Commission, to become or remain, a person associated with the broker or dealer in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order; or

(iii) for any broker or dealer to permit such a person, without the consent of the Commission, to participate in an offering of penny stock in contravention of such order, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order and of such participation.

(C) For purposes of this paragraph, the term “person participating in an offering of penny stock” includes any person acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, 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 such term.

(7) No registered broker or dealer or government securities broker or government securities dealer registered (or required to register) under section 15C(a)(1)(A) shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

(A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;

(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission’s rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating

to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and

(C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

(8) It shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than or commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member.

(9) The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(10) For the purposes of determining whether a person is subject to a statutory disqualification under section 6(c)(2), 15A(g)(2), or 17A(b)(4)(A) of this title, the term "Commission" in paragraph (4)(B) of this subsection shall mean "exchange", "association", or "clearing agency", respectively.

(11) **BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—**

(A) **NOTICE REGISTRATION.—**

(i) **CONTENTS OF NOTICE.—**Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security futures products on an exchange registered pursuant to section 6(g) may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer is a member of a national securities association registered under section 15A(k).

(ii) **IMMEDIATE EFFECTIVENESS.—**Such registration shall be effective contemporaneously with the submis-

sion of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

(iii) **SUSPENSION.**—Such registration shall be suspended immediately if a national securities association registered pursuant to section 15A(k) of this title suspends the membership of that broker or dealer.

(iv) **TERMINATION.**—Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

(B) **EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.**—A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the following provisions of this title and the rules thereunder with respect to transactions in security futures products:

- (i) Section 8.
- (ii) Section 11.
- (iii) Subsections (c)(3) and (c)(5) of this section.
- (iv) Section 15B.
- (v) Section 15C.
- (vi) Subsections (d), (e), (f), (g), (h), and (i) of section 17.

(12) **EXEMPTION FOR SECURITY FUTURES PRODUCT EXCHANGE MEMBERS.**—

(A) **REGISTRATION EXEMPTION.**—A natural person shall be exempt from the registration requirements of this section if such person—

- (i) is a member of a designated contract market registered with the Commission as an exchange pursuant to section 6(g);
- (ii) effects transactions only in securities on the exchange of which such person is a member; and
- (iii) does not directly accept or solicit orders from public customers or provide advice to public customers in connection with the trading of security futures products.

(B) **OTHER EXEMPTIONS.**—A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this title and the rules thereunder:

- (i) Section 8.
- (ii) Section 11.
- (iii) Subsections (c)(3), (c)(5), and (e) of this section.
- (iv) Section 15B.
- (v) Section 15C.
- (vi) Subsections (d), (e), (f), (g), (h), and (i) of section 17.

(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 shell company, other than a business combination related shell company.*

(iv) *Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company.*

(v) *Assists any party to obtain financing from an unaffiliated third party without—*

*(I) complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T (12 C.F.R. 220 et seq.); and*

*(II) disclosing any compensation in writing to the party.*

(vi) *Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation.*

(vii) *Facilitates a transaction with a group of buyers formed with the assistance of the M&A broker to acquire the eligible privately held company.*

(viii) *Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers. For purposes of the preceding sentence, a buyer that is actively involved in managing the acquired company is not a passive buyer, regardless of whether such buyer is itself owned by passive beneficial owners.*

(ix) *Binds a party to a transfer of ownership of an eligible privately held 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) *BUSINESS COMBINATION RELATED SHELL COMPANY.*—The term “business combination related shell company” means a shell company that is formed by an entity that is not a shell company—

(I) solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(II) solely for the purpose of completing a business combination transaction (as defined under section 230.165(f) of title 17, Code of Federal Regulations) among one or more entities other than the company itself, none of which is a shell company.

(ii) *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 corporate officer of a corporation or limited liability company, and exercises executive responsibility (or has similar status or functions);

(II) has the right to vote 25 percent or more of a class of voting securities or the power to sell or direct the sale of 25 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, 25 percent or more of the capital.

(iii) *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.*

*For purposes of this subclause, the Commission may by rule modify the dollar figures if the Commission determines that such a modification is necessary or appropriate in the public interest or for the protection of investors.*

(iv) **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.*

(v) **SHELL COMPANY.**—*The term “shell company” means a company that at the time of a transaction with an eligible privately held company—*

*(I) has no or nominal operations; and*

*(II) 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 the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2018, 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.*

(c)(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), or any security-based swap agreement by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security or any security-based swap agreement involving a government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

(2)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(B) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate com-

merce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such broker, dealer, or municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce or attempt to induce the purchase or sale of, any government security in connection with which such government securities broker or government securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation.

(D) The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(E) The Commission shall, prior to adopting any rule or regulation under subparagraph (C), consult with and consider the views of the Secretary of the Treasury and each appropriate regulatory agency. If the Secretary of the Treasury or any appropriate regulatory agency comments in writing on a proposed rule or regulation of the Commission under such subparagraph (C) that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. If the Secretary of the Treasury determines, and notifies the Commission, that such rule or regulation, if implemented, would, or as applied does (i) adversely affect the liquidity or efficiency of the market for government securities; or (ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section, the Commission shall, prior to adopting the proposed rule or regulation, find that such rule or regulation is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Secretary's determination.

(3)(A) No broker or dealer (other than a government securities broker or government securities dealer, except a registered broker or dealer) shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security (except a government security) or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.

(B) Consistent with this title, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer reg-

istered 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: (i) the provisions of section 8, section 15(c)(3), and section 17 of this title and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products; and (ii) similar provisions of the Commodity Exchange Act and rules and regulations thereunder involving security futures products.

(C) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 36 of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to subsection (b)(1) and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act, in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 of the United States Code and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practicable for similar products.

(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 12, 13, 14, or subsection (d) of section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as broker in that security.

(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 7 of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.

(7) In connection with any bid for or purchase of a government security related to an offering of government securities by or on behalf of an issuer, no government securities broker, government securities dealer, or bidder for or purchaser of securities in such offering shall knowingly or willfully make any false or misleading written statement or omit any fact necessary to make any written statement made not misleading.

(8) PROHIBITION OF REFERRAL FEES.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining the representation of any person in any private action arising under this title or under the Securities Act of 1933.

(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

(1) IN GENERAL.—Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to the date of enactment of the Securities Acts Amendments of 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this title in respect of a security registered pursuant to section 12 of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined

in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons persons. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may, for the purpose of this subsection, define by rules and regulations the term "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

(2) ASSET-BACKED SECURITIES.—

(A) SUSPENSION OF DUTY TO FILE.—The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(B) CLASSIFICATION OF ISSUERS.—The Commission may, for purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuers of asset-backed securities.

(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.

(f) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under section 15 of this title and any person associated with any such member to comply with any provision of this title (other than section 15(a)) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively.

(g) Every registered broker or dealer shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker's or dealer's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt

rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

(h) REQUIREMENTS FOR TRANSACTIONS IN PENNY STOCKS.—

(1) IN GENERAL.—No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements of this subsection and the rules and regulations prescribed under this subsection.

(2) RISK DISCLOSURE WITH RESPECT TO PENNY STOCKS.—Prior to effecting any transaction in any penny stock, a broker or dealer shall give the customer a risk disclosure document that—

(A) contains a description of the nature and level of risk in the market for penny stocks in both public offerings and secondary trading;

(B) contains a description of the broker's or dealer's duties to the customer and of the rights and remedies available to the customer with respect to violations of such duties or other requirements of Federal securities laws;

(C) contains a brief, clear, narrative description of a dealer market, including "bid" and "ask" prices for penny stocks and the significance of the spread between the bid and ask prices;

(D) contains the toll free telephone number for inquiries on disciplinary actions established pursuant to section 15A(i) of this title;

(E) defines significant terms used in the disclosure document or in the conduct of trading in penny stocks; and

(F) contains such other information, and is in such form (including language, type size, and format), as the Commission shall require by rule or regulation.

(3) COMMISSION RULES RELATING TO DISCLOSURE.—The Commission shall adopt rules setting forth additional standards for the disclosure by brokers and dealers to customers of information concerning transactions in penny stocks. Such rules—

(A) shall require brokers and dealers to disclose to each customer, prior to effecting any transaction in, and at the time of confirming any transaction with respect to any penny stock, in accordance with such procedures and methods as the Commission may require consistent with the public interest and the protection of investors—

(i) the bid and ask prices for penny stock, or such other information as the Commission may, by rule, require to provide customers with more useful and reliable information relating to the price of such stock;

(ii) the number of shares to which such bid and ask prices apply, or other comparable information relating to the depth and liquidity of the market for such stock; and

(iii) the amount and a description of any compensation that the broker or dealer and the associated person thereof will receive or has received in connection with such transaction;



(B) shall require brokers and dealers to provide, to each customer whose account with the broker or dealer contains penny stocks, a monthly statement indicating the market value of the penny stocks in that account or indicating that the market value of such stock cannot be determined because of the unavailability of firm quotes; and

(C) may, as the Commission finds necessary or appropriate in the public interest or for the protection of investors, require brokers and dealers to disclose to customers additional information concerning transactions in penny stocks.

(4) EXEMPTIONS.—The Commission, as it determines consistent with the public interest and the protection of investors, may by rule, regulation, or order exempt in whole or in part, conditionally or unconditionally, any person or class of persons, or any transaction or class of transactions, from the requirements of this subsection. Such exemptions shall include an exemption for brokers and dealers based on the minimal percentage of the broker's or dealer's commissions, commission-equivalents, and markups received from transactions in penny stocks.

(5) REGULATIONS.—It shall be unlawful for any person to violate such rules and regulations as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets—

(A) as necessary or appropriate to carry out this subsection; or

(B) as reasonably designed to prevent fraudulent, deceptive, or manipulative acts and practices with respect to penny stocks.

(i) LIMITATIONS ON STATE LAW.—

(1) CAPITAL, MARGIN, BOOKS AND RECORDS, BONDING, AND REPORTS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers that differ from, or are in addition to, the requirements in those areas established under this title. The Commission shall consult periodically the securities commissions (or any agency or office performing like functions) of the States concerning the adequacy of such requirements as established under this title.

(2) FUNDING PORTALS.—

(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, reg-

ulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

(C) DEFINITION.—For purposes of this paragraph, the term “State” includes the District of Columbia and the territories of the United States.

(3) DE MINIMIS TRANSACTIONS BY ASSOCIATED PERSONS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof may prohibit an associated person of a broker or dealer from effecting a transaction described in paragraph (3) for a customer in such State if—

(A) such associated person is not ineligible to register with such State for any reason other than such a transaction;

(B) such associated person is registered with a registered securities association and at least one State; and

(C) the broker or dealer with which such person is associated is registered with such State.

(4) DESCRIBED TRANSACTIONS.—

(A) IN GENERAL.—A transaction is described in this paragraph if—

(i) such transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) by an associated person of the broker or dealer—

(aa) to which the customer was assigned for 14 days prior to the day of the transaction; and

(bb) who is registered with a State in which the customer was a resident or was present for at least 30 consecutive days during the 1-year period prior to the day of the transaction; or

(ii) the transaction is effected—

(I) on behalf of a customer that, for 30 days prior to the day of the transaction, maintained an account with the broker or dealer; and

(II) during the period beginning on the date on which such associated person files an application for registration with the State in which the transaction is effected and ending on the earlier of—

(aa) 60 days after the date on which the application is filed; or

(bb) the date on which such State notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause.

(B) RULES OF CONSTRUCTION.—For purposes of subparagraph (A)(i)(II)—

(i) each of up to 3 associated persons of a broker or dealer who are designated to effect transactions during the absence or unavailability of the principal asso-

ciated person for a customer may be treated as an associated person to which such customer is assigned; and

(ii) if the customer is present in another State for 30 or more consecutive days or has permanently changed his or her residence to another State, a transaction is not described in this paragraph, unless the associated person of the broker or dealer files an application for registration with such State not later than 10 business days after the later of the date of the transaction, or the date of the discovery of the presence of the customer in the other State for 30 or more consecutive days or the change in the customer's residence.

(j) RULEMAKING TO EXTEND REQUIREMENTS TO NEW HYBRID PRODUCTS.—

(1) CONSULTATION.—Prior to commencing a rulemaking under this subsection, the Commission shall consult with and seek the concurrence of the Board concerning the imposition of broker or dealer registration requirements with respect to any new hybrid product. In developing and promulgating rules under this subsection, the Commission shall consider the views of the Board, including views with respect to the nature of the new hybrid product; the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws; and the impact of the proposed rule on the banking industry.

(2) LIMITATION.—The Commission shall not—

(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new hybrid product; or

(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A), unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

(3) CRITERIA FOR RULEMAKING.—The Commission shall not impose a requirement under paragraph (2) of this subsection with respect to any new hybrid product unless the Commission determines that—

(A) the new hybrid product is a security; and

(B) imposing such requirement is necessary and appropriate in the public interest and for the protection of investors.

(4) CONSIDERATIONS.—In making a determination under paragraph (3), the Commission shall consider—

(A) the nature of the new hybrid product; and

(B) the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.

(5) OBJECTION TO COMMISSION REGULATION.—

(A) FILING OF PETITION FOR REVIEW.—The Board may obtain review of any final regulation described in paragraph (2) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final regulation, a written petition requesting that the regulation be

set aside. Any proceeding to challenge any such rule shall be expedited by the Court of Appeals.

(B) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in subparagraph (A) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the regulation under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(C) EXCLUSIVE JURISDICTION.—On the date of the filing of the petition under subparagraph (A), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in subparagraph (B), to affirm and enforce or to set aside the regulation at issue.

(D) STANDARD OF REVIEW.—The court shall determine to affirm and enforce or set aside a regulation of the Commission under this subsection, based on the determination of the court as to whether—

- (i) the subject product is a new hybrid product, as defined in this subsection;
- (ii) the subject product is a security; and
- (iii) imposing a requirement to register as a broker or dealer for banks engaging in transactions in such product is appropriate in light of the history, purpose, and extent of regulation under the Federal securities laws and under the Federal banking laws, giving deference neither to the views of the Commission nor the Board.

(E) JUDICIAL STAY.—The filing of a petition by the Board pursuant to subparagraph (A) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of such determination).

(F) OTHER AUTHORITY TO CHALLENGE.—Any aggrieved party may seek judicial review of the Commission's rule-making under this subsection pursuant to section 25 of this title.

(6) DEFINITIONS.—For purposes of this subsection:

(A) NEW HYBRID PRODUCT.—The term “new hybrid product” means a product that—

- (i) was not subjected to regulation by the Commission as a security prior to the date of the enactment of the Gramm-Leach-Bliley Act;
- (ii) is not an identified banking product as such term is defined in section 206 of such Act; and
- (iii) is not an equity swap within the meaning of section 206(a)(6) of such Act.

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

(j) The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 3A(b) of this title.

(k) REGISTRATION OR SUCCESSION TO A UNITED STATES BROKER OR DEALER.—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker

or dealer, or succeed to the registration of a United States broker or dealer, the Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, the home country of the foreign person has adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(l) **TERMINATION OF A UNITED STATES BROKER OR DEALER.**—For a foreign person or an affiliate of a foreign person that presents such a risk to the stability of the United States financial system, the Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States, if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

(k) **STANDARD OF CONDUCT.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this Act or the Investment Advisers Act of 1940, the Commission may promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the Commission may by rule provide), the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer. Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

(2) **DISCLOSURE OF RANGE OF PRODUCTS OFFERED.**—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission may by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

(l) **OTHER MATTERS.**—The Commission shall—

(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

(m) **HARMONIZATION OF ENFORCEMENT.**—The enforcement authority of the Commission with respect to violations of the standard

of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.

(n) DISCLOSURES TO RETAIL INVESTORS.—

(1) IN GENERAL.—Notwithstanding any other provision of the securities laws, the Commission may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.

(2) CONSIDERATIONS.—In developing any rules under paragraph (1), the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.

(3) FORM AND CONTENTS OF DOCUMENTS AND INFORMATION.—Any documents or information designated under a rule promulgated under paragraph (1) shall—

(A) be in a summary format; and

(B) contain clear and concise information about—

(i) investment objectives, strategies, costs, and risks; and

(ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.

(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.

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#### **SEC. 15E. REGISTRATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.**

(a) REGISTRATION PROCEDURES.—

(1) APPLICATION FOR REGISTRATION.—

(A) IN GENERAL.—A credit rating agency that elects to be treated as a nationally recognized statistical rating organization for purposes of this title (in this section referred to

as the “applicant”), shall furnish to the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).

(B) REQUIRED INFORMATION.—An application for registration under this section shall contain information regarding—

(i) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable) of the applicant;

(ii) the procedures and methodologies that the applicant uses in determining credit ratings;

(iii) policies or procedures adopted and implemented by the applicant to prevent the misuse, in violation of this title (or the rules and regulations hereunder), of material, nonpublic information;

(iv) the organizational structure of the applicant;

(v) whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;

(vi) any conflict of interest relating to the issuance of credit ratings by the applicant;

(vii) the categories described in any of clauses (i) through (v) of section 3(a)(62)(B) with respect to which the applicant intends to apply for registration under this section;

(viii) on a confidential basis, a list of the 20 largest issuers and subscribers that use the credit rating services of the applicant, by amount of net revenues received therefrom in the fiscal year immediately preceding the date of submission of the application;

(ix) on a confidential basis, as to each applicable category of obligor described in any of clauses (i) through (v) of section 3(a)(62)(B), written certifications described in subparagraph (C), except as provided in subparagraph (D); and

(x) 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.

(C) WRITTEN CERTIFICATIONS.—Written certifications required by subparagraph (B)(ix)—

(i) shall be provided from not fewer than 10 qualified institutional buyers, none of which is affiliated with the applicant;

(ii) may address more than one category of obligors described in any of clauses (i) through (v) of section 3(a)(62)(B);

(iii) shall include not fewer than 2 certifications for each such category of obligor; and

(iv) shall state that the qualified institutional buyer—

(I) meets the definition of a qualified institutional buyer under section 3(a)(64); and

(II) has used the credit ratings of the applicant for at least the 3 years immediately preceding the date of the certification in the subject category or categories of obligors.

(D) EXEMPTION FROM CERTIFICATION REQUIREMENT.—A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a no-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization.

(E) LIMITATION ON LIABILITY OF QUALIFIED INSTITUTIONAL BUYERS.—No qualified institutional buyer shall be liable in any private right of action for any opinion or statement expressed in a certification made pursuant to subparagraph (B)(ix).

(2) REVIEW OF APPLICATION.—

(A) INITIAL DETERMINATION.—Not later than 90 days after the date on which the application for registration is furnished to the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

(i) by order, grant such registration for ratings in the subject category or categories of obligors, as described in clauses (i) through (v) of section 3(a)(62)(B); 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 furnished to 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 does not have adequate financial and managerial resources to consistently produce credit ratings with integrity and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (g), (h), (i), and (j); or

(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (d).

(3) PUBLIC AVAILABILITY OF INFORMATION.—Subject to section 24, the Commission shall, by rule, require a nationally recognized statistical rating organization, upon the granting of registration under this section, to make the information and documents submitted to the Commission in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (b), publicly available on its website, or through another comparable, readily accessible means, except as provided in clauses (viii) and (ix) of paragraph (1)(B).

(b) UPDATE OF REGISTRATION.—

(1) UPDATE.—Each nationally recognized statistical rating organization shall promptly amend its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a nationally recognized statistical rating organization is not required to amend—

(A) the information required to be filed under subsection (a)(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; or

(B) the certifications required to be provided under subsection (a)(1)(B)(ix) by filing information under this paragraph.

(2) CERTIFICATION.—Not later than 90 days after the end of each calendar year, each nationally recognized statistical rating organization 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 nationally recognized statistical rating organization (other than the certifications required under subsection (a)(1)(B)(ix)) continue to be accurate; and

(B) listing any material change that occurred to such information or documents during the previous calendar year.

(c) ACCOUNTABILITY FOR RATINGS PROCEDURES.—

(1) AUTHORITY.—The Commission shall have exclusive authority to enforce the provisions of this section in accordance with this title with respect to any nationally recognized statistical rating organization, if such nationally recognized statistical rating organization issues credit ratings in material contravention of those procedures relating to such nationally recognized statistical rating organization, including procedures relating to the prevention of misuse of nonpublic information and

conflicts of interest, that such nationally recognized statistical rating organization—

(A) includes in its application for registration under subsection (a)(1)(B)(ii); or

(B) makes and disseminates in reports pursuant to section 17(a) or the rules and regulations thereunder.

(2) LIMITATION.—The rules and regulations that the Commission may prescribe pursuant to this title, as they apply to nationally recognized statistical rating organizations, shall be narrowly tailored to meet the requirements of this title applicable to nationally recognized statistical rating organizations. Notwithstanding any other provision of this section, or any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings. Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws.

(3) INTERNAL CONTROLS OVER PROCESSES FOR DETERMINING CREDIT RATINGS.—

(A) IN GENERAL.—Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

(B) ATTESTATION REQUIREMENT.—The Commission shall prescribe rules requiring each nationally recognized statistical rating organization to submit to the Commission an annual internal controls report, which shall contain—

(i) a description of the responsibility of the management of the nationally recognized statistical rating organization in establishing and maintaining an effective internal control structure under subparagraph (A);

(ii) an assessment of the effectiveness of the internal control structure of the nationally recognized statistical rating organization; and

(iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.

(d) CENSURE, DENIAL, OR SUSPENSION OF REGISTRATION; NOTICE AND HEARING.—

(1) IN GENERAL.—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 nationally recognized statistical rating organization, or with respect to any person who is associated with, who is seeking to become associated with, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a nationally recognized statistical rating organization, the Commission, by order, shall censure, place

limitations on the activities or functions of such person, suspend for a period not exceeding 1 year, or bar such person from being associated with a nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, bar or revocation is necessary for the protection of investors and in the public interest and that such nationally recognized statistical rating organization, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (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;

(B) 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—

(i) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4)(B); or

(ii) a substantially equivalent crime by a foreign court of competent jurisdiction;

(C) is subject to any order of the Commission barring or suspending the right of the person to be associated with a nationally recognized statistical rating organization;

(D) fails to file the certifications required under subsection (b)(2);

(E) fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity;

(F) has failed reasonably to supervise, with a view to preventing a violation of the securities laws, an individual who commits such a violation, if the individual is subject to the supervision of that person.

(2) SUSPENSION OR REVOCATION FOR PARTICULAR CLASS OF SECURITIES.—

(A) IN GENERAL.—The Commission may temporarily suspend or permanently revoke the registration of a nationally recognized statistical rating organization with respect to a particular class or subclass of securities, if the Commission finds, on the record after notice and opportunity for hearing, that the nationally recognized statistical rating organization does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.

(B) CONSIDERATIONS.—In making any determination under subparagraph (A), the Commission shall consider—

(i) whether the nationally recognized statistical rating organization has failed over a sustained period of time, as determined by the Commission, to produce

ratings that are accurate for that class or subclass of securities; and

(ii) such other factors as the Commission may determine.

(e) TERMINATION OF REGISTRATION.—

(1) VOLUNTARY WITHDRAWAL.—A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by furnishing 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 nationally recognized statistical rating organization is no longer in existence or has ceased to do business as a credit rating agency, the Commission, by order, shall cancel the registration under this section of such nationally recognized statistical rating organization.

(f) REPRESENTATIONS.—

(1) BAN ON REPRESENTATIONS OF SPONSORSHIP BY UNITED STATES OR AGENCY THEREOF.—It shall be unlawful for any nationally recognized statistical rating organization to represent or imply in any manner whatsoever that such nationally recognized statistical rating organization has been designated, sponsored, recommended, or approved, or that the abilities or qualifications thereof have in any respect been passed upon, by the United States or any agency, officer, or employee thereof.

(2) BAN ON REPRESENTATION AS NRSRO OF UNREGISTERED CREDIT RATING AGENCIES.—It shall be unlawful for any credit rating agency that is not registered under this section as a nationally recognized statistical rating organization to state that such credit rating agency is a nationally recognized statistical rating organization registered under this title.

(3) STATEMENT OF REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934 PROVISIONS.—No provision of paragraph (1) shall be construed to prohibit a statement that a nationally recognized statistical rating organization is a nationally recognized statistical rating organization under this title, if such statement is true in fact and if the effect of such registration is not misrepresented.

(g) PREVENTION OF MISUSE OF NONPUBLIC INFORMATION.—

(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization, to prevent the misuse in violation of this title, or the rules or regulations hereunder, of material, nonpublic information by such nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization.

(2) COMMISSION AUTHORITY.—The Commission shall issue final rules in accordance with subsection (n) to require specific policies or procedures that are reasonably designed to prevent

misuse in violation of this title (or the rules or regulations hereunder) of material, nonpublic information.

(h) MANAGEMENT OF CONFLICTS OF INTEREST.—

(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.

(2) COMMISSION AUTHORITY.—The Commission shall issue final rules in accordance with subsection (n) to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to—

(A) the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

(B) the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

(C) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

(D) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating; and

(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(3) SEPARATION OF RATINGS FROM SALES AND MARKETING.—

(A) RULES REQUIRED.—The Commission shall issue rules to prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing the production of ratings by the nationally recognized statistical rating organization.

(B) CONTENTS OF RULES.—The rules issued under subparagraph (A) shall provide for—

(i) exceptions for small nationally recognized statistical rating organizations with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate; and

(ii) suspension or revocation of the registration of a nationally recognized statistical rating organization, if

the Commission finds, on the record, after notice and opportunity for a hearing, that—

(I) the nationally recognized statistical rating organization has committed a violation of a rule issued under this subsection; and

(II) the violation of a rule issued under this subsection affected a rating.

(4) LOOK-BACK REQUIREMENT.—

(A) REVIEW BY THE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the nationally recognized statistical rating organization shall—

(i) conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and

(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

(B) REVIEW BY COMMISSION.—

(i) IN GENERAL.—The Commission shall conduct periodic reviews of the policies described in subparagraph (A) and the implementation of the policies at each nationally recognized statistical rating organization to ensure they are reasonably designed and implemented to most effectively eliminate conflicts of interest.

(ii) TIMING OF REVIEWS.—The Commission shall review the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

(I) not less frequently than annually; and

(II) whenever such policies are materially modified or amended.

(5) REPORT TO COMMISSION ON CERTAIN EMPLOYMENT TRANSITIONS.—

(A) REPORT REQUIRED.—Each nationally recognized statistical rating organization shall report to the Commission any case such organization knows or can reasonably be expected to know where a person associated with such organization within the previous 5 years obtains employment with any obligor, issuer, underwriter, or sponsor of a security or money market instrument for which the organiza-

tion issued a credit rating during the 12-month period prior to such employment, if such employee—

- (i) was a senior officer of such organization;
- (ii) participated in any capacity in determining credit ratings for such obligor, issuer, underwriter, or sponsor; or
- (iii) supervised an employee described in clause (ii).

(B) PUBLIC DISCLOSURE.—Upon receiving such a report, the Commission shall make such information publicly available.

(i) PROHIBITED CONDUCT.—

(1) PROHIBITED ACTS AND PRACTICES.—The Commission shall issue final rules in accordance with subsection (n) to prohibit any act or practice relating to the issuance of credit ratings by a nationally recognized statistical rating organization that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

(A) conditioning or threatening to condition the issuance of a credit rating on the purchase by the obligor or an affiliate thereof of other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization;

(B) lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the nationally recognized statistical rating organization; or

(C) modifying or threatening to modify a credit rating or otherwise departing from its adopted systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization 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) DESIGNATION OF COMPLIANCE OFFICER.—

(1) IN GENERAL.—Each nationally recognized statistical rating organization shall designate an individual responsible for administering the policies and procedures that are required to be established pursuant to subsections (g) and (h), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

(2) LIMITATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an individual designated under paragraph (1) may not, while serving in the designated capacity—

- (i) perform credit ratings;
- (ii) participate in the development of ratings methodologies or models;
- (iii) perform marketing or sales functions; or
- (iv) participate in establishing compensation levels, other than for employees working for that individual.

(B) EXCEPTION.—The Commission may exempt a small nationally recognized statistical rating organization from the limitations under this paragraph, if the Commission finds that compliance with such limitations would impose an unreasonable burden on the nationally recognized statistical rating organization.

(3) OTHER DUTIES.—Each individual designated under paragraph (1) shall establish procedures for the receipt, retention, and treatment of—

(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures developed under this section; and

(B) confidential, anonymous complaints by employees or users of credit ratings.

(4) COMPENSATION.—The compensation of each compliance officer appointed under paragraph (1) shall not be linked to the financial performance of the nationally recognized statistical rating organization and shall be arranged so as to ensure the independence of the officer's judgment.

(5) ANNUAL REPORTS REQUIRED.—

(A) ANNUAL REPORTS REQUIRED.—Each individual designated under paragraph (1) shall submit to the nationally recognized statistical rating organization an annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization that includes—

- (i) a description of any material changes to the code of ethics and conflict of interest policies of the nationally recognized statistical rating organization; and
- (ii) a certification that the report is accurate and complete.

(B) SUBMISSION OF REPORTS TO THE COMMISSION.—Each nationally recognized statistical rating organization shall file the reports required under subparagraph (A) together with the financial report that is required to be submitted to the Commission under this section.

(k) STATEMENTS OF FINANCIAL CONDITION.—Each nationally recognized statistical rating organization 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 accountant, 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.

(l) SOLE METHOD OF REGISTRATION.—



(1) IN GENERAL.—On and after the effective date of this section, a credit rating agency may only be registered as a nationally recognized statistical rating organization for any purpose in accordance with this section.

(2) PROHIBITION ON RELIANCE ON NO-ACTION RELIEF.—On and after the effective date of this section—

(A) an entity that, before that date, received advice, approval, or a no-action letter from the Commission or staff thereof to be treated as a nationally recognized statistical rating organization pursuant to the Commission rule at section 240.15c3-1 of title 17, Code of Federal Regulations, may represent itself or act as a nationally recognized statistical rating organization only—

(i) during Commission consideration of the application, if such entity has filed an application for registration under this section; and

(ii) on and after the date of approval of its application for registration under this section; and

(B) the advice, approval, or no-action letter described in subparagraph (A) shall be void.

(3) NOTICE TO OTHER AGENCIES.—Not later than 30 days after the date of enactment of this section, the Commission shall give notice of the actions undertaken pursuant to this section to each Federal agency which employs in its rules and regulations the term “nationally recognized statistical rating organization” (as that term is used under Commission rule 15c3-1 (17 C.F.R. 240.15c3-1), as in effect on the date of enactment of this section).

(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.

(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 in final form, not later than 270 days after the date of enactment of this section; and

(B) shall become effective not later than 270 days 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 employ the term “nationally recognized statistical rating organization” or “NRSRO”; and

(B) amend or revise such rules and regulations in accordance with the purposes of this section, as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(o) NRSROs SUBJECT TO COMMISSION AUTHORITY.—

(1) IN GENERAL.—No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

(2) LIMITATION.—Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.

(p) REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

(1) ESTABLISHMENT OF OFFICE OF CREDIT RATINGS.—

(A) OFFICE ESTABLISHED.—The Commission shall establish within the Commission an Office of Credit Ratings (referred to in this subsection as the “Office”) to administer the rules of the Commission—

(i) with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest;

(ii) to promote accuracy in credit ratings issued by nationally recognized statistical rating organizations; and

(iii) to ensure that such ratings are not unduly influenced by conflicts of interest.

(B) DIRECTOR OF THE OFFICE.—The head of the Office shall be the Director, who shall report to the Chairman.

(2) STAFFING.—The Office established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section. The staff shall include persons with knowledge of and expertise in corporate, municipal, and structured debt finance.

(3) COMMISSION EXAMINATIONS.—

(A) ANNUAL EXAMINATIONS REQUIRED.—The Office shall conduct an examination of each nationally recognized statistical rating organization at least annually.

(B) CONDUCT OF EXAMINATIONS.—Each examination under subparagraph (A) shall include, *as appropriate*, a review of—

(i) whether the nationally recognized statistical rating organization conducts business in accordance with the policies, procedures, and rating methodologies of the nationally recognized statistical rating organization;

- (ii) the management of conflicts of interest by the nationally recognized statistical rating organization;
- (iii) implementation of ethics policies by the nationally recognized statistical rating organization;
- (iv) the internal supervisory controls of the nationally recognized statistical rating organization;
- (v) the governance of the nationally recognized statistical rating organization;
- (vi) the activities of the individual designated by the nationally recognized statistical rating organization under subsection (j)(1);
- (vii) the processing of complaints by the nationally recognized statistical rating organization; and
- (viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization.

(C) INSPECTION REPORTS.—The Commission shall make available to the public, in an easily understandable format, an annual report summarizing—

- (i) the essential findings of all examinations conducted under subparagraph (A), as deemed appropriate by the Commission;
- (ii) the responses by the nationally recognized statistical rating organizations to any material regulatory deficiencies identified by the Commission under clause (i); and
- (iii) whether the nationally recognized statistical rating organizations have appropriately addressed the recommendations of the Commission contained in previous reports under this subparagraph.

(4) RULEMAKING AUTHORITY.—The Commission shall—

(A) establish, by rule, fines, and other penalties applicable to any nationally recognized statistical rating organization that violates the requirements of this section and the rules thereunder; and

(B) issue such rules as may be necessary to carry out this section.

(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each nationally recognized statistical rating organization publicly disclose information on the initial credit ratings determined by the nationally recognized statistical rating organization for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different nationally recognized statistical rating organizations.

(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

(A) are comparable among nationally recognized statistical rating organizations, to allow users of credit ratings to compare the performance of credit ratings across nationally recognized statistical rating organizations;

(B) are clear and informative for investors having a wide range of sophistication who use or might use credit ratings;

(C) include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the nationally recognized statistical rating organization;

(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website, and in writing, when requested;

(E) are appropriate to the business model of a nationally recognized statistical rating organization; and

(F) each nationally recognized statistical rating organization include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.

(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization—

(1) to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are—

(A) approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board; and

(B) in accordance with the policies and procedures of the nationally recognized statistical rating organization for the development and modification of credit rating procedures and methodologies;

(2) to ensure that when material changes to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models) are made, that—

(A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;

(B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the nationally recognized statistical rating organization within a reasonable time period determined by the Commission, by rule; and

(C) the nationally recognized statistical rating organization publicly discloses the reason for the change; and

(3) to notify users of credit ratings—

(A) of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating;

(B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;

(C) when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; and

(D) of the likelihood of a material change described in subparagraph (B) resulting in a change in current credit ratings.

(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION REVIEWED.—

(1) FORM FOR DISCLOSURES.—The Commission shall require, by rule, each nationally recognized statistical rating organization to prescribe a form to accompany the publication of each credit rating that discloses—

(A) information relating to—

(i) the assumptions underlying the credit rating procedures and methodologies;

(ii) the data that was relied on to determine the credit rating; and

(iii) if applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

(B) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the nationally recognized statistical rating organization.

(2) FORMAT.—The form developed under paragraph (1) shall—

(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report;

(B) require the nationally recognized statistical rating organization to provide the content described in paragraph (3)(B) in a manner that is directly comparable across types of securities; and

(3)(B) in a manner that is directly comparable across types of securities; and

(C) be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.

(3) CONTENT OF FORM.—

(A) QUALITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under paragraph (1)—

(i) the credit ratings produced by the nationally recognized statistical rating organization;

(ii) the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating structured products;

(iii) the potential limitations of the credit ratings, and the types of risks excluded from the credit ratings that the nationally recognized statistical rating organization does not comment on, including liquidity, market, and other risks;

(iv) information on the uncertainty of the credit rating, including—

(I) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

(II) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including—

(aa) any limits on the scope of historical data; and

(bb) any limits in accessibility to certain documents or other types of information that would have better informed the credit rating;

(v) whether and to what extent third party due diligence services have been used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

(vi) a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

(vii) a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar issuances;

(viii) information relating to conflicts of interest of the nationally recognized statistical rating organization; and

(ix) such additional information as the Commission may require.

(B) QUANTITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under this subsection—

(i) an explanation or measure of the potential volatility of the credit rating, including—

(I) any factors that might lead to a change in the credit ratings; and

(II) the magnitude of the change that a user can expect under different market conditions;

(ii) information on the content of the rating, including—

(I) the historical performance of the rating; and

(II) the expected probability of default and the expected loss in the event of default;

(iii) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization, including—

(I) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and

(II) an analysis, using specific examples, of how each of the 5 assumptions identified under subclause (I) impacts a rating;

(iv) such additional information as may be required by the Commission.

(4) DUE DILIGENCE SERVICES FOR ASSET-BACKED SECURITIES.—

(A) FINDINGS.—The issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

(B) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services are employed by a nationally recognized statistical rating organization, an issuer, or an underwriter, the person providing the due diligence services shall provide to any nationally recognized statistical rating organization that produces a rating to which such services relate, written certification, as provided in subparagraph (C).

(C) FORMAT AND CONTENT.—The Commission shall establish the appropriate format and content for the written certifications required under subparagraph (B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating.

(D) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization, at the time at which the nationally recognized statistical rating organization produces a rating, to disclose the certification described in subparagraph (B) to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by a third party.

(t) CORPORATE GOVERNANCE, ORGANIZATION, AND MANAGEMENT OF CONFLICTS OF INTEREST.—

(1) BOARD OF DIRECTORS.—Each nationally recognized statistical rating organization shall have a board of directors.

(2) INDEPENDENT DIRECTORS.—

(A) IN GENERAL.—At least  $\frac{1}{2}$  of the board of directors, but not fewer than 2 of the members thereof, shall be independent of the nationally recognized statistical rating agency. A portion of the independent directors shall include users of ratings from a nationally recognized statistical rating organization.

(B) INDEPENDENCE DETERMINATION.—In order to be considered independent for purposes of this subsection, a member of the board of directors of a nationally recognized statistical rating organization—

(i) may not, other than in his or her capacity as a member of the board of directors or any committee thereof—

(I) accept any consulting, advisory, or other compensatory fee from the nationally recognized statistical rating organization; or

(II) be a person associated with the nationally recognized statistical rating organization or with any affiliated company thereof; and

(ii) shall be disqualified from any deliberation involving a specific rating in which the independent board member has a financial interest in the outcome of the rating.

(C) COMPENSATION AND TERM.—The compensation of the independent members of the board of directors of a nationally recognized statistical rating organization shall not be linked to the business performance of the nationally recognized statistical rating organization, and shall be arranged so as to ensure the independence of their judgment. The term of office of the independent directors shall be for a pre-agreed fixed period, not to exceed 5 years, and shall not be renewable.

(3) DUTIES OF BOARD OF DIRECTORS.—In addition to the overall responsibilities of the board of directors, the board shall oversee—

(A) the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings;

(B) the establishment, maintenance, and enforcement of policies and procedures to address, manage, and disclose any conflicts of interest;

(C) the effectiveness of the internal control system with respect to policies and procedures for determining credit ratings; and

(D) the compensation and promotion policies and practices of the nationally recognized statistical rating organization.

(4) TREATMENT OF NRSRO SUBSIDIARIES.—If a nationally recognized statistical rating organization is a subsidiary of a parent entity, the board of the directors of the parent entity may satisfy the requirements of this subsection by assigning to a committee of such board of directors the duties under paragraph (3), if—

(A) at least  $\frac{1}{2}$  of the members of the committee (including the chairperson of the committee) are independent, as defined in this section; and

(B) at least 1 member of the committee is a user of ratings from a nationally recognized statistical rating organization.

(5) EXCEPTION AUTHORITY.—If the Commission finds that compliance with the provisions of this subsection present an unreasonable burden on a small nationally recognized statistical rating organization, the Commission may permit the nationally recognized statistical rating organization to delegate such responsibilities to a committee that includes at least one individual who is a user of ratings of a nationally recognized statistical rating organization.

(u) DUTY TO REPORT TIPS ALLEGING MATERIAL VIOLATIONS OF LAW.—



(1) DUTY TO REPORT.—Each nationally recognized statistical rating organization shall refer to the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives from a third party and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a material violation of law that has not been adjudicated by a Federal or State court.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to verify the accuracy of the information described in paragraph (1).

(v) INFORMATION FROM SOURCES OTHER THAN THE ISSUER.—In producing a credit rating, a nationally recognized statistical rating organization shall consider information about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer or underwriter, that the nationally recognized statistical rating organization finds credible and potentially significant to a rating decision.

**SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.**

(a) REGISTRATION.—

(1) SECURITY-BASED SWAP DEALERS.—It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

(b) REQUIREMENTS.—

(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

(2) CONTENTS.—

(A) IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

(B) CONTINUAL REPORTING.—A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

(3) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

(4) RULES.—Except as provided in subsections (d) and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of non-bank se-

curity-based swap dealers and major security-based swap participants.

(5) TRANSITION.—Not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall issue rules under this section to provide for the registration of security-based swap dealers and major security-based swap participants.

(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

(c) DUAL REGISTRATION.—

(1) SECURITY-BASED SWAP DEALER.—Any person that is required to be registered as a security-based swap dealer 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 dealer.

(2) MAJOR SECURITY-BASED SWAP PARTICIPANT.—Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.

(d) RULEMAKING.—

(1) IN GENERAL.—The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.

(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—

(A) IN GENERAL.—The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a prudential regulator.

(B) APPLICABILITY.—Subparagraph (A) does not limit the authority of the Commission to prescribe rules as directed under this section.

(e) CAPITAL AND MARGIN REQUIREMENTS.—

(1) IN GENERAL.—

(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe under paragraph (2)(A).

(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—

Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B).

(2) RULES.—

(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—The prudential regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a prudential regulator imposing—

- (i) capital requirements; and
- (ii) both initial and variation margin requirements on all security-based swaps that are not cleared by a registered clearing agency.

(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

- (i) capital requirements; and
- (ii) both initial and variation margin requirements on all swaps that are not cleared by a registered clearing agency.

(C) CAPITAL.—In setting capital requirements for a person that is designated as a security-based swap dealer or a major security-based swap participant for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person.

(3) STANDARDS FOR CAPITAL AND MARGIN.—

(A) IN GENERAL.—To offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared, the requirements imposed under paragraph (2) shall —

- (i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and
- (ii) be appropriate for the risk associated with the non-cleared security-based swaps held as a security-based swap dealer or major security-based swap participant.

(B) RULE OF CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

(I) of the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) (except for section 15(b)(11) thereof) in accordance with section 15(c)(3); or

(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act (except for section 4f(a)(3) thereof) in accordance with section 4f(b) of the Commodity Exchange Act.

(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this title or the Commodity Exchange Act.

(C) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the prudential regulator with respect to security-based swap dealers and major security-based swap participants that are depository institutions, and the Commission with respect to security-based swap dealers and major security-based swap participants that are not depository institutions shall permit the use of noncash collateral, as the regulator or the Commission determines to be consistent with—

(i) preserving the financial integrity of markets trading security-based swaps; and

(ii) preserving the stability of the United States financial system.

(D) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS.—

(i) IN GENERAL.—The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

(ii) COMPARABILITY.—The entities described in clause (i) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, for—

(I) security-based swap dealers; and

(II) major security-based swap participants.

(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—**[The requirements]**

(A) IN GENERAL.—*The requirements of paragraphs (2)(A)(ii) and (2)(B)(ii) shall not apply to a security-based swap in which a counterparty qualifies for an exception*

under section 3C(g)(1) or satisfies the criteria in section 3C(g)(4).

*(B) INITIAL MARGIN REQUIREMENT.—The initial margin requirements imposed by rules adopted pursuant to paragraphs (2)(A)(ii) and (2)(B)(ii) shall not apply to any security-based swap in which—*

*(i) one counterparty is a person in which the other counterparty, directly or indirectly, holds a majority ownership interest; or*

*(ii) a third party, directly or indirectly, holds a majority ownership interest in both counterparties.*

(f) REPORTING AND RECORDKEEPING.—

(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

(A) shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant;

(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

(g) DAILY TRADING RECORDS.—

(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall require by rule or regulation.

(3) COUNTERPARTY RECORDS.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.

(4) AUDIT TRAIL.—Each registered security-based swap dealer and major security-based swap participant shall maintain a

complete audit trail for conducting comprehensive and accurate trade reconstructions.

(5) RULES.—The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

(h) BUSINESS CONDUCT STANDARDS.—

(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as prescribed in paragraph (3) and as may be prescribed by the Commission by rule or regulation that relate to—

(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

(B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;

(C) adherence to all applicable position limits; and

(D) such other matters as the Commission determines to be appropriate.

(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES.—

(A) ADVISING SPECIAL ENTITIES.—A security-based swap dealer or major security-based swap participant that acts as an advisor to special entity regarding a security-based swap shall comply with the requirements of paragraph (4) with respect to such special entity.

(B) ENTERING OF SECURITY-BASED SWAPS WITH RESPECT TO SPECIAL ENTITIES.—A security-based swap dealer that enters into or offers to enter into security-based swap with a special entity shall comply with the requirements of paragraph (5) with respect to such special entity.

(C) SPECIAL ENTITY DEFINED.—For purposes of this subsection, the term “special entity” means—

(i) a Federal agency;

(ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;

(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

(v) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

(3) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

(A) establish a duty for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the transaction (other than a security-based swap dealer, major security-based swap participant,

security-based swap dealer, or major security-based swap participant) of—

(i) information about the material risks and characteristics of the security-based swap;

(ii) any material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

(iii)(I) for cleared security-based swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

(II) for uncleared security-based swaps, receipt of the daily mark of the transaction from the security-based swap dealer or the major security-based swap participant;

(C) establish a duty for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

(D) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

(4) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS ACTING AS ADVISORS.—

(A) IN GENERAL.—It shall be unlawful for a security-based swap dealer or major security-based swap participant—

(i) to employ any device, scheme, or artifice to defraud any special entity or prospective customer who is a special entity;

(ii) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any special entity or prospective customer who is a special entity; or

(iii) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

(B) DUTY.—Any security-based swap dealer that acts as an advisor to a special entity shall have a duty to act in the best interests of the special entity.

(C) REASONABLE EFFORTS.—Any security-based swap dealer that acts as an advisor to a special entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any security-based swap recommended by the security-based swap dealer is in the best interests of the special entity, including information relating to—

(i) the financial status of the special entity;

(ii) the tax status of the special entity;

(iii) the investment or financing objectives of the special entity; and

(iv) any other information that the Commission may prescribe by rule or regulation.

(5) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES.—

(A) IN GENERAL.—Any security-based swap dealer or major security-based swap participant that offers to or enters into a security-based swap with a special entity shall—

(i) comply with any duty established by the Commission for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of the Commodity Exchange Act, that requires the security-based swap dealer or major security-based swap participant to have a reasonable basis to believe that the counterparty that is a special entity has an independent representative that—

(I) has sufficient knowledge to evaluate the transaction and risks;

(II) is not subject to a statutory disqualification;

(III) is independent of the security-based swap dealer or major security-based swap participant;

(IV) undertakes a duty to act in the best interests of the counterparty it represents;

(V) makes appropriate disclosures;

(VI) will provide written representations to the special entity regarding fair pricing and the appropriateness of the transaction; and

(VII) in the case of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(ii) before the initiation of the transaction, disclose to the special entity in writing the capacity in which the security-based swap dealer is acting.

(B) COMMISSION AUTHORITY.—The Commission may establish such other standards and requirements under this paragraph as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

(6) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.

(7) APPLICABILITY.—This subsection shall not apply with respect to a transaction that is—

(A) initiated by a special entity on an exchange or security-based swaps execution facility; and

(B) the security-based swap dealer or major security-based swap participant does not know the identity of the counterparty to the transaction.”

(i) DOCUMENTATION STANDARDS.—

(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirma-



tion, processing, netting, documentation, and valuation of all security-based swaps.

(2) RULES.—The Commission shall adopt rules governing documentation standards for security-based swap dealers and major security-based swap participants.

(j) DUTIES.—Each registered security-based swap dealer and major security-based swap participant shall, at all times, comply with the following requirements:

(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

(2) RISK MANAGEMENT PROCEDURES.—The security-based swap dealer or major security-based swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.

(3) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, information concerning—

(A) terms and conditions of its security-based swaps;

(B) security-based swap trading operations, mechanisms, and practices;

(C) financial integrity protections relating to security-based swaps; and

(D) other information relevant to its trading in security-based swaps.

(4) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major security-based swap participant shall—

(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

(B) provide the information to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.

(5) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this title; and

(B) address such other issues as the Commission determines to be appropriate.

(6) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the security-based swap dealer or major security-based swap participant shall not—

(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

(B) impose any material anticompetitive burden on trading or clearing.

(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of security-based swap dealers and major security-based swap participants.

(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(1) IN GENERAL.—Each security-based swap dealer and major security-based swap participant 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 security-based swap dealer or major security-based swap participant;

(B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant requirements described in this section;

(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(E) ensure compliance with this title (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;

(F) establish procedures for the remediation of non-compliance issues identified by the chief 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

(G) 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 security-based swap dealer or major swap participant with respect to this title (including regulations); and

(ii) each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

(i) accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant 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.

(1) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

(1) PRIMARY ENFORCEMENT AUTHORITY.—

(A) SECURITIES AND EXCHANGE COMMISSION.—Except as provided in subparagraph (B), (C), or (D), the Commission shall have primary authority to enforce subtitle B, and the amendments made by subtitle B 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 subsection (e) and other prudential requirements of this title (including risk management standards), with respect to security-based swap dealers or major security-based swap participants for which they are the prudential regulator.

(C) REFERRAL.—

(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS.—If the appropriate Federal banking agency for security-based swap dealers or major security-based swap participants that are depository institutions has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of this section or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator may have engaged in conduct that constitute a violation of the prudential requirements of subsection (e) or rules adopted thereunder, the Commission may recommend in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

## (D) BACKSTOP ENFORCEMENT AUTHORITY.—

(i) 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)(i), the prudential regulator may initiate an enforcement proceeding.

(ii) 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)(ii), the Commission may initiate an enforcement proceeding.

(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(3) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such

person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

(4) UNLAWFUL CONDUCT.—It shall be unlawful—

(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.

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#### RULES, REGULATIONS, AND ORDERS; ANNUAL REPORTS

SEC. 23. (a)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 3(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which they are responsible or for the execution of the functions vested in them by this title, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof. No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order of the Commission, the Board of Governors of the Federal Reserve System, other agency enumerated in section 3(a)(34) of this title, or any self-regulatory organization, notwithstanding that such rule, regulation, or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(2) The Commission and the Secretary of the Treasury, in making rules and regulations pursuant to any provisions of this title, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission and the Secretary of the Treasury shall not adopt any such rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of this title. The Commission and the Secretary of the Treasury shall include in the statement of basis and purpose incorporated in any rule or regulation adopted under this title, the reasons for the Commission's or the Secretary's determination that any burden on competition imposed by such rule or regulation is necessary or appropriate in furtherance of the purposes of this title.

(3) The Commission and the Secretary, in making rules and regulations pursuant to any provision of this title, considering any application for registration in accordance with section 19(a) of this title, or reviewing any proposed rule change of a self-regulatory organization in accordance with section 19(b) of this title, shall keep in a public file and make available for copying all written statements filed with the Commission and the Secretary and all written communications between the Commission or the Secretary and any person relating to the proposed rule, regulation, application, or proposed rule change: *Provided, however,* That the Commission and the Secretary shall not be required to keep in a public file or make available for copying any such statement or communication which it may withhold from the public in accordance with the provisions of section 552 of title 5, United States Code.

(b)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 3(a)(34) of this title shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this title.

(2) The appropriate regulatory agency for a self-regulatory organization shall include in its annual report to the Congress for each fiscal year, a summary of its oversight activities under this title with respect to such self-regulatory organization, including a description of any examination conducted as part of such activities of any organization, any material recommendation presented as part of such activities to such organization for changes in its organization or rules, and any such action by such organization in response to any such recommendation.

(3) The appropriate regulatory agency for any class of municipal securities dealers shall include in its annual report to the Congress for each fiscal year a summary of its regulatory activities pursuant to this title with respect to such municipal securities dealers, including the nature of and reason for any sanction imposed pursuant to this title against any such municipal securities dealer.

(4) The Commission shall also include in its annual report to the Congress for each fiscal year—

(A) a summary of the Commission's oversight activities with respect to self-regulatory organizations for which it is not the appropriate regulatory agency, including a description of any examination of any such organization, any material rec-

ommendation presented to any such organization for changes in its organization or rules, and any action by any such organization in response to any such recommendations;

(B) a statement and analysis of the expenses and operations of each self-regulatory organization in connection with the performance of its responsibilities under this title, for which purpose data pertaining to such expenses and operations shall be made available by such organization to the Commission at its request;

(C) the steps the Commission has taken and the progress it has made toward ending the physical movement of the securities certificate in connection with the settlement of securities transactions, and its recommendations, if any, for legislation to eliminate the securities certificate;

(D) the number of requests for exemptions from provisions of this title received, the number granted, and the basis upon which any such exemption was granted;

(E) a summary of the Commission's regulatory activities with respect to municipal securities dealers for which it is not the appropriate regulatory agency, including the nature of, and reason for, any sanction imposed in proceedings against such municipal securities dealers;

(F) a statement of the time elapsed between the filing of reports pursuant to section 13(f) of this title and the public availability of the information contained therein, the costs involved in the Commission's processing of such reports and tabulating such information, the manner in which the Commission uses such information, and the steps the Commission has taken and the progress it has made toward requiring such reports to be filed and such information to be made available to the public in machine language;

(G) information concerning (i) the effects its rules and regulations are having on the viability of small brokers and dealers; (ii) its attempts to reduce any unnecessary reporting burden on such brokers and dealers; and (iii) its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets;

(H) a statement detailing its administration of the Freedom of Information Act, section 552 of title 5, United States Code, including a copy of the report filed pursuant to subsection (d) of such section; and

(I) the steps that have been taken and the progress that has been made in promoting the timely public dissemination and availability for analytical purposes (on a fair, reasonable, and nondiscriminatory basis) of information concerning government securities transactions and quotations, and its recommendations, if any, for legislation to assure timely dissemination of (i) information on transactions in regularly traded government securities sufficient to permit the determination of the prevailing market price for such securities, and (ii) reports of the highest published bids and lowest published offers for government securities (including the size at which persons are willing to trade with respect to such bids and offers).

(c) The Commission, by rule, shall prescribe the procedure applicable to every case pursuant to this title of adjudication (as defined

in section 551 of title 5, United States Code) not required to be determined on the record after notice and opportunity for hearing. Such rules shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of written reasons.

(d) **CEASE-AND-DESIST PROCEDURES.**—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations providing for the expeditious conduct of hearings and rendering of decisions under section 21C of this title, section 8A of the Securities Act of 1933, section 9(f) of the Investment Company Act of 1940, and section 203(k) of the Investment Advisers Act of 1940.

(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 that forms the basis for design of the source code, to the Commission unless the Commission first issues a subpoena.*

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## TRUTH IN LENDING ACT

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## TITLE I—CONSUMER CREDIT COST DISCLOSURE

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### CHAPTER 1—GENERAL PROVISIONS

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#### § 103. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) **BUREAU.**—The term “Bureau” means the Bureau of Consumer Financial Protection.

(c) The term “Bureau” refers to the Bureau of Governors of the Federal Reserve System.

(d) The term “organization” means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(e) The term “person” means a natural person or an organization.

(f) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(g) The term “creditor” refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction



is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under chapter 4 and sections 127(a)(5), 127(a)(6), 127(a)(7), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(8), and 127(b)(10) of chapter 2 of this title, the term “creditor” shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Bureau shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans. Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this title. The term “creditor” includes a private educational lender (as that term is defined in section 140) for purposes of this title.

(h) The term “credit sale” refers to any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(i) The adjective “consumer”, used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

(j) The terms “open end credit plan” and “open end consumer credit plan” mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan or open end consumer credit plan which is an open end credit plan or open end consumer credit plan within the meaning of the preceding sentence is an open end credit plan or open end consumer credit plan even if credit information is verified from time to time.

(k) The term “adequate notice”, as used in section 133, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(l) The term “credit card” means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(m) The term “accepted credit card” means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(n) The term “cardholder” means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(o) The term “card issuer” means any person who issues a credit card, or the agent of such person with respect to such card.

(p) The term “unauthorized use”, as used in section 133, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(q) The term “discount” as used in section 167 means a reduction made from the regular price. The term “discount” as used in section 167 shall not mean a surcharge.

(r) The term “surcharge” as used in section 103 and section 167 means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means.

(s) The term “State” refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(t) The term “agricultural purposes” includes the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

(u) The term “agricultural products” includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(v) The term “material disclosures” means the disclosure, as required by this title, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 129(a).

(w) The term “dwelling” means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

(x) The term “residential mortgage transaction” means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the con-

sumer's dwelling to finance the acquisition or initial construction of such dwelling.

(y) As used in this section and section 167, the term "regular price" means the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan or a credit cardholder's open-end account shall not be considered payment made by use of the plan or the account.

(z) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Bureau under this title or the provision thereof in question.

(aa) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this title does not in itself constitute a violation of this title.

(bb) HIGH-COST MORTGAGE.—

(1) DEFINITION.—

(A) IN GENERAL.—The term "high-cost mortgage", and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction, if—

(i) in the case of a credit transaction secured—

(I) by a first mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5 percentage points, if the dwelling is personal property and the transaction is for less than \$50,000) the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction; or

(II) by a subordinate or junior mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 129C(b)(2)(B), for a comparable transaction;

(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed—

(I) in the case of a transaction for \$20,000 or more, 5 percent of the total transaction amount; or

(II) in the case of a transaction for less than \$20,000, the lesser of 8 percent of the total transaction amount or \$1,000 (or such other dollar

amount as the Bureau shall prescribe by regulation); or

(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the loan.

(C) MORTGAGE INSURANCE.—For the purposes of computing the total points and fees under paragraph (4), the total points and fees shall exclude—

(i) any premium provided by an agency of the Federal Government or an agency of a State;

(ii) any amount that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; and

(iii) any premium paid by the consumer after closing.

(2)(A) After the 2-year period beginning on the effective date of the regulations promulgated under section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994, and no more frequently than biennially after the first increase or decrease under this subparagraph, the Bureau may by regulation increase or decrease the number of percentage points specified in paragraph (1)(A), if the Bureau determines that the increase or decrease is—

(i) consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994; and

(ii) warranted by the need for credit.

(B) An increase or decrease under subparagraph (A)—

- (i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and
- (ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.

(C) In determining whether to increase or decrease the number of percentage points referred to in subparagraph (A), the Bureau shall consult with representatives of consumers, including low-income consumers, and lenders.

(3) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(4) For purposes of **paragraph (1)(B)** *paragraph (1)(A) and section 129C*, points and fees shall include—

(A) all items included in the finance charge, except interest or the time-price differential;

(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;

(C) each of the charges listed in section 106(e) (except an escrow for future payment of taxes *and insurance*), unless—

(i) the charge is reasonable;

(ii) the creditor receives no direct or indirect compensation, *except as retained by a creditor or its affiliate as a result of their participation in an affiliated business arrangement (as defined in section 2(7) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602(7))*; and

**[(iii) the charge is paid to a third party unaffiliated with the creditor; and]**

*(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);*

(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other **[accident,]** loss-of-income, life or health insurance, **[or any payments]** *and any payments* directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and

(G) such other charges as the Bureau determines to be appropriate.

(5) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.

(6) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.

(cc) The term “reverse mortgage transaction” means a non-recourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer’s principal dwelling—

- (1) securing one or more advances; and
- (2) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after—
  - (A) the transfer of the dwelling;
  - (B) the consumer ceases to occupy the dwelling as a principal dwelling; or
  - (C) the death of the consumer.

(cc) DEFINITIONS RELATING TO MORTGAGE ORIGATION AND RESIDENTIAL MORTGAGE LOANS.—

(1) COMMISSION.—Unless otherwise specified, the term “Commission” means the Federal Trade Commission.

(2) MORTGAGE ORIGINATOR.—The term “mortgage originator”—

(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

- (i) takes a residential mortgage loan application;
- (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or
- (iii) offers or negotiates terms of a residential mortgage loan;

(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) 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);

(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or

registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan—

(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

(ii) is fully amortizing;

(iii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

(v) meets any other criteria the Bureau may prescribe;

(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 129B(c); and

(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

(3) **NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.**—The term “Nationwide Mortgage Licensing System and Registry” has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(4) **OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.**—For purposes of this subsection, a person “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(5) **RESIDENTIAL MORTGAGE LOAN.**—The term “residential mortgage loan” means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 129B and 129C and section 128(a) (16), (17), (18), and (19), and sections 128(f) and 130(k), and any regulations pro-

mulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

(6) SECRETARY.—The term “Secretary”, when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

(7) SERVICER.—The term “servicer” has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).

(dd) BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point—

(A) the average prime offer rate, as defined in section 129C; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points—

(A) the average prime offer rate, as defined in section 129C; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(3) For purposes of paragraph (1), the term “bona fide discount points” means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

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## CHAPTER 2—CREDIT TRANSACTIONS

\* \* \* \* \*

### § 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 mort-

gage 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] 103(bb)(4)) 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) PRESUMPTION OF ABILITY TO REPAY.—

(1) IN GENERAL.—Any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this title, may presume that the loan has met the re-

quirements of subsection (a), if the loan is a qualified mortgage.

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

(A) QUALIFIED MORTGAGE.—The term “qualified mortgage” means any residential mortgage loan—

(i) for which the regular periodic payments for the loan may not—

(I) result in an increase of the principal balance;

or

(II) except as provided in subparagraph (E), allow the consumer to defer repayment of principal;

(ii) except as provided in subparagraph (E), the terms of which do not result in a balloon payment, where a “balloon payment” is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

(iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

(iv) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(v) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(vi) that complies with any guidelines or regulations established by the Board relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Board may determine relevant and consistent with the purposes described in paragraph (3)(B)(i);

(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount;

(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (3), such as in high-cost areas; and

(ix) in the case of a reverse mortgage (except for the purposes of subsection (a) of section 129C, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes of this subsection.

(B) AVERAGE PRIME OFFER RATE.—The term “average prime offer rate” means the average prime offer rate for a

comparable transaction as of the date on which the interest rate for the transaction is set, as published by the Board..

(C) POINTS AND FEES.—

(i) IN GENERAL.—For purposes of subparagraph (A), the term “points and fees” means points and fees as defined by 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)] 103(bb)(4).

(ii) COMPUTATION.—For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

(I) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 1 percentage point the average prime offer rate.

(II) Unless 2 bona fide discount points have been excluded under subclause (I), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage’s interest rate will be discounted does not exceed by more than 2 percentage points the average prime offer rate.

(iii) BONA FIDE DISCOUNT POINTS DEFINED.—For purposes of clause (ii), the term “bona fide discount points” means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(iv) INTEREST RATE REDUCTION.—Subclauses (I) and (II) of clause (ii) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(D) SMALLER LOANS.—The Board shall prescribe rules adjusting the criteria under subparagraph (A)(vii) in order to permit lenders that extend smaller loans to meet the requirements of the presumption of compliance under paragraph (1). In prescribing such rules, the Board shall consider the potential impact of such rules on rural areas and other areas where home values are lower.

(E) BALLOON LOANS.—The Board may, by regulation, provide that the term “qualified mortgage” includes a balloon loan—

(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);

(ii) for which the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;

(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments; and

(iv) that is extended by a creditor that—

(I) operates in rural or underserved areas;

(II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board;

(III) retains the balloon loans in portfolio; and

(IV) meets any asset size threshold and any other criteria as the Board may establish, consistent with the purposes of this subtitle.

(3) REGULATIONS.—

(A) IN GENERAL.—The Board shall prescribe regulations to carry out the purposes of this subsection.

(B) REVISION OF SAFE HARBOR CRITERIA.—

(i) IN GENERAL.—The Board may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

(ii) LOAN DEFINITION.—The following agencies shall, in consultation with the Board, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A), and such rules may revise, add to, or subtract from the criteria used to define a qualified mortgage under paragraph (2)(A), upon a finding that such rules are consistent with the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections:

(I) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act (12 U.S.C. 1707 et seq.).

(II) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.

(III) The Department of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h).

(IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.

(c) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

(1) PROHIBITED ON CERTAIN LOANS.—

(A) IN GENERAL.—A residential mortgage loan that is not a “qualified mortgage”, as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

(B) EXCLUSIONS.—For purposes of this subsection, a “qualified mortgage” may not include a residential mortgage loan that—

- (i) has an adjustable rate; or
- (ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

(2) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

(A) shall publish, and update at least weekly, average prime offer rates;

(B) may publish multiple rates based on varying types of mortgage transactions; and

(C) shall adjust the thresholds established under subclause (I), (II), and (III) of paragraph (1)(B)(ii) as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

(3) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in subsection (b)(2)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

(4) **OPTION FOR NO PREPAYMENT PENALTY REQUIRED.**—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

(d) **SINGLE PREMIUM CREDIT INSURANCE PROHIBITED.**—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

(e) **ARBITRATION.**—

(1) **IN GENERAL.**—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(2) **POST-CONTROVERSY AGREEMENTS.**—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor or any assignee to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.



(3) NO WAIVER OF STATUTORY CAUSE OF ACTION.—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

(f) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

(1) the creditor provides the consumer with a statement that—

(A) the pending transaction will or may, as the case may be, result in negative amortization;

(B) describes negative amortization in such manner as the Board shall prescribe;

(C) negative amortization increases the outstanding principal balance of the account; and

(D) negative amortization reduces the consumer's equity in the dwelling or real property; and

(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.

(g) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—

(1) DEFINITION.—For purposes of this subsection, the term “anti-deficiency law” means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

(3) NOTICE BEFORE REFINANCING THAT WOULD CAUSE LOSS OF PROTECTION.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.

(h) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

(1) the creditor's policy regarding the acceptance of partial payments; and

(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.

(i) TIMESHARE PLANS.—This section and any regulations promulgated under this section do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

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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 in-

dividual 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 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;*

*(E) 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.

\* \* \* \* \*

#### PROHIBITIONS RELATING TO INTERSTATE COMMERCE AND THE MAILES

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]

(1) *IN GENERAL.*—*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).*

(2) *ADDITIONAL REQUIREMENTS.*—

(A) *IN GENERAL.*—*The Commission may issue regulations, subject to public notice and comment, to impose such other terms, conditions, or requirements on the engaging in oral or written communications described under paragraph (1) by an issuer other than an emerging growth company as the Commission determines appropriate.*

(B) *REPORT TO CONGRESS.*—*Prior to any rulemaking described under subparagraph (A), the Commission shall issue a report to the Congress containing a list of the findings supporting the basis of such rulemaking.*

(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 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 judi-

cial review. An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.

(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) 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) DEFINITIONS.—For purposes of this subsection:

(A) TARGET OFFSETTING COLLECTION AMOUNT.—The target fee collection amount for each fiscal year is determined according to the following table:

<b>Fiscal year:</b>	<b>Target fee collection amount</b>
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 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, photo-

static 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) PRIOR TO INITIAL PUBLIC OFFERING.—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 defined under section 230.433(h)(4) of title 17, Code of Federal Regulations) or, in the absence of a road show, at least 15 days prior to the requested effective date of the registration statement.*

*(2) WITHIN 1 YEAR AFTER INITIAL PUBLIC OFFERING OR EXCHANGE REGISTRATION.—Any issuer, within the 1-year period following its initial public offering or its registration of a security under section 12(b) of the Securities Exchange Act of 1934, 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 defined under section 230.433(h)(4) of title 17, Code of Federal Regulations) or, in the absence of a road show, at least 15 days prior to the requested effective date of the registration statement.*

**(3) ADDITIONAL REQUIREMENTS.—**

*(A) IN GENERAL.—The Commission may issue regulations, subject to public notice and comment, to impose such other terms, conditions, or requirements on the submission of draft registration statements described under this sub-*

*section by an issuer other than an emerging growth company as the Commission determines appropriate.*

*(B) REPORT TO CONGRESS.—Prior to any rulemaking described under subparagraph (A), the Commission shall issue a report to the Congress containing a list of the findings supporting the basis of such rulemaking.*

[(2)] (4) 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 THERE TO

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 deter-

mine, 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 that forms the basis for design of the source code, to the Commission unless the Commission first issues a subpoena.*

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## SARBANES-OXLEY ACT OF 2002

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## TITLE IV—ENHANCED FINANCIAL DISCLOSURES

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**SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.**

(a) **RULES REQUIRED.**—The Commission shall prescribe rules requiring each annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) **INTERNAL CONTROL EVALUATION AND REPORTING.**—With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer, other than an issuer that is an emerging growth company (as defined in section 3 of the Securities Exchange Act of 1934), shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

(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).

(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.

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## **VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000**

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### **DIVISION A—TRAFFICKING VICTIMS PROTECTION ACT OF 2000**

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#### **SEC. 105. INTERAGENCY TASK FORCE TO MONITOR AND COMBAT TRAFFICKING.**

(a) *ESTABLISHMENT.*—The President shall establish an Interagency Task Force to Monitor and Combat Trafficking.

(b) *APPOINTMENT.*—The President shall appoint the members of the Task Force, which shall include the Secretary of State, the Administrator of the United States Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of National Intelligence, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Education, *the Secretary of the Treasury*, and such other officials as may be designated by the President.

(c) *CHAIRMAN.*—The Task Force shall be chaired by the Secretary of State.

(d) *ACTIVITIES OF THE TASK FORCE.*—The Task Force shall carry out the following activities:

(1) Coordinate the implementation of this division.

(2) Measure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking. The Task Force shall have primary responsibility for assisting the Secretary of State in the preparation of the reports described in section 110.

(3) Expand interagency procedures to collect and organize data, including significant research and resource information on domestic and international trafficking. Any data collection procedures established under this subsection shall respect the confidentiality of victims of trafficking.

(4) Engage in efforts to facilitate cooperation among countries of origin, transit, and destination. Such efforts shall aim to strengthen local and regional capacities to prevent trafficking, prosecute traffickers and assist trafficking victims, and

shall include initiatives to enhance cooperative efforts between destination countries and countries of origin and assist in the appropriate reintegration of stateless victims of trafficking.

(5) Examine the role of the international “sex tourism” industry in the trafficking of persons and in the sexual exploitation of women and children around the world.

(6) Engage in consultation and advocacy with governmental and nongovernmental organizations, among other entities, to advance the purposes of this division, and make reasonable efforts to distribute information to enable all relevant Federal Government agencies to publicize the National Human Trafficking Resource Center Hotline on their websites, in all headquarters offices, and in all field offices throughout the United States.

(7) Not later than May 1, 2004, and annually thereafter, the Attorney General shall submit to the Committee on Ways and Means, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives and the Committee on Finance, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate, a report on Federal agencies that are implementing any provision of this division, or any amendment made by this division, which shall include, at a minimum, information on—

(A) the number of persons who received benefits or other services under subsections (b) and (f) of section 107 in connection with programs or activities funded or administered by the Secretary of Health and Human Services, the Secretary of Labor, the Attorney General, the Board of Directors of the Legal Services Corporation, and other appropriate Federal agencies during the preceding fiscal year;

(B) the number of persons who have been granted continued presence in the United States under section 107(c)(3) during the preceding fiscal year and the mean and median time taken to adjudicate applications submitted under such section, including the time from the receipt of an application by law enforcement to the issuance of continued presence, and a description of any efforts being taken to reduce the adjudication and processing time while ensuring the safe and competent processing of the applications;

(C) the number of persons who have applied for, been granted, or been denied a visa or otherwise provided status under subparagraph (T)(i) or (U)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) during the preceding fiscal year;

(D) the number of persons who have applied for, been granted, or been denied a visa or status under clause (ii) of section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) during the preceding fiscal year, broken down by the number of such persons described in subclauses (I), (II), and (III) of such clause (ii);

(E) the amount of Federal funds expended in direct benefits paid to individuals described in subparagraph (D) in conjunction with T visa status;



(F) the number of persons who have applied for, been granted, or been denied a visa or status under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(i)) during the preceding fiscal year;

(G) the mean and median time in which it takes to adjudicate applications submitted under the provisions of law set forth in subparagraph (C), including the time between the receipt of an application and the issuance of a visa and work authorization;

(H) any efforts being taken to reduce the adjudication and processing time, while ensuring the safe and competent processing of the applications;

(I) the number of persons who have been charged or convicted under one or more of sections 1581, 1583, 1584, 1589, 1590, 1591, 1592, or 1594 of title 18, United States Code, during the preceding fiscal year and the sentences imposed against each such person;

(J) the amount, recipient, and purpose of each grant issued by any Federal agency to carry out the purposes of sections 106 and 107 of this Act, or section 134 of the Foreign Assistance Act of 1961, during the preceding fiscal year;

(K) the nature of training conducted pursuant to section 107(c)(4) during the preceding fiscal year;

(L) the amount, recipient, and purpose of each grant under section 202 and 204 of the Trafficking Victims Protection Act of 2005;

(M) activities by the Department of Defense to combat trafficking in persons, including—

(i) educational efforts for, and disciplinary actions taken against, members of the United States Armed Forces;

(ii) the development of materials used to train the armed forces of foreign countries;

(iii) all known trafficking in persons cases reported to the Under Secretary of Defense for Personnel and Readiness;

(iv) efforts to ensure that United States Government contractors and their employees or United States Government subcontractors and their employees do not engage in trafficking in persons; and

(v) all trafficking in persons activities of contractors reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(N) activities or actions by Federal departments and agencies to enforce—

(i) section 106(g) and any similar law, regulation, or policy relating to United States Government contractors and their employees or United States Government subcontractors and their employees that engage in severe forms of trafficking in persons, the procurement of commercial sex acts, or the use of forced labor, including debt bondage;

(ii) section 307 of the Tariff Act of 1930 (19 U.S.C. 1307; relating to prohibition on importation of convict-

made goods), including any determinations by the Secretary of Homeland Security to waive the restrictions of such section; and

(iii) prohibitions on the procurement by the United States Government of items or services produced by slave labor, consistent with Executive Order 13107 (December 10, 1998);

(O) the activities undertaken by the Senior Policy Operating Group to carry out its responsibilities under subsection (g); and

(P) the activities undertaken by Federal agencies to train appropriate State, tribal, and local government and law enforcement officials to identify victims of severe forms of trafficking, including both sex and labor trafficking;

(Q) the activities undertaken by Federal agencies in cooperation with State, tribal, and local law enforcement officials to identify, investigate, and prosecute offenses under sections 1581, 1583, 1584, 1589, 1590, 1591, 1592, 1594, 2251, 2251A, 2421, 2422, and 2423 of title 18, United States Code, or equivalent State offenses, including, in each fiscal year—

(i) the number, age, gender, country of origin, and citizenship status of victims identified for each offense;

(ii) the number of individuals charged, and the number of individuals convicted, under each offense;

(iii) the number of individuals referred for prosecution for State offenses, including offenses relating to the purchasing of commercial sex acts;

(iv) the number of victims granted continued presence in the United States under section 107(c)(3);

(v) the number of victims granted a visa or otherwise provided status under subparagraph (T)(i) or (U)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15));

(vi) the number of individuals required by a court order to pay restitution in connection with a violation of each offense under title 18, United States Code, the amount of restitution required to be paid under each such order, and the amount of restitution actually paid pursuant to each such order; and

(vii) the age, gender, race, country of origin, country of citizenship, and description of the role in the offense of individuals convicted under each offense; and

(R) the activities undertaken by the Department of Justice and the Department of Health and Human Services to meet the specific needs of minor victims of domestic trafficking, including actions taken pursuant to subsection (f) and section 202(a) of the Trafficking Victims Protection Reauthorization Act of 2005 (42 U.S.C. 14044(a)), and the steps taken to increase cooperation among Federal agencies to ensure the effective and efficient use of programs for which the victims are eligible.

(e) OFFICE TO MONITOR AND COMBAT TRAFFICKING.—

(1) IN GENERAL.—The Secretary of State shall establish within the Department of State an Office to Monitor and Combat

Trafficking, which shall provide assistance to the Task Force. Any such Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, with the rank of Ambassador-at-Large. The Director shall have the primary responsibility for assisting the Secretary of State in carrying out the purposes of this division and may have additional responsibilities as determined by the Secretary. The Director shall consult with nongovernmental organizations and multilateral organizations, and with trafficking victims or other affected persons. The Director shall have the authority to take evidence in public hearings or by other means. The agencies represented on the Task Force are authorized to provide staff to the Office on a nonreimbursable basis.

(2) UNITED STATES ASSISTANCE.—The Director shall be responsible for—

(A) all policy, funding, and programming decisions regarding funds made available for trafficking in persons programs that are centrally controlled by the Office to Monitor and Combat Trafficking; and

(B) coordinating any trafficking in persons programs of the Department of State or the United States Agency for International Development that are not centrally controlled by the Director.

(f) REGIONAL STRATEGIES FOR COMBATING TRAFFICKING IN PERSONS.—Each regional bureau in the Department of State shall contribute to the realization of the anti-trafficking goals and objectives of the Secretary of State. Each year, in cooperation with the Office to Monitor and Combat Trafficking in Persons, each regional bureau shall submit a list of anti-trafficking goals and objectives to the Secretary of State for each country in the geographic area of responsibilities of the regional bureau. Host governments shall be informed of the goals and objectives for their particular country and, to the extent possible, host government officials should be consulted regarding the goals and objectives.

(g) SENIOR POLICY OPERATING GROUP.—

(1) ESTABLISHMENT.—There shall be established within the executive branch a Senior Policy Operating Group.

(2) MEMBERSHIP; RELATED MATTERS.—

(A) IN GENERAL.—The Operating Group shall consist of the senior officials designated as representatives of the appointed members of the Task Force (pursuant to Executive Order No. 13257 of February 13, 2002).

(B) CHAIRPERSON.—The Operating Group shall be chaired by the Director of the Office to Monitor and Combat Trafficking of the Department of State.

(C) MEETINGS.—The Operating Group shall meet on a regular basis at the call of the Chairperson.

(3) DUTIES.—The Operating Group shall coordinate activities of Federal departments and agencies regarding policies (including grants and grant policies) involving the international trafficking in persons and the implementation of this division.

(4) AVAILABILITY OF INFORMATION.—Each Federal department or agency represented on the Operating Group shall fully share all information with such Group regarding the depart-

ment or agency's plans, before and after final agency decisions are made, on all matters relating to grants, grant policies, and other significant actions regarding the international trafficking in persons and the implementation of this division.

(5) REGULATIONS.—Not later than 90 days after the date of the enactment of the Trafficking Victims Protection Reauthorization Act of 2003, the President shall promulgate regulations to implement this section, including regulations to carry out paragraph (4).

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## TITLE 31, UNITED STATES CODE

### SUBTITLE I—GENERAL

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#### CHAPTER 3—DEPARTMENT OF THE TREASURY

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#### SUBCHAPTER I—ORGANIZATION

\* \* \* \* \*

### § 312. Terrorism and Financial Intelligence

#### (a) OFFICE OF TERRORISM AND FINANCIAL INTELLIGENCE.—

(1) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of Terrorism and Financial Intelligence (in this section referred to as “OTFI”), which shall be the successor to any such office in existence on the date of enactment of this section.

#### (2) LEADERSHIP.—

(A) UNDERSECRETARY.—There is established within the Department of the Treasury, the Office of the Undersecretary for Terrorism and Financial Crimes, who shall serve as the head of the OTFI, and shall report to the Secretary of the Treasury through the Deputy Secretary of the Treasury. The Office of the Undersecretary for Terrorism and Financial Crimes shall be the successor to the Office of the Undersecretary for Enforcement.

(B) APPOINTMENT.—The Undersecretary for Terrorism and Financial Crimes shall be appointed by the President, by and with the advice and consent of the Senate.

#### (3) ASSISTANT SECRETARY FOR TERRORIST FINANCING.—

(A) ESTABLISHMENT.—There is established within the OTFI the position of Assistant Secretary for Terrorist Financing.

(B) APPOINTMENT.—The Assistant Secretary for Terrorist Financing shall be appointed by the President, by and with the advice and consent of the Senate.

(C) DUTIES.—The Assistant Secretary for Terrorist Financing shall be responsible for formulating and coordinating the counter terrorist financing and anti-money laundering efforts of the Department of the Treasury, and

shall report directly to the Undersecretary for Terrorism and Financial Crimes.

(4) FUNCTIONS.—The functions of the OTFI include providing policy, strategic, and operational direction to the Department on issues relating to—

(A) implementation of titles I and II of the Bank Secrecy Act;

(B) United States economic sanctions programs;

(C) combating terrorist financing;

(D) combating financial crimes, including money laundering, counterfeiting, and other offenses threatening the integrity of the banking and financial systems;

(E) *combating illicit financing relating to severe forms of trafficking in persons*;

[(E)] (F) other enforcement matters;

[(F)] (G) those intelligence analysis and coordination functions described in subsection (b); and

[(G)] (H) the security functions and programs of the Department of the Treasury.

(5) REPORTS TO CONGRESS ON PROPOSED MEASURES.—The Undersecretary for Terrorism and Financial Crimes and the Assistant Secretary for Terrorist Financing shall 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 72 hours after proposing by rule, regulation, order, or otherwise, any measure to reorganize the structure of the Department for combatting money laundering and terrorist financing, before any such proposal becomes effective.

(6) OTHER OFFICES WITHIN OTFI.—Notwithstanding any other provision of law, the following offices of the Department of the Treasury shall be within the OTFI:

(A) The Office of the Assistant Secretary for Intelligence and Analysis, which shall report directly to the Undersecretary for Terrorism and Financial Crimes.

(B) The Office of the Assistant Secretary for Terrorist Financing, which shall report directly to the Undersecretary for Terrorism and Financial Crimes.

(C) The Office of Foreign Assets Control (in this section referred to as the “OFAC”), which shall report directly to the Undersecretary for Terrorism and Financial Crimes.

(D) The Executive Office for Asset Forfeiture, which shall report to the Undersecretary for Terrorism and Financial Crimes.

(E) The Office of Intelligence and Analysis (in this section referred to as the “OIA”), which shall report to the Assistant Secretary for Intelligence and Analysis.

(F) The Office of Terrorist Financing, which shall report to the Assistant Secretary for Terrorist Financing.

(7) FINCEN.—

(A) REPORTING TO UNDERSECRETARY.—The Financial Crimes Enforcement Network (in this section referred to as “FinCEN”), a bureau of the Department of the Treasury, shall report to the Undersecretary for Terrorism and Financial Crimes. The Undersecretary for Terrorism and

Financial Crimes may not redelegate its reporting authority over FinCEN.

(B) OFFICE OF COMPLIANCE.—There is established within FinCEN, an Office of Compliance.

(8) *INTERAGENCY COORDINATION.*—*The Secretary of the Treasury, after consultation with the Undersecretary for Terrorism and Financial Crimes, shall designate an office within the OTFI that shall coordinate efforts to combat the illicit financing of severe forms of trafficking in persons with—*

(A) *other offices of the Department of the Treasury;*

(B) *other Federal agencies, including—*

(i) *the Office to Monitor and Combat Trafficking in Persons of the Department of State; and*

(ii) *the Interagency Task Force to Monitor and Combat Trafficking;*

(C) *State and local law enforcement agencies; and*

(D) *foreign governments.*

(9) *DEFINITION.*—*In this subsection, the term “severe forms of trafficking in persons” has the meaning given such term in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).*

(b) OFFICE OF INTELLIGENCE AND ANALYSIS.—

(1) ASSISTANT SECRETARY FOR INTELLIGENCE AND ANALYSIS.—The Assistant Secretary for Intelligence and Analysis shall head the OIA.

(2) RESPONSIBILITIES.—The OIA shall be responsible for the receipt, analysis, collation, and dissemination of intelligence and counterintelligence information related to the operations and responsibilities of the entire Department of the Treasury, including all components and bureaus of the Department.

(3) PRIMARY FUNCTIONS.—The primary functions of the OIA are—

(A) to build a robust analytical capability on terrorist finance by coordinating and overseeing work involving intelligence analysts in all components of the Department of the Treasury, focusing on the highest priorities of the Department, as well as ensuring that the existing intelligence needs of the OFAC and FinCEN are met; and

(B) to provide intelligence support to senior officials of the Department on a wide range of international economic and other relevant issues.

(4) OTHER FUNCTIONS AND DUTIES.—The OIA shall—

(A) carry out the intelligence support functions that are assigned, to the Office of Intelligence Support under section 311 (pursuant to section 105 of the Intelligence Authorization Act for Fiscal Year 2004);

(B) serve in a liaison capacity with the intelligence community; and

(C) represent the Department in various intelligence related activities.

(5) DUTIES OF THE ASSISTANT SECRETARY.—The Assistant Secretary for Intelligence and Analysis shall serve as the Senior Officer Intelligence Community, and shall represent the Department in intelligence community fora, including the Na-

tional Foreign Intelligence Board committees and the Intelligence Community Management Staff.

(c) DELEGATION.—To the extent that any authorities, powers, and responsibilities over enforcement matters delegated to the Undersecretary for Terrorism and Financial Crimes, or the positions of Assistant Secretary for Terrorism and Financial Crimes, Assistant Secretary for Enforcement and Operations, or Deputy Assistant Secretary for Terrorist Financing and Financial Crimes, have not been transferred to the Department of Homeland Security, the Department of Justice, or the Assistant Secretary for Tax Policy (related to the customs revenue functions of the Bureau of Alcohol and Tobacco Tax and Trade), those remaining authorities, powers, and responsibilities are delegated to the Undersecretary for Terrorism and Financial Crimes.

(d) DESIGNATION AS ENFORCEMENT ORGANIZATION.—The Office of Terrorism and Financial Intelligence (including any components thereof) is designated as a law enforcement organization of the Department of the Treasury for purposes of section 9705 of title 31, United States Code, and other relevant authorities.

(e) USE OF EXISTING RESOURCES.—The Secretary may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary on the date of enactment of this section in carrying out this section, except as otherwise prohibited by law.

(f) REFERENCES.—References in this section to the “Secretary”, “Undersecretary”, “Deputy Secretary”, “Deputy Assistant Secretary”, “Office”, “Assistant Secretary”, and “Department” are references to positions and offices of the Department of the Treasury, unless otherwise specified.

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## **TRAFFICKING VICTIMS PROTECTION ACT OF 2000**

\* \* \* \* \*

### **DIVISION A—TRAFFICKING VICTIMS PROTECTION ACT OF 2000**

\* \* \* \* \*

#### **SEC. 105. INTERAGENCY TASK FORCE TO MONITOR AND COMBAT TRAFFICKING.**

(a) ESTABLISHMENT.—The President shall establish an Interagency Task Force to Monitor and Combat Trafficking.

(b) APPOINTMENT.—The President shall appoint the members of the Task Force, which shall include the Secretary of State, the Administrator of the United States Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of National Intelligence, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Education, and such other officials as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Secretary of State.

(d) **ACTIVITIES OF THE TASK FORCE.**—The Task Force shall carry out the following activities:

- (1) Coordinate the implementation of this division.
- (2) Measure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking. The Task Force shall have primary responsibility for assisting the Secretary of State in the preparation of the reports described in section 110.
- (3) Expand interagency procedures to collect and organize data, including significant research and resource information on domestic and international trafficking. Any data collection procedures established under this subsection shall respect the confidentiality of victims of trafficking.
- (4) Engage in efforts to facilitate cooperation among countries of origin, transit, and destination. Such efforts shall aim to strengthen local and regional capacities to prevent trafficking, prosecute traffickers and assist trafficking victims, and shall include initiatives to enhance cooperative efforts between destination countries and countries of origin and assist in the appropriate reintegration of stateless victims of trafficking.
- (5) Examine the role of the international “sex tourism” industry in the trafficking of persons and in the sexual exploitation of women and children around the world.
- (6) Engage in consultation and advocacy with governmental and nongovernmental organizations, among other entities, to advance the purposes of this division, and make reasonable efforts to distribute information to enable all relevant Federal Government agencies to publicize the National Human Trafficking Resource Center Hotline on their websites, in all headquarters offices, and in all field offices throughout the United States.

(7) Not later than May 1, 2004, and annually thereafter, the Attorney General shall submit to the Committee on Ways and Means, the Committee on Foreign Affairs, *the Committee on Financial Services*, and the Committee on the Judiciary of the House of Representatives and the Committee on Finance, the Committee on Foreign Relations, *the Committee on Banking, Housing, and Urban Affairs*, and the Committee on the Judiciary of the Senate, a report on Federal agencies that are implementing any provision of this division, or any amendment made by this division, which shall include, at a minimum, information on—

(A) the number of persons who received benefits or other services under subsections (b) and (f) of section 107 in connection with programs or activities funded or administered by the Secretary of Health and Human Services, the Secretary of Labor, the Attorney General, the Board of Directors of the Legal Services Corporation, and other appropriate Federal agencies during the preceding fiscal year;

(B) the number of persons who have been granted continued presence in the United States under section 107(c)(3) during the preceding fiscal year and the mean and median time taken to adjudicate applications sub-



mitted under such section, including the time from the receipt of an application by law enforcement to the issuance of continued presence, and a description of any efforts being taken to reduce the adjudication and processing time while ensuring the safe and competent processing of the applications;

(C) the number of persons who have applied for, been granted, or been denied a visa or otherwise provided status under subparagraph (T)(i) or (U)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) during the preceding fiscal year;

(D) the number of persons who have applied for, been granted, or been denied a visa or status under clause (ii) of section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) during the preceding fiscal year, broken down by the number of such persons described in subclauses (I), (II), and (III) of such clause (ii);

(E) the amount of Federal funds expended in direct benefits paid to individuals described in subparagraph (D) in conjunction with T visa status;

(F) the number of persons who have applied for, been granted, or been denied a visa or status under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(i)) during the preceding fiscal year;

(G) the mean and median time in which it takes to adjudicate applications submitted under the provisions of law set forth in subparagraph (C), including the time between the receipt of an application and the issuance of a visa and work authorization;

(H) any efforts being taken to reduce the adjudication and processing time, while ensuring the safe and competent processing of the applications;

(I) the number of persons who have been charged or convicted under one or more of sections 1581, 1583, 1584, 1589, 1590, 1591, 1592, or 1594 of title 18, United States Code, during the preceding fiscal year and the sentences imposed against each such person;

(J) the amount, recipient, and purpose of each grant issued by any Federal agency to carry out the purposes of sections 106 and 107 of this Act, or section 134 of the Foreign Assistance Act of 1961, during the preceding fiscal year;

(K) the nature of training conducted pursuant to section 107(c)(4) during the preceding fiscal year;

(L) the amount, recipient, and purpose of each grant under section 202 and 204 of the Trafficking Victims Protection Act of 2005;

(M) activities by the Department of Defense to combat trafficking in persons, including—

(i) educational efforts for, and disciplinary actions taken against, members of the United States Armed Forces;

(ii) the development of materials used to train the armed forces of foreign countries;

(iii) all known trafficking in persons cases reported to the Under Secretary of Defense for Personnel and Readiness;

(iv) efforts to ensure that United States Government contractors and their employees or United States Government subcontractors and their employees do not engage in trafficking in persons; and

(v) all trafficking in persons activities of contractors reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(N) activities or actions by Federal departments and agencies to enforce—

(i) section 106(g) and any similar law, regulation, or policy relating to United States Government contractors and their employees or United States Government subcontractors and their employees that engage in severe forms of trafficking in persons, the procurement of commercial sex acts, or the use of forced labor, including debt bondage;

(ii) section 307 of the Tariff Act of 1930 (19 U.S.C. 1307; relating to prohibition on importation of convict-made goods), including any determinations by the Secretary of Homeland Security to waive the restrictions of such section; and

(iii) prohibitions on the procurement by the United States Government of items or services produced by slave labor, consistent with Executive Order 13107 (December 10, 1998);

(O) the activities undertaken by the Senior Policy Operating Group to carry out its responsibilities under subsection (g); and

(P) the activities undertaken by Federal agencies to train appropriate State, tribal, and local government and law enforcement officials to identify victims of severe forms of trafficking, including both sex and labor trafficking;

(Q) the activities undertaken by Federal agencies in cooperation with State, tribal, and local law enforcement officials to identify, investigate, and prosecute offenses under sections 1581, 1583, 1584, 1589, 1590, 1591, 1592, 1594, 2251, 2251A, 2421, 2422, and 2423 of title 18, United States Code, or equivalent State offenses, including, in each fiscal year—

(i) the number, age, gender, country of origin, and citizenship status of victims identified for each offense;

(ii) the number of individuals charged, and the number of individuals convicted, under each offense;

(iii) the number of individuals referred for prosecution for State offenses, including offenses relating to the purchasing of commercial sex acts;

(iv) the number of victims granted continued presence in the United States under section 107(c)(3);

(v) the number of victims granted a visa or otherwise provided status under subparagraph (T)(i) or (U)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15));

(vi) the number of individuals required by a court order to pay restitution in connection with a violation of each offense under title 18, United States Code, the amount of restitution required to be paid under each such order, and the amount of restitution actually paid pursuant to each such order; and

(vii) the age, gender, race, country of origin, country of citizenship, and description of the role in the offense of individuals convicted under each offense[; and];

(R) the activities undertaken by the Department of Justice and the Department of Health and Human Services to meet the specific needs of minor victims of domestic trafficking, including actions taken pursuant to subsection (f) and section 202(a) of the Trafficking Victims Protection Reauthorization Act of 2005 (42 U.S.C. 14044(a)), and the steps taken to increase cooperation among Federal agencies to ensure the effective and efficient use of programs for which the victims are eligible[.]; and

(S) *the efforts of the United States to eliminate money laundering relating to severe forms of trafficking in persons and the number of investigations, arrests, indictments, and convictions in money laundering cases with a nexus to severe forms of trafficking in persons.*

(e) OFFICE TO MONITOR AND COMBAT TRAFFICKING.—

(1) IN GENERAL.—The Secretary of State shall establish within the Department of State an Office to Monitor and Combat Trafficking, which shall provide assistance to the Task Force. Any such Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, with the rank of Ambassador-at-Large. The Director shall have the primary responsibility for assisting the Secretary of State in carrying out the purposes of this division and may have additional responsibilities as determined by the Secretary. The Director shall consult with nongovernmental organizations and multilateral organizations, and with trafficking victims or other affected persons. The Director shall have the authority to take evidence in public hearings or by other means. The agencies represented on the Task Force are authorized to provide staff to the Office on a nonreimbursable basis.

(2) UNITED STATES ASSISTANCE.—The Director shall be responsible for—

(A) all policy, funding, and programming decisions regarding funds made available for trafficking in persons programs that are centrally controlled by the Office to Monitor and Combat Trafficking; and

(B) coordinating any trafficking in persons programs of the Department of State or the United States Agency for International Development that are not centrally controlled by the Director.

(f) REGIONAL STRATEGIES FOR COMBATING TRAFFICKING IN PERSONS.—Each regional bureau in the Department of State shall contribute to the realization of the anti-trafficking goals and objectives of the Secretary of State. Each year, in cooperation with the Office to Monitor and Combat Trafficking in Persons, each regional bu-

reau shall submit a list of anti-trafficking goals and objectives to the Secretary of State for each country in the geographic area of responsibilities of the regional bureau. Host governments shall be informed of the goals and objectives for their particular country and, to the extent possible, host government officials should be consulted regarding the goals and objectives.

(g) SENIOR POLICY OPERATING GROUP.—

(1) ESTABLISHMENT.—There shall be established within the executive branch a Senior Policy Operating Group.

(2) MEMBERSHIP; RELATED MATTERS.—

(A) IN GENERAL.—The Operating Group shall consist of the senior officials designated as representatives of the appointed members of the Task Force (pursuant to Executive Order No. 13257 of February 13, 2002).

(B) CHAIRPERSON.—The Operating Group shall be chaired by the Director of the Office to Monitor and Combat Trafficking of the Department of State.

(C) MEETINGS.—The Operating Group shall meet on a regular basis at the call of the Chairperson.

(3) DUTIES.—The Operating Group shall coordinate activities of Federal departments and agencies regarding policies (including grants and grant policies) involving the international trafficking in persons and the implementation of this division.

(4) AVAILABILITY OF INFORMATION.—Each Federal department or agency represented on the Operating Group shall fully share all information with such Group regarding the department or agency's plans, before and after final agency decisions are made, on all matters relating to grants, grant policies, and other significant actions regarding the international trafficking in persons and the implementation of this division.

(5) REGULATIONS.—Not later than 90 days after the date of the enactment of the Trafficking Victims Protection Reauthorization Act of 2003, the President shall promulgate regulations to implement this section, including regulations to carry out paragraph (4).

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**SEC. 108. MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.**

(a) MINIMUM STANDARDS.—For purposes of this division, the minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or destination for victims of severe forms of trafficking are the following:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should

prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

(b) CRITERIA.—In determinations under subsection (a)(4), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly-reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to establish the identity of local populations, including birth registration, citizenship, and nationality, measures to ensure that its nationals who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, a transparent system for remediating or punishing

such public officials as a deterrent, measures to prevent the use of forced labor or child labor in violation of international standards, effective bilateral, multilateral, or regional information sharing and cooperation arrangements with other countries, and effective policies or laws regulating foreign labor recruiters and holding them civilly and criminally liable for fraudulent recruiting.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons and has entered into bilateral, multilateral, or regional law enforcement cooperation and coordination arrangements with other countries.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials, including diplomats and soldiers, who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. A government's failure to appropriately address public allegations against such public officials, especially once such officials have returned to their home countries, shall be considered inaction under these criteria. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. During the periods prior to the annual report submitted on June 1, 2004, and on June 1, 2005, and the periods afterwards until September 30 of each such year, the Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government has entered into effective, transparent partnerships, cooperative arrangements, or agreements that have resulted in concrete and measurable outcomes with—

(A) domestic civil society organizations, private sector entities, or international nongovernmental organizations, or into multilateral or regional arrangements or agreements, to assist the government's efforts to prevent trafficking, protect victims, and punish traffickers; or

(B) the United States toward agreed goals and objectives in the collective fight against trafficking.

(10) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(11) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(12) Whether the government of the country has made serious and sustained efforts to reduce the demand for—

(A) commercial sex acts; and

(B) participation in international sex tourism by nationals of the country.

(13) *Whether the government of the country, consistent with the capacity of the country, has in effect a framework to prevent financial transactions involving the proceeds of severe forms of trafficking in persons, and is taking steps to implement such a framework, including by investigating, prosecuting, convicting, and sentencing individuals who attempt or conduct such transactions.*

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## SMALL BUSINESS INVESTMENT ACT OF 1958

\* \* \* \* \*

### TITLE III—INVESTMENT DIVISION PROGRAMS

#### PART A—SMALL BUSINESS INVESTMENT COMPANIES

\* \* \* \* \*

#### CAPITAL REQUIREMENTS

#### SEC. 302.

##### (a) AMOUNT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

(A) \$5,000,000; or

(B) \$10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be

purchased or guaranteed by the Administration under this Act.

(2) EXCEPTION.—The Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, permit the private capital of a licensee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than \$10,000,000, but not less than \$5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(3) ADEQUACY.—In addition to the requirements of paragraph (1), the Administrator shall—

(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

(B) determine that the licensee will be able both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company's owners and managers, the history of the company as an entity, if any, and the company's financial resources.

(4) EXEMPTION FROM CAPITAL REQUIREMENTS.—The Administrator may, in the discretion of the Administrator, approve leverage for any licensee licensed under subsection (c) or (d) of section 301 before the date of enactment of the Small Business Program Improvement Act of 1996 that does not meet the capital requirements of paragraph (1), if—

(A) the licensee certifies in writing that not less 50 percent of the aggregate dollar amount of its financings after the date of enactment of the Small Business Program Improvement Act of 1996 will be provided to smaller enterprises; and

(B) the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.

(b) FINANCIAL INSTITUTION INVESTMENTS.—

(1) CERTAIN BANKS.—Notwithstanding the provisions of section 6(a)(1) of the Bank Holding Company Act of 1956, any national bank, or any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank or, *subject to the approval of the appropriate Federal banking agency, 15 percent of such capital and surplus.*

(2) CERTAIN SAVINGS ASSOCIATIONS.—Notwithstanding any other provision of law, any Federal savings association may invest in any one or more small business investment companies,



or in any entity established to invest solely in small business investment companies, except that in no event may the total amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association or, *subject to the approval of the appropriate Federal banking agency, 15 percent of such capital and surplus.*

(3) *APPROPRIATE FEDERAL BANKING AGENCY DEFINED.*—For purposes of this subsection, the term “appropriate Federal banking agency” has the meaning given that term under section 3 of the Federal Deposit Insurance Act.

(c) **DIVERSIFICATION OF OWNERSHIP.**—The Administrator shall ensure that the management of each licensee licensed after the date of enactment of the Small Business Program Improvement Act of 1996 is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.

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## GRAMM-LEACH-BLILEY ACT

\* \* \* \* \*

## TITLE V—PRIVACY

### Subtitle A—Disclosure of Nonpublic Personal Information

\* \* \* \* \*

#### **SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

(a) **DISCLOSURE REQUIRED.**—At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504, of such financial institution’s policies and practices with respect to—

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 502, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

(b) **REGULATIONS.**—Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 504.

(c) **INFORMATION TO BE INCLUDED.**—The disclosure required by subsection (a) shall include—

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated

third parties, other than agents of the institution, consistent with section 502 of this subtitle, and including—

- (A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 502(e); and
- (B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;
- (2) the categories of nonpublic personal information that are collected by the financial institution;
- (3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 501; and
- (4) the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act.

(d) EXEMPTION FOR CERTIFIED PUBLIC ACCOUNTANTS.—

(1) IN GENERAL.—The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

- (A) a certified public accountant;
- (B) certified or licensed for such purpose by a State; and
- (C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.
- (2) LIMITATION.—Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.
- (3) DEFINITIONS.—For purposes of this subsection, the term “State” means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) MODEL FORMS.—

(1) IN GENERAL.—The agencies referred to in section 504(a)(1) shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) FORMAT.—A model form developed under paragraph (1) shall—

- (A) be comprehensible to consumers, with a clear format and design;
- (B) provide for clear and conspicuous disclosures;
- (C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and
- (D) be succinct, and use an easily readable type font.
- (3) TIMING.—A model form required to be developed by this subsection shall be issued in proposed form for public comment

not later than 180 days after the date of enactment of this subsection.

(4) **SAFE HARBOR.**—Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(f) **EXCEPTION TO ANNUAL NOTICE REQUIREMENT.**—A financial institution that—

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

(g) **ADDITIONAL EXCEPTION TO ANNUAL NOTICE REQUIREMENT.**—

(1) **IN GENERAL.**—*A vehicle financial company that has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section shall not be required to provide an annual disclosure under this section if—*

(A) *the vehicle financial company makes its current policy available to consumers on its website and via mail upon written request sent to a designated address identified for the purpose of requesting the policy or upon telephone request made using a toll free consumer service telephone number;*

(B) *the vehicle financial company conspicuously notifies consumers of the availability of the current policy, including—*

(i) *with respect to consumers who are entitled to a periodic billing statement, a message on the front page of each periodic billing statement; and*

(ii) *with respect to consumers who are not entitled to a periodic billing statement, through other reasonable means such as through a link on the landing page of the company's website or with other written communication, including electronic communication, sent to the consumer; and*

(C) *the vehicle financial company—*

(i) *provides consumers with the ability to opt out, subject to any exemption or exception provided under subsection (b)(2) or (e) of section 502 or under regulations prescribed under section 504(b), of having the consumer's nonpublic personal information disclosed to a nonaffiliated third party; and*

(ii) *includes a description about where to locate the procedures for a consumer to select such opt out in each periodic billing statement sent to the consumer.*

(2) **TREATMENT OF MULTIPLE POLICIES.**—*If a vehicle financial company maintains more than one set of policies described*

*under paragraph (1) that vary depending on the consumer's account status or State of residence, the vehicle financial company may comply with the website posting requirement in paragraph (1)(A) by posting all of such policies to the public section of the vehicle financial company's website, with instructions for choosing the applicable policy.*

(3) *VEHICLE FINANCIAL COMPANY DEFINED.—For purposes of this subsection, the term “vehicle financial company” means—*

*(A) a financial institution that—*

*(i) is regularly engaged in the business of extending credit for the purchase of vehicles;*

*(ii) is affiliated with a vehicle manufacturer; and*

*(iii) only shares nonpublic personal information of consumers with nonaffiliated third parties that are vehicle dealers; or*

*(B) a financial institution that—*

*(i) regularly engages in the business of extending credit for the purchase or lease of vehicles from vehicle dealers; or*

*(ii) purchases vehicle installment sales contracts or leases from vehicle dealers.*

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## INVESTMENT COMPANY ACT OF 1940

### TITLE I—INVESTMENT COMPANIES

\* \* \* \* \*

#### ACCOUNTS AND RECORDS

##### SEC. 31. (a) MAINTENANCE OF RECORDS.—

(1) *IN GENERAL.*—Each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall maintain and preserve such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934) for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Each investment adviser that is not a majority-owned subsidiary of, and each depositor of any registered investment company, and each principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such records as are necessary or appropriate to record such person's transactions with such registered company. Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors.

(2) MINIMIZING COMPLIANCE BURDEN.—In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate, consistent with the public interest and for the protection of investors, to avoid unnecessary recordkeeping by, and minimize the compliance burden on, persons required to maintain records under this subsection (hereafter in this section referred to as “subject persons”). Such steps shall include considering, and requesting public comment on—

(A) feasible alternatives that minimize the recordkeeping burdens on subject persons;

(B) the necessity of such records in view of the public benefits derived from the independent scrutiny of such records through Commission examination;

(C) the costs associated with maintaining the information that would be required to be reflected in such records; and

(D) the effects that a proposed recordkeeping requirement would have on internal compliance policies and procedures.

(b) EXAMINATIONS OF RECORDS.—

(1) IN GENERAL.—All records required to be maintained and preserved in accordance with subsection (a) shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.

(2) AVAILABILITY.—For purposes of examinations referred to in paragraph (1), any subject person shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.

(3) COMMISSION ACTION.—The Commission shall exercise its authority under this subsection with due regard for the benefits of internal compliance policies and procedures and the effective implementation and operation thereof.

(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

(A) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or cred-

its of the registered investment company within the custody or use of such person.

(c) **REGULATORY AUTHORITY.**—The Commission may, in the public interest or for the protection of investors, issue rules and regulations providing for a reasonable degree of uniformity in the accounting policies and principles to be followed by registered investment companies in maintaining their accounting records and in preparing financial statements required pursuant to this title.

(d) **EXEMPTION AUTHORITY.**—The Commission, upon application made by any registered investment company, may by order exempt a specific transaction or transactions from the provisions of any rule or regulation made pursuant to subsection (e), if the Commission finds that such rule or regulation should not reasonably be applied to such transaction.

(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 that forms the basis for design of the source code, to the Commission unless the Commission first issues a subpoena.*

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## INVESTMENT ADVISERS ACT OF 1940

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### TITLE II—INVESTMENT ADVISERS

\* \* \* \* \*

#### ANNUAL AND OTHER REPORTS

**SEC. 204. (a) IN GENERAL.**—Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 203(b) of this title), shall make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

**(b) RECORDS AND REPORTS OF PRIVATE FUNDS.**—

**(1) IN GENERAL.**—The Commission may require any investment adviser registered under this title—

**(A)** to maintain such records of, and file with the Commission such reports regarding, private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Sta-

bility Oversight Council (in this subsection referred to as the "Council"); and

(B) to provide or make available to the Council those reports or records or the information contained therein.

(2) TREATMENT OF RECORDS.—The records and reports of any private fund to which an investment adviser registered under this title provides investment advice shall be deemed to be the records and reports of the investment adviser.

(3) REQUIRED INFORMATION.—The records and reports required to be maintained by an investment adviser and subject to inspection by the Commission under this subsection shall include, for each private fund advised by the investment adviser, a description of—

(A) the amount of assets under management and use of leverage, including off-balance-sheet leverage;

(B) counterparty credit risk exposure;

(C) trading and investment positions;

(D) valuation policies and practices of the fund;

(E) types of assets held;

(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

(G) trading practices; and

(H) such other information as the Commission, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of private fund being advised.

(4) MAINTENANCE OF RECORDS.—An investment adviser registered under this title shall maintain such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

(5) FILING OF RECORDS.—The Commission shall issue rules requiring each investment adviser to a private fund to file reports containing such information as the Commission deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

(6) EXAMINATION OF RECORDS.—

(A) PERIODIC AND SPECIAL EXAMINATIONS.—The Commission—

(i) shall conduct periodic inspections of the records of private funds maintained by an investment adviser registered under this title in accordance with a schedule established by the Commission; and

(ii) may conduct at any time and from time to time such additional, special, and other examinations as the Commission may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

(B) AVAILABILITY OF RECORDS.—An investment adviser registered under this title shall make available to the

Commission any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the Commission or its representatives may reasonably request.

(7) INFORMATION SHARING.—

(A) IN GENERAL.—The Commission shall make available to the Council copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Council may consider necessary for the purpose of assessing the systemic risk posed by a private fund.

(B) CONFIDENTIALITY.—The Council shall maintain the confidentiality of information received under this paragraph in all such reports, documents, records, and information, in a manner consistent with the level of confidentiality established for the Commission pursuant to paragraph (8). The Council shall be exempt from section 552 of title 5, United States Code, with respect to any information in any report, document, record, or information made available, to the Council under this subsection.

(8) COMMISSION CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection, except that nothing in this subsection authorizes the Commission—

(A) to withhold information from Congress, upon an agreement of confidentiality; or

(B) prevent the Commission from complying with—

(i) a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or

(ii) an order of a court of the United States in an action brought by the United States or the Commission.

(9) OTHER RECIPIENTS CONFIDENTIALITY.—Any department, agency, or self-regulatory organization that receives reports or information from the Commission under this subsection shall maintain the confidentiality of such reports, documents, records, and information in a manner consistent with the level of confidentiality established for the Commission under paragraph (8).

(10) PUBLIC INFORMATION EXCEPTION.—

(A) IN GENERAL.—The Commission, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the Commission under this subsection, shall be exempt from the provisions of section 552 of title 5, United States Code, with respect to any such report, document, record, or information. Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts



ascertained during an examination, as provided by section 210(b) of this title.

(B) PROPRIETARY INFORMATION.—For purposes of this paragraph, proprietary information includes sensitive, non-public information regarding—

- (i) the investment or trading strategies of the investment adviser;
- (ii) analytical or research methodologies;
- (iii) trading data;
- (iv) computer hardware or software containing intellectual property; and
- (v) any additional information that the Commission determines to be proprietary.

(11) ANNUAL REPORT TO CONGRESS.—The Commission shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.

(c) FILING DEPOSITORIES.—The Commission may, by rule, require an investment adviser—

- (1) to file with the Commission any fee, application, report, or notice required to be filed by this title or the rules issued under this title through any entity designated by the Commission for that purpose; and
- (2) to pay the reasonable costs associated with such filing and the establishment and maintenance of the systems required by subsection (c).

(d) ACCESS TO DISCIPLINARY AND OTHER INFORMATION.—

(1) MAINTENANCE OF SYSTEM TO RESPOND TO INQUIRIES.—

(A) IN GENERAL.—The Commission shall require the entity designated by the Commission under subsection (b)(1) to establish and maintain a toll-free telephone listing, or a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law or rule to be reported) involving investment advisers and persons associated with investment advisers.

(B) APPLICABILITY.—This subsection shall apply to any investment adviser (and the persons associated with that adviser), whether the investment adviser is registered with the Commission under section 203 or regulated solely by a State, as described in section 203A.

(2) RECOVERY OF COSTS.—An entity designated by the Commission under subsection (b)(1) may charge persons making inquiries, other than individual investors, reasonable fees for responses to inquiries described in paragraph (1).

(3) LIMITATION ON LIABILITY.—An entity designated by the Commission under subsection (b)(1) shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

[(d)] (e) RECORDS OF PERSONS WITH CUSTODY OR USE.—

(1) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a client, that relate to

such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(2) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the securities, deposits, or credits of the client within the custody or use of such person.

(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 that forms the basis for design of the source code, to the Commission unless the Commission first issues a subpoena.

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## FINANCIAL STABILITY ACT OF 2010

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## TITLE I—FINANCIAL STABILITY

\* \* \* \* \*

### Subtitle A—Financial Stability Oversight Council

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#### 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  $\frac{2}{3}$  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) the appropriateness of the imposition of prudential standards as opposed to other forms of regulation to mitigate the identified risks; and*
- [(K)]** (L) 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  $\frac{2}{3}$  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) the appropriateness of the imposition of prudential standards as opposed to other forms of regulation to mitigate the identified risks; and*

**[(K)]** (L) 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  $\frac{2}{3}$  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  $\frac{2}{3}$  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).]

(d) REEVALUATION AND RESCISSION.—

(1) ANNUAL REEVALUATION.—*Not less frequently than annually, the Council shall reevaluate each determination made under subsections (a) and (b) with respect to a nonbank financial company supervised by the Board of Governors and shall—*

*(A) provide written notice to the nonbank financial company being reevaluated and afford such company an opportunity to submit written materials, within such time as the Council determines to be appropriate (but which shall be not less than 30 days after the date of receipt by the company of such notice), to contest the determination, including materials concerning whether, in the company's view, material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company could pose a threat to the financial stability of the United States;*

(B) provide an opportunity for the nonbank financial company to meet with the Council to present the information described in subparagraph (A); and

(C) if the Council does not rescind the determination, provide notice to the nonbank financial company, its primary financial regulatory agency and the primary financial regulatory agency of any of the company's significant subsidiaries of the reasons for the Council's decision, which notice shall address with specificity how the Council assessed the material factors presented by the company under subparagraphs (A) and (B).

(2) *PERIODIC REEVALUATION.*—

(A) *REVIEW.*—Every 5 years after the date of a final determination with respect to a nonbank financial company under subsection (a) or (b), as applicable, the nonbank financial company may submit a written request to the Council for a reevaluation of such determination. Upon receipt of such a request, the Council shall conduct a reevaluation of such determination and hold a vote on whether to rescind such determination.

(B) *PROCEDURES.*—Upon receipt of a written request under paragraph (A), the Council shall fix a time (not earlier than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to—

(i) submit written materials (which may include a plan to modify the company's business, structure, or operations, which shall specify the length of the implementation period); and

(ii) provide oral testimony and oral argument before the members of the Council.

(C) *TREATMENT OF PLAN.*—If the company submits a plan in accordance with subparagraph (B)(i), the Council shall consider whether the plan, if implemented, would cause the company to no longer meet the standards for a final determination under subsection (a) or (b), as applicable. The Council shall provide the nonbank financial company an opportunity to revise the plan after consultation with the Council.

(D) *EXPLANATION FOR CERTAIN COMPANIES.*—With respect to a reevaluation under this paragraph where the determination being reevaluated was made before the date of enactment of this paragraph, the nonbank financial company may require the Council, as part of such reevaluation, to explain with specificity the basis for such determination.

(3) *RESCISSION OF DETERMINATION.*—

(A) *IN GENERAL.*—If the Council, by a vote of not fewer than  $\frac{2}{3}$  of the voting members then serving, including an affirmative vote by the Chairperson, determines under this subsection that a nonbank financial company no longer meets the standards for a final determination under subsection (a) or (b), as applicable, the Council shall rescind such determination.

(B) *APPROVAL OF COMPANY PLAN.*—Approval by the Council of a plan submitted or revised in accordance with para-

graph (2) shall require a vote of not fewer than  $\frac{2}{3}$  of the voting members then serving, including an affirmative vote by the Chairperson. If such plan is approved by the Council, the company shall implement the plan during the period identified in the plan, except that the Council, in its sole discretion and upon request from the company, may grant one or more extensions of the implementation period. After the end of the implementation period, including any extensions granted by the Council, the Council shall proceed to a vote as described under subparagraph (A).

(e) **REQUIREMENTS FOR PROPOSED DETERMINATION, NOTICE AND OPPORTUNITY FOR HEARING, AND FINAL DETERMINATION.**—

(1) **NOTICE OF IDENTIFICATION FOR INITIAL EVALUATION AND OPPORTUNITY FOR VOLUNTARY SUBMISSION.**—Upon identifying a nonbank financial company for comprehensive analysis of the potential for the nonbank company to pose a threat to the financial stability of the United States, the Council shall provide the nonbank financial company with—

(A) written notice that explains with specificity the basis for so identifying the company, a copy of which shall be provided to the company's primary financial regulatory agency;

(B) an opportunity to submit written materials for consideration by the Council as part of the Council's initial evaluation of the risk profile and characteristics of the company;

(C) an opportunity to meet with the Council to discuss the Council's analysis; and

(D) a list of the public sources of information being considered by the Council as part of such analysis.

(2) **REQUIREMENTS BEFORE MAKING A PROPOSED DETERMINATION.**—Before making a proposed determination with respect to a nonbank financial company under paragraph (3), the Council shall—

(A) by a vote of not fewer than  $\frac{2}{3}$  of the voting members then serving, including an affirmative vote by the Chairperson, approve a resolution that identifies with specificity any risks to the financial stability of the United States the Council has identified relating to the nonbank financial company;

(B) with respect to nonbank financial company with a primary financial regulatory agency, provide a copy of the resolution described under subparagraph (A) to the primary financial regulatory agency and provide such agency with at least 180 days from the receipt of the resolution to—

- (i) consider the risks identified in the resolution; and
- (ii) provide a written response to the Council that includes its assessment of the risks identified and the degree to which they are or could be addressed by existing regulation and, as appropriate, issue proposed regulations or undertake other regulatory action to mitigate the identified risks;

(C) provide the nonbank financial company with written notice that the Council—



(i) is considering whether to make a proposed determination with respect to the nonbank financial company under subsection (a) or (b), as applicable, which notice explains with specificity the basis for the Council's consideration, including any aspects of the company's operations or activities that are a primary focus for the Council; or

(ii) has determined not to subject the company to further review, which action shall not preclude the Council from issuing a notice to the company under subparagraph (1)(A) at a future time; and

(D) in the case of a notice to the nonbank financial company under subparagraph (C)(i), provide the company with—

(i) an opportunity to meet with the Council to discuss the Council's analysis;

(ii) an opportunity to submit written materials, within such time as the Council deems appropriate (but not less than 30 days after the date of receipt by the company of the notice described under clause (i)), to the Council to inform the Council's consideration of the nonbank financial company for a proposed determination, including materials concerning the company's views as to whether it satisfies the standard for determination set forth in subsection (a) or (b), as applicable;

(iii) an explanation of how any request by the Council for information from the nonbank financial company relates to potential risks to the financial stability of the United States and the Council's analysis of the company;

(iv) written notice when the Council deems its evidentiary record regarding such nonbank financial company to be complete; and

(v) an opportunity to meet with the members of the Council.

(3) **PROPOSED DETERMINATION.**—

(A) **VOTING.**—The Council may, by a vote of not fewer than  $\frac{2}{3}$  of the voting members then serving, including an affirmative vote by the Chairperson, propose to make a determination in accordance with the provisions of subsection (a) or (b), as applicable, with respect to a nonbank financial company.

(B) **DEADLINE FOR MAKING A PROPOSED DETERMINATION.**—With respect to a nonbank financial company provided with a written notice under paragraph (2)(C)(i), if the Council does not provide the company with the written notice of a proposed determination described under paragraph (4) within the 180-day period following the date on which the Council notifies the company under paragraph (2)(C) that the evidentiary record is complete, the Council may not make such a proposed determination with respect to such company unless the Council repeats the procedures described under paragraph (2).

(C) *REVIEW OF ACTIONS OF PRIMARY FINANCIAL REGULATORY AGENCY.*—With respect to a nonbank financial company with a primary financial regulatory agency, the Council may not vote under subparagraph (A) to make a proposed determination unless—

(i) the Council first determines that any proposed regulations or other regulatory actions taken by the primary financial regulatory agency after receipt of the resolution described under paragraph (2)(A) are insufficient to mitigate the risks identified in the resolution;

(ii) the primary financial regulatory agency has notified the Council that the agency has no proposed regulations or other regulatory actions to mitigate the risks identified in the resolution; or

(iii) the period allowed by the Council under paragraph (2)(B) has elapsed and the primary financial regulatory agency has taken no action in response to the resolution.

(4) *NOTICE OF PROPOSED DETERMINATION.*—The Council shall—

(A) 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, an explanation of the specific risks to the financial stability of the United States presented by the nonbank financial company, and a detailed explanation of why existing regulations or other regulatory action by the company's primary financial regulatory agency, if any, is insufficient to mitigate such risk; and

(B) provide the primary financial regulatory agency of the nonbank financial company a copy of the nonpublic written explanation of the Council's proposed determination.

(5) *HEARING.*—

(A) *IN GENERAL.*—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (4), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination, including the opportunity to present a plan to modify the company's business, structure, or operations in order to mitigate the risks identified in the notice, and which plan shall also include any steps the company expects to take during the implementation period to mitigate such risks.

(B) *GRANT OF HEARING.*—Upon receipt of a timely request, the Council shall fix a time (not earlier than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to—

(i) submit written materials (which may include a plan to modify the company's business, structure, or operations); or

(ii) provide oral testimony and oral argument to the members of the Council.

(6) COUNCIL CONSIDERATION OF COMPANY PLAN.—

(A) *IN GENERAL.*—If a nonbank financial company submits a plan in accordance with paragraph (5), the Council shall, prior to making a final determination—

(i) consider whether the plan, if implemented, would mitigate the risks identified in the notice under paragraph (4); and

(ii) provide the nonbank financial company an opportunity to revise the plan after consultation with the Council.

(B) *VOTING.*—Approval by the Council of a plan submitted under paragraph (5) or revised under subparagraph (A)(ii) shall require a vote of not fewer than  $\frac{2}{3}$  of the voting members then serving, including an affirmative vote by the Chairperson.

(C) *IMPLEMENTATION OF APPROVED PLAN.*—With respect to a nonbank financial company's plan approved by the Council under subparagraph (B), the company shall have one year to implement the plan, except that the Council, in its sole discretion and upon request from the nonbank financial company, may grant one or more extensions of the implementation period.

(D) *OVERSIGHT OF IMPLEMENTATION.*—

(i) *PERIODIC REPORTS.*—The Council, acting through the Office of Financial Research, may require the submission of periodic reports from a nonbank financial company for the purpose of evaluating the company's progress in implementing a plan approved by the Council under subparagraph (B).

(ii) *INSPECTIONS.*—The Council may direct the primary financial regulatory agency of a nonbank financial company or its subsidiaries (or, if none, the Board of Governors) to inspect the company or its subsidiaries for the purpose of evaluating the implementation of the company's plan.

(E) *AUTHORITY TO RESCIND APPROVAL.*—

(i) *IN GENERAL.*—During the implementation period described under subparagraph (C), including any extensions granted by the Council, the Council shall retain the authority to rescind its approval of the plan if the Council finds, by a vote of not fewer than  $\frac{2}{3}$  of the voting members then serving, including an affirmative vote by the Chairperson, that the company's implementation of the plan is no longer sufficient to mitigate or prevent the risks identified in the resolution described under paragraph (2)(A).

(ii) *FINAL DETERMINATION VOTE.*—The Council may proceed to a vote on final determination under subsection (a) or (b), as applicable, not earlier than 10 days after providing the nonbank financial company with written notice that the Council has rescinded the approval of the company's plan pursuant to clause (i).

(F) *ACTIONS AFTER IMPLEMENTATION.*—

(i) *EVALUATION OF IMPLEMENTATION.*—After the end of the implementation period described under subparagraph (C), including any extensions granted by the Council, the Council shall consider whether the plan, as implemented by the nonbank financial company, adequately mitigates or prevents the risks identified in the resolution described under paragraph (2)(A).

(ii) *VOTING.*—If, after performing an evaluation under clause (i), not fewer than  $\frac{2}{3}$  of the voting members of the Council then serving, including an affirmative vote by the Chairperson, determine that the plan, as implemented, adequately mitigates or prevents the identified risks, the Council shall not make a final determination under subsection (a) or (b), as applicable, with respect to the nonbank financial company and shall notify the company of the Council's decision to take no further action.

(7) *FINAL COUNCIL DECISIONS.*—

(A) *IN GENERAL.*—Not later than 90 days after the date of a hearing under paragraph (5), the Council shall notify the nonbank financial company of—

(i) a final determination under subsection (a) or (b), as applicable;

(ii) the Council's approval of a plan submitted by the nonbank financial company under paragraph (5) or revised under paragraph (6); or

(iii) the Council's decision to take no further action with respect to the nonbank financial company.

(B) *EXPLANATORY STATEMENT.*—A final determination of the Council, under subsection (a) or (b), shall contain a statement of the basis for the decision of the Council, including the reasons why the Council rejected any plan by the nonbank financial company submitted under paragraph (5) or revised under paragraph (6).

(C) *NOTICE TO PRIMARY FINANCIAL REGULATORY AGENCY.*—In the case of a final determination under subsection (a) or (b), the Council shall provide the primary financial regulatory agency of the nonbank financial company a copy of the nonpublic written explanation of the Council's final determination.

(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  $\frac{2}{3}$  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] *from the outset of the Council's consideration of the company, including before the Council makes any proposed or 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.

(j) PUBLIC DISCLOSURE REQUIREMENT.—*The Council shall—*

*(1) in each case where a nonbank financial company has been notified that it is subject to the Council's review and the company has publicly disclosed such fact, confirm that the nonbank financial company is subject to the Council's review, in response to a request from a third party;*

*(2) upon making a final determination, publicly provide a written explanation of the basis for its decision with sufficient*

*detail to provide the public with an understanding of the specific bases of the Council's determination, including any assumptions related thereof, subject to the requirements of section 112(d)(5);*

*(3) include, in the annual report required by section 112, the number of nonbank financial companies from the previous year subject to preliminary analysis, further review, and subject to a proposed or final determination; and*

*(4) within 90 days after the enactment of this subsection, publish information regarding its methodology for calculating any quantitative thresholds or other metrics used to identify nonbank financial companies for analysis by the Council.*

*(k) PERIODIC ASSESSMENT OF THE IMPACT OF DESIGNATIONS.—*

*(1) ASSESSMENT.—Every five years after the date of enactment of this section, the Council shall—*

*(A) conduct a study of the Council's determinations that nonbank financial companies shall be supervised by the Board of Governors and shall be subject to prudential standards; and*

*(B) comprehensively assess the impact of such determinations on the companies for which such determinations were made and the wider economy, including whether such determinations are having the intended result of improving the financial stability of the United States.*

*(2) REPORT.—Not later than 90 days after completing a study required under paragraph (1), the Council shall issue a report to the Congress that—*

*(A) describes all findings and conclusions made by the Council in carrying out such study; and*

*(B) identifies whether any of the Council's determinations should be rescinded or whether related regulations or regulatory guidance should be modified, streamlined, expanded, or repealed.*

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## **Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies**

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### **SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLD- ING 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 *to ensure that companies with comparable risk profiles and business models are operating under a similar set of requirements.*

(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).

(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 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) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other risk-related factors that the Board of Governors 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 paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 115; and

(D) 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 pru-



dential 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);

(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 to the Board of Governors, the Council, and the Corporation 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 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 of Governors and the Corporation shall review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their 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 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 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 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, 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.

(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 over-accumulation 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) 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).

(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), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) 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;

(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; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) 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;

(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.

(2) BY THE COMPANY.—

(A) REQUIREMENT.—A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct semiannual stress tests. All other financial 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 shall require.

(C) REGULATIONS.—Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, 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 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.

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## BANK HOLDING COMPANY ACT OF 1956

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### 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 ex-



pected 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.]

(2) RULEMAKING.—

(A) *IN GENERAL.*—*The Board may, as appropriate, consult with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commodity Futures Trading Commission to adopt rules or guidance to carry out this section, as provided in subparagraph (B).*

(B) *RULEMAKING REQUIREMENTS.*—*In adopting a rule or guidance under subparagraph (A), the Board—*

*(i) shall consider the findings of the report required in paragraph (1) and, as appropriate, subsequent reports;*

*(ii) shall assure, to the extent possible, that such rule or guidance 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; and*

*(iii) shall include requirements to ensure compliance with this section, such as requirements regarding internal controls and recordkeeping.*

(C) *AUTHORITY.*—*The Board shall have sole authority to issue and amend rules under this section after the date of the enactment of this paragraph.*

(D) *CONFORMING AUTHORITY.*—

*(i) CONTINUITY OF REGULATIONS.*—*Any rules or guidance issued under this section prior to the date of enactment of this paragraph shall continue in effect until the Board issues a successor rule or guidance, or amends such rule or guidance, pursuant to subparagraph (C).*

*(ii) APPLICABLE GUIDANCE.*—*In performing examinations or other supervisory duties, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, as appropriate, shall update any applicable policies and procedures to ensure that such policies and procedures are consistent (to the extent practicable) with any rules or guidance issued pursuant to subparagraph (C).*

(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),] *The Board shall have the authority* 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 issue 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 ap-

appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission,] *the Board* 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** *the Board*, 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** *has not* 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 selecting 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, except that the hedge fund or private equity fund may share the same name or a variation of the same name as a banking entity that is an investment adviser to the hedge fund or private equity fund, if—

(I) such investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106);

(II) such investment adviser does not share the same name or a variation of the same name as an insured depository institution, any company that

controls an insured depository institution, or any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(III) such name does not contain the word “bank”;

(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,] *Board*, 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] *Board* 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 pro-

vided 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] *Board* 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] *Board* 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] *Board* 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 violates 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.]

(e) ENFORCEMENT; ANTI-EVASION.—

(1) APPROPRIATE FEDERAL BANKING AGENCY.—*Notwithstanding any other provision of law except for any rules or guidance issued under subsection (b)(2), whenever the appropriate Federal banking agency has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board has made an investment or engaged in an activity in a manner that either violates the restrictions under this section, or that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity),*



*such appropriate Federal banking agency 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.*

**(2) SECURITIES AND EXCHANGE COMMISSION AND COMMODITY FUTURES TRADING COMMISSION.—**

**(A) IN GENERAL.**—*Notwithstanding any other provision of law except for any rules or guidance issued under subsection (b)(2), whenever the Securities and Exchange Commission or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a covered nonbank financial company for which the respective agency is the primary Federal regulator has made an investment or engaged in an activity in a manner that either violates the restrictions under this section, or that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the covered nonbank financial company to terminate the activity and, as relevant, dispose of the investment.*

**(B) COVERED NONBANK FINANCIAL COMPANY DEFINED.**—*In this paragraph, the term “covered nonbank financial company” means a nonbank financial company (as defined in section 102 of the Financial Stability Act of 2010) supervised by the Securities and Exchange Commission or the Commodity Futures Trading Commission, as appropriate.*

**(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] *Board* 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 treat-

ed 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—

(A) that functions solely in a trust or fiduciary capacity, if—

(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(ii) 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;

(iii) 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

(iv) 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)); or

(B) that does not have and is not controlled by a company that has—

(i) more than \$10,000,000,000 in total consolidated assets; and

(ii) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets.

(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] Board 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 com-

modity 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] *Board* 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] *Board* 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)).

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## DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

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## TITLE I—FINANCIAL STABILITY

\* \* \* \* \*

### Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

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#### SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLD- ING 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).

(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 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) whether the company owns an insured depository institution;
- (iii) nonfinancial activities and affiliations of the company; and
- (iv) any other risk-related factors that the Board of Governors 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 paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 115; and

(D) 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);

(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]** *every 2 years* to the Board of Governors, the Council, and the Corporation 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 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 company 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 company submits the resolution plan, provide feedback to the company on such plan.*

(B) *DISCLOSURE OF ASSESSMENT FRAMEWORK.*—*The Board of Governors and the Corporation shall publicly disclose the assessment framework that is used to review information under this paragraph.*

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their 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 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 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 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, 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.

## (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 sur-

plus (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 over-accumulation 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) 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).

(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), as determined necessary or ap-

propriate by the Board of Governors to promote sound risk management practices.

(3) 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;

(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; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) 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;

(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.

(2) BY THE COMPANY.—

(A) REQUIREMENT.—A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct semiannual stress tests. All other financial companies that have total consolidated assets of more than \$10,000,000,000 and [are regulated by a primary Federal financial regulatory agency] *whose primary financial regulatory agency is a Federal banking agency or the Federal Housing Finance 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 shall require.

(C) REGULATIONS.—Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, 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.

(D) SEC AND CFTC.—*The Securities and Exchange Commission and the Commodity Futures Trading Commission may each issue regulations requiring financial companies with respect to which they are the primary financial regulatory agency to conduct periodic analyses of the financial condition, including available liquidity, of such companies under adverse economic conditions.*

(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 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.

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## **TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGU- LATION OF SECURITIES**

\* \* \* \* \*

### **Subtitle I—Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters**

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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 Bureau of Consumer Financial Protection.*

(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.

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## TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

\* \* \* \* \*

### Subtitle A—Bureau of Consumer Financial Protection

#### SEC. 1011. ESTABLISHMENT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.

(a) BUREAU ESTABLISHED.—There is established in the Federal Reserve System, an independent bureau to be known as the “Bureau of Consumer Financial Protection”, which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Bureau 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.

(b) DIRECTOR [AND DEPUTY DIRECTOR], *DEPUTY DIRECTOR*, AND *INSPECTOR GENERAL*.—

(1) IN GENERAL.—There is established the position of the Director, who shall serve as the head of the Bureau.

(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

(B) serve as acting Director in the absence or unavailability of the Director.



(6) *INSPECTOR GENERAL.*—*There is established the position of the Inspector General.*

(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], *Deputy Director, or Inspector General* 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], *Deputy Director, or Inspector General.*

(e) *OFFICES.*—The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, 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 under the Federal consumer financial laws.

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#### **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 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 Bureau 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 hearings no less frequently than twice annually, at a date determined by the chairman of the respective committee, 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.).

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#### **SEC. 1017. FUNDING; PENALTIES AND FINES.**

(a) **TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.**—

(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) *FUNDING FOR OFFICE OF INSPECTOR GENERAL.*—*Each fiscal year, the Bureau shall dedicate 2 percent of the funds transferred pursuant to paragraph (1) to the Office of the Inspector General.*

[(C)] (D) *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) *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) *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) 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), 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) 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) 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.

(e) 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.

(4) 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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## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

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TITLE X—FEDERAL FINANCIAL INSTITUTIONS  
EXAMINATION COUNCIL

\* \* \* \* \*

DEFINITIONS

SEC. 1003. As used in this title—

[(1) 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 Office of Thrift Supervision, and the National Credit Union Administration;]

*(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, and 1014, includes the Bureau of Consumer Financial Protection;*

(2) the term “Council” means the Financial Institutions Examination Council; and

[(3) the term “financial institution” means a commercial bank, a savings bank, a trust company, a savings association, a building and loan association, a homestead association, a cooperative bank, or a credit union;]

*(3) the term “financial institution”—*

*(A) means a commercial bank, a savings bank, a trust company, a savings association, a building and loan association, a homestead association, a cooperative bank, or a credit union; and*

*(B) for purposes of sections 1012, 1013, and 1014, includes a nondepository covered person subject to supervision by the Bureau of Consumer Financial Protection under section 1024 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5514).*

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EXPENSES OF THE COUNCIL

SEC. 1005. [One-fifth] *One-fourth* of the costs and expenses of the Council, including the salaries of its employees, shall be paid by each of the Federal financial institutions regulatory agencies. Annual assessments for such share shall be levied by the Council based upon its projected budget for the year, and additional assessments may be made during the year if necessary.

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**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. 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) **TERM.**—The Director shall serve for a term of 5 years, and may be appointed to serve a subsequent 5-year term.

(d) **STAFFING.**—The Director is authorized to hire staff to support the activities of the Office.

(e) **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) in accordance with subsection (f), 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 1014; 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.*

(f) **STANDARD FOR REVIEWING EXAMINATION PROCEDURES.**—*In conducting reviews pursuant to subsection (e)(4), the Director shall prioritize factors relating to the safety and soundness of the financial system of the United States.*

(g) **REMOVAL.**—*If the Director is removed from office, the Council shall communicate in writing the reasons for any such removal 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 30 days before the removal.*

(h) **CONFIDENTIALITY.**—*The Director shall keep confidential all meetings with, discussions with, and information provided by financial institutions.*

**SEC. 1014. 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) subject to subsection (e), be deemed a 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) *LIMITED REVIEW BY FFIEC.*—

(1) *IN GENERAL.*—If the agency whose supervisory determination was the subject of the review believes that the Director's decision under subsection (d) would pose an imminent threat to the safety and soundness of the financial institution, such agency may file a written notice seeking review of the Director's decision with the Council within 10 days of receiving the Director's decision.

(2) *STANDARD OF REVIEW.*—In making a determination under this subsection, the Council shall conduct a review to determine whether there is substantial evidence that the Director's decision would pose an imminent threat to the safety and soundness of the financial institution.

(3) *FINAL DETERMINATION.*—A determination by the Council shall—

(A) be made not later than 30 days after the filing of the notice pursuant to paragraph (1); and

(B) be deemed a final agency action and shall bind the agency whose supervisory determination was the subject of the review and the financial institution requesting the review.

(f) *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 or the Council'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.

(g) *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.

(h) *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.

(i) *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.

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## RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994

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### TITLE III—PAPERWORK REDUCTION AND REGULATORY IMPROVEMENT

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#### SEC. 309. REGULATORY APPEALS PROCESS, OMBUDSMAN, AND ALTERNATIVE DISPUTE RESOLUTION.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, each appropriate Federal banking agency, *the Bureau of Consumer Financial Protection*, and the National Credit Union Administration Board shall establish an independent intra-agency appellate process. The process shall be available to review material supervisory determinations made at insured depository institutions or at insured credit unions that the agency supervises.

(b) REVIEW PROCESS.—In establishing the independent appellate process under subsection (a), each agency shall ensure that—

(1) any appeal of a material supervisory determination by an insured depository institution or insured credit union is heard and decided expeditiously; and

(2) appropriate safeguards exist for protecting [the appellant from retaliation by agency examiners] *the insured depository institution or insured credit union from retaliation by the agencies referred to in subsection (a).*

*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) COMMENT PERIOD.—Not later than 90 days after the date of enactment of this Act, each appropriate Federal banking agency and the National Credit Union Administration Board shall provide public notice and opportunity for comment on proposed guidelines for the establishment of an appellate process under this section.

(d) AGENCY OMBUDSMAN.—

(1) ESTABLISHMENT REQUIRED.—Not later than 180 days after the date of enactment of this Act, each Federal banking agency and the National Credit Union Administration Board shall appoint an ombudsman.

(2) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with paragraph (1) for any agency shall—

- (A) act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and
  - (B) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.
- (e) ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM.—
  - (1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, each Federal banking agency and the National Credit Union Administration Board shall develop and implement a pilot program for using alternative means of dispute resolution of issues in controversy (hereafter in this section referred to as the “alternative dispute resolution program”) that is consistent with the requirements of subchapter IV of chapter 5 of title 5, United States Code, if the parties to the dispute, including the agency, agree to such proceeding.
  - (2) STANDARDS.—An alternative dispute resolution pilot program developed under paragraph (1) shall—
    - (A) be fair to all interested parties to a dispute;
    - (B) resolve disputes expeditiously; **[and]**
    - (C) be less costly than traditional means of dispute resolution, including litigation~~].~~; and
    - (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.*
  - (3) INDEPENDENT EVALUATION.—Not later than 18 months after the date on which a pilot program is implemented under paragraph (1), the Administrative Conference of the United States shall submit to the Congress a report containing—
    - (A) an evaluation of that pilot program;
    - (B) the extent to which the pilot programs meet the standards established under paragraph (2);
    - (C) the extent to which parties to disputes were offered alternative means of dispute resolution and the frequency with which the parties, including the agencies, accepted or declined to use such means; and
    - (D) any recommendations of the Conference to improve the alternative dispute resolution procedures of the Federal banking agencies and the National Credit Union Administration Board.
  - (4) IMPLEMENTATION OF PROGRAM.—At any time after completion of the evaluation under paragraph (3)(A), any Federal banking agency and the National Credit Union Administration Board may implement an alternative dispute resolution program throughout the agency, taking into account the results of that evaluation.
  - (5) COORDINATION WITH EXISTING AGENCY ADR PROGRAMS.—
    - (A) EVALUATION REQUIRED.—If any Federal banking agency or the National Credit Union Administration maintains an alternative dispute resolution program as of the date of enactment of this Act under any other provision of law, the Administrative Conference of the United States shall include such program in the evaluation conducted under paragraph (3)(A).

(B) MULTIPLE ADR PROGRAMS.—No provision of this section shall be construed as precluding any Federal banking agency or the National Credit Union Administration Board from establishing more than 1 alternative means of dispute resolution.

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

(1) MATERIAL SUPERVISORY DETERMINATIONS.—The term “material supervisory determinations”—

(A) includes determinations relating to—

- (i) examination ratings;
- (ii) the adequacy of loan loss reserve provisions;

**[and]**

(iii) loan classifications on loans that are significant to an institution; **[and]**

(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*

(B) does not include a determination by a Federal banking agency or the National Credit Union Administration Board to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act or section 212 of the Federal Credit Union Act, as appropriate.

(2) INDEPENDENT APPELLATE PROCESS.—The term “independent appellate process” means a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.

(3) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—The term “alternative means of dispute resolution” has the meaning given to such term in section 571 of title 5, United States Code.

(4) ISSUES IN CONTROVERSY.—The term “issues in controversy” means—

(A) any final agency decision involving any claim against an insured depository institution or insured credit union for which the agency has been appointed conservator or receiver or for which a liquidating agent has been appointed, as the case may be;

(B) any final action taken by an agency in the agency’s capacity as conservator or receiver for an insured depository institution or by the liquidating agent appointed for an insured credit union; and

(C) any other issue for which the appropriate Federal banking agency or the National Credit Union Administration Board determines that alternative means of dispute resolution would be appropriate.

(g) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall affect the authority of an appropriate Federal banking agency or the National Credit Union Administration Board to take enforcement or supervisory action.

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## FEDERAL CREDIT UNION ACT

\* \* \* \* \*

### TITLE II—SHARE INSURANCE

\* \* \* \* \*

#### REQUIREMENTS GOVERNING INSURED CREDIT UNIONS

##### SEC. 205. (a) INSURANCE LOGO.—

###### (1) INSURED CREDIT UNIONS.—

(A) IN GENERAL.—Each insured credit union shall display at each place of business maintained by that credit union a sign or signs relating to the insurance of the share accounts of the institution, in accordance with regulations to be prescribed by the Board.

(B) STATEMENT TO BE INCLUDED.—Each sign required under subparagraph (A) shall include a statement that insured share accounts are backed by the full faith and credit of the United States Government.

(2) REGULATIONS.—The Board 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 credit union continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than \$100, which the Board may recover for its use.

(b)(1) Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board—

(A) merge or consolidate with any noninsured credit union or institution;

(B) assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;

(C) transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or

(D) convert into a noninsured credit union or institution.

###### (2) CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), an insured credit union may convert to a mutual savings bank or savings association (if the savings association is in mu-

tual form), as those terms are defined in section 3 of the Federal Deposit Insurance Act, without the prior approval of the Board, subject to the requirements and procedures set forth in the laws and regulations governing mutual savings banks and savings associations.

(B) CONVERSION PROPOSAL.—A proposal for a conversion described in subparagraph (A) shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on that date or by written ballot to be filed on or before that date), by a majority of the directors of the insured credit union. Approval of the proposal for conversion shall be by the affirmative vote of a majority of the members of the insured credit union who vote on the proposal.

(C) NOTICE OF PROPOSAL TO MEMBERS.—An insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) shall submit notice to each of its members who is eligible to vote on the matter of its intent to convert—

- (i) 90 days before the date of the member vote on the conversion;
- (ii) 60 days before the date of the member vote on the conversion; and
- (iii) 30 days before the date of the member vote on the conversion.

(D) NOTICE OF PROPOSAL TO BOARD.—The Board may require an insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) to submit a notice to the Board of its intent to convert during the 90-day period preceding the date of the completion of the conversion.

(E) INAPPLICABILITY OF ACT UPON CONVERSION.—Upon completion of a conversion described in subparagraph (A), the credit union shall no longer be subject to any of the provisions of this Act.

(F) LIMIT ON COMPENSATION OF OFFICIALS.—

(i) IN GENERAL.—No director or senior management official of an insured credit union may receive any economic benefit in connection with a conversion of the credit union as described in subparagraph (A), other than—

- (I) director fees; and
- (II) compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

(ii) SENIOR MANAGEMENT OFFICIAL.—For purposes of this subparagraph, the term “senior management official” means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer (as defined by the appropriate Federal banking agency pursuant to section 32 (f) of the Federal Deposit Insurance Act).

(G) CONSISTENT RULES.—

(i) IN GENERAL.—Not later than 6 months after the date of enactment of the Credit Union Membership Access Act, the Administration shall promulgate final rules applicable to charter conversions described in this paragraph that are consistent with rules promulgated by other financial regulators, including the Office of the Comptroller of the Currency. The rules required by this clause shall provide that charter conversion by an insured credit union shall be subject to regulation that is no more or less restrictive than that applicable to charter conversions by other financial institutions.

(ii) OVERSIGHT OF MEMBER VOTE.—The member vote concerning charter conversion under this paragraph shall be administered by the Administration, and shall be verified by the Federal or State regulatory agency that would have jurisdiction over the institution after the conversion. If either the Administration or that regulatory agency disapproves of the methods by which the member vote was taken or procedures applicable to the member vote, the member vote shall be taken again, as directed by the Administration or the agency.

(3) Except with the prior written approval of the Board, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

(c) In granting or withholding approval or consent under subsection (b) of this section, the Board shall consider—

(1) the history, financial condition, and management policies of the credit union;

(2) the adequacy of the credit union's reserves;

(3) the economic advisability of the transaction;

(4) the general character and fitness of the credit union's management;

(5) the convenience and needs of the members to be served by the credit union; and

(6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(d) PROHIBITION.—

(1) IN GENERAL.—Except with prior written consent of the Board—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, 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 credit union; or

(ii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and



(B) any insured credit union 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 Board 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 Board, 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.

(3) PENALTY.—Whoever knowingly violates paragraph (1) or (2) shall be fined not more than \$1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(e)(1) The Board shall promulgate rules establishing minimum standards with which each insured credit union must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(2) The rules shall establish the time limits within which insured credit unions shall comply with the standards and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures.

(3) An insured credit union which violates a rule promulgated pursuant to this subsection shall be subject to a civil penalty which shall not exceed \$100 for each day of the violation.

(f)(1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts and may permit the owners of such share

draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(g)(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, 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 insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such credit union would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving, or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan 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 interest paid from the credit union taking or receiving such interest.

(h) Notwithstanding any other provision of law, the Board may authorize a merger or consolidation of an insured credit union which is insolvent or is in danger of insolvency with any other insured credit union or may authorize an insured credit union to purchase any of the assets of, or assume any of the liabilities of, any other insured credit union which is insolvent or in danger of insolvency if the Board is satisfied that—

- (1) an emergency requiring expeditious action exists with respect to such other insured credit union;
- (2) other alternatives are not reasonably available; and
- (3) the public interest would best be served by approval of such merger, consolidation, purchase, or assumption.

(i)(1) Notwithstanding any other provision of this Act or of State law, the Board may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of or assume any of the liabilities of an insured credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the Board must attempt to effect the merger or consolidation of an insured credit

union which is insolvent or in danger of insolvency with another insured credit union, as provided in subsection (h).

(2) For purposes of the authority contained in paragraph (1), insured accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the Board and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

(j) 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*, the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, 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 Board, 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*, the Administration, any State credit union supervisor, or foreign banking authority, but for this subsection.

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## REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

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### UNIFORM SETTLEMENT STATEMENT

SEC. 4. (a) 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. Such forms shall conspicuously and clearly **[itemize all charges]** *itemize all actual charges* imposed upon the borrower **[and all charges imposed upon the seller in connection with the settlement and]** *and the seller in connection with the settlement. Such forms shall indicate whether any title insurance premium included in such charges*

covers or insures the lender's interest in the property, the borrower's interest, or both. *Charges for any title insurance premium disclosed on such forms shall be equal to the amount charged for each individual title insurance policy, subject to any discounts as required by State regulation or the title company rate filings.* The Bureau may, by regulation, permit the deletion from the forms prescribed under this section of items which are not, under local laws or customs, applicable in any locality, except that such regulation shall require that the numerical code prescribed by the Bureau be retained in forms to be used in all localities. Nothing in this section may be construed to require that that part of the standard forms which relates to the borrower's transaction to be furnished to the seller, or to require that that part of the standard forms which relates to the seller be furnished to the borrower.

(b) The forms prescribed under this section shall be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement, except that (1) the Bureau may exempt from the requirements of this section settlements occurring in localities where the final settlement statement is not customarily provided at or before the date of settlement, or settlements where such requirements are impractical and (2) the borrower may, in accordance with regulations of the Bureau, waive his right to have the forms made available at such time. Upon the request of the borrower to inspect the forms prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day.

(c) The standard form described in subsection (a) may include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—

- (1) the fee paid directly to the appraiser by such company;
- and
- (2) the administration fee charged by such company.

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## INSPECTOR GENERAL ACT OF 1978

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### REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 12 of this Act, as used in this section—

- (1) the term "Federal entity" means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

- (A) an establishment (as defined under section 12(2) of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term “designated Federal entity” means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System [and the Bureau of Consumer Financial Protection], the Board for International Broadcasting, the Committee for Purchase From People Who Are Blind or Severely Disabled, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Defense Intelligence Agency, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Election Assistance Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Geospatial-Intelligence Agency, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, the Postal Regulatory Commission, and the United States Postal Service;

(3) the term “head of the Federal entity” means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking officer or board of a Federal entity as identified in the list published pursuant to subsection (h)(1) of this section;

(4) the term “head of the designated Federal entity” means the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission, any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, except that—

(A) with respect to the National Science Foundation, such term means the National Science Board;

(B) with respect to the United States Postal Service, such term means the Governors (within the meaning of section 102(3) of title 39, United States Code);

(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

(D) with respect to the Committee for Purchase From People Who Are Blind or Severely Disabled, such term means the Chairman of the Committee for Purchase From People Who Are Blind or Severely Disabled;

(E) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

(F) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

(G) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

(H) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

(I) with respect to the Peace Corps, such term means the Director of the Peace Corps;

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section, there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such office any program operating responsibilities.

(c) Except as provided under subsection (f) of this section, the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity. Each Inspector General shall be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. [For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System.]

(d)(1) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other

officer or employee of such designated Federal entity. Except as provided in paragraph (2), the head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(2)(A) The Secretary of Defense, in consultation with the Director of National Intelligence, may prohibit the inspector general of an element of the intelligence community specified in subparagraph (D) from initiating, carrying out, or completing any audit or investigation, or from accessing information available to an element of the intelligence community specified in subparagraph (D), or from accessing information available to an element of the intelligence community specified in subparagraph (D), if the Secretary determines that the prohibition is necessary to protect vital national security interests of the United States.

(B) If the Secretary exercises the authority under subparagraph (A), the Secretary shall submit to the committees of Congress specified in subparagraph (E) an appropriately classified statement of the reasons for the exercise of such authority not later than 7 days after the exercise of such authority.

(C) At the same time the Secretary submits under subparagraph (B) a statement on the exercise of the authority in subparagraph (A) to the committees of Congress specified in subparagraph (E), the Secretary shall notify the inspector general of such element of the submittal of such statement and, to the extent consistent with the protection of intelligence sources and methods, provide such inspector general with a copy of such statement. Such inspector general may submit to such committees of Congress any comments on a notice or statement received by the inspector general under this subparagraph that the inspector general considers appropriate.

(D) The elements of the intelligence community specified in this subparagraph are as follows:

- (i) The Defense Intelligence Agency.
- (ii) The National Geospatial-Intelligence Agency.
- (iii) The National Reconnaissance Office.
- (iv) The National Security Agency.

(E) The committees of Congress specified in this subparagraph are—

- (i) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and
- (ii) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(e)(1) In the case of a designated Federal entity for which a board, chairman of a committee, or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a  $\frac{2}{3}$  majority of the board, committee, or commission.”

(2) If an Inspector General is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

(f)(1) For purposes of carrying out subsection (c) with respect to the United States Postal Service, the appointment provisions of section 202(e) of title 39, United States Code, shall be applied.

(2) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service (hereinafter in this subsection referred to as the “Inspector General”) shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

(3)(A)(i) Notwithstanding subsection (d), the Inspector General shall be under the authority, direction, and control of the Governors with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

- (I) ongoing civil or criminal investigations or proceedings;
- (II) undercover operations;
- (III) the identity of confidential sources, including protected witnesses;
- (IV) intelligence or counterintelligence matters; or
- (V) other matters the disclosure of which would constitute a serious threat to national security.

(ii) With respect to the information described under clause (i), the Governors may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Governors determine that such prohibition is necessary to prevent the disclosure of any information described under clause (i) or to prevent the significant impairment to the national interests of the United States.

(iii) If the Governors exercise any power under clause (i) or (ii), the Governors shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(B) In carrying out the duties and responsibilities specified in this Act, the Inspector General—

- (i) may initiate, conduct and supervise such audits and investigations in the United States Postal Service as the Inspector General considers appropriate; and
- (ii) shall give particular regard to the activities of the Postal Inspection Service with a view toward avoiding duplication and insuring effective coordination and cooperation.

(C) Any report required to be transmitted by the Governors to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.



(4) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.

(5) As used in this subsection, the term "Governors" has the meaning given such term by section 102(3) of title 39, United States Code.

(6) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.

(g)(1) Sections 4, 5, 6 (other than subsections (a)(7) and (a)(8) thereof), and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting—

(A) "designated Federal entity" for "establishment"; and

(B) "head of the designated Federal entity" for "head of the establishment".

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System [and the Bureau of Consumer Financial Protection] and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(4) Each Inspector General shall—

(A) in accordance with applicable laws and regulations governing appointments within the designated Federal entity, appoint a Counsel to the Inspector General who shall report to the Inspector General;

(B) obtain the services of a counsel appointed by and directly reporting to another Inspector General on a reimbursable basis; or

(C) obtain the services of appropriate staff of the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

(h)(1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and des-

ignated Federal entities and if the designated Federal entity is not a board or commission, include the head of each such entity (as defined under subsection (a) of this section).

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which—

(A) states whether there has been established in the Federal entity an office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non-Federal auditor during the reporting period and a summary of any particularly significant findings; and

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

\* \* \* \* \*

#### DEFINITIONS

SEC. 12. As used in this Act—

(1) the term “head of the establishment” means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, Homeland Security, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, or Small Business, or Veterans’ Affairs; the Director of the Federal Emergency Management Agency, or the Office of Personnel Management; the Chairman of the Nuclear Regulatory Commission, the Federal Communications Commission, or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; the chief executive officer of the Resolution Trust Corporation; the Chairperson of the Federal Deposit Insurance Corporation; the Commissioner of Social Security, Social Security Administration; the Director of the Federal Housing Finance Agency; the Board of Directors of the Tennessee Valley Authority; the President of the Export-Import Bank; *the Director of the Bureau of Consumer Financial Protection*; the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Director of the National Security Agency; or the Director of the National Reconnaissance Office; as the case may be;

(2) the term “establishment” means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, Homeland Security, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Communications Commission, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, or the Veterans’ Administration, the Social Security Administration, the Federal Housing Finance Agency, the Tennessee Valley Authority, the Export-Import Bank, *the Bureau of Consumer Financial Protection*, the Commissions established under section 15301 of title 40, United States Code, the National Security Agency, or the National Reconnaissance Office, as the case may be;

(3) the term “Inspector General” means the Inspector General of an establishment;

(4) the term “Office” means the Office of Inspector General of an establishment; and

(5) the term “Federal agency” means an agency as defined in section 552(f) of title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

\* \* \* \* \*

## CONSUMER FINANCIAL PROTECTION ACT OF 2010

\* \* \* \* \*

## TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

\* \* \* \* \*

### Subtitle A—Bureau of Consumer Financial Protection

#### SEC. 1011. ESTABLISHMENT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.

(a) BUREAU ESTABLISHED.—There is established in the Federal Reserve System, an independent bureau to be known as the “Bureau of Consumer Financial Protection”, which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws. The Bureau 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.

(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.

(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

(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 shall be in the District of Columbia. The Director may establish regional offices of the Bureau, 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 under the Federal consumer financial laws.

\* \* \* \* \*

**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)] (I) 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) 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), 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) 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.

[(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 APPROPRIATION.*—*There authorized to be appropriated for fiscal year 2020 to the Bureau from the combined earnings of the Federal Reserve System \$485,000,000.*

[(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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## TITLE 5, UNITED STATES CODE

### PART I—THE AGENCIES GENERALLY

\* \* \* \* \*

#### [CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING]

##### **[§ 801. Congressional review]**

[(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule 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, including whether it is a major rule; and

[(iii) the proposed effective date of the rule.

[(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule 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;

[(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

[(iii) the agency's actions relevant 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 in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

[(B) Federal 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 on the latest of—

[(A) the later of the date occurring 60 days after the date on which—

[(i) the Congress receives the report submitted under paragraph (1); or

[(ii) the rule is published in the Federal Register, if so published;

[(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

[(i) on which either House of Congress votes and fails to override the veto of the President; or

[(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

[(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

[(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

[(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

[(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

[(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

[(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, 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 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 802 or the effect of a joint resolution of disapproval under this section.

[(d)(1) In addition to the opportunity for review otherwise provided under this chapter, 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 adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

[(2)(A) In applying section 802 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 (as a rule that shall take effect) 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).

[(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

[(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

[(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

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

[(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

[(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

[(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

## **§ 802. Congressional disapproval procedure**

[(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 801(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 rule submitted by the — — relating to — —, and such rule shall have no force or effect.” (The blank spaces being appropriately filled in).

[(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

[(2) For purposes of this section, the term “submission or publication date” means the later of the date on which—

[(A) the Congress receives the report submitted under section 801(a)(1); or

[(B) the rule is published in the Federal Register, if so published.

[(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 20 calendar days after the submission or publication date defined under subsection (b)(2), 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 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.

[(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 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 801(a)(1)(A) was submitted during the period referred to in section 801(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.

[(g) This section is enacted by Congress—

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

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

### **§ 803. Special rule on statutory, regulatory, and judicial deadlines**

[(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

[(b) The term “deadline” means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

### **§ 804. Definitions**

[For purposes of this chapter—

[(1) The term “Federal agency” means any agency as that term is defined in section 551(1).

[(2) The term “major rule” means any 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 \$100,000,000 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.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

[(3) The term “rule” has the meaning given such term in section 551, 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 therefor, 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.

#### **[§ 805. Judicial review**

[No determination, finding, action, or omission under this chapter shall be subject to judicial review.

#### **[§ 806. Applicability; severability**

[(a) This chapter shall apply notwithstanding any other provision of law.

[(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

#### **[§ 807. Exemption for monetary policy**

[Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

#### **[§ 808. Effective date of certain rules**

[Notwithstanding section 801—

[(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 which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor 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 agency promulgating the rule determines.]

## **CHAPTER 8—CONGRESSIONAL REVIEW OF BUREAU RULEMAKING**

*Sec.*

- 801. *Congressional review.*
- 802. *Congressional approval procedure for major rules.*
- 803. *Congressional disapproval procedure for nonmajor rules.*
- 804. *Definitions.*
- 805. *Judicial review.*
- 806. *Exemption for monetary policy.*
- 807. *Effective date of certain rules.*
- 808. *Regulatory cut-go requirement.*
- 809. *Review of rules currently in effect.*

### **§801. Congressional review**

(a)(1)(A) *Before a rule may take effect, the Bureau shall satisfy the requirements of section 808 and 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 sections 804(2)(A), 804(2)(B), and 804(2)(C);*
- (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 Bureau 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 Bureau's actions pursuant to sections 603, 604, 605, 607, and 609 of this title;*
- (iii) the Bureau'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 Bureau'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 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 802 or as provided for in the rule following enactment of a joint resolution of approval described in section 802, whichever is later.

(4) A nonmajor rule shall take effect as provided by section 803 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 chapter 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 802.

(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 section 801(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 802.

(d)(1) In addition to the opportunity for review otherwise provided under this chapter, 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 802 and 803 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying sections 802 and 803 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).

**§ 802. 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 801(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 801(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 801(b)(2), then such vote shall be taken on that day.

(h) This section and section 803 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.

**§ 803. 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 801(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 consider-

ation 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 801(a)(1)(A) was submitted during the period referred to in section 801(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.

#### **§804. Definitions**

For purposes of this chapter:

(1) The term “Bureau” means the Bureau of Consumer Financial Protection.

(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 cost on the economy of \$100,000,000 or more, adjusted annually for inflation;

(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, 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 Bureau management or personnel; or

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

(5) The term “submission date or publication date”, except as otherwise provided in this chapter, means—

(A) in the case of a major rule, the date on which the Congress receives the report submitted under section 801(a)(1); 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 801(a)(1); and

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

#### **§ 805. Judicial review**

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

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

(c) The enactment of a joint resolution of approval under section 802 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.

#### **§ 806. Exemption for monetary policy**

Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

#### **§ 807. Effective date of certain rules**

Notwithstanding section 801—

(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 Bureau 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 Bureau determines.

**§ 808. Regulatory cut-go requirement**

*In making any new rule, the Bureau shall identify a rule or rules that may be amended or repealed to completely offset any annual costs of the new rule to the United States economy. Before the new rule may take effect, the Bureau shall make each such repeal or amendment. In making such an amendment or repeal, the Bureau shall comply with the requirements of subchapter II of chapter 5, but the Bureau may consolidate proceedings under subchapter with proceedings on the new rule.*

**§ 809. Review of rules currently in effect**

*(a) ANNUAL REVIEW.—Beginning on the date that is 6 months after the date of enactment of this section and annually thereafter for the 9 years following, the Bureau shall designate not less than 10 percent of eligible rules made by the Bureau for review, and shall submit a report including each such eligible rule in the same manner as a report under section 801(a)(1). Section 801, section 802, and section 803 shall apply to each such rule, subject to subsection (c) of this section. No eligible rule previously designated may be designated again.*

*(b) SUNSET FOR ELIGIBLE RULES NOT EXTENDED.—Beginning after the date that is 10 years after the date of enactment of this section, if Congress has not enacted a joint resolution of approval for that eligible rule, that eligible rule shall not continue in effect.*

*(c) CONSOLIDATION; SEVERABILITY.—In applying sections 801, 802, and 803 to eligible rules under this section, the following shall apply:*

*(1) The words “take effect” shall be read as “continue in effect”.*

*(2) Except as provided in paragraph (3), a single joint resolution of approval shall apply to all eligible rules in a report designated for a year, and the matter after the resolving clause of that joint resolution is as follows: “That Congress approves the rules submitted by the \_\_\_\_ for the year \_\_\_\_.” (The blank spaces being appropriately filled in).*

*(3) It shall be in order to consider any amendment that provides for specific conditions on which the approval of a particular eligible rule included in the joint resolution is contingent.*

*(4) A member of either House may move that a separate joint resolution be required for a specified rule.*

*(d) DEFINITION.—In this section, the term “eligible rule” means a rule that is in effect as of the date of enactment of this section.*

\* \* \* \* \*

**BALANCED BUDGET AND EMERGENCY DEFICIT  
CONTROL ACT OF 1985**

\* \* \* \* \*

**PART C—EMERGENCY POWERS TO ELIMINATE  
DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT**

\* \* \* \* \*

**SEC. 257. THE BASELINE.**

(a) **IN GENERAL.**—For any budget year, the baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through the applicable date.

(b) **DIRECT SPENDING AND RECEIPTS.**—For the budget year and each outyear, the baseline shall be calculated using the following assumptions:

(1) **IN GENERAL.**—Laws providing or creating direct spending and receipts are assumed to operate in the manner specified in those laws for each such year and funding for entitlement authority is assumed to be adequate to make all payments required by those laws.

(2) **EXCEPTIONS.**—(A)(i) No program established by a law enacted on or before the date of enactment of the Balanced Budget Act of 1997 with estimated current year outlays greater than \$50,000,000 shall be assumed to expire in the budget year or the outyears. The scoring of new programs with estimated outlays greater than \$50,000,000 a year shall be based on scoring by the Committees on Budget or OMB, as applicable. OMB, CBO, and the Budget Committees shall consult on the scoring of such programs where there are differences between CBO and OMB.

(ii) On the expiration of the suspension of a provision of law that is suspended under section 171 of Public Law 104–127 and that authorizes a program with estimated fiscal year outlays that are greater than \$50,000,000, for purposes of clause (i), the program shall be assumed to continue to operate in the same manner as the program operated immediately before the expiration of the suspension.

(B) The increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.

(C) Excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at current rates.

(D) If any law expires before the budget year or any outyear, then any program with estimated current year outlays greater than \$50,000,000 that operates under that law shall be assumed to continue to operate under that law as in effect immediately before its expiration.

(E) *BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 802 OF TITLE 5, UNITED STATES CODE.*—Any rules subject to the congressional approval procedure set forth in section 802 of chapter 8 of title 5, United States Code, affecting budget authority, outlays, or receipts shall be assumed to be effective unless it is not approved in accordance with such section.

(3) **HOSPITAL INSURANCE TRUST FUND.**—Notwithstanding any other provision of law, the receipts and disbursements of the Hospital Insurance Trust Fund shall be included in all calculations required by this Act.

(c) **DISCRETIONARY APPROPRIATIONS.**—For the budget year and each outyear, the baseline shall be calculated using the following assumptions regarding all amounts other than those covered by subsection (b):

(1) INFLATION OF CURRENT-YEAR APPROPRIATIONS.—Budgetary resources other than unobligated balances shall be at the level provided for the budget year in full-year appropriation Acts. If for any account a full-year appropriation has not yet been enacted, budgetary resources other than unobligated balances shall be at the level available in the current year, adjusted sequentially and cumulatively for expiring housing contracts as specified in paragraph (2), for social insurance administrative expenses as specified in paragraph (3), to offset pay absorption and for pay annualization as specified in paragraph (4), for inflation as specified in paragraph (5), and to account for changes required by law in the level of agency payments for personnel benefits other than pay.

(2) EXPIRING HOUSING CONTRACTS.—New budget authority to renew expiring multiyear subsidized housing contracts shall be adjusted to reflect the difference in the number of such contracts that are scheduled to expire in that fiscal year and the number expiring in the current year, with the per-contract renewal cost equal to the average current-year cost of renewal contracts.

(3) SOCIAL INSURANCE ADMINISTRATIVE EXPENSES.—Budgetary resources for the administrative expenses of the following trust funds shall be adjusted by the percentage change in the beneficiary population from the current year to that fiscal year: the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account.

(4) PAY ANNUALIZATION; OFFSET TO PAY ABSORPTION.—Current-year new budget authority for Federal employees shall be adjusted to reflect the full 12-month costs (without absorption) of any pay adjustment that occurred in that fiscal year.

(5) INFLATORS.—The inflator used in paragraph (1) to adjust budgetary resources relating to personnel shall be the percent by which the average of the Bureau of Labor Statistics Employment Cost Index (wages and salaries, private industry workers) for that fiscal year differs from such index for the current year. The inflator used in paragraph (1) to adjust all other budgetary resources shall be the percent by which the average of the estimated gross domestic product chain-type price index for that fiscal year differs from the average of such estimated index for the current year.

(6) CURRENT-YEAR APPROPRIATIONS.—If, for any account, a continuing appropriation is in effect for less than the entire current year, then the current-year amount shall be assumed to equal the amount that would be available if that continuing appropriation covered the entire fiscal year. If law permits the transfer of budget authority among budget accounts in the current year, the current-year level for an account shall reflect transfers accomplished by the submission of, or assumed for the current year in, the President's original budget for the budget year.

(d) UP-TO-DATE CONCEPTS.—In deriving the baseline for any budget year or outyear, current-year amounts shall be calculated using the concepts and definitions that are required for that budget year.



(e) ASSET SALES.—Amounts realized from the sale of an asset shall not be included in estimates under section 251, 252, or 253 if that sale would result in a financial cost to the Federal Government as determined pursuant to scorekeeping guidelines.

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## TITLE 18, UNITED STATES CODE

### PART I—CRIMES

\* \* \* \* \*

#### CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

\* \* \* \* \*

#### § 2702. Voluntary disclosure of customer communications or records

(a) PROHIBITIONS.—Except as provided in subsection (b) or (c)—

(1) a person or entity providing an electronic communication service to the public shall not knowingly **[divulge]** *disclose* to any person or entity the contents of a communication **[while in electronic storage by that service]** *that is in electronic storage with or otherwise stored, held, or maintained by that service*; and

(2) a person or entity providing remote computing service **[to the public]** shall not knowingly **[divulge]** *disclose* to any person or entity the contents of any communication **[which is carried or maintained on that service]** *that is stored, held, or maintained by that service—*

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service;

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing; and

(3) **[a provider of]** *a person or entity providing* remote computing service or electronic communication service to the public shall not knowingly **[divulge]** *disclose* a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.

(b) EXCEPTIONS FOR DISCLOSURE OF COMMUNICATIONS.—A provider described in subsection (a) may **[divulge]** *disclose* the contents of a *wire or electronic communication—*

**[**(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;**]**

(1) *to an originator, addressee, or intended recipient of such communication, to the subscriber or customer on whose behalf the provider stores, holds, or maintains such communication, or to an agent of such addressee, intended recipient, subscriber, or customer;*

(2) as otherwise authorized in section 2517, 2511(2)(a), or 2703 of this title;

[(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;]

(3) *with the lawful consent of the originator, addressee, or intended recipient of such communication, or of the subscriber or customer on whose behalf the provider stores, holds, or maintains such communication;*

(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2258A;

(7) to a law enforcement agency—

(A) if the contents—

(i) were inadvertently obtained by the service provider; and

(ii) appear to pertain to the commission of a crime;

[(B) Repealed. Pub. L. 108-21, title V, Sec. 508(b)(1)(A), Apr. 30, 2003, 117 Stat. 684]

(8) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency; or

(9) to a foreign government pursuant to an order from a foreign government that is subject to an executive agreement that the Attorney General has determined and certified to Congress satisfies section 2523.

(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may [divulge] *disclose* a record or other information pertaining to a subscriber to or customer of such service (not including the contents of *wire or electronic* communications covered by subsection (a)(1) or (a)(2))—

(1) as otherwise authorized in section 2703;

[(2) with the lawful consent of the customer or subscriber;]

(2) *with the lawful consent of the subscriber or customer;*

(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(4) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency;

(5) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2258A;

(6) to any person other than a governmental entity; or

(7) to a foreign government pursuant to an order from a foreign government that is subject to an executive agreement that the Attorney General has determined and certified to Congress satisfies section 2523.

(d) REPORTING OF EMERGENCY DISCLOSURES.—On an annual basis, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report containing—

(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8);

(2) a summary of the basis for disclosure in those instances where—

(A) voluntary disclosures under subsection (b)(8) were made to the Department of Justice; and

(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges; and

(3) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (c)(4).

### **§ 2703. Required disclosure of customer communications or records**

[(a) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

[(b) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

[(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction; or

[(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

[(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or

[(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

[(2) Paragraph (1) is applicable with respect to any wire or electronic communication that is held or maintained on that service—

[(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

[(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

[(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity—

[(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction;

[(B) obtains a court order for such disclosure under subsection (d) of this section;

[(C) has the consent of the subscriber or customer to such disclosure;

[(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or

[(E) seeks information under paragraph (2).

[(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

[(A) name;

[(B) address;

[(C) local and long distance telephone connection records, or records of session times and durations;

[(D) length of service (including start date) and types of service utilized;

[(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

[(F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

[(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.]

(a) *CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.*—*Except as provided in subsections (i) and (j), a governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication that is in electronic storage with or otherwise stored, held, or maintained by that service only if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that—*

*(1) is issued by a court of competent jurisdiction; and*

*(2) may indicate the date by which the provider must make the disclosure to the governmental entity.*

*In the absence of a date on the warrant indicating the date by which the provider must make disclosure to the governmental entity, the provider shall promptly respond to the warrant.*

(b) *CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.*—

*(1) IN GENERAL.*—*Except as provided in subsections (i) and (j), a governmental entity may require the disclosure by a provider of remote computing service of the contents of a wire or electronic communication that is stored, held, or maintained by that service only if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that—*

*(A) is issued by a court of competent jurisdiction; and*

*(B) may indicate the date by which the provider must make the disclosure to the governmental entity.*

*In the absence of a date on the warrant indicating the date by which the provider must make disclosure to the governmental entity, the provider shall promptly respond to the warrant.*

*(2) APPLICABILITY.*—*Paragraph (1) is applicable with respect to any wire or electronic communication that is stored, held, or maintained by the provider—*

*(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communication received by means of electronic transmission from), a subscriber or customer of such remote computing service; and*

*(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.*

(c) *RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.*—

*(1) IN GENERAL.*—*Except as provided in subsections (i) and (j), a governmental entity may require the disclosure by a provider of electronic communication service or remote computing service of a record or other information pertaining to a subscriber to or customer of such service (not including the contents of wire or electronic communications), only—*

(A) if a governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that—

(i) is issued by a court of competent jurisdiction directing the disclosure; and

(ii) may indicate the date by which the provider must make the disclosure to the governmental entity;

(B) if a governmental entity obtains a court order directing the disclosure under subsection (d);

(C) with the lawful consent of the subscriber or customer;

or

(D) as otherwise authorized in paragraph (2).

(2) *SUBSCRIBER OR CUSTOMER INFORMATION.*—A provider of electronic communication service or remote computing service shall, in response to an administrative subpoena authorized by Federal or State statute, a grand jury, trial, or civil discovery subpoena, or any means available under paragraph (1), disclose to a governmental entity the—

(A) name;

(B) address;

(C) local and long distance telephone connection records, or records of session times and durations;

(D) length of service (including start date) and types of service used;

(E) telephone or instrument number or other subscriber or customer number or identity, including any temporarily assigned network address; and

(F) means and source of payment for such service (including any credit card or bank account number), of a subscriber or customer of such service.

(3) *NOTICE NOT REQUIRED.*—A governmental entity that receives records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) *REQUIREMENTS FOR COURT ORDER.*—A court order for disclosure under subsection [(b) or] (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that [the contents of a wire or electronic communication, or] the records or other information [sought,] *sought* are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this [section] *subsection*, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(e) *NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.*—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, statutory authorization, or certification under this chapter.

## (f) REQUIREMENT TO PRESERVE EVIDENCE.—

(1) IN GENERAL.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(2) PERIOD OF RETENTION.—Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

(g) PRESENCE OF OFFICER NOT REQUIRED.—Notwithstanding section 3105 of this title, the presence of an officer shall not be required for service or execution of a search warrant issued in accordance with this chapter requiring disclosure by a provider of electronic communications service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.

## (h) COMITY ANALYSIS AND DISCLOSURE OF INFORMATION REGARDING LEGAL PROCESS SEEKING CONTENTS OF WIRE OR ELECTRONIC COMMUNICATION.—

## (1) DEFINITIONS.—In this subsection—

(A) the term “qualifying foreign government” means a foreign government—

(i) with which the United States has an executive agreement that has entered into force under section 2523; and

(ii) the laws of which provide to electronic communication service providers and remote computing service providers substantive and procedural opportunities similar to those provided under paragraphs (2) and (5); and

(B) the term “United States person” has the meaning given the term in section 2523.

(2) MOTIONS TO QUASH OR MODIFY.—(A) A provider of electronic communication service to the public or remote computing service, including a foreign electronic communication service or remote computing service, that is being required to disclose pursuant to legal process issued under this section the contents of a wire or electronic communication of a subscriber or customer, may file a motion to modify or quash the legal process where the provider reasonably believes—

(i) that the customer or subscriber is not a United States person and does not reside in the United States; and

(ii) that the required disclosure would create a material risk that the provider would violate the laws of a qualifying foreign government. Such a motion shall be filed not later than 14 days after the date on which the provider was served with the legal process, absent agreement with the government or permission from the court to extend the deadline based on an application made within the 14 days. The right to move to quash is without prejudice to any other grounds to move to quash or defenses thereto, but it shall be the sole basis for moving to quash on the grounds of a conflict of law related to a qualifying foreign government.

(B) Upon receipt of a motion filed pursuant to subparagraph (A), the court shall afford the governmental entity that applied for or issued the legal process under this section the opportunity to respond. The court may modify or quash the legal process, as appropriate, only if the court finds that—

- (i) the required disclosure would cause the provider to violate the laws of a qualifying foreign government;
- (ii) based on the totality of the circumstances, the interests of justice dictate that the legal process should be modified or quashed; and
- (iii) the customer or subscriber is not a United States person and does not reside in the United States.

(3) COMITY ANALYSIS.—For purposes of making a determination under paragraph (2)(B)(ii), the court shall take into account, as appropriate—

(A) the interests of the United States, including the investigative interests of the governmental entity seeking to require the disclosure;

(B) the interests of the qualifying foreign government in preventing any prohibited disclosure;

(C) the likelihood, extent, and nature of penalties to the provider or any employees of the provider as a result of inconsistent legal requirements imposed on the provider;

(D) the location and nationality of the subscriber or customer whose communications are being sought, if known, and the nature and extent of the subscriber or customer's connection to the United States, or if the legal process has been sought on behalf of a foreign authority pursuant to section 3512, the nature and extent of the subscriber or customer's connection to the foreign authority's country;

(E) the nature and extent of the provider's ties to and presence in the United States;

(F) the importance to the investigation of the information required to be disclosed;

(G) the likelihood of timely and effective access to the information required to be disclosed through means that would cause less serious negative consequences; and

(H) if the legal process has been sought on behalf of a foreign authority pursuant to section 3512, the investigative interests of the foreign authority making the request for assistance.

(4) DISCLOSURE OBLIGATIONS DURING PENDENCY OF CHALLENGE.—A service provider shall preserve, but not be obligated to produce, information sought during the pendency of a motion brought under this subsection, unless the court finds that immediate production is necessary to prevent an adverse result identified in section 2705(a)(2).

(5) DISCLOSURE TO QUALIFYING FOREIGN GOVERNMENT.—(A) It shall not constitute a violation of a protective order issued under section 2705 for a provider of electronic communication service to the public or remote computing service to disclose to the entity within a qualifying foreign government, designated in an executive agreement under section 2523, the fact of the existence of legal process issued under this section seeking the contents of a wire or electronic communication of a customer



or subscriber who is a national or resident of the qualifying foreign government.

(B) Nothing in this paragraph shall be construed to modify or otherwise affect any other authority to make a motion to modify or quash a protective order issued under section 2705.

(h) *NOTICE.*—*Except as provided in section 2705, a provider of electronic communication service or remote computing service may notify a subscriber or customer of a receipt of a warrant, court order, subpoena, or request under subsection (a), (b), (c), or (d) of this section.*

(i) *RULE OF CONSTRUCTION RELATED TO LEGAL PROCESS.*—*Nothing in this section or in section 2702 shall limit the authority of a governmental entity to use an administrative subpoena authorized by Federal or State statute, a grand jury, trial, or civil discovery subpoena, or a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction to—*

*(1) require an originator, addressee, or intended recipient of a wire or electronic communication to disclose a wire or electronic communication (including the contents of that communication) to the governmental entity;*

*(2) require a person or entity that provides an electronic communication service to the officers, directors, employees, or agents of the person or entity (for the purpose of carrying out their duties) to disclose a wire or electronic communication (including the contents of that communication) to or from the person or entity itself or to or from an officer, director, employee, or agent of the entity to a governmental entity, if the wire or electronic communication is stored, held, or maintained on an electronic communications system owned, operated, or controlled by the person or entity; or*

*(3) require a person or entity that provides a remote computing service or electronic communication service to disclose a wire or electronic communication (including the contents of that communication) that advertises or promotes a product or service and that has been made readily accessible to the general public.*

(j) *RULE OF CONSTRUCTION RELATED TO CONGRESSIONAL SUBPOENAS.*—*Nothing in this section or in section 2702 shall limit the power of inquiry vested in the Congress by article I of the Constitution of the United States, including the authority to compel the production of a wire or electronic communication (including the contents of a wire or electronic communication) that is stored, held, or maintained by a person or entity that provides remote computing service or electronic communication service.*

\* \* \* \* \*

## **[§ 2705. Delayed notice**

**[(a) DELAY OF NOTIFICATION.**—(1) A governmental entity acting under section 2703(b) of this title may—

**[(A)** where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of

the court order may have an adverse result described in paragraph (2) of this subsection; or

[(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

[(2) An adverse result for the purposes of paragraph (1) of this subsection is—

[(A) endangering the life or physical safety of an individual;

[(B) flight from prosecution;

[(C) destruction of or tampering with evidence;

[(D) intimidation of potential witnesses; or

[(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

[(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

[(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

[(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

[(A) states with reasonable specificity the nature of the law enforcement inquiry; and

[(B) informs such customer or subscriber—

[(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

[(ii) that notification of such customer or subscriber was delayed;

[(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

[(iv) which provision of this chapter allowed such delay.

[(6) As used in this subsection, the term “supervisory official” means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency’s headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney’s headquarters or regional office.

[(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or re-

mote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

- [(1) endangering the life or physical safety of an individual;
- [(2) flight from prosecution;
- [(3) destruction of or tampering with evidence;
- [(4) intimidation of potential witnesses; or
- [(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.]]

**§2705. Delayed notice**

(a) *IN GENERAL.*—A governmental entity acting under section 2703 may apply to a court for an order directing a provider of electronic communication service or remote computing service to which a warrant, order, subpoena, or other directive under section 2703 is directed not to notify any other person of the existence of the warrant, order, subpoena, or other directive.

(b) *DETERMINATION.*—A court shall grant a request for an order made under subsection (a) for delayed notification of up to 180 days if the court determines that there is reason to believe that notification of the existence of the warrant, order, subpoena, or other directive will likely result in—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(c) *EXTENSION.*—Upon request by a governmental entity, a court may grant one or more extensions, for periods of up to 180 days each, of an order granted in accordance with subsection (b).

\* \* \* \* \*

## DISSENTING VIEWS

The Bipartisan Budget Act enacted early this year provided relief from unworkable discretionary spending caps. The agreement was supposed to provide the country with stability following a year of shutdowns, last-minute veto threats, and general uncertainty in government. That stability lasted long enough for Congress to pass a bipartisan Omnibus appropriations bill for Fiscal Year (FY) 2018, and then Republican chaos reigned again. The President threatened to veto the bill, unhappy with Congress' large investments in programs to help low- and middle-income Americans and rejection of his campaign-promised border wall.

Even after the President signed the bill, the Administration and Republican leadership in Congress who voted for the Bipartisan Budget Act and the Omnibus bill have continued to attempt to undo those bipartisan agreements. The majority passed H.R. 3, a rescission bill to undo funding and mollify an angry President. We have been told by OMB Director Mick Mulvaney that this was the first of many rescission packages meant to bring spending in line with the President's priorities, ignoring Congressional action that dismissed the President's draconian FY 2018 budget request.

In addition to the unacceptable rescissions proposals, the majority's lack of transparency in allocating the FY 2019 discretionary budget also endangers future bipartisan compromise. The majority abandoned longstanding committee practice to provide Members and the public with a budget blueprint for domestic spending, known as 302(b) allocations. Members were asked to vote on bills without having the full picture on what impact each bill would have on the other bills.

The Financial Services and General Government (FSGG) bill funds critical programs that impact the lives of every American in their capacity as consumers, as investors, and as taxpayers. The bill's jurisdiction covers a diverse range of agencies including those that provide oversight and regulation of the financial and telecommunications industries, manage government buildings and infrastructure projects, and oversee the federal workforce. In addition, funding in this bill supports the operations of the White House, the Federal Judiciary, and the District of Columbia.

While we appreciate the majority's work in assembling the Fiscal Year (FY) 2019 FSGG bill, the sheer number of policy provisions in this bill reflects an unprecedented degree of focus on partisan priorities from the Majority's side of the aisle. The bill's allocation is the same as the 2018 enacted level, \$23.423 billion, which does not adequately meet the growing needs of taxpayers, consumers, and investors.

The bill's most galling feature is its failure to provide any funding for Election Assistance Commission grants. Our election infrastructure is outdated, reliant on antiquated technology, and unable

to adequately defend against future intrusions. For instance, before the 2016 election, Russia targeted the election systems of at least 21 states—including accessing the Illinois voter database. Congress has been repeatedly warned that Russia and other hostile actors will attempt to tamper with the 2018 or 2020 elections. With foreign governments attempting to disrupt and influence our democratic process, now is the time to double down on our efforts to prevent all forms of election hacking. Yet not a single Republican voted for an amendment from Ranking Member Quigley to provide \$380 million, the amount appropriated in FY 2018, to help states fortify and protect election systems.

The bill would also reduce the Community Development Financial Institutions (CDFI) Fund, one of the most significant bipartisan priorities within the subcommittee's jurisdiction. Even after accepting an amendment to increase funding, the bill as reported out of committee is \$34 million below the FY 2018 enacted level. CDFIs have historically generated twelve dollars of financing for every one dollar of appropriated funding. This committee should be doing more to ensure that low-income rural, urban, and Native American communities have access to quality, affordable, and responsible financial services products.

Another particularly irresponsible cut targets the General Services Administration (GSA), which functions as the Federal Government's developer and landlord. The bill decimates funding for the Federal Buildings Fund, forcing the agency to neglect high-priority safety and security projects. This lack of sufficient funding for repair projects further exacerbates an already dire situation. Every dollar that GSA is unable to spend on basic maintenance and repairs leads to a long-term capital liability of four to five dollars in the future.

These reductions are particularly problematic when compared to some of the priorities of the majority. Most notable is the creation of a \$585 million "Fund for America's Kids and Grandkids." This is an obvious attempt to not spend the subcommittee's full allocation under the guise of deficit reduction. Instead of throwing \$585 million in a black hole, the resources provided for this program could have been far better invested in a number of areas that would have actually helped the next generation of Americans.

Even more troubling than inadequate funding for critical priorities is the laundry list of ideological riders and authorizing provisions included in the bill. Titles IX, X, and XI contain 31 different authorizing bills. While several of these are non-controversial and received substantial Democratic support, they do not belong in a spending bill. It is disappointing that Republicans opposed an amendment offered by Rep. Kaptur to strike the extraneous titles.

As in previous years, House Republicans have used the FSGG bill to attempt to weaken campaign finance laws. Riders are included to prevent the Securities and Exchange Commission (SEC) from requiring the disclosure of political contributions and to repeal the Federal Election Commission's prior approval requirement, which places limits on political solicitation. Republicans rejected an amendment from Rep. Cartwright to strike the SEC provision.

Democrats also tried to remove provisions that interfere in women's health decisions. Our Republican colleagues evidently are not satisfied with the restrictions already in place under current law, so this year's FSGG appropriations bill would make it even more difficult for a woman to purchase the health insurance she wants. Ranking Member Lowey offered an amendment to strike this harmful provision and protect a woman's right to make legal and private health choices without government interference, which Republicans opposed.

Several of the objectionable Republican provisions that attack women's right to safe and legal abortion services also continued the Republican tradition of interfering in the local affairs of the District of Columbia. As in past years, the bill contains a variety of provisions that impose limits on the District's ability to govern itself. Rep. Ryan and Rep. Lee offered amendments to protect the District's ability to spend its own funds to enforce its Reproductive Health Non-Discrimination Act and to cover safe and legal abortion under its Medicaid program, respectively. Republicans opposed both of these amendments.

Rep. Aguilar offered an amendment that was rejected to make sure that individuals in the Deferred Action for Childhood Arrivals program, which covers certain non-criminal immigrants who entered the country as children and remain without U.S. citizenship, can lend their talents to the Federal workforce. Despite more Republican broken promises, Democrats will continue to work to help our Dreamers.

Democrats sought to make a number of other improvements to the bill, including an amendment from Rep. McCollum to restore a provision to block pay raises for the Vice President and high ranking political appointees, an amendment from Rep. Serrano to nullify part-time Consumer Financial Protection Bureau Director Mulvaney's firing of the entire Consumer Advisory Board, an amendment from Rep. Wasserman Schultz to remove the prohibition on funds for the Internal Revenue Service to deny tax exemption to churches for engaging in political activity, and an amendment from Reps. Price and Serrano to restore the FCC's Open Internet Order and save net neutrality. All of these amendments were defeated.

We were also disappointed that Republicans opposed an amendment from Rep. Joyce to ensure that financial institutions are not penalized solely because they provide services to entities involved with handling marijuana in states where such activity is legal. After several Republicans implied that they would support an amendment limited to entities handling medical marijuana, Rep. Joyce proposed such an amendment. The Majority encouraged him to withdraw that amendment as well. Democrats will continue to work to provide clarity for financial institutions and others operating legal businesses.

Despite the bill's numerous shortcomings, we are pleased that it would increase funding for the Office of Terrorism and Financial Intelligence, Federal Defender Services, Small Business Administration, and Office of National Drug Control Policy. Additionally, we thank Chairman Graves for directing the United States Postal Service to issue a report on the adequacy of personnel levels, the

use of temporary employees, and consolidation of distribution centers. Inconsistent mail delivery has reached epidemic proportions in many areas, and must be improved.

However, on balance the reductions to critical programs and poison pill riders make this a bill Democrats strongly oppose. It is the latest example of House Republicans following President Trump's lead and turning their backs on hardworking American families.

NITA M. LOWEY.

MIKE QUIGLEY.

