

CFPB TRANSPARENCY AND ACCOUNTABILITY REFORM
ACT

DECEMBER 4, 2023.—Committed to the Committee of the Whole House on the State
of the Union ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2798]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2798) to make reforms to the Bureau of Consumer Financial Protection, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “CFPB Transparency and Accountability Reform Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—COMMISSION OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION ACT

Sec. 101. Short title.

Sec. 102. Making the Bureau an independent agency led by a commission.

Sec. 103. Deeming of name.

Sec. 104. Conforming amendments.

TITLE II—TABS ACT OF 2023

Sec. 201. Short title.

Sec. 202. Bringing the Bureau into the regular appropriations process.

TITLE III—CFPB-IG REFORM ACT OF 2023

Sec. 301. Short title.

Sec. 302. Appointment of Inspector General.

Sec. 303. Requirements for the Inspector General for the Bureau of Consumer Financial Protection.
 Sec. 304. Effective date.

TITLE IV—CFPB DUAL MANDATE AND ECONOMIC ANALYSIS ACT

Sec. 401. Short title.
 Sec. 402. Purpose.
 Sec. 403. Office of Economic Analysis.

TITLE V—TRANSPARENCY IN CFPB COST-BENEFIT ANALYSIS ACT

Sec. 501. Short title.
 Sec. 502. Transparency in cost-benefit analysis.

TITLE VI—MAKING THE CFPB ACCOUNTABLE TO SMALL BUSINESSES ACT OF 2023

Sec. 601. Short title.
 Sec. 602. Rulemaking under Dodd-Frank Wall Street Reform and Consumer Protection Act.
 Sec. 603. Initial regulatory flexibility analysis.
 Sec. 604. Final regulatory flexibility analysis.

TITLE VII—CFPB WHISTLEBLOWER INCENTIVES AND PROTECTION ACT

Sec. 701. Short title.
 Sec. 702. Bureau whistleblower incentives and protection.
 Sec. 703. Amendment to the Consumer Financial Civil Penalty Fund.

TITLE I—COMMISSION OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION ACT

SEC. 101. SHORT TITLE.

This Act may be cited as the “Commission of the Bureau of Consumer Financial Protection Act”

SEC. 102. MAKING THE BUREAU AN INDEPENDENT AGENCY LED BY A COMMISSION.

The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

- (1) in section 1011—
 - (A) in subsection (a)—
 - (i) by striking “in the Federal Reserve System,”; and
 - (ii) by striking “independent bureau” and inserting “independent agency”;
 - (B) by striking subsections (b), (c), and (d);
 - (C) by redesignating subsection (e) as subsection (j);
 - (D) in subsection (j), as so redesignated, by striking “, including in cities in which the Federal reserve banks, or branches of such banks, are located,”; and
 - (E) by inserting after subsection (a) the following new subsections:

“(b) **AUTHORITY TO PRESCRIBE REGULATIONS.**—The commission of the Bureau may prescribe such regulations and issue such orders in accordance with this title as the Bureau may determine to be necessary for carrying out this title and all other laws within the Bureau’s jurisdiction and shall exercise any authorities granted under this title and all other laws within the Bureau’s jurisdiction.

“(c) **COMPOSITION OF THE COMMISSION.**—

“(1) **IN GENERAL.**—The management of the Bureau shall be vested in a commission, which shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate, and at least 2 of whom shall have private sector experience in the provision of consumer financial products and services.

“(2) **STAGGERING.**—The members of the commission shall serve staggered terms, which initially shall be established by the President for terms of 1, 2, 3, 4, and 5 years, respectively.

“(3) **TERMS.**—

“(A) **IN GENERAL.**—Except with respect to the initial staggered terms described under paragraph (2), each member of the commission, including the Chair, shall serve for a term of 5 years.

“(B) **REMOVAL.**—The President may remove any member of the commission for inefficiency, neglect of duty, or malfeasance in office.

“(C) **VACANCIES.**—Any member of the commission appointed to fill a vacancy occurring before the expiration of the term to which that member’s predecessor was appointed (including the Chair) shall be appointed only for the remainder of the term.

“(D) **CONTINUATION OF SERVICE.**—Each member of the commission may continue to serve after the expiration of the term of office to which that member was appointed until a successor has been appointed by the Presi-

dent and confirmed by the Senate, except that a member may not continue to serve more than 1 year after the date on which that member's term would otherwise expire.

“(E) OTHER EMPLOYMENT PROHIBITED.—No member of the commission shall engage in any other business, vocation, or employment.

“(d) AFFILIATION.—Not more than 3 members of the commission shall be members of any one political party.

“(e) CHAIR OF THE COMMISSION.—

“(1) INITIAL CHAIR.—The first member and Chair of the commission shall be the individual serving as Director of the Bureau of Consumer Financial Protection on the day before the date of the enactment of this subsection. Such individual shall serve until the President has appointed all 5 members of the commission in accordance with subsection (c).

“(2) SUBSEQUENT CHAIR.—Of the 5 members appointed in accordance with subsection (c), the President shall appoint 1 member to serve as the subsequent Chair of the commission.

“(3) AUTHORITY.—The Chair shall be the principal executive officer of the commission, and shall exercise all of the executive and administrative functions of the commission, including with respect to—

“(A) the appointment and supervision of personnel employed under the commission (other than personnel employed regularly and full time in the immediate offices of members of the commission other than the Chair);

“(B) the distribution of business among personnel appointed and supervised by the Chair and among administrative units of the commission; and

“(C) the use and expenditure of funds.

“(4) LIMITATION.—In carrying out any of the Chair's functions under the provisions of this subsection, the Chair shall be governed by general policies of the commission and by such regulatory decisions, findings, and determinations as the commission may by law be authorized to make.

“(5) REQUESTS OR ESTIMATES RELATED TO APPROPRIATIONS.—Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the commission may not be submitted by the Chair without the prior approval of the commission.

“(6) DESIGNATION.—The Chair shall be known as both the ‘Chair of the commission’ of the Bureau and the ‘Chair of the Bureau’.

“(f) INITIAL QUORUM ESTABLISHED.—For the 6 month period beginning on the date of enactment of this subsection, the first member and Chair of the commission described under subsection (e)(1) shall constitute a quorum for the transaction of business until the President has appointed all 5 members of the commission in accordance with subsection (c). Following such appointment of 5 members, the quorum requirements of subsection (g) shall apply.

“(g) NO IMPAIRMENT BY REASON OF VACANCIES.—No vacancy in the members of the commission after the establishment of an initial quorum under subsection (f) shall impair the right of the remaining members of the commission to exercise all the powers of the commission. Three members of the commission shall constitute a quorum for the transaction of business, except that if there are only 3 members serving on the commission because of vacancies in the commission, 2 members of the commission shall constitute a quorum for the transaction of business. If there are only 2 members serving on the commission because of vacancies in the commission, 2 members shall constitute a quorum for the 6-month period beginning on the date of the vacancy which caused the number of commission members to decline to 2.

“(h) SEAL.—The Bureau shall have an official seal.

“(i) COMPENSATION.—

“(1) CHAIR.—The Chair shall receive compensation at the rate prescribed for level I of the Executive Schedule under section 5313 of title 5, United States Code.

“(2) OTHER MEMBERS OF THE COMMISSION.—The 4 other members of the commission shall each receive compensation at the rate prescribed for level II of the Executive Schedule under section 5314 of title 5, United States Code.”;

(2) in section 1012(c)—

(A) in the heading, by striking “AUTONOMY OF THE BUREAU” and inserting “COORDINATION WITH THE BOARD OF GOVERNORS”;

(B) by striking “(1) COORDINATION WITH THE BOARD OF GOVERNORS.—”;

and

(C) by striking paragraphs (2), (3), (4), and (5); and

(3) in section 1014(b), by striking “Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.” and inserting “Not fewer than half of all members

shall have private sector experience in the provision of consumer financial products and services.”

SEC. 103. DEEMING OF NAME.

Any reference in a law, regulation, document, paper, or other record of the United States to the Director of the Bureau of Consumer Financial Protection, except in subsection (e)(1) of section 1011 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5491), as added by this Act, shall be deemed a reference to the commission leading and governing the Bureau of Consumer Financial Protection, as described under section 1011 of the Consumer Financial Protection Act of 2010.

SEC. 104. CONFORMING AMENDMENTS.

(a) CONSUMER FINANCIAL PROTECTION ACT OF 2010.—

(1) IN GENERAL.—Except as provided under paragraph (2), the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(A) by striking “Director of the Bureau” each place such term appears, other than where such term is used to refer to a Director other than the Director of the Bureau of Consumer Financial Protection, and inserting “Bureau”;

(B) by striking “Director” each place such term appears and inserting “Bureau”, other than where such term is used to refer to a Director other than the Director of the Bureau of Consumer Financial Protection; and

(C) in section 1002, by striking paragraph (10).

(2) EXCEPTIONS.—

(A) IN GENERAL.—The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended—

(i) in section 1013(c)(3)—

(I) by striking “Assistant Director of the Bureau for” and inserting “Head of the Office of”; and

(II) in subparagraph (B), by striking “Assistant Director” and inserting “Head of the Office”;

(ii) in section 1013(g)(2)—

(I) by striking “ASSISTANT DIRECTOR” and inserting “HEAD OF THE OFFICE”; and

(II) by striking “an assistant director” and inserting “a Head of the Office of Financial Protection for Older Americans”;

(iii) in section 1016(a), by striking “Director of the Bureau” and inserting “Chair of the Bureau”; and

(iv) by striking section 1066.

(B) CLERICAL AMENDMENT.—The table of contents for the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by striking the item relating to section 1066.

(b) DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.—The Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) is amended—

(1) in section 111(b)(1)(D), by striking “Director” and inserting “Chair”; and

(2) in section 1447, by striking “Director of the Bureau” each place such term appears and inserting “Chair of the Bureau”.

(c) ELECTRONIC FUND TRANSFER ACT.—Section 921(a)(4)(C) of the Electronic Fund Transfer Act (15 U.S.C. 1693o–2(a)(4)(C)), as added by section 1075(a)(2) of the Consumer Financial Protection Act of 2010, is amended by striking “Director of the Bureau of Consumer Financial Protection” and inserting “Chair of the Bureau of Consumer Financial Protection”.

(d) EXPEDITED FUNDS AVAILABILITY ACT.—The Expedited Funds Availability Act (12 U.S.C. 4001 et seq.), as amended by section 1086 of the Consumer Financial Protection Act of 2010, is amended by striking “Director of the Bureau” each place such term appears and inserting “Bureau”.

(e) FEDERAL DEPOSIT INSURANCE ACT.—Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812), as amended by section 336(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended by striking “Director of the Consumer Financial Protection Bureau” each place such term appears and inserting “Chair of the Bureau of Consumer Financial Protection”.

(f) FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.—Section 1004(a)(4) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)(4)), as amended by section 1091 of the Consumer Financial Protection Act of 2010, is amended by striking “Director of the Consumer Financial Protection Bureau” and inserting “Chair of the Bureau of Consumer Financial Protection”.

(g) FINANCIAL LITERACY AND EDUCATION IMPROVEMENT ACT.—Section 513 of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702), as amended

by section 1013(d)(5) of the Consumer Financial Protection Act of 2010, is amended by striking “Director” each place such term appears and inserting “Chair”.

(h) HOME MORTGAGE DISCLOSURE ACT OF 1975.—Section 307 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2806 et seq), as amended by section 1094(6) of the Consumer Financial Protection Act of 2010, is amended by striking “Director of the Bureau of Consumer Financial Protection” each place such term appears and inserting “Bureau of Consumer Financial Protection”.

(i) INTERSTATE LAND SALES FULL DISCLOSURE ACT.—The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq), as amended by section 1098A of the Consumer Financial Protection Act of 2010, is amended—

(1) in section 1402—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (12) as paragraphs (1) through (11), respectively;

(2) in section 1403(c)—

(A) by striking “him” and inserting “the Bureau”; and

(B) by striking “he” and inserting “the Bureau”;

(3) in section 1407—

(A) in subsection (c), by striking “he” and inserting “the Bureau”; and

(B) in subsection (e), by striking “Director or anyone designated by him” and inserting “Bureau”;

(4) in section 1411(a)—

(A) by striking “his findings” and inserting “the findings of the Bureau”; and

(B) by striking “his recommendation” and inserting “the recommendation of the Bureau”;

(5) in section 1415—

(A) in subsection (a), by striking “he may, in his discretion,” and inserting “the Bureau may, in the discretion of the Bureau,”;

(B) in subsection (b)—

(i) by striking “in his discretion” each place such term appears and inserting “in the discretion of the Bureau”;

(ii) by striking “he deems” and inserting “the Bureau determines”; and

(iii) by striking “he may deem” and inserting “the Bureau may determine”; and

(C) in subsection (c), by striking “the Director, or any officer designated by him,” and inserting “the Bureau”;

(6) in section 1416(a)—

(A) by striking “Director of the Bureau of Consumer Financial Protection who may delegate any of his” and inserting “Bureau of Consumer Financial Protection, which may delegate any”;

(B) by striking “his administrative” and inserting “administrative”; and

(C) by striking “himself” and inserting “the commission of the Bureau”;

(7) in section 1418a(b)(4), by striking “Secretary’s determination” and inserting “determination of the Bureau”; and

(8) by striking “Director” each place such term appears and inserting “Bureau”.

(j) REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.—Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604), as amended by section 1450 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended—

(1) by striking “The Director of the Bureau of Consumer Financial Protection (hereafter in this section referred to as the ‘Director’)” and inserting “The Bureau of Consumer Financial Protection (hereafter in this section referred to as the ‘Bureau’)”; and

(2) by striking “Director” each place such term appears and inserting “Bureau”.

(k) S.A.F.E. MORTGAGE LICENSING ACT OF 2008.—The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.), as amended by section 1100 of the Consumer Financial Protection Act of 2010, is amended—

(1) by striking “Director” each place such term appears in headings and text and inserting “Bureau of Consumer Financial Protection”; and

(2) in section 1503, by striking paragraph (10).

(l) TITLE 44, UNITED STATES CODE.—Section 3513(c) of title 44, United States Code, as amended by section 1100D(b) of the Consumer Financial Protection Act of 2010, is amended by striking “Director of the”.

TITLE II—TABS ACT OF 2023

SEC. 201. SHORT TITLE.

This title may be cited as the “Taking Account of Bureaucrats’ Spending Act of 2023” or the “TABS Act of 2023”.

SEC. 202. BRINGING THE BUREAU INTO THE REGULAR APPROPRIATIONS PROCESS.

(a) IN GENERAL.—Section 1017 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5497) is amended—

(1) in subsection (a)—

(A) by amending the heading of such subsection to read as follows: “BUDGET, FINANCIAL MANAGEMENT, AND AUDIT.—”;

(B) by striking paragraphs (1), (2), and (3);

(C) by redesignating paragraphs (4) and (5) as paragraphs (1) and (2), respectively; and

(D) by striking subparagraphs (E) and (F) of paragraph (1), as so redesignated;

(2) by striking subsections (b) and (c);

(3) by redesignating subsections (d) and (e) as subsections (b) and (c), respectively; and

(4) in subsection (c), as so redesignated—

(A) by striking paragraphs (1), (2), and (3) and inserting the following:

“(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Bureau \$650,000,000 for fiscal year 2024 to carry out the authorities of the Bureau.”; and

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

(b) TRANSFER OF AMOUNTS FROM CIVIL PENALTY FUND.—On the date that funds are appropriated pursuant to section 1017(c)(1) of the Consumer Financial Protection Act of 2010 (as amended by subsection (a)) for fiscal year 2024, there is transferred an equal amount of funds from the Consumer Financial Civil Penalty Fund to the general fund of the Treasury.

TITLE III—CFPB-IG REFORM ACT OF 2023

SEC. 301. SHORT TITLE.

This title may be cited as the “Bureau of Consumer Financial Protection-Inspector General Reform Act of 2023” or the “CFPB-IG Reform Act of 2023”.

SEC. 302. APPOINTMENT OF INSPECTOR GENERAL.

Chapter 4 of title 5, United States Code, is amended—

(1) in section 401—

(A) in paragraph (1), by inserting “the Bureau of Consumer Financial Protection,” after “the Export-Import Bank of the United States,”; and

(B) in paragraph (3), by inserting “the Chair of the Bureau of Consumer Financial Protection;” after “the President of the Export-Import Bank of the United States;”;

(2) in section 415—

(A) in subsection (a)(1)(A), by striking “and the Bureau of Consumer Financial Protection”;

(B) in subsection (c), by striking “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.”; and

(C) in subsection (g)(3), by striking “and the Bureau of Consumer Financial Protection”.

SEC. 303. REQUIREMENTS FOR THE INSPECTOR GENERAL FOR THE BUREAU OF CONSUMER FINANCIAL PROTECTION.

(a) ESTABLISHMENT.—Section 1011 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5491), as amended by section 102(1), is further amended by adding at the end the following:

“(k) INSPECTOR GENERAL.—There is established the position of the Inspector General.”.

(b) HEARINGS.—Section 1016 of such Act is amended by inserting after subsection (c) the following:

“(d) ADDITIONAL REQUIREMENT FOR INSPECTOR GENERAL.—On a separate occasion from that described in subsection (a), the Inspector General of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b) and the reports required under section 405 of title 5, United States Code.”

(c) PARTICIPATION IN THE COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—Section 989E(a)(1) of such Act is amended by adding at the end the following:

“(J) The Bureau of Consumer Financial Protection.”

(d) DEADLINE FOR APPOINTMENT.—Not later than 60 days after the date of the enactment of this Act, the President shall appoint an Inspector General for the Bureau of Consumer Financial Protection in accordance with section 403 of title 5, United States Code.

SEC. 304. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this title shall take effect on the date on which the first Inspector General of the Bureau of Consumer Financial Protection is confirmed by the Senate.

(b) APPOINTMENT.—The President may appoint, and the Senate may confirm, an Inspector General of the Bureau of Consumer Financial Protection before the amendments made by this title take effect.

(c) TRANSITION.—The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall, upon the date on which the first Inspector General of the Bureau of Consumer Financial Protection is confirmed by the Senate, become the Inspector General of the Board of Governors of the Federal Reserve System.

TITLE IV—CFPB DUAL MANDATE AND ECONOMIC ANALYSIS ACT

SEC. 401. SHORT TITLE.

This title may be cited as the “CFPB Dual Mandate and Economic Analysis Act”.

SEC. 402. PURPOSE.

Section 1021(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5511(a)) is amended—

(1) by striking “fair, transparent, and competitive” and inserting: “fair and transparent”; and

(2) by adding at the end the following: “In addition, the Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of strengthening private sector participation in markets, without Government interference or subsidies, to increase competition and enhance consumer choice.”

SEC. 403. OFFICE OF ECONOMIC ANALYSIS.

(a) IN GENERAL.—Section 1013 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493) is amended by adding at the end the following:

“(i) OFFICE OF ECONOMIC ANALYSIS.—

(1) ESTABLISHMENT.—The Bureau shall establish an Office of Economic Analysis.

(2) REVIEW AND ASSESSMENT OF PROPOSED GUIDANCE, ORDERS, RULES, AND REGULATIONS.—The Office of Economic Analysis shall—

“(A) review all proposed guidance, orders, rules, and regulations of the Bureau, including carrying out the determinations and assessments with respect to notices of proposed rulemaking described under section 1022(b)(7);

“(B) assess the impact of such guidance, orders, rules, and regulations on consumer choice, price, and access to credit products; and

“(C) publish a report on such reviews and assessments in the Federal Register.

(3) MEASURING EXISTING GUIDANCE, ORDERS, RULES, AND REGULATIONS.—The Office of Economic Analysis shall—

“(A) review each guidance, order, rule, and regulation issued by the Bureau after 1, 2, 5, and 10 years;

“(B) measure each such guidance, order, rule, or regulation’s success in solving the problem that the guidance, order, rule, or regulation was intended to solve when issued; and

“(C) publish a report on such review and measurement in the Federal Register.”.

(b) CONSIDERATION OF REVIEW AND ASSESSMENT; RULEMAKING REQUIREMENTS.—Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)) is amended by adding at the end the following:

“(5) CONSIDERATION OF REVIEW AND ASSESSMENT BY THE OFFICE OF ECONOMIC ANALYSIS.—

“(A) IN GENERAL.—Before issuing any guidance, order, rule, or regulation, the commissioners of the Bureau shall consider the review and assessment of such guidance, order, rule, or regulation carried out by the Office of Economic Analysis.

“(B) NOTICE OF DISAGREEMENT.—If any commissioner of the Bureau disagrees with any part of a review and assessment described under subparagraph (A) with respect to any guidance, order, rule, or regulation, the commissioner shall accompany any such guidance, order, rule, or regulation with a statement explaining why the commissioner so disagrees.

“(6) IDENTIFICATION OF PROBLEMS AND METRICS FOR JUDGING SUCCESS.—

“(A) IN GENERAL.—The Bureau shall, in each proposed rulemaking of the Bureau—

“(i) identify the problem that the particular rule or regulations is seeking to solve; and

“(ii) specify the metrics by which the Bureau will measure the success of the rule or regulation in solving such problem.

“(B) REQUIRED METRICS.—The metrics specified under subparagraph (A)(ii) shall include a measurement of changes to consumer access to, and cost of, consumer financial products and services.”.

TITLE V—TRANSPARENCY IN CFPB COST-BENEFIT ANALYSIS ACT

SEC. 501. SHORT TITLE.

This title may be cited as the “Transparency in CFPB Cost-Benefit Analysis Act”.

SEC. 502. TRANSPARENCY IN COST-BENEFIT ANALYSIS.

Section 1022(b) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5512(b)), as amended by section 403, is further amended by adding at the end the following:

“(7) ADDITIONAL RULEMAKING REQUIREMENTS.—

“(A) IN GENERAL.—Each notice of proposed rulemaking issued by the Bureau shall be published in its entirety in the Federal Register and shall include—

“(i) a statement of the need for the proposed regulation;

“(ii) an examination of why the Bureau must undertake the proposed regulation and why the private market, State, local, or tribal authorities cannot adequately address the problem;

“(iii) an examination by the Office of Economic Analysis of whether the proposed regulation is duplicative, inconsistent, or incompatible with other Federal regulations and orders;

“(iv) if the proposed regulation is found by the Office of Economic Analysis to be duplicative, inconsistent, or incompatible with other Federal regulations and orders, a discussion of—

“(I) why the proposed regulation is justified;

“(II) how the proposed regulation can coexist with the existing regulations; and

“(III) how the Bureau plans to reduce the regulatory burden associated with the duplicative, inconsistent, or incompatible proposed regulation;

“(v) a quantitative and qualitative assessment by the Office of Economic Analysis of all anticipated direct and indirect costs and benefits of the proposed regulation, including—

“(I) compliance costs for all regulated entities, including small businesses;

“(II) effects on economic activity, efficiency, competition, and capital formation;

“(III) regulatory and administrative costs of implementation; and

“(IV) costs imposed on State, local, and tribal entities;

“(vi) an identification of reasonable alternatives to the regulation, including modification of an existing regulation;

“(vii) an analysis by the Office of Economic Analysis of the costs and benefits, both quantitative and qualitative, of any alternative identified pursuant to clause (vi);

“(viii) if the Office of Economic Analysis determines the proposed regulation would increase costs for small businesses, then the Bureau shall consult the Office of Advocacy within the Small Business Administration to determine ways to minimize the effect of direct and indirect costs imposed on small businesses by the proposed regulation;

“(ix) if the Office of Economic Analysis determines that quantified net benefits of the proposed action do not outweigh the quantified net benefits of the alternatives, a justification of the regulation;

“(x) if quantified benefits identified pursuant to clause (v) by the Office of Economic Analysis do not outweigh the quantified costs of the regulation, a justification of the regulation;

“(xi) an assessment by the Office of Economic Analysis of how the burden imposed by the regulation will be distributed, including whether consumers or small businesses will be disproportionately burdened; and

“(xii) when feasible, and using appropriate statistical techniques, a probability distribution prepared by the Office of Economic Analysis of the relevant outcomes of the proposed regulation.

“(B) ASSUMPTIONS AND STUDIES USED.—With respect to the information required to be included under subparagraph (A) in a notice of proposed rulemaking, the Bureau shall include in such notice—

“(i) a discussion of underlying assumptions used as a basis for such information; and

“(ii) a description of any studies or data used in preparing such information, and whether such studies were peer-reviewed.”.

TITLE VI—MAKING THE CFPB ACCOUNTABLE TO SMALL BUSINESSES ACT OF 2023

SEC. 601. SHORT TITLE.

This title may be cited as the “Making the CFPB Accountable to Small Businesses Act of 2023”.

SEC. 602. RULEMAKING UNDER DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.

Section 1022(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5512(b)(2)(A)) is amended—

(1) in clause (i), by striking “and” at the end;

(2) in clause (ii), by striking the semicolon at the end and inserting “; and”; and

(3) by adding at the end the following:

“(iii) the impact of proposed rules on small entities, in accordance with section 609 of title 5, United States Code;”.

SEC. 603. INITIAL REGULATORY FLEXIBILITY ANALYSIS.

Section 603(d)(1) of title 5, United States Code, is amended—

(1) in subparagraph (B), by striking “and” at the end;

(2) in subparagraph (C), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(D) with respect to the Bureau of Consumer Financial Protection, if the Bureau does not adopt any alternatives described in paragraphs (1) through (4) of subsection (c), a detailed justification of the Bureau’s determination that the relative size and resources of small entities should have no bearing on the rule, supported by factual, policy and legal reasons.”.

SEC. 604. FINAL REGULATORY FLEXIBILITY ANALYSIS.

Section 604(a) of title 5, United States Code, is amended by amending the second paragraph (6) to read as follows:

“(7) with respect to the Bureau of Consumer Financial Protection, a description of the steps the Bureau has taken to minimize any additional cost of credit for small entities and, where no significant alternatives for small entities was

adopted, a detailed justification of the Bureau's determination that the relative size and resources of small entities should have no bearing on the rule, supported by factual, policy and legal reasons.”.

TITLE VII—CFPB WHISTLEBLOWER INCENTIVES AND PROTECTION ACT

SEC. 701. SHORT TITLE.

This title may be cited as the “CFPB Whistleblower Incentives and Protection Act”.

SEC. 702. BUREAU WHISTLEBLOWER INCENTIVES AND PROTECTION.

(a) **IN GENERAL.**—The Consumer Financial Protection Act of 2010 (12 U.S.C. 5481 et seq.) is amended by inserting after section 1017 the following:

“SEC. 1017A. WHISTLEBLOWER INCENTIVES AND PROTECTION.

“(a) **DEFINITIONS.**—In this section:

“(1) **ADMINISTRATIVE PROCEEDING OR COURT ACTION.**—The term ‘administrative proceeding or court action’ means any judicial or administrative action brought by the Bureau that results in monetary sanctions exceeding \$1,000,000.

“(2) **FUND.**—The term ‘Fund’ means the ‘Consumer Financial Civil Penalty Fund’ established under section 1017(b)(1).

“(3) **MONETARY SANCTIONS.**—The term ‘monetary sanctions’, when used with respect to any administrative proceeding or court action means any monies, including penalties, disgorgement, restitution, or interest, ordered to be paid or other amounts of relief obtained under section 1055(a)(2).

“(4) **ORIGINAL INFORMATION.**—The term ‘original information’ means information that—

“(A) is derived from the independent knowledge or analysis of a whistleblower;

“(B) is not known to the Bureau from any other source, unless the whistleblower is the original source of the information;

“(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, or from the news media, unless the whistleblower is a source of the information; and

“(D) is not exclusively derived from an allegation made in an audit, examination, or investigation.

“(5) **SUCCESSFUL ENFORCEMENT.**—The term ‘successful enforcement’, when used with respect to any administrative proceeding or court action, includes any settlement of such action.

“(6) **WHISTLEBLOWER.**—The term ‘whistleblower’ means any individual, or 2 or more individuals acting jointly, who provides original information relating to a violation of Federal consumer financial law, consistent with any rule issued by the Bureau under this section.

“(b) **AWARDS.**—

“(1) **IN GENERAL.**—In any administrative proceeding or court action the Bureau, subject to rules prescribed by the Bureau and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information that led to the successful enforcement of the administrative proceeding or court action in an aggregate amount equal to—

“(A) not less than the greater of—

“(i) 10 percent, in total, of monetary sanctions imposed and collected in the administrative proceeding or court action; or

“(ii) \$50,000; and

“(B) not more than 30 percent, in total, of such monetary sanctions.

“(2) **PAYMENT OF AWARDS.**—Any amount paid under paragraph (1) shall be paid from the Fund.

“(3) **AWARD MAXIMUM.**—Notwithstanding any other provision in this section, the maximum award to any single whistleblower is limited to \$5,000,000.

“(c) **DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.**—

“(1) **DETERMINATION OF AMOUNT OF AWARD.**—

“(A) **DISCRETION.**—The determination of the percentage amount of an award made under subsection (b) shall be in the discretion of the Bureau.

“(B) **CRITERIA.**—In determining the percentage amount of an award made under subsection (b), the Bureau shall take into consideration—

“(i) the significance of the information provided by the whistleblower to the successful enforcement of the administrative proceeding or court action;

“(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in an administrative proceeding or court action;

“(iii) the programmatic interest of the Bureau in deterring violations of Federal consumer financial law (including applicable rules) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and

“(iv) such additional relevant factors as the Bureau may establish by rule.

“(2) DENIAL OF AWARD.—No award under subsection (b) may be made—

“(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Bureau, a member, officer, or employee of an entity described in subclauses (I) through (V) of subsection (h)(1)(C)(i);

“(B) to any whistleblower who is convicted of a criminal violation related to the administrative proceeding or court action for which the whistleblower otherwise could receive an award under this section;

“(C) to any whistleblower who is found to be liable for the conduct in the administrative proceeding or court action, or a related action, for which the whistleblower otherwise could receive an award under this section;

“(D) to any whistleblower who planned and initiated the conduct at issue in the administrative proceeding or court action for which the whistleblower otherwise could receive an award under this section;

“(E) to any whistleblower who submits information to the Bureau that is based on the facts underlying the administrative proceeding or court action previously submitted by another whistleblower;

“(F) to any whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; and

“(G) to any whistleblower who fails to submit information to the Bureau in such form as the Bureau may, by rule, require.

“(d) REPRESENTATION.—

“(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

“(2) REQUIRED REPRESENTATION.—

“(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower submits the information upon which the claim is based.

“(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Bureau may require, directly or through counsel of the whistleblower.

“(e) NO CONTRACT NECESSARY.—No contract or other agreement with the Bureau is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Bureau by rule.

“(f) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Bureau. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Bureau. The court shall review the determination made by the Bureau in accordance with section 706 of title 5, United States Code.

“(g) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Bureau shall transmit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the Bureau’s whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year.

“(h) PROTECTION OF WHISTLEBLOWERS.—

“(1) CONFIDENTIALITY.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the Bureau and any officer or employee of the Bureau, may not disclose any information, including information provided by a whistleblower to the Bureau, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Bureau or any entity described in subparagraph (C). For purposes of section

552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

“(B) EFFECT.—Nothing in this paragraph is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

“(C) AVAILABILITY TO GOVERNMENT AGENCIES.—

“(i) IN GENERAL.—Without the loss of its status as confidential in the hands of the Bureau, all information referred to in subparagraph (A) may, in the discretion of the Bureau, when determined by the Bureau to be necessary or appropriate, be made available to—

“(I) the Department of Justice;

“(II) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

“(III) a State attorney general in connection with any criminal investigation;

“(IV) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and

“(V) a foreign regulatory authority.

“(ii) MAINTENANCE OF INFORMATION.—Each of the entities, agencies, or persons described in clause (i) shall maintain information described in that clause as confidential, in accordance with the requirements in subparagraph (A).

“(2) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under section 1057, any other Federal or State law, or under any collective bargaining agreement.

“(i) RULEMAKING AUTHORITY.—The Bureau shall have the authority to issue such rules as may be necessary or appropriate to implement the provisions of this section.

“(j) ORIGINAL INFORMATION.—Information submitted to the Bureau by a whistleblower in accordance with rules implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules, provided such information was submitted after the date of enactment of this section.”

(b) CLERICAL AMENDMENT.—The table of contents under section 1(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by inserting after the item relating to section 1017 the following:

“Sec. 1017A. Whistleblower incentives and protection.”

SEC. 703. AMENDMENT TO THE CONSUMER FINANCIAL CIVIL PENALTY FUND.

Subsection (b)(2) of section 1017 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5497), as redesignated by section 202(3), is further amended by striking “under the Federal consumer financial laws.” and inserting “under the Federal consumer financial laws and for awards authorized under section 1017A.”

PURPOSE AND SUMMARY

Introduced on April 24, 2023, by Representative Andy Barr, H.R. 2798, the *CFPB Transparency and Accountability Reform Act*, would reform the Bureau of Consumer Financial Protection (CFPB) to make it more transparent and accountable to Congress and the American people. The bill would change the leadership structure of the CFPB from a single Director to a bipartisan, five-member commission. The bill would also bring the CFPB under the regular appropriations process and create a dedicated Inspector General for the CFPB to ensure transparency and accountability, and to prevent waste, fraud, and abuse. The bill would create a new Office of Economic Analysis and require cost-benefit analysis for all guidance, orders, rules, or regulations of the CFPB. The bill would also require all proposed rules to consider the impact on small businesses. Finally, the bill would provide awards to whistleblowers who report original information relating to a violation of consumer financial law resulting in certain monetary sanctions exceeding \$1 million.

H.R. 2798 contains parts of the following individual bills:

- H.R. 1410, the *Consumer Financial Protection Commission Act*, introduced by Representative Blaine Luetkemeyer;
- H.R. 1382, the *Taking Account of Bureaucrats' Spending (TABS) Act*, introduced by Representative Andy Barr;
- H.R. 1411, the *CFPB-IG Reform Act*, introduced by Representative Blaine Luetkemeyer;
- H.R. 2489, the *CFPB Dual Mandate and Economic Analysis Act*, introduced by Representative Tom Emmer;
- H.R. 1313, the *Transparency in CFPB Cost-Benefit Analysis Act*, introduced by Representative Alex Mooney;
- H.R. 1749, the *Making the CFPB Accountable to Small Businesses Act*, introduced by Representative Scott Fitzgerald; and
- H.R. 2490, the *CFPB Whistleblower Incentives and Protection Act*, introduced by Representative Tom Emmer.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2798 would promote transparency and accountability at the CFPB. The Dodd-Frank Act established the CFPB as an independent bureau. Unlike other federal financial agencies, the CFPB does not have an executive board, does not have an independent Inspector General, and does not allow for meaningful oversight of the director. The CFPB is led by a single director who is appointed by the President and confirmed by the Senate for a term of five years. The Dodd-Frank Act stated the President may only remove the director from office for cause, i.e., “inefficiency, neglect of duty, or malfeasance in office.” In 2020, the Supreme Court held, in *Seila Law LLC v. Consumer Financial Protection Bureau*, that the CFPB’s leadership structure is unconstitutional as a violation of the separation of powers.

Currently, the CFPB operates outside of the annual Congressional appropriations process. Instead, it receives funding through direct transfers from the Federal Reserve (Fed) which also operates outside of the appropriations process. The Fed does not have nor does it exercise authority over the CFPB or its budget. The CFPB director is required only to submit a letter to the Federal Reserve Board each quarter certifying the amount of funds that are “reasonably necessary” for carrying out the authorities of the Bureau. The Federal Reserve then transfers the requested amount. The CFPB’s funding mechanism significantly differs than that of other financial markets regulators, including the Federal Trade Commission, the Commodity Futures Trading Commission, or the Securities and Exchange Commission, which receive Congressional appropriations. It also differs from Federal banking agencies, which operate based on fees and assessments from regulated entities. Federal Reserve fee receipts on assessments it levies on financial institutions are deposited into the general fund of the U.S. Treasury and are not used to fund the CFPB. This process affords very little Congressional oversight of the CFPB’s budget or insight into uses of federal taxpayer resources by the CFPB.

Moreover, the actions of the CFPB are highly and solely dependent on the persuasion and normative beliefs of the director, which changes every five years. Under current leadership, the CFPB has adopted a tactic of “regulating without rules.” Instead of following the law, the CFPB has, in effect, increasingly “regulated” through enforcement actions, blog posts, speeches, or press releases. Not

only does this method subject the CFPB to legal challenges from covered industry participants, but it also further entrenches financial services industry uncertainty and increases costs associated with the provision of financial products and services when CFPB's policy priorities dramatically shift under each change in leadership.

Relatedly, by strengthening the analysis underlying each proposed regulation, the CFPB can ensure lasting policy directives and adhere to its statutory purpose of providing regulatory clarity to financial services markets and facilitating access and options for consumers. H.R. 2798 will provide Congress with the necessary tools to ensure that CFPB is an accountable, appropriately funded, and transparent agency.

HEARING

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.R. 2798: The Subcommittee on Financial Institutions and Monetary Policy of the Committee on Financial Services held a hearing on March 9, 2023, "Consumer Financial Protection Bureau: Ripe for Reform."

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 26, 2023, and ordered H.R. 2798 to be reported favorably to the House as amended by a recorded vote of 26 ayes to 23 nays (Record vote no. FC-57), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Barr by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 2798 was ordered reported favorably to the House as amended by a recorded vote of 26 ayes to 23 nays (Record vote no. FC-57), a quorum being present.

An amendment offered by Mr. Lynch, no. 4, was not agreed to by a recorded vote of 21 ayes to 28 nays (Record vote no. FC-51).

An amendment offered by Ms. Beatty, no. 5, was not agreed to by a recorded vote of 21 ayes and 28 nays (Record vote no. FC-52).

An amendment offered by Ms. Waters, no. 6, was not agreed to by a recorded vote of 21 ayes to 28 nays (Record vote no. FC-53).

An amendment offered by Mr. Green, no. 7, was not agreed to by a recorded vote of 21 ayes to 28 nays (Record vote no. FC-54).

An amendment offered by Mr. Cleaver, no. 8, was not agreed to by a recorded vote of 21 ayes to 28 nays (Record vote no. FC-55).

An amendment offered by Ms. Williams, no. 9, was not agreed to by a recorded vote of 20 ayes to 28 nays (Record vote no. FC-56).

Record vote no. FC- 57

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms. Waters	—	X	—
Mr. Hill	X	—	—	Mrs. Velizquez	—	X	—
Mr. Lucas	X	—	—	Mr. Sherman	—	X	—
Mr. Sessions	X	—	—	Mr. Meeks	—	—	—
Mr. Posey	—	—	—	Mr. Scott	—	X	—
Mr. Luetkemeyer	X	—	—	Mr. Lynch	—	X	—
Mr. Huizenga	X	—	—	Mr. Green	—	X	—
Mrs. Wagner	X	—	—	Mr. Cleaver	—	X	—
Mr. Barr	X	—	—	Mr. Himes	—	X	—
Mr. Williams (TX)	X	—	—	Mr. Foster	—	X	—
Mr. Emmer	X	—	—	Mrs. Beatty	—	—	—
Mr. Loudermilk	X	—	—	Mr. Vargas	—	X	—
Mr. Mooney	X	—	—	Mr. Gottheimer	—	X	—
Mr. Davidson	X	—	—	Mr. Gonzalez	—	X	—
Mr. Rose	X	—	—	Mr. Casten	—	X	—
Mr. Steil	X	—	—	Ms. Pressley	—	X	—
Mr. Timmons	X	—	—	Mr. Horsford	—	X	—
Mr. Norman	—	X	—	Ms. Thib	—	X	—
Mr. Meuser	X	—	—	Mr. Torres	—	X	—
Mr. Fitzgerald	X	—	—	Ms. Garcia	—	X	—
Mr. Garbarino	X	—	—	Ms. Williams (GA)	—	X	—
Mrs. Kim	X	—	—	Mr. Nickel	—	X	—
Mr. Donalds	—	X	—	Ms. Pettersen	—	X	—
Mr. Flood	X	—	—				
Mr. Lawler	X	—	—				
Mr. Nunn	X	—	—				
Ms. De La Cruz	X	—	—				
Mrs. Houchin	X	—	—				
Mr. Ogles	X	—	—				

Record vote no. FC- 51

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	—	X	—	Ms. Waters	X	—	—
Mr. Hill	—	X	—	Mrs. Velizquez	X	—	—
Mr. Lucas	—	X	—	Mr. Sherman	X	—	—
Mr. Sessions	—	X	—	Mr. Meeks	—	—	—
Mr. Posey	—	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	—	X	—	Mr. Lynch	X	—	—
Mr. Huizenga	—	X	—	Mr. Green	X	—	—
Mrs. Wagner	—	X	—	Mr. Cleaver	X	—	—
Mr. Barr	—	X	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	X	—	Mr. Foster	X	—	—
Mr. Emmer	—	X	—	Mrs. Beatty	—	—	—
Mr. Loudermilk	—	X	—	Mr. Vargas	X	—	—
Mr. Mooney	—	X	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	X	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	X	—	Mr. Casten	X	—	—
Mr. Steil	—	X	—	Ms. Pressley	X	—	—
Mr. Timmons	—	X	—	Mr. Horsford	X	—	—
Mr. Norman	—	X	—	Ms. Thib	X	—	—
Mr. Meuser	—	X	—	Mr. Torres	X	—	—
Mr. Fitzgerald	—	X	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	X	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	X	—	Mr. Nickel	X	—	—
Mr. Donalds	—	X	—	Ms. Pettersen	X	—	—
Mr. Flood	—	X	—				
Mr. Lawler	—	X	—				
Mr. Nunn	—	X	—				
Ms. De La Cruz	—	X	—				
Mrs. Houchin	—	X	—				
Mr. Ogles	—	X	—				

Record vote no. FC- 52

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	—	X	—	Ms. Waters	X	—	—
Mr. Hill	—	X	—	Mrs. Velizquez	X	—	—
Mr. Lucas	—	X	—	Mr. Sherman	X	—	—
Mr. Sessions	—	X	—	Mr. Meeks	—	—	—
Mr. Posey	—	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	—	X	—	Mr. Lynch	X	—	—
Mr. Huizenga	—	X	—	Mr. Green	X	—	—
Mrs. Wagner	—	X	—	Mr. Cleaver	X	—	—
Mr. Barr	—	X	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	X	—	Mr. Foster	X	—	—
Mr. Emmer	—	X	—	Mrs. Beatty	—	—	—
Mr. Loudermilk	—	X	—	Mr. Vargas	X	—	—
Mr. Mooney	—	X	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	X	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	X	—	Mr. Casten	X	—	—
Mr. Steil	—	X	—	Ms. Pressley	X	—	—
Mr. Timmons	—	X	—	Mr. Horsford	X	—	—
Mr. Norman	—	X	—	Ms. Thib	X	—	—
Mr. Meuser	—	X	—	Mr. Torres	X	—	—
Mr. Fitzgerald	—	X	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	X	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	X	—	Mr. Nickel	X	—	—
Mr. Donalds	—	X	—	Ms. Pettersen	X	—	—
Mr. Flood	—	X	—				
Mr. Lawler	—	X	—				
Mr. Nunn	—	X	—				
Ms. De La Cruz	—	X	—				
Mrs. Houchin	—	X	—				
Mr. Ogles	—	X	—				

Record vote no. FC- 53

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	—	X	—	Ms. Waters	X	—	—
Mr. Hill	—	X	—	Mrs. Velizquez	X	—	—
Mr. Lucas	—	X	—	Mr. Sherman	X	—	—
Mr. Sessions	—	X	—	Mr. Meeks	—	—	—
Mr. Posey	—	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	—	X	—	Mr. Lynch	X	—	—
Mr. Huizenga	—	X	—	Mr. Green	X	—	—
Mrs. Wagner	—	X	—	Mr. Cleaver	X	—	—
Mr. Barr	—	X	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	X	—	Mr. Foster	X	—	—
Mr. Emmer	—	X	—	Mrs. Beatty	—	—	—
Mr. Loudermilk	—	X	—	Mr. Vargas	X	—	—
Mr. Mooney	—	X	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	X	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	X	—	Mr. Casten	X	—	—
Mr. Steil	—	X	—	Ms. Pressley	X	—	—
Mr. Timmons	—	X	—	Mr. Horsford	X	—	—
Mr. Norman	—	X	—	Ms. Thib	X	—	—
Mr. Meuser	—	X	—	Mr. Torres	X	—	—
Mr. Fitzgerald	—	X	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	X	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	X	—	Mr. Nickel	X	—	—
Mr. Donalds	—	X	—	Ms. Pettersen	X	—	—
Mr. Flood	—	X	—				
Mr. Lawler	—	X	—				
Mr. Nunn	—	X	—				
Ms. De La Cruz	—	X	—				
Mrs. Houchin	—	X	—				
Mr. Ogles	—	X	—				

Record vote no. FC- 54

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	—	X	—	Ms. Waters	X	—	—
Mr. Hill	—	X	—	Mrs. Velizquez	X	—	—
Mr. Lucas	—	X	—	Mr. Sherman	X	—	—
Mr. Sessions	—	X	—	Mr. Meeks	—	—	—
Mr. Posey	—	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	—	X	—	Mr. Lynch	X	—	—
Mr. Huizenga	—	X	—	Mr. Green	X	—	—
Mrs. Wagner	—	X	—	Mr. Cleaver	X	—	—
Mr. Barr	—	X	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	X	—	Mr. Foster	X	—	—
Mr. Emmer	—	X	—	Mrs. Beatty	—	—	—
Mr. Loudermilk	—	X	—	Mr. Vargas	X	—	—
Mr. Mooney	—	X	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	X	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	X	—	Mr. Casten	X	—	—
Mr. Steil	—	X	—	Ms. Pressley	X	—	—
Mr. Timmons	—	X	—	Mr. Horsford	X	—	—
Mr. Norman	—	X	—	Ms. Thib	X	—	—
Mr. Meuser	—	X	—	Mr. Torres	X	—	—
Mr. Fitzgerald	—	X	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	X	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	X	—	Mr. Nickel	X	—	—
Mr. Donalds	—	X	—	Ms. Pettersen	X	—	—
Mr. Flood	—	X	—				
Mr. Lawler	—	X	—				
Mr. Nunn	—	X	—				
Ms. De La Cruz	—	X	—				
Mrs. Houchin	—	X	—				
Mr. Ogles	—	X	—				

Record vote no. FC- 55

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	—	X	—	Ms. Waters	X	—	—
Mr. Hill	—	X	—	Mrs. Velizquez	X	—	—
Mr. Lucas	—	X	—	Mr. Sherman	X	—	—
Mr. Sessions	—	X	—	Mr. Meeks	—	—	—
Mr. Posey	—	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	—	X	—	Mr. Lynch	X	—	—
Mr. Huizenga	—	X	—	Mr. Green	X	—	—
Mrs. Wagner	—	X	—	Mr. Cleaver	X	—	—
Mr. Barr	—	X	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	X	—	Mr. Foster	X	—	—
Mr. Emmer	—	X	—	Mrs. Beatty	—	—	—
Mr. Loudermilk	—	X	—	Mr. Vargas	X	—	—
Mr. Mooney	—	X	—	Mr. Gottheimer	X	—	—
Mr. Davidson	—	X	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	X	—	Mr. Casten	X	—	—
Mr. Steil	—	X	—	Ms. Pressley	X	—	—
Mr. Timmons	—	X	—	Mr. Horsford	X	—	—
Mr. Norman	—	X	—	Ms. Thib	X	—	—
Mr. Meuser	—	X	—	Mr. Torres	X	—	—
Mr. Fitzgerald	—	X	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	X	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	X	—	Mr. Nickel	X	—	—
Mr. Donalds	—	X	—	Ms. Pettersen	X	—	—
Mr. Flood	—	X	—				
Mr. Lawler	—	X	—				
Mr. Nunn	—	X	—				
Ms. De La Cruz	—	X	—				
Mrs. Houchin	—	X	—				
Mr. Ogles	—	X	—				

Record vote no. FC- 56

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	—	X	—	Ms. Waters	X	—	—
Mr. Hill	—	X	—	Mrs. Velizquez	X	—	—
Mr. Lucas	—	X	—	Mr. Sherman	X	—	—
Mr. Sessions	—	X	—	Mr. Meeks	—	—	—
Mr. Posey	—	—	—	Mr. Scott	X	—	—
Mr. Luetkemeyer	—	X	—	Mr. Lynch	X	—	—
Mr. Huizenga	—	X	—	Mr. Green	X	—	—
Mrs. Wagner	—	X	—	Mr. Cleaver	X	—	—
Mr. Barr	—	X	—	Mr. Himes	X	—	—
Mr. Williams (TX)	—	X	—	Mr. Foster	X	—	—
Mr. Emmer	—	X	—	Mrs. Beatty	—	—	—
Mr. Loudermilk	—	X	—	Mr. Vargas	X	—	—
Mr. Mooney	—	X	—	Mr. Gottheimer	—	—	—
Mr. Davidson	—	X	—	Mr. Gonzalez	X	—	—
Mr. Rose	—	X	—	Mr. Casten	X	—	—
Mr. Steil	—	X	—	Ms. Pressley	X	—	—
Mr. Timmons	—	X	—	Mr. Horsford	X	—	—
Mr. Norman	—	X	—	Ms. Thib	X	—	—
Mr. Meuser	—	X	—	Mr. Torres	X	—	—
Mr. Fitzgerald	—	X	—	Ms. Garcia	X	—	—
Mr. Garbarino	—	X	—	Ms. Williams (GA)	X	—	—
Mrs. Kim	—	X	—	Mr. Nickel	X	—	—
Mr. Donalds	—	X	—	Ms. Pettersen	X	—	—
Mr. Flood	—	X	—				
Mr. Lawler	—	X	—				
Mr. Nunn	—	X	—				
Ms. De La Cruz	—	X	—				
Mrs. Houchin	—	X	—				
Mr. Ogles	—	X	—				

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 2798 is to reform the CFPB to make it more transparent and accountable to Congress and the American people.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

At a Glance			
H.R. 2798, CFPB Transparency and Accountability Reform Act			
As ordered reported by the House Committee on Financial Services on April 26, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	-2,948	-6,601
Revenues	0	32	80
Increase or Decrease (-) in the Deficit	0	-2,980	-6,681
Spending Subject to Appropriation (Outlays)	0	650	650
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
The bill would			
<ul style="list-style-type: none"> Eliminate the authority of the Consumer Financial Protection Bureau (CFPB) to receive and spend transfers from the Federal Reserve Establish an Office of Inspector General and Office of Economic Analysis within the CFPB 			
Estimated budgetary effects would mainly stem from			
<ul style="list-style-type: none"> Decreases in net direct spending by eliminating the authority of the CFPB to receive and spend transfers from the Federal Reserve and by establishing a program to pay awards to whistleblowers Changes in revenues, which net to zero over 10 years, because of delayed increases in remittances to the Treasury by the Federal Reserve Increases in spending subject to appropriation to fund the CFPB's current and new responsibilities 			
Areas of significant uncertainty include			
<ul style="list-style-type: none"> Anticipating the magnitude of staff changes at the CFPB and Federal Reserve in response to the bill 			

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1973.

FEDERAL MANDATES STATEMENT

Pursuant to section 423 of the Unfunded Mandates Reform Act, the Committee adopts as its own the estimate of the Federal mandates prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; Table of Contents

TITLE I—COMMISSION OF THE BUREAU OF CONSUMER FINANCIAL
PROTECTION ACT

Sec. 101. Short title

Sec. 102. Making the Bureau an independent agency led by a commission

This section would remove the CFPB from the Federal Reserve System; convert the CFPB from an independent bureau to independent agency; and eliminate the positions of Director and Deputy

Director. This section would establish a five-member, bipartisan commission to lead the CFPB appointed by the President and confirmed by the Senate, with at least two members of the commission (members) having private sector experience in the provision of consumer financial products and services. This section would grant the commission authority to prescribe regulations to carry out this Title and all other laws within the Bureau's jurisdiction. This section would require each member to serve for a term of five years, with an initial staggering of terms; grant the President removal authority of any member for inefficiency, neglect of duty, or malfeasance in office; determine that vacancy appointments will only fill the remainder of the term; allow for a member to continue to serve for the earlier of one year after expiration of the term or when the new member is confirmed by the Senate; and prohibit other employment by members. This section would establish the first member as Chair of the commission to be the person serving as the Director of the Bureau at the time of enactment; allow the person to serve until all five members have been confirmed by the Senate; and require the President to appoint one member to serve as the subsequent Chair of the commission. This section would make the Chair the principal executive officer of the commission in charge of all executive and administrative functions of the commission including the appointment and supervision of all personnel except for personnel employed immediately under other members, the distribution of business, and the use and expenditure of funds; and establish limitations on the Chair's authority by the commission, including requiring prior approval of the commission to request appropriations. This section would clarify that the Chair of the commission and the Chair of the Bureau are the same. This section would allow the first member as Chair of the commission to constitute a quorum for the transaction of business for the earlier of 6 months following enactment of this Act or until the President has appointed and the Senate has confirmed all five members of the commission; following the full appointment of the commission, three members would constitute a quorum, with additional requirements in place in the event of vacancies on the commission. This section would direct the Bureau to have an official seal. This section would set compensation levels for the Chair and other members of the commission.

Sec. 103. Deeming of name

This section would ensure that any reference to the Director of the Bureau of Consumer Financial Protection shall be deemed a reference to the commission leading and governing the Bureau of Consumer Financial Protection.

Sec. 104. Conforming amendments

This section would make conforming amendments in relevant statute where "Director" shall be replaced by "Chair" or "Bureau" more generally.

TITLE II—TABS ACT OF 2023

*Sec. 201. Short title**Sec. 202. Bringing the Bureau into the regular appropriations process*

This section would eliminate provisions that fund the CFPB using transfers from earnings of the Federal Reserve System. This section would instead authorize the appropriations of \$650,000,000 in unobligated amounts contained in the Consumer Financial Civil Penalty Fund for fiscal year 2024 to carry out the authorities of the Bureau.

TITLE III—CFPB–IG REFORM ACT OF 2023

*Sec. 301. Short title**Sec. 302. Appointment of Inspector General*

This section would establish an Inspector General solely for the CFPB (CFPB–IG) and separate from the Inspector General of the Board of Governors of the Federal Reserve System.

Sec. 303. Requirements for the Inspector General for the Bureau of Consumer Financial Protection

This section would require the CFPB–IG to testify semiannually in front of the House Financial Services Committee and Senate Banking Committee. This section would grant the CFPB–IG participation in the Council of Inspectors General on Financial Oversight (CIGFO). This section would require the President to appoint the CFPB–IG within 60 days of the enactment of this Act.

Sec. 304. Effective date

This section would set the effective date of the amendments of this Title as the date of confirmation of the first CFPB–IG by the Senate. This section would not prohibit the President from appointing, and the Senate from confirming, a CFPB–IG before the amendments made by this Title take effect. This section would provide for the separation of the CFPB and Federal Reserve IG upon the date of Senate confirmation of the CFPB–IG.

TITLE IV—CFPB DUAL MANDATE AND ECONOMIC ANALYSIS ACT

*Sec. 401. Short title**Sec. 402. Purpose*

This section would revise the purpose of the CFPB to include “strengthening private sector participation in markets, without government interference or subsidies, to increase competition and enhance consumer choice.”

Sec. 403. Office of Economic Analysis

This section would require the CFPB to establish an Office of Economic Analysis to review all proposed and existing guidance, orders, rules, and regulations. This section would require the CFPB to identify in each proposed rulemaking the problem to be solved by the rule or regulation and the metrics the CFPB will use to measure the success of the rule or regulation. Those metrics must

include a measurement of changes regarding consumer access to, and the cost of, consumer financial products and services.

TITLE V—TRANSPARENCY IN CFPB COST-BENEFIT ANALYSIS ACT

Sec. 501. Short title

Sec. 502. Transparency in cost-benefit analysis

This section would require each notice of proposed rulemaking issued by the CFPB to be published in the Federal Register and include certain information. Specifically, the CFPB would be required to publish:

- a statement of the need for the proposed regulation;
- an examination of why the CFPB must undertake the proposed regulation and why the private market, State, local, or tribal authorities cannot adequately address the problem;
- an examination by the Office of Economic Analysis of whether the proposed regulation is duplicative, inconsistent, or incompatible with other Federal regulations and orders;
- a quantitative and qualitative assessment by the Office of Economic Analysis of all anticipated direct and indirect costs and benefits of the proposed regulation;
- an identification of reasonable alternatives to the regulation, including modification of an existing regulation and an analysis by the Office of Economic Analysis of the costs and benefits, both quantitative and qualitative, of any alternative identified;
 - The section would require the CFPB to consult with the Small Business Administration's Office of Advocacy to determine ways to minimize the effect of direct and indirect costs imposed on small businesses by the proposed regulation;
- a justification of the regulation, if the Office of Economic Analysis determines that quantified net benefits of the proposed action do not outweigh the quantified net benefits of the alternatives considered;
- an assessment by the Office of Economic Analysis of how the burden imposed by the regulation will be distributed, including whether consumers or small businesses will be disproportionately burdened; and
- when feasible, and using appropriate statistical techniques, a probability distribution of the relevant outcomes of the proposed regulation, prepared by the Office of Economic Analysis.

This section would also require the CFPB to publish in each notice of proposed rulemaking a discussion of underlying assumptions used as a basis for such information; and a description of any studies or data used in preparing such information, and whether such studies were peer-reviewed.

TITLE VI—MAKING THE CFPB ACCOUNTABLE TO SMALL BUSINESSES
ACT OF 2023

Sec. 601. Short title

Sec. 602. Rulemaking under Dodd-Frank Wall Street Reform and Consumer Protection Act

This section would require the CFPB, in proposing each rule, to consider the impact of the rule on small entities, in accordance

with the Small Business Regulatory Enforcement Fairness Act (SBREFA) requirements.

Sec. 603. Initial regulatory flexibility analysis

This section would require the CFPB to include, in the initial regulatory flexibility analysis for each proposed rule, a detailed justification of the CFPB's determination that the relative size and resources of small entities should have no bearing on the rule, supported by factual, policy and legal reasons, should the Bureau not adopt any significant alternatives required to be discussed in the analysis.

Sec. 604. Final regulatory flexibility analysis

This section would require the CFPB to include in the final regulatory flexibility analysis, for each final rule, a description of the steps the CFPB has taken to minimize any additional cost of credit for small entities and, where no significant alternatives for small entities was adopted, a detailed justification of the Bureau's determination that the relative size and resources of small entities should have no bearing on the rule, supported by factual, policy and legal reasons.

TITLE VII—CFPB WHISTLEBLOWER INCENTIVES AND PROTECTION ACT

Sec. 701. Short title

Sec. 702. Bureau whistleblower incentives and protection

This section would require the CFPB to provide awards to whistleblowers who report original information relating to a violation of consumer financial law resulting in successful enforcement and certain monetary sanctions exceeding \$1 million. Specifically, the CFPB would be required to award compensation to whistleblowers (1) not less than the greater of 10% of the collected monetary sanctions, or \$50,000; and (2) not more than 30% of the collected monetary sanctions. The compensation to any single whistleblower would be capped at \$5 million. This section would also set forth requirements regarding the legal representation of a whistleblower and would provide for confidentiality regarding the whistleblower's identity.

Sec. 703. Amendment to the Consumer Financial Civil Penalty Fund

This section would fund the whistleblower awards from the Consumer Financial Civil Penalty Fund.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Dodd-Frank Wall Street Reform and Consumer Protection Act”.

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

Sec. 1. Short title; table of contents.

* * * * *

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

Sec. 1001. Short title.

Sec. 1002. Definitions.

Subtitle A—Bureau of Consumer Financial Protection

* * * * *

Sec. 1017. Funding; penalties and fines.

Sec. 1017A. *Whistleblower incentives and protection.*

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Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

Sec. 1061. Transfer of consumer financial protection functions.

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[Sec. 1066. Interim authority of the Secretary.]

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TITLE I—FINANCIAL STABILITY

* * * * *

Subtitle A—Financial Stability Oversight Council

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) **ESTABLISHMENT.**—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

(b) **MEMBERSHIP.**—The Council shall consist of the following members:

(1) **VOTING MEMBERS.**—The voting members, who shall each have 1 vote on the Council shall be—

(A) the Secretary of the Treasury, who shall serve as Chairperson of the Council;

(B) the Chairman of the Board of Governors;

(C) the Comptroller of the Currency;

(D) the **[Director]** *Chair* of the Bureau;

(E) the Chairman of the Commission;

(F) the Chairperson of the Corporation;

(G) the Chairperson of the Commodity Futures Trading Commission;

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

(I) the Chairman of the National Credit Union Administration Board; and

(J) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) NONVOTING MEMBERS.—The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council, shall be—

(A) the Director of the Office of Financial Research;

(B) the Director of the Federal Insurance Office;

(C) a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners;

(D) a State banking supervisor, to be designated by a selection process determined by the State banking supervisors; and

(E) a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners.

(3) NONVOTING MEMBER PARTICIPATION.—The nonvoting members of the Council shall not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council, except that the Chairperson may, upon an affirmative vote of the member agencies, exclude the nonvoting members from any of the proceedings, meetings, discussions, or deliberations of the Council when necessary to safeguard and promote the free exchange of confidential supervisory information.

(c) TERMS; VACANCY.—

(1) TERMS.—The independent member of the Council shall serve for a term of 6 years, and each nonvoting member described in subparagraphs (C), (D), and (E) of subsection (b)(2) shall serve for a term of 2 years.

(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(4) TERM OF INDEPENDENT MEMBER.—Notwithstanding paragraph (1), if a successor to the independent member of the Council serving under subsection (b)(1)(J) is not appointed and confirmed by the end of the term of service of such member, such member may continue to serve until the earlier of—

(A) 18 months after the date on which the term of service ends; or

(B) the date on which a successor to such member is appointed and confirmed.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—

(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the voting members then serving.

(g) NONAPPLICABILITY OF CHAPTER 10 OF TITLE 5, UNITED STATES CODE.—Chapter 10 of title 5, United States Code, shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) COMPENSATION OF MEMBERS.—

(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:“Independent Member of the Financial Stability Oversight Council (1).”

(j) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

* * * * *

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

SEC. 901. SHORT TITLE.

This title may be cited as the “Investor Protection and Securities Reform Act of 2010”.

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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.

* * * * *

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the “Consumer Financial Protection Act of 2010”.

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

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

(2) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection.

(3) BUSINESS OF INSURANCE.—The term “business of insurance” means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(4) CONSUMER.—The term “consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term “consumer financial product or service” means any financial product or service that is described in one or more categories under—

(A) paragraph (15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

- (B) clause (i), (iii), (ix), or (x) of paragraph (15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).
- (6) COVERED PERSON.—The term “covered person” means—
- (A) any person that engages in offering or providing a consumer financial product or service; and
- (B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.
- (7) CREDIT.—The term “credit” means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.
- (8) DEPOSIT-TAKING ACTIVITY.—The term “deposit-taking activity” means—
- (A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;
- (B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or
- (C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.
- (9) DESIGNATED TRANSFER DATE.—The term “designated transfer date” means the date established under section 1062.
- [(10) DIRECTOR.—The term “Director” means the Director of the Bureau.]
- (11) ELECTRONIC CONDUIT SERVICES.—The term “electronic conduit services”—
- (A) means the provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network; and
- (B) does not include a person that provides electronic conduit services if, when providing such services, the person—
- (i) selects or modifies the content of the electronic data;
- (ii) transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such financial data is differentiated from other types of data of the same form that such person transmits, routes, or stores, or with respect to which, provides connections; or
- (iii) is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.
- (12) ENUMERATED CONSUMER LAWS.—Except as otherwise specifically provided in section 1029, subtitle G or subtitle H, the term “enumerated consumer laws” means—
- (A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act;

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)-(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802-6809) except for section 505 as it applies to section 501(b);

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111-8); and

(R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

(13) FAIR LENDING.—The term “fair lending” means fair, equitable, and nondiscriminatory access to credit for consumers.

(14) FEDERAL CONSUMER FINANCIAL LAW.—The term “Federal consumer financial law” means the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H. The term does not include the Federal Trade Commission Act.

(15) FINANCIAL PRODUCT OR SERVICE.—

(A) IN GENERAL.—The term “financial product or service” means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if—

(I) the lease is on a non-operating basis;

(II) the initial term of the lease is at least 90 days; and

(III) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the Bureau;

(iii) providing real estate settlement services, except such services excluded under subparagraph (C), or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause—

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—

(I) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(II) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services (other than services relating to securities provided by a person regulated by the Commission or a person regulated by a State securities Commission, but only to the extent that such person acts in a regulated capacity) to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person;

(bb) provides the information described in item (aa) to an affiliate of such person; or

(cc) provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service, including a decision for employment, government licensing, or a residential lease or tenancy involving a consumer; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in section 1027(a)(2)(A);

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes

of this title, if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.

(B) RULE OF CONSTRUCTION.—

(i) IN GENERAL.—For purposes of subparagraph (A)(xi)(II), and subject to clause (ii) of this subparagraph, the following activities provided to a covered person shall not, for purposes of this title, be considered incidental or complementary to a financial activity permissible for a financial holding company to engage in under any provision of a Federal law or regulation applicable to a financial holding company:

(I) Providing information products or services to a covered person for identity authentication.

(II) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(III) Providing document retrieval or delivery services.

(IV) Providing public records information retrieval.

(V) Providing information products or services for anti-money laundering activities.

(ii) LIMITATION.—Nothing in clause (i) may be construed as modifying or limiting the authority of the Bureau to exercise any—

(I) examination or enforcement powers authority under this title with respect to a covered person or service provider engaging in an activity described in subparagraph (A)(ix); or

(II) powers authorized by this title to prescribe rules, issue orders, or take other actions under any enumerated consumer law or law for which the authorities are transferred under subtitle F or H.

(C) EXCLUSIONS.—The term “financial product or service” does not include—

(i) the business of insurance; or

(ii) electronic conduit services.

(16) FOREIGN EXCHANGE.—The term “foreign exchange” means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(17) INSURED CREDIT UNION.—The term “insured credit union” has the same meaning as in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(18) PAYMENT INSTRUMENT.—The term “payment instrument” means a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(19) PERSON.—The term “person” means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(20) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term “person regulated by the Commodity Futures Trading Commission” means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(21) PERSON REGULATED BY THE COMMISSION.—The term “person regulated by the Commission” means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(22) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term “person regulated by a State insurance regulator” means any person that is engaged in the business of insurance and subject to regulation by any State insurance regu-

lator, but only to the extent that such person acts in such capacity.

(23) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term “person that performs income tax preparation activities for consumers” means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(24) PRUDENTIAL REGULATOR.—The term “prudential regulator” means—

(A) in the case of an insured depository institution or depository institution holding company (as defined in section 3 of the Federal Deposit Insurance Act), or subsidiary of such institution or company, the appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(25) RELATED PERSON.—The term “related person”—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 2 of the Bank Holding Company Act of 1956), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility for, or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(26) SERVICE PROVIDER.—

(A) IN GENERAL.—The term “service provider” means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) EXCEPTIONS.—The term “service provider” does not include a person solely by virtue of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) RULE OF CONSTRUCTION.—A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(27) STATE.—The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1(a)).

(28) STORED VALUE.—

(A) IN GENERAL.—The term “stored value” means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(B) EXCLUSION.—Notwithstanding subparagraph (A), the term “stored value” does not include a special purpose card or certificate, which shall be defined for purposes of this paragraph as funds or monetary value represented in any electronic format, whether or not specially encrypted, that is—

(i) issued by a merchant, retailer, or other seller of nonfinancial goods or services;

(ii) redeemable only for transactions with the merchant, retailer, or seller of nonfinancial goods or services or with an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services;

(iii) issued in a specified amount that, except in the case of a card or product used solely for telephone services, may not be increased or reloaded;

(iv) purchased on a prepaid basis in exchange for payment; and

(v) honored upon presentation to such merchant, retailer, or seller of nonfinancial goods or services or an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services, only for any nonfinancial goods or services.

(29) TRANSMITTING OR EXCHANGING FUNDS.—The term “transmitting or exchanging funds” means receiving currency, monetary value, or payment instruments from a consumer for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or through other businesses that facilitate third-party transfers within the United States or to or from the United States.

Subtitle A—Bureau of Consumer Financial Protection

SEC. 1011. ESTABLISHMENT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.

(a) BUREAU ESTABLISHED.—There is established [in the Federal Reserve System,] an [independent bureau] *independent agency* 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.]

(b) *AUTHORITY TO PRESCRIBE REGULATIONS.*—*The commission of the Bureau may prescribe such regulations and issue such orders in accordance with this title as the Bureau may determine to be necessary for carrying out this title and all other laws within the Bureau's jurisdiction and shall exercise any authorities granted under this title and all other laws within the Bureau's jurisdiction.*

(c) *COMPOSITION OF THE COMMISSION.*—

(1) *IN GENERAL.*—*The management of the Bureau shall be vested in a commission, which shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate, and at least 2 of whom shall have private sector experience in the provision of consumer financial products and services.*

(2) *STAGGERING.*—*The members of the commission shall serve staggered terms, which initially shall be established by the President for terms of 1, 2, 3, 4, and 5 years, respectively.*

(3) *TERMS.*—

(A) *IN GENERAL.*—*Except with respect to the initial staggered terms described under paragraph (2), each member of the commission, including the Chair, shall serve for a term of 5 years.*

(B) *REMOVAL.*—*The President may remove any member of the commission for inefficiency, neglect of duty, or malfeasance in office.*

(C) *VACANCIES.*—*Any member of the commission appointed to fill a vacancy occurring before the expiration of the term to which that member's predecessor was appointed (including the Chair) shall be appointed only for the remainder of the term.*

(D) *CONTINUATION OF SERVICE.*—*Each member of the commission may continue to serve after the expiration of the term of office to which that member was appointed until a successor has been appointed by the President and confirmed by the Senate, except that a member may not continue to serve more than 1 year after the date on which that member's term would otherwise expire.*

(E) *OTHER EMPLOYMENT PROHIBITED.*—*No member of the commission shall engage in any other business, vocation, or employment.*

(d) *AFFILIATION.*—*Not more than 3 members of the commission shall be members of any one political party.*

(e) *CHAIR OF THE COMMISSION.*—

(1) *INITIAL CHAIR.*—*The first member and Chair of the commission shall be the individual serving as Director of the Bureau of Consumer Financial Protection on the day before the date of the enactment of this subsection. Such individual shall*

serve until the President has appointed all 5 members of the commission in accordance with subsection (c).

(2) *SUBSEQUENT CHAIR.*—Of the 5 members appointed in accordance with subsection (c), the President shall appoint 1 member to serve as the subsequent Chair of the commission.

(3) *AUTHORITY.*—The Chair shall be the principal executive officer of the commission, and shall exercise all of the executive and administrative functions of the commission, including with respect to—

(A) the appointment and supervision of personnel employed under the commission (other than personnel employed regularly and full time in the immediate offices of members of the commission other than the Chair);

(B) the distribution of business among personnel appointed and supervised by the Chair and among administrative units of the commission; and

(C) the use and expenditure of funds.

(4) *LIMITATION.*—In carrying out any of the Chair's functions under the provisions of this subsection, the Chair shall be governed by general policies of the commission and by such regulatory decisions, findings, and determinations as the commission may by law be authorized to make.

(5) *REQUESTS OR ESTIMATES RELATED TO APPROPRIATIONS.*—Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the commission may not be submitted by the Chair without the prior approval of the commission.

(6) *DESIGNATION.*—The Chair shall be known as both the "Chair of the commission" of the Bureau and the "Chair of the Bureau".

(f) *INITIAL QUORUM ESTABLISHED.*—For the 6 month period beginning on the date of enactment of this subsection, the first member and Chair of the commission described under subsection (e)(1) shall constitute a quorum for the transaction of business until the President has appointed all 5 members of the commission in accordance with subsection (c). Following such appointment of 5 members, the quorum requirements of subsection (g) shall apply.

(g) *NO IMPAIRMENT BY REASON OF VACANCIES.*—No vacancy in the members of the commission after the establishment of an initial quorum under subsection (f) shall impair the right of the remaining members of the commission to exercise all the powers of the commission. Three members of the commission shall constitute a quorum for the transaction of business, except that if there are only 3 members serving on the commission because of vacancies in the commission, 2 members of the commission shall constitute a quorum for the transaction of business. If there are only 2 members serving on the commission because of vacancies in the commission, 2 members shall constitute a quorum for the 6-month period beginning on the date of the vacancy which caused the number of commission members to decline to 2.

(h) *SEAL.*—The Bureau shall have an official seal.

(i) *COMPENSATION.*—

(1) *CHAIR.*—The Chair shall receive compensation at the rate prescribed for level I of the Executive Schedule under section 5313 of title 5, United States Code.

(2) *OTHER MEMBERS OF THE COMMISSION.*—The 4 other members of the commission shall each receive compensation at the rate prescribed for level II of the Executive Schedule under section 5314 of title 5, United States Code.

[(e)] (j) *OFFICES.*—The principal office of the Bureau shall be in the District of Columbia. The [Director] *Bureau* 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.

(k) *INSPECTOR GENERAL.*—There is established the position of the Inspector General.

SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.

(a) *POWERS OF THE BUREAU.*—The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the [Director] *Bureau* and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) *DELEGATION OF AUTHORITY.*—The [Director of the Bureau] *Bureau* may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) [AUTONOMY OF THE BUREAU] *COORDINATION WITH THE BOARD OF GOVERNORS.*—

[(1) *COORDINATION WITH THE BOARD OF GOVERNORS.*—] Notwithstanding any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

[(2) *AUTONOMY.*—] Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act, the Board of Governors may not—

[(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

[(B) appoint, direct, or remove any officer or employee of the Bureau; or

[(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

[(3) RULES AND ORDERS.—No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

[(4) RECOMMENDATIONS AND TESTIMONY.—No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

[(5) CLARIFICATION OF AUTONOMY OF THE BUREAU IN LEGAL PROCEEDINGS.—The Bureau shall not be liable under any provision of law for any action or inaction of the Board of Governors, and the Board of Governors shall not be liable under any provision of law for any action or inaction of the Bureau.]

SEC. 1013. ADMINISTRATION.

(a) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The [Director] *Bureau* may fix the number of, and appoint and direct, all employees of the Bureau, in accordance with the applicable provisions of title 5, United States Code.

(B) EMPLOYEES OF THE BUREAU.—The [Director] *Bureau* is authorized to employ attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Unless otherwise provided expressly by law, any individual appointed under this section shall be an employee as defined in section 2105 of title 5, United States Code, and subject to the provisions of such title and other laws generally applicable to the employees of an Executive agency.

(C) WAIVER AUTHORITY.—

(i) IN GENERAL.—In making any appointment under subparagraph (A), the [Director] *Bureau* may waive the requirements of chapter 33 of title 5, United States Code, and the regulations implementing such chapter, to the extent necessary to appoint employees on terms and conditions that are consistent with those set forth in section 11(1) of the Federal Reserve Act (12 U.S.C. 248(1)), while providing for—

(I) fair, credible, and transparent methods of establishing qualification requirements for, recruitment for, and appointments to positions;

(II) fair and open competition and equitable treatment in the consideration and selection of individuals to positions;

(III) fair, credible, and transparent methods of assigning, reassigning, detailing, transferring, and promoting employees.

(ii) VETERANS PREFERENCES.—In implementing this subparagraph, the [Director] *Bureau* shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, in a manner consistent with that in which such provisions are applied under chapter 33 of title 5, United States Code. The authority under this subparagraph to waive the requirements of that chapter 33 shall expire 5 years after the date of enactment of this Act.

(2) COMPENSATION.—Notwithstanding any otherwise applicable provision of title 5, United States Code, concerning compensation, including the provisions of chapter 51 and chapter 53, the following provisions shall apply with respect to employees of the Bureau:

(A) The rates of basic pay for all employees of the Bureau may be set and adjusted by the [Director] *Bureau*.

(B) The [Director] *Bureau* shall at all times provide compensation (including benefits) to each class of employees that, at a minimum, are comparable to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

(C) All such employees shall be compensated (including benefits) on terms and conditions that are consistent with the terms and conditions set forth in section 11(1) of the Federal Reserve Act (12 U.S.C. 248(1)).

(3) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN AND FEDERAL RESERVE SYSTEM THRIFT PLAN.—

(A) EMPLOYEE ELECTION.—Employees appointed to the Bureau may elect to participate in either—

(i) both the Federal Reserve System Retirement Plan and the Federal Reserve System Thrift Plan, under the same terms on which such participation is offered to employees of the Board of Governors who participate in such plans and under the terms and conditions specified under section 1064(i)(1)(C); or

(ii) the Civil Service Retirement System under chapter 83 of title 5, United States Code, or the Federal Employees Retirement System under chapter 84 of title 5, United States Code, if previously covered under one of those Federal employee retirement systems.

(B) ELECTION PERIOD.—Bureau employees shall make an election under this paragraph not later than 1 year after the date of appointment by, or transfer under subtitle F to, the Bureau. Participation in, and benefit accruals under, any other retirement plan established or maintained by the Federal Government shall end not later than the date

on which participation in, and benefit accruals under, the Federal Reserve System Retirement Plan and Federal Reserve System Thrift Plan begin.

(C) EMPLOYER CONTRIBUTION.—The Bureau shall pay an employer contribution to the Federal Reserve System Retirement Plan, in the amount established as an employer contribution under the Federal Employees Retirement System, as established under chapter 84 of title 5, United States Code, for each Bureau employee who elects to participate in the Federal Reserve System Retirement Plan. The Bureau shall pay an employer contribution to the Federal Reserve System Thrift Plan for each Bureau employee who elects to participate in such plan, as required under the terms of such plan.

(D) CONTROLLED GROUP STATUS.—The Bureau is the same employer as the Federal Reserve System (as comprised of the Board of Governors and each of the 12 Federal reserve banks prior to the date of enactment of this Act) for purposes of subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986, (26 U.S.C. 414).

(4) LABOR-MANAGEMENT RELATIONS.—Chapter 71 of title 5, United States Code, shall apply to the Bureau and the employees of the Bureau.

(5) AGENCY OMBUDSMAN.—

(A) ESTABLISHMENT REQUIRED.—Not later than 180 days after the designated transfer date, the Bureau shall appoint an ombudsman.

(B) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with subparagraph (A) shall—

(i) act as a liaison between the Bureau and any affected person with respect to any problem that such party may have in dealing with the Bureau, resulting from the regulatory activities of the Bureau; and

(ii) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

(b) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The **[Director]** *Bureau* shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;

(E) consumer behavior with respect to consumer financial products or services, including performance on mortgage loans; and

(F) experiences of traditionally underserved consumers, including un-banked and under-banked consumers.

(2) COMMUNITY AFFAIRS.—The **[Director]** *Bureau* shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The **[Director]** *Bureau* shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The **[Director]** *Bureau* shall coordinate with the Federal Trade Commission or other Federal agencies to route complaints to such agencies, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems;

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources; and

(iii) participation by the State agency includes measures necessary to provide for protection of personally identifiable information that conform to the standards for protection of the confidentiality of personally identifiable information and for data integrity and security that apply to the Federal agencies described in subparagraph (D).

(C) REPORTS TO THE CONGRESS.—The **[Director]** *Bureau* shall present an annual report to Congress not later than March 31 of each year on the complaints received by the Bureau in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, complaint types, and, where applicable, information about resolution of complaints.

(D) DATA SHARING REQUIRED.—To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Bureau shall share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies, subject to the standards applicable to Federal agencies for protection of

the confidentiality of personally identifiable information and for data security and integrity. The prudential regulators, the Federal Trade Commission, and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Bureau, subject to the standards applicable to Federal agencies for protection of confidentiality of personally identifiable information and for data security and integrity.

(c) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—The **【Director】 Bureau** shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the **【Director】 Bureau** may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—There is established the position of **【Assistant Director of the Bureau for】 Head of the Office of Fair Lending and Equal Opportunity**, who—

(A) shall be appointed by the **【Director】 Bureau**; and

(B) shall carry out such duties as the **【Director】 Bureau** may delegate to such **【Assistant Director】 Head of the Office**.

(d) OFFICE OF FINANCIAL EDUCATION.—

(1) ESTABLISHMENT.—The **【Director】 Bureau** shall establish an Office of Financial Education, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(2) OTHER DUTIES.—The Office of Financial Education shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Literacy, through activities including providing opportunities for consumers to access—

(A) financial counseling, including community-based financial counseling, where practicable;

(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

- (C) savings, borrowing, and other services found at mainstream financial institutions;
 - (D) activities intended to—
 - (i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;
 - (ii) reduce debt; and
 - (iii) improve the financial situation of the consumer;
 - (E) assistance in developing long-term savings strategies; and
 - (F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.
- (3) COORDINATION.—The Office of Financial Education shall coordinate with other units within the Bureau in carrying out its functions, including—
- (A) working with the Community Affairs Office to implement the strategy to improve financial literacy of consumers; and
 - (B) working with the research unit established by the **[Director]** *Bureau* to conduct research related to consumer financial education and counseling.
- (4) REPORT.—Not later than 24 months after the designated transfer date, and annually thereafter, the **[Director]** *Bureau* shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—
- (A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and
 - (B) the Committee on Financial Services of the House of Representatives.
- (5) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—
- (A) in subparagraph (B), by striking “and” at the end;
 - (B) by redesignating subparagraph (C) as subparagraph (D); and
 - (C) by inserting after subparagraph (B) the following new subparagraph:
“(C) the **[Director of the Bureau]** *Bureau* of Consumer Financial Protection; and”.
- (6) CONFORMING AMENDMENT.—Section 513(d) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(d)) is amended by adding at the end the following: “The **[Director of the Bureau]** *Bureau* of Consumer Financial Protection shall serve as the Vice Chairman.”.
- (7) STUDY AND REPORT ON FINANCIAL LITERACY PROGRAM.—
- (A) IN GENERAL.—The Comptroller General of the United States shall conduct a study to identify—
 - (i) the feasibility of certification of persons providing the programs or performing the activities described in paragraph (2), including recognizing outstanding programs, and developing guidelines and resources for community-based practitioners, including—

(I) a potential certification process and standards for certification;

(II) appropriate certifying entities;

(III) resources required for funding such a process; and

(IV) a cost-benefit analysis of such certification;

(ii) technological resources intended to collect, analyze, evaluate, or promote financial literacy and counseling programs;

(iii) effective methods, tools, and strategies intended to educate and empower consumers about personal finance management; and

(iv) recommendations intended to encourage the development of programs that effectively improve financial education outcomes and empower consumers to make better informed financial decisions based on findings.

(B) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(e) OFFICE OF SERVICE MEMBER AFFAIRS.—

(1) IN GENERAL.—The **[Director]** *Bureau* shall establish an Office of Service Member Affairs, which shall be responsible for developing and implementing initiatives for service members and their families intended to—

(A) educate and empower service members and their families to make better informed decisions regarding consumer financial products and services;

(B) coordinate with the unit of the Bureau established under subsection (b)(3), in order to monitor complaints by service members and their families and responses to those complaints by the Bureau or other appropriate Federal or State agency; and

(C) coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families.

(2) COORDINATION.—

(A) REGIONAL SERVICES.—The **[Director]** *Bureau* is authorized to assign employees of the Bureau as may be deemed necessary to conduct the business of the Office of Service Member Affairs, including by establishing and maintaining the functions of the Office in regional offices of the Bureau located near military bases, military treatment facilities, or other similar military facilities.

(B) AGREEMENTS.—The **[Director]** *Bureau* is authorized to enter into memoranda of understanding and similar agreements with the Department of Defense, including any branch or agency as authorized by the department, in order to carry out the business of the Office of Service Member Affairs.

(3) DEFINITION.—As used in this subsection, the term “service member” means any member of the United States Armed Forces and any member of the National Guard or Reserves.

(f) TIMING.—The Office of Fair Lending and Equal Opportunity, the Office of Financial Education, and the Office of Service Member Affairs shall each be established not later than 1 year after the designated transfer date.

(g) OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS.—

(1) ESTABLISHMENT.—Before the end of the 180-day period beginning on the designated transfer date, the [Director] *Bureau* shall establish the Office of Financial Protection for Older Americans, the functions of which shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this subsection, referred to as “seniors”) on protection from unfair, deceptive, and abusive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(2) [ASSISTANT DIRECTOR] *HEAD OF THE OFFICE*.—The Office of Financial Protection for Older Americans (in this subsection referred to as the “Office”) shall be headed by [an assistant director] *a Head of the Office of Financial Protection for Older Americans*.

(3) DUTIES.—The Office shall—

(A) develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(i) help seniors recognize warning signs of unfair, deceptive, or abusive practices, protect themselves from such practices;

(ii) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(iii) provide personal consumer credit advocacy to respond to consumer problems caused by unfair, deceptive, or abusive practices;

(B) monitor certifications or designations of financial advisors who advise seniors and alert the Commission and State regulators of certifications or designations that are identified as unfair, deceptive, or abusive;

(C) not later than 18 months after the date of the establishment of the Office, submit to Congress and the Commission any legislative and regulatory recommendations on the best practices for—

(i) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(ii) methods in which a senior can identify the financial advisor most appropriate for the senior’s needs; and

(iii) methods in which a senior can verify a financial advisor’s credentials;

(D) conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(i) protecting themselves from unfair, deceptive, and abusive practices;

(ii) long-term savings; and

(iii) planning for retirement and long-term care;

(E) coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement; and

(F) work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

(h) APPLICATION OF CHAPTER 10 OF TITLE 5, UNITED STATES CODE.—Notwithstanding any provision of chapter 10 of title 5, United States Code, such chapter shall apply to each advisory committee of the Bureau and each subcommittee of such an advisory committee.

(i) OFFICE OF ECONOMIC ANALYSIS.—

(1) ESTABLISHMENT.—*The Bureau shall establish an Office of Economic Analysis.*

(2) REVIEW AND ASSESSMENT OF PROPOSED GUIDANCE, ORDERS, RULES, AND REGULATIONS.—*The Office of Economic Analysis shall—*

(A) *review all proposed guidance, orders, rules, and regulations of the Bureau, including carrying out the determinations and assessments with respect to notices of proposed rulemaking described under section 1022(b)(7);*

(B) *assess the impact of such guidance, orders, rules, and regulations on consumer choice, price, and access to credit products; and*

(C) *publish a report on such reviews and assessments in the Federal Register.*

(3) MEASURING EXISTING GUIDANCE, ORDERS, RULES, AND REGULATIONS.—*The Office of Economic Analysis shall—*

(A) *review each guidance, order, rule, and regulation issued by the Bureau after 1, 2, 5, and 10 years;*

(B) *measure each such guidance, order, rule, or regulation's success in solving the problem that the guidance, order, rule, or regulation was intended to solve when issued; and*

(C) *publish a report on such review and measurement in the Federal Register.*

SEC. 1014. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The [Director] Bureau shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the [Director] Bureau shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that

primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation. **[Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.]** *Not fewer than half of all members shall have private sector experience in the provision of consumer financial products and services.*

(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the **[Director] Bureau**, but, at a minimum, shall meet at least twice in each year.

(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the **[Director] Bureau** while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

* * * * *

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The **[Director of the Bureau] Chair 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 before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semiannual hearings regarding the reports required under subsection (b) and the reports required under section 405 of title 5, United States Code.*

* * * * *

SEC. 1017. FUNDING; PENALTIES AND FINES.

(a) **【TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—】** *BUDGET, FINANCIAL MANAGEMENT, AND AUDIT.*—

【(1) IN GENERAL.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

【(2) FUNDING CAP.—

【(A) IN GENERAL.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

【(i) 10 percent of such expenses in fiscal year 2011;

【(ii) 11 percent of such expenses in fiscal year 2012;

and

【(iii) 12 percent of such expenses in fiscal year 2013, and in each year thereafter.

【(B) ADJUSTMENT OF AMOUNT.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted annually, using the percent increase, if any, in the employment cost index for total compensation for State and local government workers published by the Federal Government, or the successor index thereto, for the 12-month period ending on September 30 of the year preceding the transfer.

[(C) REVIEWABILITY.—Notwithstanding any other provision in this title, the funds derived from the Federal Reserve System pursuant to this subsection shall not be subject to review by the Committees on Appropriations of the House of Representatives and the Senate.]

[(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date.]

[(4)] (1) BUDGET AND FINANCIAL MANAGEMENT.—

(A) FINANCIAL OPERATING PLANS AND FORECASTS.—The [Director] *Bureau* shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the [Director] *Bureau*, as prepared by the [Director] *Bureau* 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] *Bureau* 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] *Bureau* 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] *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.** *under the Federal consumer financial laws and for awards authorized under section 1017A.* 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)] (1) DETERMINATION REGARDING NEED FOR APPROPRIATED FUNDS.—

[(A)] (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)] (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)] (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)] (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)] (1) AUTHORIZATION OF APPROPRIATIONS.—*There is authorized to be appropriated to the Bureau \$650,000,000 for fiscal year 2024 to carry out the authorities of the Bureau.*

[(4)] (2) ANNUAL REPORT.—The **[(Director)] Bureau** 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)] Bureau**, 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.

SEC. 1017A. WHISTLEBLOWER INCENTIVES AND PROTECTION.

[(a)] (a) DEFINITIONS.—*In this section:*

[(1)] (1) ADMINISTRATIVE PROCEEDING OR COURT ACTION.—*The term “administrative proceeding or court action” means any ju-*

judicial or administrative action brought by the Bureau that results in monetary sanctions exceeding \$1,000,000.

(2) *FUND*.—The term “Fund” means the “Consumer Financial Civil Penalty Fund” established under section 1017(b)(1).

(3) *MONETARY SANCTIONS*.—The term “monetary sanctions”, when used with respect to any administrative proceeding or court action means any monies, including penalties, disgorgement, restitution, or interest, ordered to be paid or other amounts of relief obtained under section 1055(a)(2).

(4) *ORIGINAL INFORMATION*.—The term “original information” means information that—

(A) is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Bureau from any other source, unless the whistleblower is the original source of the information;

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, or from the news media, unless the whistleblower is a source of the information; and

(D) is not exclusively derived from an allegation made in an audit, examination, or investigation.

(5) *SUCCESSFUL ENFORCEMENT*.—The term “successful enforcement”, when used with respect to any administrative proceeding or court action, includes any settlement of such action.

(6) *WHISTLEBLOWER*.—The term “whistleblower” means any individual, or 2 or more individuals acting jointly, who provides original information relating to a violation of Federal consumer financial law, consistent with any rule issued by the Bureau under this section.

(b) *AWARDS*.—

(1) *IN GENERAL*.—In any administrative proceeding or court action the Bureau, subject to rules prescribed by the Bureau and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information that led to the successful enforcement of the administrative proceeding or court action in an aggregate amount equal to—

(A) not less than the greater of—

(i) 10 percent, in total, of monetary sanctions imposed and collected in the administrative proceeding or court action; or

(ii) \$50,000; and

(B) not more than 30 percent, in total, of such monetary sanctions.

(2) *PAYMENT OF AWARDS*.—Any amount paid under paragraph (1) shall be paid from the Fund.

(3) *AWARD MAXIMUM*.—Notwithstanding any other provision in this section, the maximum award to any single whistleblower is limited to \$5,000,000.

(c) *DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD*.—

(1) *DETERMINATION OF AMOUNT OF AWARD*.—

(A) *DISCRETION*.—The determination of the percentage amount of an award made under subsection (b) shall be in the discretion of the Bureau.

(B) *CRITERIA.*—In determining the percentage amount of an award made under subsection (b), the Bureau shall take into consideration—

(i) the significance of the information provided by the whistleblower to the successful enforcement of the administrative proceeding or court action;

(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in an administrative proceeding or court action;

(iii) the programmatic interest of the Bureau in deterring violations of Federal consumer financial law (including applicable rules) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and

(iv) such additional relevant factors as the Bureau may establish by rule.

(2) *DENIAL OF AWARD.*—No award under subsection (b) may be made—

(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Bureau, a member, officer, or employee of an entity described in subclauses (I) through (V) of subsection (h)(1)(C)(i);

(B) to any whistleblower who is convicted of a criminal violation related to the administrative proceeding or court action for which the whistleblower otherwise could receive an award under this section;

(C) to any whistleblower who is found to be liable for the conduct in the administrative proceeding or court action, or a related action, for which the whistleblower otherwise could receive an award under this section;

(D) to any whistleblower who planned and initiated the conduct at issue in the administrative proceeding or court action for which the whistleblower otherwise could receive an award under this section;

(E) to any whistleblower who submits information to the Bureau that is based on the facts underlying the administrative proceeding or court action previously submitted by another whistleblower;

(F) to any whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; and

(G) to any whistleblower who fails to submit information to the Bureau in such form as the Bureau may, by rule, require.

(d) *REPRESENTATION.*—

(1) *PERMITTED REPRESENTATION.*—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

(2) *REQUIRED REPRESENTATION.*—

(A) *IN GENERAL.*—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be

represented by counsel if the whistleblower submits the information upon which the claim is based.

(B) *DISCLOSURE OF IDENTITY.*—Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Bureau may require, directly or through counsel of the whistleblower.

(e) *NO CONTRACT NECESSARY.*—No contract or other agreement with the Bureau is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Bureau by rule.

(f) *APPEALS.*—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Bureau. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Bureau. The court shall review the determination made by the Bureau in accordance with section 706 of title 5, United States Code.

(g) *REPORTS TO CONGRESS.*—Not later than October 30 of each year, the Bureau shall transmit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the Bureau's whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year.

(h) *PROTECTION OF WHISTLEBLOWERS.*—

(1) *CONFIDENTIALITY.*—

(A) *IN GENERAL.*—Except as provided in subparagraphs (B) and (C), the Bureau and any officer or employee of the Bureau, may not disclose any information, including information provided by a whistleblower to the Bureau, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Bureau or any entity described in subparagraph (C). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(B) *EFFECT.*—Nothing in this paragraph is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(C) *AVAILABILITY TO GOVERNMENT AGENCIES.*—

(i) *IN GENERAL.*—Without the loss of its status as confidential in the hands of the Bureau, all information referred to in subparagraph (A) may, in the discretion of the Bureau, when determined by the Bureau to be necessary or appropriate, be made available to—

(I) the Department of Justice;

(II) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

(III) a State attorney general in connection with any criminal investigation;

(IV) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and

(V) a foreign regulatory authority.

(ii) MAINTENANCE OF INFORMATION.—Each of the entities, agencies, or persons described in clause (i) shall maintain information described in that clause as confidential, in accordance with the requirements in subparagraph (A).

(2) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under section 1057, any other Federal or State law, or under any collective bargaining agreement.

(i) RULEMAKING AUTHORITY.—The Bureau shall have the authority to issue such rules as may be necessary or appropriate to implement the provisions of this section.

(j) ORIGINAL INFORMATION.—Information submitted to the Bureau by a whistleblower in accordance with rules implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules, provided such information was submitted after the date of enactment of this section.

* * * * *

Subtitle B—General Powers of the Bureau

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

(a) PURPOSE.—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are **[fair, transparent, and competitive]** *fair and transparent*. In addition, the Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of strengthening private sector participation in markets, without Government interference or subsidies, to increase competition and enhance consumer choice.

(b) OBJECTIVES.—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) FUNCTIONS.—The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

(4) subject to sections 1024 through 1026, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

(5) issuing rules, orders, and guidance implementing Federal consumer financial law; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

SEC. 1022. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) GENERAL AUTHORITY.—The [Director] *Bureau* may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; [and]

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas[;]; and

(iii) *the impact of proposed rules on small entities, in accordance with section 609 of title 5, United States Code;*

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

- (i) the total assets of the class of covered persons;
- (ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and
- (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—

(A) IN GENERAL.—Notwithstanding any other provisions of Federal law and except as provided in section 1061(b)(5), to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(B) DEFERENCE.—Notwithstanding any power granted to any Federal agency or to the Council under this title, and subject to section 1061(b)(5)(E), the deference that a court affords to the Bureau with respect to a determination by the Bureau regarding the meaning or interpretation of any provision of a Federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of such Federal consumer financial law.

(5) CONSIDERATION OF REVIEW AND ASSESSMENT BY THE OFFICE OF ECONOMIC ANALYSIS.—

(A) IN GENERAL.—*Before issuing any guidance, order, rule, or regulation, the commissioners of the Bureau shall consider the review and assessment of such guidance, order, rule, or regulation carried out by the Office of Economic Analysis.*

(B) *NOTICE OF DISAGREEMENT.*—If any commissioner of the Bureau disagrees with any part of a review and assessment described under subparagraph (A) with respect to any guidance, order, rule, or regulation, the commissioner shall accompany any such guidance, order, rule, or regulation with a statement explaining why the commissioner so disagrees.

(6) *IDENTIFICATION OF PROBLEMS AND METRICS FOR JUDGING SUCCESS.*—

(A) *IN GENERAL.*—The Bureau shall, in each proposed rulemaking of the Bureau—

(i) identify the problem that the particular rule or regulations is seeking to solve; and

(ii) specify the metrics by which the Bureau will measure the success of the rule or regulation in solving such problem.

(B) *REQUIRED METRICS.*—The metrics specified under subparagraph (A)(ii) shall include a measurement of changes to consumer access to, and cost of, consumer financial products and services.

(7) *ADDITIONAL RULEMAKING REQUIREMENTS.*—

(A) *IN GENERAL.*—Each notice of proposed rulemaking issued by the Bureau shall be published in its entirety in the Federal Register and shall include—

(i) a statement of the need for the proposed regulation;

(ii) an examination of why the Bureau must undertake the proposed regulation and why the private market, State, local, or tribal authorities cannot adequately address the problem;

(iii) an examination by the Office of Economic Analysis of whether the proposed regulation is duplicative, inconsistent, or incompatible with other Federal regulations and orders;

(iv) if the proposed regulation is found by the Office of Economic Analysis to be duplicative, inconsistent, or incompatible with other Federal regulations and orders, a discussion of—

(I) why the proposed regulation is justified;

(II) how the proposed regulation can coexist with the existing regulations; and

(III) how the Bureau plans to reduce the regulatory burden associated with the duplicative, inconsistent, or incompatible proposed regulation;

(v) a quantitative and qualitative assessment by the Office of Economic Analysis of all anticipated direct and indirect costs and benefits of the proposed regulation, including—

(I) compliance costs for all regulated entities, including small businesses;

(II) effects on economic activity, efficiency, competition, and capital formation;

(III) regulatory and administrative costs of implementation; and

(IV) costs imposed on State, local, and tribal entities;

(vi) an identification of reasonable alternatives to the regulation, including modification of an existing regulation;

(vii) an analysis by the Office of Economic Analysis of the costs and benefits, both quantitative and qualitative, of any alternative identified pursuant to clause (vi);

(viii) if the Office of Economic Analysis determines the proposed regulation would increase costs for small businesses, then the Bureau shall consult the Office of Advocacy within the Small Business Administration to determine ways to minimize the effect of direct and indirect costs imposed on small businesses by the proposed regulation;

(ix) if the Office of Economic Analysis determines that quantified net benefits of the proposed action do not outweigh the quantified net benefits of the alternatives, a justification of the regulation;

(x) if quantified benefits identified pursuant to clause (v) by the Office of Economic Analysis do not outweigh the quantified costs of the regulation, a justification of the regulation;

(xi) an assessment by the Office of Economic Analysis of how the burden imposed by the regulation will be distributed, including whether consumers or small businesses will be disproportionately burdened; and

(xii) when feasible, and using appropriate statistical techniques, a probability distribution prepared by the Office of Economic Analysis of the relevant outcomes of the proposed regulation.

(B) ASSUMPTIONS AND STUDIES USED.—With respect to the information required to be included under subparagraph (A) in a notice of proposed rulemaking, the Bureau shall include in such notice—

(i) a discussion of underlying assumptions used as a basis for such information; and

(ii) a description of any studies or data used in preparing such information, and whether such studies were peer-reviewed.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) SIGNIFICANT FINDINGS.—

(A) IN GENERAL.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(B) CONFIDENTIAL INFORMATION.—The Bureau may make public such information obtained by the Bureau under this section as is in the public interest, through aggregated reports or other appropriate formats designed to protect confidential information in accordance with paragraphs (4), (6), (8), and (9).

(4) COLLECTION OF INFORMATION.—

(A) IN GENERAL.—In conducting any monitoring or assessment required by this section, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

(B) METHODOLOGY.—In order to gather information described in subparagraph (A), the Bureau may—

(i) gather and compile information from a variety of sources, including examination reports concerning covered persons or service providers, consumer complaints, voluntary surveys and voluntary interviews of consumers, surveys and interviews with covered persons and service providers, and review of available databases; and

(ii) require covered persons and service providers participating in consumer financial services markets to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information described in paragraph (4), as necessary for the Bureau to fulfill the monitoring, assessment, and reporting responsibilities imposed by Congress.

(C) LIMITATION.—The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers.

(5) LIMITED INFORMATION GATHERING.—In order to assess whether a nondepository is a covered person, as defined in section 1002, the Bureau may require such nondepository to file with the Bureau, under oath or otherwise, in such form and within such reasonable period of time as the Bureau may prescribe by rule or order, annual or special reports, or answers in writing to specific questions.

(6) CONFIDENTIALITY RULES.—

(A) RULEMAKING.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(B) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(C) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(7) REGISTRATION.—

(A) IN GENERAL.—The Bureau may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person.

(B) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau may publicly disclose registration information to facilitate the ability of con-

sumers to identify covered persons that are registered with the Bureau.

(C) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(8) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(9) CONSUMER PRIVACY.—

(A) IN GENERAL.—The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person or service provider to the Bureau; or

(ii) as may be specifically permitted or required under other applicable provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) TREATMENT OF COVERED PERSON OR SERVICE PROVIDER.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978, to a disclosure by a covered person or service provider subject to this subsection, the covered person or service provider shall be treated as if it were a “financial institution”, as defined in section 1101 of that Act (12 U.S.C. 3401).

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) REPORTS.—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

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SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED PERSONS.**(a) SCOPE OF COVERAGE.—**

(1) **APPLICABILITY.**—Notwithstanding any other provision of this title, and except as provided in paragraph (3), this section shall apply to any covered person who—

(A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans;

(B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2);

(C) the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints collected through the system under section 1013(b)(3) or information from other sources, that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(D) offers or provides to a consumer any private education loan, as defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650), notwithstanding section 1027(a)(2)(A) and subject to section 1027(a)(2)(C); or

(E) offers or provides to a consumer a payday loan.

(2) **RULEMAKING TO DEFINE COVERED PERSONS SUBJECT TO THIS SECTION.**—The Bureau shall consult with the Federal Trade Commission prior to issuing a rule, in accordance with paragraph (1)(B), to define covered persons subject to this section. The Bureau shall issue its initial rule not later than 1 year after the designated transfer date.

(3) RULES OF CONSTRUCTION.—

(A) **CERTAIN PERSONS EXCLUDED.**—This section shall not apply to persons described in section 1025(a) or 1026(a).

(B) **ACTIVITY LEVELS.**—For purposes of computing activity levels under paragraph (1) or rules issued thereunder, activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated.

(b) SUPERVISION.—

(1) **IN GENERAL.**—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial law;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) **RISK-BASED SUPERVISION PROGRAM.**—The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a)(1), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product

markets and geographic markets, and taking into consideration, as applicable—

(A) the asset size of the covered person;

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

(3) **COORDINATION.**—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators, the State bank regulatory authorities, and the State agencies that licence, supervise, or examine the offering of consumer financial products or services, including establishing their respective schedules for examining persons described in subsection (a)(1) and requirements regarding reports to be submitted by such persons. The sharing of information with such regulators, authorities, and agencies shall not be construed as waiving, destroying, or otherwise affecting any privilege or confidentiality such person may claim with respect to such information under Federal or State law as to any person or entity other than such Bureau, agency, supervisor, or authority.

(4) **USE OF EXISTING REPORTS.**—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to persons described in subsection (a)(1) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) **PRESERVATION OF AUTHORITY.**—Nothing in this title may be construed as limiting the authority of the [Director] *Bureau* to require reports from persons described in subsection (a)(1), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) **REPORTS OF TAX LAW NONCOMPLIANCE.**—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) **REGISTRATION, RECORDKEEPING AND OTHER REQUIREMENTS FOR CERTAIN PERSONS.**—

(A) **IN GENERAL.**—The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers.

(B) **RECORDKEEPING.**—The Bureau may require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(C) **REQUIREMENTS CONCERNING OBLIGATIONS.**—The Bureau may prescribe rules regarding a person described in

subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(D) CONSULTATION WITH STATE AGENCIES.—In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE ENFORCEMENT AUTHORITY.—Except as provided in paragraph (3) and section 1061, with respect to any person described in subsection (a)(1), to the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law.

(2) REFERRAL.—Any Federal agency authorized to enforce a Federal consumer financial law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforcement proceeding, as the Bureau is authorized by that Federal law or by this title.

(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Bureau and the Federal Trade Commission shall negotiate an agreement for coordinating with respect to enforcement actions by each agency regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1), or service providers thereto. The agreement shall include procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce any Federal law regarding the offering or provision of consumer financial products or services.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Bureau or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) AGREEMENT TERMS.—The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) DEADLINE.—The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law and except as provided in section 1061, to the extent that Federal law authorizes the Bureau and another Federal agency to issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a)(1) under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a)(1), subject to those provisions of law.

(e) SERVICE PROVIDERS.—A service provider to a person described in subsection (a)(1) shall be subject to the authority of the Bureau under this section, to the same extent as if such service provider were engaged in a service relationship with a bank, and the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator, as applicable.

(f) PRESERVATION OF FARM CREDIT ADMINISTRATION AUTHORITY.—No provision of this title may be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

- (1) an insured depository institution with total assets of more than \$10,000,000,000 and any affiliate thereof; or
- (2) an insured credit union with total assets of more than \$10,000,000,000 and any affiliate thereof.

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall have exclusive authority to require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

- (A) assessing compliance with the requirements of Federal consumer financial laws;
- (B) obtaining information about the activities subject to such laws and the associated compliance systems or procedures of such persons; and
- (C) detecting and assessing associated risks to consumers and to markets for consumer financial products and services.

(2) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including consultation regarding their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(3) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(4) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the **[Director]** Bureau to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(5) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, including performing follow up supervisory and support functions incidental thereto, to assure compliance with such proceeding.

(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

(e) SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.—

(1) EXAMINATIONS.—A prudential regulator and the Bureau shall, with respect to each insured depository institution, insured credit union, or other covered person described in subsection (a) that is supervised by the prudential regulator and the Bureau, respectively—

(A) coordinate the scheduling of examinations of the insured depository institution, insured credit union, or other covered person described in subsection (a);

(B) conduct simultaneous examinations of each insured depository institution or insured credit union, unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) AVOIDANCE OF CONFLICT IN SUPERVISION.—

(A) REQUEST.—If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the “agencies”) are conflicting, an insured depository institution, insured credit union, or other covered person described in subsection (a) may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) JOINT STATEMENT.—The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person described in subsection (a).

(4) APPEALS TO GOVERNING PANEL.—

(A) IN GENERAL.—If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person described in subsection (a) may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

(B) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this paragraph shall be composed of—

(i) a representative from the Bureau and a representative of the prudential regulator, both of whom—

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union

Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.

(C) CONDUCT OF APPEAL.—In an appeal under this paragraph—

(i) the insured depository institution, insured credit union, or other covered person described in subsection (a)—

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear before the governing panel in person or by telephone; and

(ii) the governing panel—

(I) may request the insured depository institution, insured credit union, or other covered person described in subsection (a), the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, insured credit union, or other covered person described in subsection (a) may jointly agree.

(D) PUBLIC AVAILABILITY OF DETERMINATIONS.—A governing panel shall publish all information contained in a determination by the governing panel, with appropriate redactions of information that would be subject to an exemption from disclosure under section 552 of title 5, United States Code.

(E) PROHIBITION AGAINST RETALIATION.—The Bureau and the prudential regulators shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured credit union, or other covered person described in subsection (a) instituting an appeal under this paragraph, as well as their officers and employees.

(F) LIMITATION.—The process provided in this paragraph shall not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) or section 212 of the Federal Credit Union Act (112 U.S.C. 1790a), as applicable.

(G) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law, or the authority of a prudential regulator to interpret or take enforcement action under any other provision of Federal law for safety and soundness purposes.

SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) **SCOPE OF COVERAGE.**—This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of \$10,000,000,000 or less; or

(2) an insured credit union with total assets of \$10,000,000,000 or less.

(b) **REPORTS.**—The **[Director]** *Bureau* may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to support its examination activities under subsection (c), and to assess and detect risks to consumers and consumer financial markets.

(1) **USE OF EXISTING REPORTS.**—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(2) **PRESERVATION OF AUTHORITY.**—Nothing in this subsection may be construed as limiting the authority of the **[Director]** *Bureau* from requiring from a person described in subsection (a), as permitted under paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(3) **REPORTS OF TAX LAW NONCOMPLIANCE.**—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) **EXAMINATIONS.**—

(1) **IN GENERAL.**—The Bureau may, at its discretion, include examiners on a sampling basis of the examinations performed by the prudential regulator to assess compliance with the requirements of Federal consumer financial law of persons described in subsection (a).

(2) **AGENCY COORDINATION.**—The prudential regulator shall—

(A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;

(B) involve such Bureau examiner in the entire examination process for such person; and

(C) consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.

(d) **ENFORCEMENT.**—

(1) **IN GENERAL.**—Except for requiring reports under subsection (b), the prudential regulator is authorized to enforce the requirements of Federal consumer financial laws and, with respect to a covered person described in subsection (a), shall have exclusive authority (relative to the Bureau) to enforce such laws.

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—

(A) REFERRAL.—When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in writing and recommend appropriate action to respond.

(B) RESPONSE.—Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

(e) SERVICE PROVIDERS.—A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under section 1025 to the same extent as if the Bureau were an appropriate Federal bank agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). When conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU; PRESERVATION OF AUTHORITIES.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND OTHER SELLERS OF NONFINANCIAL GOODS OR SERVICES.—

(1) SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this title with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(2) OFFERING OR PROVISION OF CERTAIN CONSUMER FINANCIAL PRODUCTS OR SERVICES IN CONNECTION WITH THE SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services, but only to the extent that such person—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) APPLICABILITY.—Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as

described in subparagraph (C)(i), arising from a transaction described in subparagraph (A)—

(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(iii));

(ii) in which the credit extended significantly exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title; or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is subject to a finance charge.

(C) LIMITATIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (B), subparagraph (A) shall apply with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

(ii) EXCEPTION.—Subparagraph (A) and clause (i) of this subparagraph do not apply to any merchant, retailer, or seller of nonfinancial goods or services—

(I) if such merchant, retailer, or seller of nonfinancial goods or services is engaged in a transaction described in subparagraph (B)(i) or (B)(ii); or

(II) to the extent that such merchant, retailer, or seller is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(D) RULES.—

(i) AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency (other than the Bureau) with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(ii) SMALL BUSINESSES.—A merchant, retailer, or seller of nonfinancial goods or services that would otherwise be subject to the authority of the Bureau solely by virtue of the application of subparagraph (B)(iii) shall be deemed not to be engaged significantly in offering or providing consumer financial products or services under subparagraph (C)(i), if such person—

(I) only extends credit for the sale of non-financial goods or services, as described in subparagraph (A)(i);

(II) retains such credit on its own accounts (except to sell or convey such debt that is delinquent or otherwise in default); and

(III) meets the relevant industry size threshold to be a small business concern, based on annual receipts, pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder.

(iii) INITIAL YEAR.—A merchant, retailer, or seller of nonfinancial goods or services shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) during the first year of operations of that business concern if, during that year, the receipts of that business concern reasonably are expected to meet that size threshold.

(iv) OTHER STANDARDS FOR SMALL BUSINESS.—With respect to a merchant, retailer, or seller of non-financial goods or services that is classified on a basis other than annual receipts for the purposes of section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder, such merchant, retailer, or seller shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) if such merchant, retailer, or seller meets the relevant industry size threshold to be a small business concern based on the number of employees, or other such applicable measure, established under that Act.

(E) EXCEPTION FROM STATE ENFORCEMENT.—To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this title may be brought under subsection 1042(a), with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of nonfinancial goods or services.

(b) EXCLUSION FOR REAL ESTATE BROKERAGE ACTIVITIES.—

(1) REAL ESTATE BROKERAGE ACTIVITIES EXCLUDED.—Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a person that is licensed or registered as a real estate broker or real estate agent, in accordance with State law, to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the

provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) DESCRIPTION OF ACTIVITIES.—The Bureau may exercise rulemaking, supervisory, enforcement, or other authority under this title with respect to a person described in paragraph (1) when such person is—

(A) engaged in an activity of offering or providing any consumer financial product or service, except that the Bureau may exercise such authority only with respect to that activity; or

(B) otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, but the Bureau may exercise such authority only with respect to that law.

(c) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The **[Director]** *Bureau* may not exercise any rulemaking, supervisory, enforcement, or other authority over a person to the extent that—

(A) such person is not described in paragraph (2); and

(B) such person—

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) DESCRIPTION OF ACTIVITIES.—A person is described in this paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) MANUFACTURED HOME.—The term “manufactured home” has the same meaning as in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term “modular home” means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

(d) EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or

certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided—

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

(B) any person, other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) DESCRIPTION OF ACTIVITIES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any person described in paragraph (1)(A) or (1)(B) to the extent that such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is the offering or provision of any consumer financial product or service, except to the extent that a person described in paragraph (1)(A) is engaged in an activity which is a customary and usual accounting activity described in paragraph (1)(A), or incidental thereto.

(B) NOT A CUSTOMARY AND USUAL ACCOUNTING ACTIVITY.—For purposes of this subsection, extending or brokering credit is not a customary and usual accounting activity, or incidental thereto.

(C) RULE OF CONSTRUCTION.—For purposes of subparagraphs (A) and (B), a person described in paragraph (1)(A) shall not be deemed to be extending credit, if such person is only extending credit directly to a consumer, exclusively for the purpose of enabling such consumer to purchase services described in clause (i) or (ii) of paragraph (1)(A) directly from such person, and such credit is—

(i) not subject to a finance charge; and

(ii) not payable by written agreement in more than 4 installments.

(D) OTHER LIMITATIONS.—Paragraph (1) does not apply to any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(e) EXCLUSION FOR PRACTICE OF LAW.—

(1) IN GENERAL.—Except as provided under paragraph (2), the Bureau may not exercise any supervisory or enforcement authority with respect to an activity engaged in by an attorney

as part of the practice of law under the laws of a State in which the attorney is licensed to practice law.

(2) **RULE OF CONSTRUCTION.**—Paragraph (1) shall not be construed so as to limit the exercise by the Bureau of any supervisory, enforcement, or other authority regarding the offering or provision of a consumer financial product or service described in any subparagraph of section 1002(5)—

(A) that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship; or

(B) that is otherwise offered or provided by the attorney in question with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such financial product or service.

(3) **EXISTING AUTHORITY.**—Paragraph (1) shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(f) **EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.**—

(1) **IN GENERAL.**—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by a State insurance regulator.

(2) **DESCRIPTION OF ACTIVITIES.**—Paragraph (1) does not apply to any person described in such paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(3) **STATE INSURANCE AUTHORITY UNDER GRAMM-LEACH-BLILEY.**—Notwithstanding paragraph (2), the Bureau shall not exercise any authorities that are granted a State insurance authority under section 505(a)(6) of the Gramm-Leach-Bliley Act with respect to a person regulated by a State insurance authority.

(g) **EXCLUSION FOR EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.**—

(1) **PRESERVATION OF AUTHORITY OF OTHER AGENCIES.**—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) **ACTIVITIES NOT CONSTITUTING THE OFFERING OR PROVISION OF ANY CONSUMER FINANCIAL PRODUCT OR SERVICE.**—For purposes of this title, a person shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is—

(A) a specified plan or arrangement;

(B) engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement; or

(C) engaged in the activity of establishing or maintaining a qualified tuition program under section 529(b)(1) of the Internal Revenue Code of 1986 offered by a State or other prepaid tuition program offered by a State.

(3) LIMITATION ON BUREAU AUTHORITY.—

(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the Bureau may not exercise any rule-making or enforcement authority with respect to products or services that relate to any specified plan or arrangement.

(B) BUREAU ACTION PURSUANT TO AGENCY REQUEST.—

(i) AGENCY REQUEST.—The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement.

(ii) AGENCY RESPONSE.—In response to a request by the Bureau, the Secretary and the Secretary of Labor shall jointly issue a written response, not later than 90 days after receipt of such request, to grant or deny the request of the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement.

(iii) SCOPE OF BUREAU ACTION.—Subject to a request or response pursuant to clause (i) or clause (ii) by the agencies made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request or response, in accordance with the provisions of this title. A request or response made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this title with respect to the provision of services relating to any specified plan or arrangement.

(C) DESCRIPTION OF PRODUCTS OR SERVICES.—To the extent that a person engaged in providing products or services relating to any specified plan or arrangement is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, subparagraph (A) shall not apply with respect to that law.

(4) SPECIFIED PLAN OR ARRANGEMENT.—For purposes of this subsection, the term “specified plan or arrangement” means any plan, account, or arrangement described in section 220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, 529A, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is

subject to title I of the Employee Retirement Income Security Act of 1974, or any prepaid tuition program offered by a State.

(h) PERSONS REGULATED BY A STATE SECURITIES COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(i) EXCLUSION FOR PERSONS REGULATED BY THE COMMISSION.—

(1) IN GENERAL.—No provision of this title may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commission shall consult and coordinate, where feasible, with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law. In carrying out this paragraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for providing advance notice to the Bureau when the Commission is initiating a rulemaking.

(j) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to

any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law.

(k) EXCLUSION FOR PERSONS REGULATED BY THE FARM CREDIT ADMINISTRATION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Farm Credit Administration.

(2) DEFINITION.—For purposes of this subsection, the term “person regulated by the Farm Credit Administration” means any Farm Credit System institution that is chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(l) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—The [Director] *Bureau* and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information, education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) LIMITATION.—The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(m) INSURANCE.—The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(n) LIMITED AUTHORITY OF THE BUREAU.—Notwithstanding subsections (a) through (h) and (l), a person subject to or described in one or more of such provisions—

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 1022, 1052, or 1053.

(o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(p) ATTORNEY GENERAL.—No provision of this title, including section 1024(c)(1), shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(q) SECRETARY OF THE TREASURY.—No provision of this title shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

(r) DEPOSIT INSURANCE AND SHARE INSURANCE.—Nothing in this title shall affect the authority of the Corporation under the Federal Deposit Insurance Act or the National Credit Union Administration Board under the Federal Credit Union Act as to matters related to deposit insurance and share insurance, respectively.

(s) FAIR HOUSING ACT.—No provision of this title shall be construed as affecting any authority arising under the Fair Housing Act.

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Subtitle C—Specific Bureau Authorities

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SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.

(a) ESTABLISHMENT.—The Secretary, in consultation with the **[Director]** *Bureau*, shall designate a Private Education Loan Ombudsman (in this section referred to as the “Ombudsman”) within the Bureau, to provide timely assistance to borrowers of private education loans.

(b) PUBLIC INFORMATION.—The Secretary and the **[Director]** *Bureau* shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.

(c) FUNCTIONS OF OMBUDSMAN.—The Ombudsman designated under this subsection shall—

(1) in accordance with regulations of the **[Director]** *Bureau*, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of understanding with the student loan ombudsman established under section 141(f) of the Higher Education Act of 1965 (20 U.S.C. 1018(f)), to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the **[Director]** *Bureau*, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on

Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) ANNUAL REPORTS.—

(1) IN GENERAL.—The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) SUBMISSION.—The report required by paragraph (1) shall be submitted on the same date annually to the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) DEFINITIONS.—For purposes of this section, the terms “private education loan” and “institution of higher education” have the same meanings as in section 140 of the Truth in Lending Act (15 U.S.C. 1650).

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Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

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[SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.

[(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Bureau under this subtitle until the Director of the Bureau is confirmed by the Senate in accordance with section 1011.

[(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Department of the Treasury may provide administrative services necessary to support the Bureau before the designated transfer date.]

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Subtitle G—Regulatory Improvements

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SEC. 1079. REVIEW, REPORT, AND PROGRAM WITH RESPECT TO EXCHANGE FACILITATORS.

(a) REVIEW.—The [Director] *Bureau* shall review all Federal laws and regulations relating to the protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes.

(b) REPORT.—Not later than 1 year after the designated transfer date, the [Director] *Bureau* shall submit to Congress a report describing—

(1) recommendations for legislation to ensure the appropriate protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes;

(2) recommendations for updating the regulations of Federal departments and agencies to ensure the appropriate protection of such consumers; and

(3) recommendations for regulations to ensure the appropriate protection of such consumers.

(c) PROGRAM.—Not later than 2 years after the date of the submission of the report under subsection (b), the Bureau shall, consistent with subtitle B, propose regulations or otherwise establish a program to protect consumers who use exchange facilitators.

(d) EXCHANGE FACILITATOR DEFINED.—In this section, the term “exchange facilitator” means a person that—

(1) facilitates, for a fee, an exchange of like kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer’s relinquished property and transfers a replacement property to the taxpayer as a qualified intermediary (within the meaning of Treasury Regulations section 1.1031(k)-1(g)(4)) or enters into an agreement with the taxpayer to take title to a property as an exchange accommodation titleholder (within the meaning of Revenue Procedure 2000-37) or enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder (within the meaning of Treasury Regulations section 1.1031(k)-1(g)(3));

(2) maintains an office for the purpose of soliciting business to perform the services described in paragraph (1); or

(3) advertises any of the services described in paragraph (1) or solicits clients in printed publications, direct mail, television or radio advertisements, telephone calls, facsimile transmissions, or other electronic communications directed to the general public for purposes of providing any such services.

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TITLE XIV—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

SEC. 1400. SHORT TITLE; DESIGNATION AS ENUMERATED CONSUMER LAW.

(a) SHORT TITLE.—This title may be cited as the “Mortgage Reform and Anti-Predatory Lending Act”.

(b) DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subtitles A, B, C, and E and sections 1471, 1472, 1475, and 1476, and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 1002, and come under the purview of the Bureau of Consumer Financial Protection for purposes of title X, including the transfer of functions and personnel under subtitle F of title X and the savings provisions of such subtitle.

(c) REGULATIONS; EFFECTIVE DATE.—

(1) REGULATIONS.—The regulations required to be prescribed under this title or the amendments made by this title shall—

(A) be prescribed in final form before the end of the 18-month period beginning on the designated transfer date; and

(B) take effect not later than 12 months after the date of issuance of the regulations in final form.

(2) EFFECTIVE DATE ESTABLISHED BY RULE.—Except as provided in paragraph (3), a section, or provision thereof, of this title shall take effect on the date on which the final regulations implementing such section, or provision, take effect.

(3) EFFECTIVE DATE.—A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date.

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Subtitle D—Office of Housing Counseling

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SEC. 1447. DEFAULT AND FORECLOSURE DATABASE.

(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development and the [Director of the Bureau] *Chair of the Bureau*, in consultation with the Federal agencies responsible for regulation of banking and financial institutions involved in residential mortgage lending and servicing, shall establish and maintain a database of information on foreclosures and defaults on mortgage loans for one- to four-unit residential properties and shall make such information publicly available, subject to subsection (e).

(b) CENSUS TRACT DATA.—Information in the database may be collected, aggregated, and made available on a census tract basis.

(c) REQUIREMENTS.—Information collected and made available through the database shall include—

(1) the number and percentage of such mortgage loans that are delinquent by more than 30 days;

(2) the number and percentage of such mortgage loans that are delinquent by more than 90 days;

(3) the number and percentage of such properties that are real estate-owned;

(4) number and percentage of such mortgage loans that are in the foreclosure process;

(5) the number and percentage of such mortgage loans that have an outstanding principal obligation amount that is greater than the value of the property for which the loan was made; and

(6) such other information as the Secretary of Housing and Urban Development and the [Director of the Bureau] *Chair of the Bureau* consider appropriate.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to encourage discriminatory or unsound allocation of credit or lending policies or practices.

(e) PRIVACY AND CONFIDENTIALITY.—In establishing and maintaining the database described in subsection (a), the Secretary of Housing and Urban Development and the [Director of the Bureau] *Chair of the Bureau* shall—

(1) be subject to the standards applicable to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity;

(2) implement the necessary measures to conform to the standards for data integrity and security described in paragraph (1); and

(3) collect and make available information under this section, in accordance with paragraphs (5) and (6) of section 1022(c) and the rules prescribed under such paragraphs, in order to protect privacy and confidentiality.

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ELECTRONIC FUND TRANSFER ACT

§ 901. Short title

This title may be cited as the “Electronic Fund Transfer Act”.

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SEC. 921. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.

(a) **REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—**

(1) **REGULATORY AUTHORITY OVER INTERCHANGE TRANSACTION FEES.—**The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction, to implement this subsection (including related definitions), and to prevent circumvention or evasion of this subsection.

(2) **REASONABLE INTERCHANGE TRANSACTION FEES.—**The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

(3) **RULEMAKING REQUIRED.—**

(A) **IN GENERAL.—**The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

(B) **INFORMATION COLLECTION.—**The Board may require any issuer (or agent of an issuer) or payment card network to provide the Board with such information as may be necessary to carry out the provisions of this subsection and the Board, in issuing rules under subparagraph (A) and on at least a bi-annual basis thereafter, shall disclose such aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transactions as the Board considers appropriate and in the public interest.

(4) **CONSIDERATIONS; CONSULTATION.—**In prescribing regulations under paragraph (3)(A), the Board shall—

(A) consider the functional similarity between—

- (i) electronic debit transactions; and
 - (ii) checking transactions that are required within the Federal Reserve bank system to clear at par;
- (B) distinguish between—

- (i) the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

- (ii) other costs incurred by an issuer which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the [Director of the Bureau of Consumer Financial Protection] *Chair of the Bureau of Consumer Financial Protection*.

(5) ADJUSTMENTS TO INTERCHANGE TRANSACTION FEES FOR FRAUD PREVENTION COSTS.—

(A) ADJUSTMENTS.—The Board may allow for an adjustment to the fee amount received or charged by an issuer under paragraph (2), if—

- (i) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer; and

- (ii) the issuer complies with the fraud-related standards established by the Board under subparagraph (B), which standards shall—

- (I) be designed to ensure that any fraud-related adjustment of the issuer is limited to the amount described in clause (i) and takes into account any fraud-related reimbursements (including amounts from charge-backs) received from consumers, merchants, or payment card networks in relation to electronic debit transactions involving the issuer; and

- (II) require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to electronic debit transactions, including through the development and implementation of cost-effective fraud prevention technology.

(B) RULEMAKING REQUIRED.—

- (i) IN GENERAL.—The Board shall prescribe regulations in final form not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for making adjustments under this paragraph.

- (ii) FACTORS FOR CONSIDERATION.—In issuing the standards and prescribing regulations under this paragraph, the Board shall consider—

(I) the nature, type, and occurrence of fraud in electronic debit transactions;

(II) the extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means;

(III) the available and economical means by which fraud on electronic debit transactions may be reduced;

(IV) the fraud prevention and data security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

(V) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

(VI) the extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and

(VII) such other factors as the Board considers appropriate.

(6) EXEMPTION FOR SMALL ISSUERS.—

(A) IN GENERAL.—This subsection shall not apply to any issuer that, together with its affiliates, has assets of less than \$10,000,000,000, and the Board shall exempt such issuers from regulations prescribed under paragraph (3)(A).

(B) DEFINITION.—For purposes of this paragraph, the term “issuer” shall be limited to the person holding the asset account that is debited through an electronic debit transaction.

(7) EXEMPTION FOR GOVERNMENT-ADMINISTERED PAYMENT PROGRAMS AND RELOADABLE PREPAID CARDS.—

(A) IN GENERAL.—This subsection shall not apply to an interchange transaction fee charged or received with respect to an electronic debit transaction in which a person uses—

(i) a debit card or general-use prepaid card that has been provided to a person pursuant to a Federal, State or local government-administered payment program, in which the person may only use the debit card or general-use prepaid card to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program; or

(ii) a plastic card, payment code, or device that is—

(I) linked to funds, monetary value, or assets which are purchased or loaded on a prepaid basis;

(II) not issued or approved for use to access or debit any account held by or for the benefit of the card holder (other than a subaccount or other

method of recording or tracking funds purchased or loaded on the card on a prepaid basis);

(III) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

(IV) used to transfer or debit funds, monetary value, or other assets; and

(V) reloadable and not marketed or labeled as a gift card or gift certificate.

(B) EXCEPTION.—Notwithstanding subparagraph (A), after the end of the 1-year period beginning on the effective date provided in paragraph (9), this subsection shall apply to an interchange transaction fee charged or received with respect to an electronic debit transaction described in subparagraph (A)(i) in which a person uses a general-use prepaid card, or an electronic debit transaction described in subparagraph (A)(ii), if any of the following fees may be charged to a person with respect to the card:

(i) A fee for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance.

(ii) A fee imposed by the issuer for the first withdrawal per month from an automated teller machine that is part of the issuer's designated automated teller machine network.

(C) DEFINITION.—For purposes of subparagraph (B), the term “designated automated teller machine network” means either—

(i) all automated teller machines identified in the name of the issuer; or

(ii) any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer's customers.

(D) REPORTING.—Beginning 12 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall annually provide a report to the Congress regarding —

(i) the prevalence of the use of general-use prepaid cards in Federal, State or local government-administered payment programs; and

(ii) the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards.

(8) REGULATORY AUTHORITY OVER NETWORK FEES.—

(A) IN GENERAL.—The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any network fee.

(B) LIMITATION.—The authority under subparagraph (A) to prescribe regulations shall be limited to regulations to ensure that—

(i) a network fee is not used to directly or indirectly compensate an issuer with respect to an electronic debit transaction; and

(ii) a network fee is not used to circumvent or evade the restrictions of this subsection and regulations prescribed under such subsection.

(C) RULEMAKING REQUIRED.—The Board shall prescribe regulations in final form before the end of the 9-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, to carry out the authorities provided under subparagraph (A).

(9) EFFECTIVE DATE.—This subsection shall take effect at the end of the 12-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010.

(b) LIMITATION ON PAYMENT CARD NETWORK RESTRICTIONS.—

(1) PROHIBITIONS AGAINST EXCLUSIVITY ARRANGEMENTS.—

(A) NO EXCLUSIVE NETWORK.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to—

(i) 1 such network; or

(ii) 2 or more such networks which are owned, controlled, or otherwise operated by —

(I) affiliated persons; or

(II) networks affiliated with such issuer.

(B) NO ROUTING RESTRICTIONS.—The Board shall, before the end of the 1-year period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, prescribe regulations providing that an issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

(2) LIMITATION ON RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—

(A) IN GENERAL.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards to the extent that—

(i) in the case of a discount or in-kind incentive for payment by the use of debit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network;

(ii) in the case of a discount or in-kind incentive for payment by the use of credit cards, the discount or in-

kind incentive does not differentiate on the basis of the issuer or the payment card network; and

(iii) to the extent required by Federal law and applicable State law, such discount or in-kind incentive is offered to all prospective buyers and disclosed clearly and conspicuously.

(B) **LAWFUL DISCOUNTS.**—For purposes of this paragraph, the network may not penalize any person for the providing of a discount that is in compliance with Federal law and applicable State law.

(3) **LIMITATION ON RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.**—

(A) **IN GENERAL.**—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability—

(i) of any person to set a minimum dollar value for the acceptance by that person of credit cards, to the extent that —

(I) such minimum dollar value does not differentiate between issuers or between payment card networks; and

(II) such minimum dollar value does not exceed \$10.00; or

(ii) of any Federal agency or institution of higher education to set a maximum dollar value for the acceptance by that Federal agency or institution of higher education of credit cards, to the extent that such maximum dollar value does not differentiate between issuers or between payment card networks.

(B) **INCREASE IN MINIMUM DOLLAR AMOUNT.**—The Board may, by regulation prescribed pursuant to section 553 of title 5, United States Code, increase the amount of the dollar value listed in subparagraph (A)(i)(II).

(4) **RULE OF CONSTRUCTION.**—No provision of this subsection shall be construed to authorize any person—

(A) to discriminate between debit cards within a payment card network on the basis of the issuer that issued the debit card; or

(B) to discriminate between credit cards within a payment card network on the basis of the issuer that issued the credit card.

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

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

(2) **DEBIT CARD.**—The term “debit card”—

(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means;

(B) includes a general-use prepaid card, as that term is defined in section 915(a)(2)(A); and

- (C) does not include paper checks.
- (3) CREDIT CARD.—The term “credit card” has the same meaning as in section 103 of the Truth in Lending Act.
- (4) DISCOUNT.—The term “discount”—
 - (A) means a reduction made from the price that customers are informed is the regular price; and
 - (B) does not include any means of increasing the price that customers are informed is the regular price.
- (5) ELECTRONIC DEBIT TRANSACTION.—The term “electronic debit transaction” means a transaction in which a person uses a debit card.
- (6) FEDERAL AGENCY.—The term “Federal agency” means—
 - (A) an agency (as defined in section 101 of title 31, United States Code); and
 - (B) a Government corporation (as defined in section 103 of title 5, United States Code).
- (7) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the same meaning as in 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002).
- (8) INTERCHANGE TRANSACTION FEE.—The term “interchange transaction fee” means any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.
- (9) ISSUER.—The term “issuer” means any person who issues a debit card, or credit card, or the agent of such person with respect to such card.
- (10) NETWORK FEE.—The term “network fee” means any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee.
- (11) PAYMENT CARD NETWORK.—The term “payment card network” means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.
- (d) ENFORCEMENT.—
 - (1) IN GENERAL.—Compliance with the requirements imposed under this section shall be enforced under section 918.
 - (2) EXCEPTION.—Sections 916 and 917 shall not apply with respect to this section or the requirements imposed pursuant to this section.

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EXPEDITED FUNDS AVAILABILITY ACT

SEC. 601. SHORT TITLE.

This title may be cited as the “Expedited Funds Availability Act”.

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SEC. 603. EXPEDITED FUNDS AVAILABILITY SCHEDULES.**(a) NEXT BUSINESS DAY AVAILABILITY FOR CERTAIN DEPOSITS.—**

(1) CASH DEPOSITS; WIRE TRANSFERS.—Except as provided in subsection (e) and in section 604, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution, such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) GOVERNMENT CHECKS; CERTAIN OTHER CHECKS.—Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

- (i) is drawn on the Treasury of the United States; and
- (ii) is endorsed only by the person to whom it was issued.

(B) a check which—

- (i) is drawn by a State;
- (ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;
- (iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and
- (iv) is endorsed only by the person to whom it was issued;

(C) a check which—

- (i) is drawn by a unit of general local government;
- (ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;
- (iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and
- (iv) is endorsed only by the person to whom it was issued;

(D) the first \$200 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

- (i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;

(ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and

(iii) is endorsed only by the person to whom it was issued.

(b) PERMANENT SCHEDULE.—

(1) AVAILABILITY OF FUNDS DEPOSITED BY LOCAL CHECKS.—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

(2) AVAILABILITY OF FUNDS DEPOSITED BY NONLOCAL CHECKS.—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) TIME PERIOD ADJUSTMENTS FOR CASH WITHDRAWAL OF CERTAIN CHECKS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) 5 P.M. CASH AVAILABILITY.—Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) \$200 AVAILABILITY.—Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D).

(4) APPLICABILITY.—This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) TEMPORARY SCHEDULE.—

(1) AVAILABILITY OF LOCAL CHECKS.—

(A) IN GENERAL.—Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section,

and section 604, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(B) TIME PERIOD ADJUSTMENT FOR CASH WITHDRAWAL OF CERTAIN CHECKS.—

(i) IN GENERAL.—Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearing-house association as the receiving depository institution (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) 5 P.M. CASH AVAILABILITY.—Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) \$200 AVAILABILITY.—Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D).

(2) AVAILABILITY OF NONLOCAL CHECKS.—Subject to subsections (a)(2), (d), and (e) of this section and section 604, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) APPLICABILITY.—This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4).

(d) TIME PERIOD ADJUSTMENTS.—

(1) REDUCTION GENERALLY.—Notwithstanding any other provision of law, the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) EXTENSION FOR CERTAIN DEPOSITS IN NONCONTIGUOUS STATES OR TERRITORIES.—Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) DEPOSITS AT AN ATM.—

(1) NONPROPRIETARY ATM.—

(A) IN GENERAL.—Not more than 4 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) DEPOSITS DESCRIBED IN THIS PARAGRAPH.—A deposit is described in this subparagraph if it is—

- (i) a cash deposit;
- (ii) a deposit made by a check described in subsection (a)(2);
- (iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2)); or
- (iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2)).

(2) PROPRIETARY ATM—TEMPORARY AND PERMANENT SCHEDULES.—The provisions of subsections (a), (b), and (c) shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(3) STUDY AND REPORT ON ATM'S.—The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after the date of the enactment of this title, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) CHECK RETURN; NOTICE OF NONPAYMENT.—No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

- (1) such checks be physically returned to such depository institution; or
- (2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) or in the regulations issued under any such subsection.

SEC. 604. SAFEGUARD EXCEPTIONS.

(a) NEW ACCOUNTS.—Notwithstanding section 603, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit

in such account during the 30-day period (or such shorter period as the Board, jointly with the **Director of the Bureau** Bureau of Consumer Financial Protection, may establish) beginning on the date such account is established—

(1) NEXT BUSINESS DAY AVAILABILITY OF CASH AND CERTAIN ITEMS.—Except as provided in paragraph (3), in the case of—

(A) any cash deposited in such account;

(B) any funds received by such depository institution by wire transfer for deposit in such account;

(C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and

(D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 603(a)(2),

such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(2) AVAILABILITY OF OTHER ITEMS.—In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 603(b), 603(c), or paragraphs (1) of section 603(e).

(3) LIMITATION RELATING TO CERTAIN CHECKS IN EXCESS OF \$5,000.—In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds \$5,000—

(A) paragraph (1) shall apply only with respect to the first \$5,000 of such aggregate amount; and

(B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) LARGE OR REDEPOSITED CHECKS; REPEATED OVERDRAFTS.—The Board, jointly with the **Director of the Bureau** Bureau of Consumer Financial Protection, may, by regulation, establish reasonable exceptions to any time limitation established under subsection (a)(2), (b), (c), or (e) of section 603 for—

(1) the amount of deposits by one or more checks that exceeds the amount of \$5,000 in any one day;

(2) checks that have been returned unpaid and redeposited; and

(3) deposit accounts which have been overdrawn repeatedly.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—In accordance with regulations which the Board, jointly with the **Director of the Bureau** Bureau of Consumer Financial Protection, shall prescribe, subsections (a)(2), (b), (c), and (e) of section 603 shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding

sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

(2) BASIS FOR DETERMINATION.—No determination under this subsection may be based on any class of checks or persons.

(3) OVERDRAFT FEES.—If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

(A) the depositor was not provided with the written notice required under subsection (f) (with respect to such determination) at the time the deposit was made;

(B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and

(C) the amount of the check is collected from the originating depository institution.

(4) COMPLIANCE.—Each agency referred to in section 610(a) shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) as a result of the application of this subsection.

(d) EMERGENCY CONDITIONS.—Subject to such regulations as the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, may prescribe, subsections (a)(2), (b), (c), and (e) of section 603 shall not apply to funds deposited by check in any receiving depository institution in the case of—

(1) any interruption of communication facilities;

(2) suspension of payments by another depository institution;

(3) any war; or

(4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(e) PREVENTION OF FRAUD LOSSES.—

(1) IN GENERAL.—The Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, may, by regulation or order, suspend the applicability of this title, or any portion thereof, to any classification of checks if the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, determines that—

(A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

(B) suspension of this title, or such portion of this title, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) SUNSET PROVISION.—No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) REPORT TO CONGRESS.—

(A) NOTICE OF EACH SUSPENSION.—Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) CONTENTS OF REPORT.—Each report under subparagraph (A) shall contain—

(i) the specific reason for prescribing the regulation or issuing the order;

(ii) evidence considered by the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, in making the determination under paragraph (1) with respect to such regulation or order; and

(iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) NOTICE OF EXCEPTION; AVAILABILITY WITHIN REASONABLE TIME.—

(1) IN GENERAL.—If any exception contained in this section (other than subsection (a)) applies with respect to funds deposited in an account at a depository institution—

(A) the depository institution shall provide notice in the manner provided in paragraph (2) of—

(i) the time period within which the funds shall be made available for withdrawal; and

(ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this title, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection.

(2) TIME FOR NOTICE.—The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection.

(D) In the case of a deposit to which subsection (b)(1) or (b)(2) applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

(E) In the case of a deposit to which subsection (b)(3) applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.

(3) SUBSEQUENT DETERMINATIONS.—If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution.

SEC. 605. DISCLOSURE OF FUNDS AVAILABILITY POLICIES.

(a) NOTICE FOR NEW ACCOUNTS.—Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) PREPRINTED DEPOSIT SLIPS.—All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board, jointly with the [Director of the Bureau] Bureau of Consumer Financial Protection, in regulations, that deposited items may not be available for immediate withdrawal.

(c) MAILING OF NOTICE.—

(1) FIRST MAILING AFTER ENACTMENT.—In the first regularly scheduled mailing to customers occurring after the effective date of this section, but not more than 60 days after such effective date, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before such effective date.

(2) SUBSEQUENT CHANGES.—A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

(3) UPON REQUEST.—Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institu-

tion with respect to when a customer may withdraw funds deposited into a customer's account.

(d) POSTING OF NOTICE.—

(1) SPECIFIC NOTICE AT MANNED TELLER STATIONS.—Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) GENERAL NOTICE AT AUTOMATED TELLER MACHINES.—In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) NOTICE OF INTEREST PAYMENT POLICY.—If a depository institution described in section 606(b) begins the accrual of interest or dividends at a later date than the date described in section 606(a) with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) MODEL DISCLOSURE FORMS.—

(1) PREPARED BY BOARD AND BUREAU.—The Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) USE OF FORMS TO ACHIEVE COMPLIANCE.—A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

(A) uses any appropriate model form or clause as published by the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, or

(B) uses any such model form or clause and changes such form or clause by—

(i) deleting any information which is not required by this title; or

(ii) rearranging the format.

(3) VOLUNTARY USE.—Nothing in this title requires the use of any such model form or clause prescribed by the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, under this subsection.

(4) NOTICE AND COMMENT.—Model disclosure forms and clauses shall be adopted by the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

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SEC. 609. REGULATIONS AND REPORTS BY BOARD.

(a) IN GENERAL.—After notice and opportunity to submit comment in accordance with section 553(c) of title 5, United States Code, the Board, jointly with the [Director of the Bureau] *Bureau* of Consumer Financial Protection, shall prescribe regulations—

- (1) to carry out the provisions of this title;
- (2) to prevent the circumvention or evasion of such provisions; and
- (3) to facilitate compliance with such provisions.

(b) REGULATIONS RELATING TO IMPROVEMENT OF CHECK PROCESSING SYSTEM.—In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

(1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;

(2) the Federal Reserve banks and depository institutions provide for check truncation;

(3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;

(4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks,

(5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

- (i) automate the process of reading endorsements; and
- (ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determine whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f), that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(c) REGULATORY RESPONSIBILITY OF BOARD FOR PAYMENT SYSTEM.—

(1) RESPONSIBILITY FOR PAYMENT SYSTEM.—In order to carry out the provisions of this title, the Board of Governors of the

Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) REGULATIONS.—The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(d) REPORTS.—

(1) IMPLEMENTATION PROGRESS REPORTS.—

(A) REQUIRED REPORTS.—The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after the date of the enactment of this title.

(B) CONTENTS OF REPORT.—Each such report shall describe—

(i) the actions taken and progress made by the Board to implement the schedules established in section 603, and

(ii) the impact of this title on consumers and depository institutions.

(2) EVALUATION OF TEMPORARY SCHEDULE REPORT.—

(A) REPORT REQUIRED.—The Board shall transmit a report to both Houses of the Congress not later than 2 years after the date of the enactment of this title regarding the effects the temporary schedule established under section 603(c) have had on depository institutions and the public.

(B) CONTENTS OF REPORT.—Such report shall also assess the potential impact the implementation of the schedule established in section 603(b) will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

(3) COMPTROLLER GENERAL EVALUATION REPORT.—Not later than 6 months after section 603(b) takes effect, the Comptroller General of the United States shall transmit a report to the Congress evaluating the implementation and administration of this title.

(e) CONSULTATIONS.—In prescribing regulations under subsections (a) and (b), the Board and the **Director of the Bureau** Bureau of Consumer Financial Protection, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.

(f) ELECTRONIC CLEARINGHOUSE STUDY.—

(1) STUDY REQUIRED.—The Board shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

- (2) CONSULTATION; FACTORS TO BE STUDIED.—In connection with the study required under paragraph (1), the Board shall—
 - (A) consult with appropriate experts in telecommunications technology; and
 - (B) consider all practical and legal impediments to the development of an electronic clearinghouse process.
- (3) REPORT REQUIRED.—The Board shall report its conclusions to the Congress within 9 months of the date of the enactment of this title.

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FEDERAL DEPOSIT INSURANCE ACT

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SEC. 2. MANAGEMENT.

- (a) BOARD OF DIRECTORS.—
 - (1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—
 - (A) 1 of whom shall be the Comptroller of the Currency;
 - (B) 1 of whom shall be the [Director of the Consumer Financial Protection Bureau] *Chair of the Bureau of Consumer Financial Protection*; and
 - (C) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.
 - (2) POLITICAL AFFILIATION.—After February 28, 1993, not more than 3 of the members of the Board of Directors may be members of the same political party.
- (b) CHAIRPERSON AND VICE CHAIRPERSON.—
 - (1) CHAIRPERSON.—1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.
 - (2) VICE CHAIRPERSON.—1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.
 - (3) ACTING CHAIRPERSON.—In the event of a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.
- (c) TERMS.—
 - (1) APPOINTED MEMBERS.—Each appointed member shall be appointed for a term of 6 years.
 - (2) INTERIM APPOINTMENTS.—Any member appointed to fill a vacancy occurring before the expiration of the term for which such member’s predecessor was appointed shall be appointed only for the remainder of such term.
 - (3) CONTINUATION OF SERVICE.—The Chairperson, Vice Chairperson, and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(d) VACANCY.—

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

(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency or the office of **【Director of the Consumer Financial Protection Bureau】** *Chair of the Bureau of Consumer Financial Protection* and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency or the **【Director of the Consumer Financial Protection Bureau】** *Chair of the Bureau of Consumer Financial Protection*, the acting Comptroller of the Currency or the acting **【Director of the Consumer Financial Protection Bureau】** *Chair of the Bureau of Consumer Financial Protection*, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.

(e) INELIGIBILITY FOR OTHER OFFICES.—

(1) POSTSERVICE RESTRICTION.—

(A) IN GENERAL.—No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any depository institution holding company during—

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

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

(B) EXCEPTION FOR MEMBERS WHO SERVE FULL TERM.—

The limitation contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the Board of Directors after serving the full term for which such member was appointed.

(2) RESTRICTION DURING SERVICE.—No member of the Board of Directors may—

(A) be an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank; or

(B) hold stock in any insured depository institution or depository institution holding company.

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

(f) STATUS OF EMPLOYEES.—

(1) IN GENERAL.—A director, member, officer, or employee of the Corporation has no liability under the Securities Act of 1933 with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. This subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment.

(2) DEFINITION.—For purposes of this subsection, the term “employee of the Corporation” includes any employee of the Office of the Comptroller of the Currency or of the Consumer Financial Protection Bureau who serves as a deputy or assistant to a member of the Board of Directors of the Corporation in connection with activities of the Corporation.

(3) EFFECT ON OTHER LAW.—This subsection does not affect—

(A) any other immunities and protections that may be available to such person under applicable law with respect to such transactions, or

(B) any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a person described in paragraph (1) participating in such transactions.

This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

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TITLE X—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

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ESTABLISHMENT OF THE COUNCIL

SEC. 1004. (a) There is established the Financial Institutions Examination Council which shall consist of—

- (1) the Comptroller of the Currency,
- (2) the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation,
- (3) a Governor of the Board of Governors of the Federal Reserve System designated by the Chairman of the Board,
- (4) the [Director of the Consumer Financial Protection Bureau] *Chair of the Bureau of Consumer Financial Protection*,
- (5) the Chairman of the National Credit Union Administration Board, and
- (6) the Chairman of the State Liaison Committee.

(b) The members of the Council shall select the first chairman of the Council. Thereafter the chairmanship shall rotate among the members of the Council.

(c) The term of the Chairman of the Council shall be two years.

(d) The members of the Council may, from time to time, designate other officers or employees of their respective agencies to carry out their duties on the Council.

(e) Each member of the Council shall serve without additional compensation but shall be entitled to reasonable expenses incurred in carrying out his official duties as such a member.

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FINANCIAL LITERACY AND EDUCATION IMPROVEMENT ACT

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TITLE V—FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

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SEC. 513. ESTABLISHMENT OF FINANCIAL LITERACY AND EDUCATION COMMISSION.

(a) **IN GENERAL.**—There is established a commission to be known as the “Financial Literacy and Education Commission”.

(b) **PURPOSE.**—The Commission shall serve to improve the financial literacy and education of persons in the United States through development of a national strategy to promote financial literacy and education.

(c) **MEMBERSHIP.**—

(1) **COMPOSITION.**—The Commission shall be composed of—

(A) the Secretary of the Treasury;

(B) the respective head of each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, the Securities and Exchange Commission, each of the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management;

(C) the **[Director]** *Chair* of the Bureau of Consumer Financial Protection; and

(D) at the discretion of the President, not more than 5 individuals appointed by the President from among the administrative heads of any other Federal agencies, departments, or other Federal Government entities, whom the President determines to be engaged in a serious effort to improve financial literacy and education.

(2) **ALTERNATES.**—Each member of the Commission may designate an alternate if the member is unable to attend a meeting of the Commission. Such alternate shall be an individual who exercises significant decisionmaking authority.

(d) **CHAIRPERSON.**—The Secretary of the Treasury shall serve as the Chairperson. The **[Director]** *Chair* of the Bureau of Consumer Financial Protection shall serve as the Vice Chairman.

(e) **MEETINGS.**—The Commission shall hold, at the call of the Chairperson, at least 1 meeting every 4 months. All such meetings

shall be open to the public. The Commission may hold, at the call of the Chairperson, such other meetings as the Chairperson sees fit to carry out this title.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) INITIAL MEETING.—The Commission shall hold its first meeting not later than 60 days after the date of enactment of this Act.

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HOME MORTGAGE DISCLOSURE ACT OF 1975

TITLE III—HOME MORTGAGE DISCLOSURE

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SEC. 307. COMPLIANCE IMPROVEMENT METHODS.

(a) IN GENERAL.—

(1) CONSULTATION REQUIRED.—The [Director of the Bureau of Consumer Financial Protection] *Bureau of Consumer Financial Protection*, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

(3) CONTRACTING AUTHORITY.—The [Director of the Bureau of Consumer Financial Protection] *Bureau of Consumer Financial Protection* is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

(b) RECOMMENDATIONS TO CONGRESS.—The [Director of the Bureau of Consumer Financial Protection] *Bureau of Consumer Financial Protection* shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the [Director of the Bureau of Consumer Financial Protection] *Bureau of Consumer Financial Protection* deems appropriate to carry out the purpose of this title.

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INTERSTATE LAND SALES FULL DISCLOSURE ACT

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TITLE XIV—INTERSTATE LAND SALES

SHORT TITLE

SEC. 1401. This title may be cited as the “Interstate Land Sales Full Disclosure Act.”

DEFINITIONS

SEC. 1402. For the purposes of this title, the term—

【(1) “Director” means the Director of the Bureau of Consumer Financial Protection;】

【(2)】 (1) “person” means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate;

【(3)】 (2) “subdivision” means any land which is located in any State or in a foreign country and is divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan;

【(4)】 (3) “common promotional plan” means a plan, undertaken by a single developer or a group of developers acting in concert, to offer lots for sale or lease; where such land is offered for sale by such a developer or group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;

【(5)】 (4) “developer” means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;

【(6)】 (5) “agent” means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose representation or another person consists solely of rendering legal services;

【(7)】 (6) “blanket encumbrance” means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision, except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority;

【(8)】 (7) “interstate commerce” means trade or commerce among the several states or between any foreign country and any state;

【(9)】 (8) “State” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

【(10)】 (9) “purchaser” means an actual or prospective purchaser or lessee of any lot in a subdivision;

【(11)】 (10) “offer” includes any inducement, solicitation, or attempt to encourage a person to acquire a lot in a subdivision; and

【(12)】 (11) “Bureau” means the Bureau of Consumer Financial Protection.

EXEMPTIONS

SEC. 1403. (a) Unless the method of disposition is adopted for the purpose of evasion of this title, the provisions of this title shall not apply to—

(1) the sale or lease of lots in a subdivision containing less than twenty-five lots;

(2) the sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building, or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years;

(3) the sale of evidences of indebtedness secured by a mortgage or deed of trust on real estate;

(4) the sale of securities issued by a real estate investment trust;

(5) the sale or lease of real estate by any government or government agency;

(6) the sale or lease of cemetery lots;

(7) the sale or lease of lots to any person who acquires such lots for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business; or

(8) the sale or lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development or which is restricted to such use by a declaration of covenants, conditions, and restrictions which has been recorded in the official records of the city or county in which such real estate is located, when—

(A) local authorities have approved access from such real estate to a public street or highway;

(B) the purchaser or lessee of such real estate is a duly organized corporation, partnership, trust, or business entity engaged in commercial or industrial business;

(C) the purchaser or lessee of such real estate is represented in the transaction of sale or lease by a representative of its own selection;

(D) the purchaser or lessee of such real estate affirms in writing to the seller or lessor that it either (i) is purchasing or leasing such real estate substantially for its own use, or (ii) has a binding commitment to sell, lease, or sublease such real estate to an entity which meets the requirements of subparagraph (B), is engaged in commercial or industrial business, and is not affiliated with the seller, lessor, or agent thereof; and

(E) a policy of title insurance or a title opinion is issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as may be approved in writing by such purchaser or the lessee prior to recordation of the instrument of conveyance or execution of the lease, but (i) nothing herein shall be construed as requiring the recordation of a lease, and (ii) any purchaser or lessee may waive, in writing in a separate document, the

requirement of this subparagraph that a policy of title insurance or title opinion be issued in connection with the transaction.

(b) Unless the method of disposition is adopted for the purpose of evasion of this title, the provisions requiring registration and disclosure (as specified in section 1404(a)(1) and sections 1405 through 1408) shall not apply to—

(1) the sale or lease of lots in a subdivision containing fewer than one hundred lots which are not exempt under subsection (a);

(2) the sale or lease of lots in a subdivision if, within the twelve-month period commencing on the date of the first sale or lease of a lot in such subdivision after the effective date of this subsection or on such other date within that twelve-month period as the [Director] *Bureau* may prescribe, not more than twelve lots are sold or leased, and the sale or lease of the first twelve lots in such subdivision in any subsequent twelve-month period, if not more than twelve lots have been sold or leased in any preceding twelve-month period after the effective date of this subsection;

(3) the sale or lease of lots in a subdivision if each noncontiguous part of such subdivision contains not more than twenty lots, and if the purchaser or lessee (or spouse thereof) has made a personal, on-the-lot inspection of the lot purchased or leased, prior to signing of the contract or agreement to purchase or lease;

(4) the sale or lease of lots in a subdivision in which each of the lots is at least twenty acres (inclusive of easements for ingress and egress or public utilities);

(5) the sale or lease of a lot which is located within a municipality or county where a unit of local government specifies minimum standards for the development of subdivision lots taking place within its boundaries, when—

(A)(i) the subdivision meets all local codes and standards, and (ii) each lot is either zoned for single family residences or, in the absence of a zoning ordinance, is limited exclusively to single family residences;

(B)(i) the lot is situated on a paved street or highway which has been built to standards applicable to streets and highways maintained by the unit of local government in which the subdivision is located and is acceptable to such unit, or, where such street or highway is not complete, a bond or other surety acceptable to the municipality or county in the full amount of the cost of completing such street or highway has been posted to assure completion to such standards, and (ii) the unit of local government or a homeowners association has accepted or is obligated to accept the responsibility of maintaining such street or highway, except that, in any case in which a homeowners association has accepted or is obligated to accept such responsibility, a good faith written estimate of the cost of carrying out such responsibility over the first ten years of ownership or lease is provided to the purchaser or lessee prior to the signing of the contract or agreement to purchase or lease;

(C) at the time of closing, potable water, sanitary sewage disposal, and electricity have been extended to the lot or the unit of local government is obligated to install such facilities within one hundred and eighty days, and, for subdivisions which do not have a central water or sewage disposal system, rather than installation of water or sewer facilities, there must be assurances that an adequate potable water supply is available year-round and that the lot is approved for the installation of a septic tank;

(D) the contract of sale requires delivery of a warranty deed (or, where such deed is not commonly used in the jurisdiction where the lot is located, a deed or grant which warrants that the grantor has not conveyed the lot to another person and that the lot is free from encumbrances made by the grantor or any other person claiming by, through, or under him) to the purchaser within one hundred and eighty days after the signing of the sales contract;

(E) at the time of closing, a title insurance binder or a title opinion reflecting the condition of the title shall be in existence and issued or presented to the purchaser or lessee showing that, subject only to such exceptions as may be approved in writing by the purchaser or lessee at the time of closing, marketable title to the lot is vested in the seller or lessor;

(F) the purchaser or lessee (or spouse thereof) has made a personal, on-the-lot inspection of the lot purchased or leased, prior to signing of the contract or agreement to purchase or lease; and

(G) there are no offers, by direct mail or telephone solicitation, of gifts, trips, dinners, or other such promotional techniques to induce prospective purchasers or lessees to visit the subdivision or to purchase or lease a lot;

(6) the sale or lease of a lot, if a mobile home is to be erected or placed thereon as a residence, where the lot is sold as a homesite by one party and the home by another, under contracts that obligate such sellers to perform, contingent upon the other seller carrying out its obligations so that a completed mobile home will be erected or placed on the completed homesite within a period of two years, and provide for all funds received by the sellers to be deposited in escrow accounts (controlled by parties independent of the sellers) until the transactions are completed, and further provide that such funds shall be released to the buyer on demand without prejudice if the land with the mobile home erected or placed thereon is not conveyed within such two-year period. Such homesite must conform to all local codes and standards for mobile home subdivisions, if any, must provide potable water, sanitary sewage disposal, electricity, access by roads, the purchaser must receive marketable title to the lot, and where common facilities are to be provided, they must be completed or fully funded;

(7)(A) the sale or lease of real estate by a developer who is engaged in a sales operation which is intrastate in nature. For purposes of this exemption, a lot may be sold only if—

- (i) the lot is free and clear of all liens, encumbrances, and adverse claims;
 - (ii) the purchaser or lessee (or spouse thereof) has made a personal on-the-lot inspection of the lot to be purchased or leased;
 - (iii) each purchase or lease agreement contains—
 - (I) a clear and specific statement describing a good faith estimate of the year of completion of, and the party responsible for, providing and maintaining the roads, water facilities, sewer facilities and any existing or promised amenities; and
 - (II) a nonwaivable provision specifying that the contract or agreement may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws; and
 - (iv) the purchaser or lessee has, prior to the time the contract or lease is entered into, acknowledged in writing the receipt of a written statement by the developer containing good faith estimates of the cost of providing electric, water, sewage, gas, and telephone service to such a lot.
- (B) As used in subparagraph (A)(i) of this paragraph, the terms “liens”, “encumbrances”, and “adverse claims” do not include United States land patents and similar Federal grants or reservations, property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners’ association, which, under applicable State or local law, constitute liens on the property before they are due and payable or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, if—
- (i) the developer, prior to the time the contract of sale or lease is entered into, has furnished each purchaser or lessee with a statement setting forth in descriptive and concise terms all such liens, reservations, taxes, assessments and restrictions which are applicable to the lot to be purchased or leased; and
 - (ii) receipt of such statement has been acknowledged in writing by the purchaser or lessee.
- (C) For the purpose of this paragraph, a sales operation is “intrastate in nature” if the developer is subject to the laws of the State in which the land is located, and each lot in the subdivision, other than those which are exempt under section 1403(a), (b)(6), or (b)(8), is sold or leased to residents of the State in which the land is located;
- (8) the sale or lease of a lot in a subdivision containing fewer than three hundred lots if—
- (A) the principal residence of the purchaser or lessee is within the same standard metropolitan statistical area, as

defined by the Office of Management and Budget, as the lot purchased or leased;

(B) the lot is free and clear of liens (such as mortgages, deeds of trust, tax liens, mechanics liens, or judgments) at the time of the signing of the contract or agreement and until a deed is delivered to the purchaser or the lease expires. As used in this subparagraph, the term "liens" does not include (i) United States land patents and similar Federal grants or reservations, (ii) property reservations which lands developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, (iii) taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable or beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, or (iv) other interests described in regulations prescribed by the **[Director] Bureau**;

(C) the purchaser or lessee (or spouse thereof) has made a personal on-the-lot inspection of the lot to be purchased or leased;

(D) each purchase or lease agreement contains (i) a clear and specific statement describing a good faith estimate of the year of completion of and the party responsible for providing and maintaining the roads, water facilities sewer facilities and any existing or promised amenities; and (ii) a non waivable provision specifying that the contract or agreement may be revoked at the option of the purchaser or lessee until midnight of the seventh day following the signing of such contract or agreement or until such later time as may be required pursuant to applicable State laws;

(E) the purchaser or lessee has, prior to the time the contract or lease is entered into, acknowledged in writing receipt of a written statement by the developer setting forth (i) in descriptive and concise terms all liens, reservations, taxes, assessments, beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, and adverse claims which are applicable to the lot to be purchased or leased, and (ii) good faith estimates of the cost of providing electric, water, sewer, gas, and telephone service to such lot;

(F) the developer executes and supplies to the purchaser a written instrument designating a person within the State of residence of the purchaser as his agent for service of process and acknowledging that the developer submits to the legal jurisdiction of the State in which the purchaser or lessee resides; and

(G) the developer executes a written affirmation to the effect that he has complied with the provisions of this paragraph, such affirmation to be given on a form provided by the **[Director] Bureau**, which shall include the following: the name and address of the developer; the name and address of the purchaser or lessee; a legal description

of the lot; and affirmation that the provisions of this paragraph have been complied with; a statement that the developer submits to the jurisdiction of this title with regard to the sale of lease; and the signature of the developer; or

(9) the sale or lease of a condominium unit that is not exempt under subsection (a).

(c) The **[Director]** *Bureau* may from time to time, pursuant to rules and regulations issued by **[him]** *the Bureau*, exempt from any of the provisions of this title any subdivision or any lots in a subdivision, if **[he]** *the Bureau* finds that the enforcement of this title with respect to such subdivision or lots is not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited character of the public offering.

(d) For purposes of subsection (b), the term “condominium unit” means a unit of residential or commercial property to be designated for separate ownership pursuant to a condominium plan or declaration provided that upon conveyance—

(1) the owner of such unit will have sole ownership of the unit and an undivided interest in the common elements appurtenant to the unit; and

(2) the unit will be an improved lot.

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REGISTRATION OF SUBDIVISIONS

SEC. 1405. (a) A subdivision may be registered by filing with the **[Director]** *Bureau* a statement of record, meeting the requirements of this title and such rules and regulations as may be prescribed by the **[Director]** *Bureau* in furtherance of the provisions of this title. A statement of record shall be deemed effective only as to the lots specified therein.

(b) At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the **[Director]** *Bureau* a fee, not in excess of \$1,000, in accordance with a schedule to be fixed by the regulations of the **[Director]** *Bureau*, which fees may be used by the **[Director]** *Bureau* to cover all or part of the cost of rendering services under this title, and such expenses as are paid from such fees shall be considered non-administrative.

(c) The filing with the **[Director]** *Bureau* of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (b).

(d) The information contained in or filed with any statement of record shall be made available to the public under such regulations as the **[Director]** *Bureau* may prescribe and copies thereof shall be furnished to every applicant at such reasonable charge as the **[Director]** *Bureau* may prescribe.

INFORMATION REQUIRED IN STATEMENT OF RECORD

SEC. 1406. The statement of record shall contain the information and be accompanied by the documents specified hereinafter in this section—

(1) the name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest;

(2) a legal description of, and a statement of the total area included in, the subdivision and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the lots to be covered by the statement of record and their relation to existing streets and roads;

(3) a statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto;

(4) a statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision;

(5) a statement of the present condition of access to the subdivision, the existence of any unusual conditions relating to noise or safety which affect the subdivision and are known to the developer, the availability of sewage disposal facilities and other public utilities (including water, electricity, gas and telephone facilities) in the subdivision, the proximity in miles to the subdivision to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

(6) in the case of any subdivision or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrance and the steps, if any, taken to protect the purchaser in such eventuality;

(7)(A) copy of its articles of incorporation, with all amendments thereto, if the developer is a corporation; (B) copies of all instruments by which the trust is created or declared, if the developer is a trust; (C) copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and (D) if the purported holder of legal title is a person other than developer, copies of the above documents for such person;

(8) copies of the deed or other instrument establishing title to the subdivision in the developer or other person and copies of any instrument creating a lien or encumbrance upon the title of developer or other person or copies of the opinion or opinions of counsel in respect to the title to the subdivision in the developer or other person or copies of the title insurance policy guaranteeing such title;

(9) copies of all forms of conveyance to be used in selling or leasing lots to purchasers;

(10) copies of instruments creating easements or other restrictions;

(11) such certified and uncertified financial statements of the developer as the **[Director]** *Bureau* may require; and

(12) such other information and such other documents and certifications as the **[Director]** *Bureau* may require as being reasonably necessary or appropriate for the protection of purchasers.

TAKING EFFECT OF STATEMENTS OF RECORD AND AMENDMENTS
THERE TO

SEC. 1407. (a) Except as hereinafter provided, the effective date of a statement of record, or any amendment thereto, shall be the thirtieth day after the filing thereof or such earlier date as the [Director] *Bureau* may determine, having due regard to the public interest and the protection of purchaser. If any amendment to any such statement is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the consent of the Secretary, or filed pursuant to an order of the [Director] *Bureau*, shall be treated as being filed as of the date of the filing of the statement of record. When a developer records additional lands to be offered for disposition, he may consolidate the subsequent statement of record with any earlier recording offering subdivided land for disposition under the same promotional plan. At the time of consolidation the developer shall include in the consolidated statement of record any material changes in the information contained in the earlier statement.

(b) If it appears to the [Director] *Bureau* that a statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the [Director] *Bureau* shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective date of the statement or the amendment until thirty days after the developer files such additional information as the [Director] *Bureau* shall require. Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be held within twenty days of receipt of such request by the [Director] *Bureau*.

(c) If, at any time subsequent to the effective date of a statement or record, a change shall occur affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the [Director] *Bureau* may, if [he] *the Bureau* determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

(d) If it appears to the [Director] *Bureau* at any time that a statement of record, which is in effect, 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 [Director] *Bureau* may, after notice, and after opportunity for hearing (at a time fixed by the [Director] *Bureau*) within fifteen days after such notice, issue an order suspending the statement of record. When such statement has been amended in accordance with such order, the [Director] *Bureau* shall so declare and thereupon the order shall cease to be effective.

(e) The [Director] *Bureau* is hereby empowered to make an examination in any case to determine whether an order should issue under subsection (d). In making such examination, the [Director or anyone designated by him] *Bureau* shall have access to and may demand the production of any books and papers of, and many ad-

minister oaths and affirmations to and examine, the developer, any agents, or any other person, in respect of any matter relevant to the examination. If the developer or any agents 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 an order suspending the statement of record.

(f) Any notice required under this section shall be sent to or served on the developer or his authorized agent.

INFORMATION REQUIRED IN PROPERTY REPORT

SEC. 1408. (a) A property report relating to the lots in a subdivision shall contain such of the information contained in the statement of record, and any amendments thereto, as the **[Director]** *Bureau* may deem necessary, but need not include the documents referred to in paragraphs (7) to (11), inclusive, of section 1406. A property report shall also contain such other information as the **[Director]** *Bureau* may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of purchasers.

(b) The property report shall not be used for any promotional purposes before the statement of record becomes effective and then only if it is used in its entirety. No person may advertise or represent that the **[Director]** *Bureau* approves or recommends the subdivision or the sale or lease of lots therein. No portion of the property report shall be underscored, italicized, or printed in larger, or bolder type than the balance of the statement unless the **[Director]** *Bureau* requires or permits it.

CERTIFICATION OF SUBSTANTIALLY EQUIVALENT STATE LAW

SEC. 1409. (a)(1) A State shall be certified if the **[Director]** *Bureau* determines—

(A) that, when taken as a whole, the laws and regulations of the State applicable to the sale or lease of lots not exempt under section 1403 require the seller or lessor of such lots to disclose information which is at least substantially equivalent to the information required to be disclosed by section 1408; and

(B) that the State's administration of such laws and regulations provides, to the maximum extent practicable, that such information is accurate.

(2) In the case of any State which is not certified under paragraph (1), such State shall be certified if the **[Director]** *Bureau* determines—

(A) that when taken as a whole, the laws and regulations of the State applicable to the sale or lease of lots not exempt under section 1403 provide sufficient protection for purchasers and lessees with respect to the matters for which information is required to be disclosed by section 1408 but which is not required to be disclosed by such State's laws and regulations; and

(B) that the State's administration of such laws and regulations provides, to the maximum extent practicable, that (i) information required to be disclosed by such laws and regulations is accurate, and (ii) sufficient protection for purchasers

and lessees is made available with respect to the matters for which information is not required to be disclosed.

(3) Any State requesting certification must agree to accept a property report covering land located in another certified State but offered for sale or lease in the State requesting certification if the property report has been approved by the other certified State. Such property report shall be the only property report required by the State with respect to the sale or lease of such land.

(b) After the **[Director] Bureau** has certified a State under subsection (a), the **[Director] Bureau** shall accept for filing under sections 1405 through 1408 (and declare effective as the Federal statement of record and property report which shall be used in all States in which the lots are offered for sale or lease) disclosure materials found acceptable, and any related documentation required, by State authorities in connection with the sale or lease of lots located within the State. The **[Director] Bureau** may accept for such filing, and declare effective as the Federal statement of record and property report, such materials and documentation found acceptable by the State in connection with the sale or lease of lots located outside that State. Nothing in this subsection shall preclude the **[Director] Bureau** from exercising the authority conferred by subsections (d) and (e) of section 1407.

(c) If a State fails to meet the standards for certification pursuant to subsection (a), the **[Director] Bureau** shall notify the State in writing of the changes in State law, regulation, or administration that are needed in order to obtain certification.

(d) The **[Director] Bureau** shall periodically review the laws and regulations, and the administration thereof, of States certified under subsection (a), and may withdraw such certification upon a determination that such laws, regulations, and the administration thereof, taken as a whole, no longer meet the requirements of subsection (a).

(e) Nothing in this title may be construed to prevent or limit the authority of any State or local government to enact and enforce with regard to the sale of land any law, ordinance, or code not in conflict with this title. In administering this title, the **[Director] Bureau** shall cooperate with State authorities charged with the responsibility of regulating the sale or lease of lots which are subject to this title.

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COURT REVIEW OF ORDERS

SEC. 1411. (a) Any person, aggrieved by an order or determination of the **[Director] Bureau** issued after a hearing, may obtain a review of such order or determination in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order or determination, a written petition praying that the order or determination of the **[Director] Bureau** be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the **[Director] Bureau**, and thereupon the **[Director] Bureau** shall file in the court the record upon which the order or

determination complained of was entered, as provided in section 2112 of title 28, United States Code. No objection to an order or determination of the [Director] *Bureau* shall be considered by the court unless such objection shall have been urged before the [Director] *Bureau*. The finding of the [Director] *Bureau* as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the [Director] *Bureau*, the court may order such additional evidence to be taken before the [Director] *Bureau* and to be adduced upon a hearing in such manner and upon such terms and conditions as to the court may seem proper. The [Director] *Bureau* may modify [his findings] *the findings of the Bureau* as to the facts by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and [his recommendation] *the recommendation of the Bureau*, if any, for the modification or setting aside of the original order. Upon the filing of such petition, the jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the [Director] *Bureau*, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

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CONTRARY STIPULATION VOID

SEC. 1413. Any condition, stipulation, or provision binding any person acquiring any lot in a subdivision to waive compliance with any provision of this title of the rules and regulations of the [Director] *Bureau* shall be void.

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INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES

SEC. 1415. (a) Whenever it shall appear to the [Director] *Bureau* that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed pursuant thereto, [he may, in his discretion,] *the Bureau may, in the discretion of the Bureau*, bring an action in any district court of the United States, or the United States District Court for the District of Columbia to enjoin such acts or practices, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The [Director] *Bureau* may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the appropriate criminal proceedings under this title.

(b) The [Director] *Bureau* may, [in his discretion] *in the discretion of the Bureau*, make such investigations as [he deems] *the Bu-*

reau determines necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation prescribed pursuant thereto, and may require or permit any person to file with him a statement in writing, under oath or otherwise as the [Director] *Bureau* shall determine, as to all the facts and circumstances concerning the matter to be investigated. The [Director] *Bureau* is authorized, [in his discretion] *in the discretion of the Bureau*, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which [he may deem] *the Bureau may determine* necessary or proper to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder or in securing information to service as a basis for recommending further legislation concerning the matters to which this title relates.

(c) For the purpose of any such investigation, or any other proceeding under this title, [the Director, or any officer designated by him,] *the Bureau* is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the [Director] *Bureau* deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(d) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the [Director] *Bureau* may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums, and other records and documents. And such court may issue an order requiring such person to appear before the [Director] *Bureau* or any officer designated by the [Director] *Bureau*, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

ADMINISTRATION

SEC. 1416. (a) The authority and responsibility for administering this title shall be in the [Director of the Bureau of Consumer Financial Protection who may delegate any of his] *Bureau of Consumer Financial Protection, which may delegate any functions, duties, and powers to employees of the Bureau of Consumer Financial Protection or to boards of such employees including functions, duties, and powers with respect to investigating, hearing, determining, ordering, or otherwise acting as to any work, business, or matter under this title.* The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Bureau in compliance with sections 3105, 3344, 5372, and 7521 of title 5 of the United States Code. The [Director] *Bureau* shall by rule prescribed such rights of appeal from the decisions of [his administrative] *administrative*

law judges to other administrative law judges or to other officers in the Bureau, to boards of officers or to **himself** *the commission of the Bureau*, as shall be appropriate and in accordance with law.

(b) All hearings shall be public and appropriate records thereof shall be kept, and any order issued after such hearing shall be based on the record made in such hearing which shall be conducted in accordance with provisions of subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

(c) The **Director** *Bureau* shall conduct all actions with respect to rulemaking or adjudication under this title in accordance with the provisions of chapter 5 of title 5, United States Code. Notice shall be given of any adverse action or final disposition and such notice and the entry of any order shall be accompanied by a written statement of supporting facts and legal authority.

UNLAWFUL REPRESENTATIONS

SEC. 1417. The fact that a statement of record with respect to a subdivision has been filed or is in effect shall not be deemed a finding by the **Director** *Bureau* that the statement of record is true and accurate on its face, or be held to mean the **Director** *Bureau* has in any way passed upon the merits of, or given approval to, such subdivision. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

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CIVIL MONEY PENALTIES

SEC. 1418a. (a) IN GENERAL.—

(1) AUTHORITY.—Whenever any person knowingly and materially violates any of the provisions of this title or any rule, regulation, or order issued under this title, the **Director** *Bureau* may impose a civil money penalty on such person in accordance with the provisions of this section. The penalty shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the **Director** *Bureau* imposes other administrative sanctions.

(2) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the **Director** *Bureau*, may not exceed \$1,000 for each violation, except that the maximum penalty for all violations by a particular person during any 1-year period shall not exceed \$1,000,000. Each violation of this title, or any rule, regulation, or order issued under this title, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease. In the case of a continuing violation, as determined by the **Director** *Bureau*, each day shall constitute a separate violation.

(b) AGENCY PROCEDURES.—

(1) ESTABLISHMENT.—The **Director** *Bureau* shall establish standards and procedures governing the imposition of civil money penalties under subsection (a). The standards and procedures—

(A) shall provide for the imposition of a penalty only after a person has been given an opportunity for a hearing on the record; and

(B) may provide for review by the **[Director] Bureau** of any determination or order, or interlocutory ruling, arising from a hearing.

(2) FINAL ORDERS.—If no hearing is requested within 15 days of receipt of the notice of opportunity for hearing, the imposition of the penalty shall constitute a final and unappealable determination. If the **[Director] Bureau** reviews the determination or order, the **[Director] Bureau** may affirm, modify, or reverse that determination or order. If the **[Director] Bureau** does not review the determination or order within 90 days of the issuance of the determination or order, the determination or order shall be final.

(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (a), consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (including offenses occurring before enactment of this section), ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the **[Director] Bureau** may determine in regulations to be appropriate.

(4) REVIEWABILITY OF IMPOSITION OF PENALTY.—The **[Secretary's determination] determination of the Bureau** or order imposing a penalty under subsection (a) shall not be subject to review, except as provided in subsection (c).

(c) JUDICIAL REVIEW OF AGENCY DETERMINATION.—

(1) IN GENERAL.—After exhausting all administrative remedies established by the **[Director] Bureau** under subsection (b)(1), a person aggrieved by a final order of the **[Director] Bureau** assessing a penalty under this section may seek judicial review pursuant to section 1411.

(2) ORDER TO PAY PENALTY.—Notwithstanding any other provision of law, in any such review, the court shall have the power to order payment of the penalty imposed by the **[Director] Bureau**.

(d) ACTION TO COLLECT PENALTY.—If any person fails to comply with the determination or order of the **[Director] Bureau** imposing a civil money penalty under subsection (a), after the determination or order is no longer subject to review as provided by subsections (b) and (c), the **[Director] Bureau** may request the Attorney General of the United States to bring an action in any appropriate United States district court to obtain a monetary judgment against the person and such other relief as may be available. The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the Secretary's determination or order imposing the penalty shall not be subject to review.

(e) SETTLEMENT BY DIRECTOR.—The **[Director] Bureau** may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) DEFINITION OF KNOWINGLY.—The term “knowingly” means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(g) REGULATIONS.—The [Director] *Bureau* shall issue such regulations as the [Director] *Bureau* deems appropriate to implement this section.

(h) USE OF PENALTIES FOR ADMINISTRATION.—Civil money penalties collected under this section shall be paid to the [Director] *Bureau* and, upon approval in an appropriation Act, may be used by the [Director] *Bureau* to cover all or part of the cost of rendering services under this title.

SEC. 1419. The [Director] *Bureau* shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon him elsewhere in this title. For the purpose of his rules and regulations, the [Director] *Bureau* may classify persons and matters within his jurisdiction and prescribe different requirements for different classes of persons or matters.

JURISDICTION OF OFFENSES AND SUITS

SEC. 1420. The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction of offenses and violations under this title and under the this title and under the rules and regulations prescribed by the [Director] *Bureau* pursuant thereto, and concurrent with State courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this title. Any such suit or action may be brought to enforce any liability or duty created by this title. Any such suit or action may be brought in the district where the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291 of title 28, United State Code. No case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where the United States or any officer or employee of the United States in his official capacity is a party. No costs shall be assessed for or against the [Director] *Bureau* in any proceeding under this title brought by or against him in the Supreme Court or such other courts.

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REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

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HOME BUYING INFORMATION BOOKLETS

SEC. 5. (a) PREPARATION AND DISTRIBUTION.—[The Director of the Bureau of Consumer Financial Protection (hereafter in this section referred to as the “Director”)] *The Bureau of Consumer Financial Protection (hereafter in this section referred to as the “Bureau”)* shall prepare, at least once every 5 years, a booklet to help con-

sumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The **[Director] Bureau** shall prepare the booklet in various languages and cultural styles, as the **[Director] Bureau** determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The **[Director] Bureau** shall distribute such booklets to all lenders that make federally related mortgage loans. The **[Director] Bureau** shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for use in complying with the requirement under subsection (c) of this section.

(b) CONTENTS.—Each booklet shall be in such form and detail as the **[Director] Bureau** shall prescribe and, in addition to such other information as the **[Director] Bureau** may provide, shall include in plain and understandable language the following information:

(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

- (A) balloon payments;
- (B) prepayment penalties;
- (C) the advantages of prepayment; and
- (D) the trade-off between closing costs and the interest rate over the life of the loan.

(2) An explanation and sample of the uniform settlement statement required by section 4.

(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act.

(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled “Consumer Handbook on Adjustable Rate Mortgages”, published by the **[Director] Bureau**, or to any suitable substitute of such booklet that the **[Director] Bureau** may subsequently adopt pursuant to such section.

(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act.

(8) Information about homeownership counseling services made available pursuant to section 106(a)(4) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(4)), a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 10 of this Act regarding such accounts.

(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

(11) An explanation of a consumer's responsibilities, liabilities, and obligations in a mortgage transaction.

(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

(13) Notice that the Office of Housing of the Bureau of Consumer Financial Protection has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

(14) An explanation of flood insurance and the availability of flood insurance under the National Flood Insurance Program or from a private insurance company, whether or not the real estate is located in an area having special flood hazards, and the following statement: "Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose to not maintain flood insurance on a structure, and it floods, you are responsible for all flood losses relating to that structure."

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(c) Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Bureau. Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) and located in the area of the lender.

(d) Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. The lender shall provide the booklet in the version that is most appropriate for the person receiving it. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if

the lender denies the application for credit before the end of the 3-day period.

(e) Booklets may be printed and distributed by lenders if their form and content are approved by the Bureau as meeting the requirements of subsection (b) of this section.

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S.A.F.E. MORTGAGE LICENSING ACT OF 2008

TITLE V—S.A.F.E. MORTGAGE LICENSING ACT

SEC. 1501. SHORT TITLE.

This title may be cited as the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or “S.A.F.E. Mortgage Licensing Act of 2008”.

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SEC. 1503. DEFINITIONS.

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

(1) BUREAU.—The term “Bureau” means the Bureau of Consumer Financial Protection.

(2) FEDERAL BANKING AGENCY.—The term “Federal banking agency” means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(3) DEPOSITORY INSTITUTION.—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(4) LOAN ORIGINATOR.—

(A) IN GENERAL.—The term “loan originator”—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) 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 the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and

(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

(B) OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.—For purposes of this subsection, an individual “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) ADMINISTRATIVE OR CLERICAL TASKS.—The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv).

(5) LOAN PROCESSOR OR UNDERWRITER.—

(A) IN GENERAL.—The term “loan processor or underwriter” means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

(i) a State-licensed loan originator; or

(ii) a registered loan originator.

(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term “clerical or support duties” may include—

(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(6) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and

maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the **[Director]** *Bureau of Consumer Financial Protection* under section 1509.

(7) **NONTRADITIONAL MORTGAGE PRODUCT.**—The term “non-traditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(8) **REGISTERED LOAN ORIGINATOR.**—The term “registered loan originator” means any individual who—

(A) meets the definition of loan originator and is an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(9) **RESIDENTIAL MORTGAGE LOAN.**—The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

[(10) DIRECTOR.—The term “Director” means the Director of the Bureau of Consumer Financial Protection.]

(11) **STATE.**—The term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(12) **STATE-LICENSED LOAN ORIGINATOR.**—The term “State-licensed loan originator” means any individual who—

(A) is a loan originator;

(B) is not an employee of—

(i) a depository institution;

(ii) a subsidiary that is—

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(C) is licensed by a State or by the **[Director]** *Bureau of Consumer Financial Protection* under section 1508 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(13) **UNIQUE IDENTIFIER.**—

(A) IN GENERAL.—The term “unique identifier” means a number or other identifier that—

- (i) permanently identifies a loan originator;
- (ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
- (iii) shall not be used for purposes other than those set forth under this title.

(B) RESPONSIBILITY OF STATES.—To the greatest extent possible and to accomplish the purpose of this title, States shall use unique identifiers in lieu of social security numbers.

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SEC. 1508. BUREAU OF CONSUMER FINANCIAL PROTECTION BACKUP AUTHORITY TO ESTABLISH LOAN ORIGINATOR LICENSING SYSTEM.

(a) BACKUP LICENSING SYSTEM.—If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on the date of the enactment of this title or at any time thereafter, the [Director] *Bureau of Consumer Financial Protection* determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 1505 and 1506 and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the [Director] *Bureau of Consumer Financial Protection* shall provide for the establishment and maintenance of a system for the licensing and registration by the [Director] *Bureau of Consumer Financial Protection* of loan originators operating in such State as State-licensed loan originators.

(b) LICENSING AND REGISTRATION REQUIREMENTS.—The system established by the [Director] *Bureau of Consumer Financial Protection* under subsection (a) for any State shall meet the requirements of sections 1505 and 1506 for State-licensed loan originators.

(c) UNIQUE IDENTIFIER.—The [Director] *Bureau of Consumer Financial Protection* shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the [Director] *Bureau of Consumer Financial Protection* as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) STATE LICENSING LAW REQUIREMENTS.—For purposes of this section, the law in effect in a State meets the requirements of this subsection if the [Director] *Bureau of Consumer Financial Protection* determines the law satisfies the following minimum requirements:

- (1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such

law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.

(2) The State loan originator supervisory authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.

(3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

(4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

(5) The State loan originator supervisory authority has established a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.

(6) The State loan originator supervisory authority has established minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.

(e) **TEMPORARY EXTENSION OF PERIOD.**—The **[Director]** *Bureau of Consumer Financial Protection* may extend, by not more than 24 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 1505 and 1506 and subsection (d) if the **[Director]** *Bureau of Consumer Financial Protection* determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

(f) **REGULATION AUTHORITY.**—

(1) **IN GENERAL.**—The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

(2) **CONSIDERATIONS.**—In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.

SEC. 1509. BACKUP AUTHORITY TO ESTABLISH A NATIONWIDE MORTGAGE LICENSING AND REGISTRY SYSTEM.

If at any time the **[Director]** *Bureau of Consumer Financial Protection* determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this title for a comprehensive licensing, supervisory, and tracking system for loan originators, the **[Director]** *Bureau of Consumer Financial Protection* shall establish and maintain such a system to

carry out the purposes of this title and the effective registration and regulation of loan originators.

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SEC. 1512. CONFIDENTIALITY OF INFORMATION.

(a) **SYSTEM CONFIDENTIALITY.**—Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the **[Director]** *Bureau of Consumer Financial Protection* under section 1509, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage or financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) **NONAPPLICABILITY OF CERTAIN REQUIREMENTS.**—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the **[Director]** *Bureau of Consumer Financial Protection* with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) **COORDINATION WITH OTHER LAW.**—Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) **PUBLIC ACCESS TO INFORMATION.**—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

SEC. 1513. LIABILITY PROVISIONS.

The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the **[Director]** *Bureau of Consumer Financial Protection* under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relat-

ing to the collection, furnishing, or dissemination of information concerning persons who—

(1) have applied, are applying, or are licensed or registered through the Nationwide Mortgage Licensing System and Registry; and

(2) work in an industry with respect to which persons were licensed or registered through the Nationwide Mortgage Licensing System and Registry on the date of enactment of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

SEC. 1514. ENFORCEMENT BY THE BUREAU.

(a) **SUMMONS AUTHORITY.**—The **[Director]** *Bureau of Consumer Financial Protection* may—

(1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the **[Director]** *Bureau of Consumer Financial Protection* under section 1508; and

(2) summon any loan originator referred to in paragraph (1) or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the **[Director]** *Bureau of Consumer Financial Protection* or any delegate of the **[Director]** *Bureau of Consumer Financial Protection* at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of this title.

(b) **EXAMINATION AUTHORITY.**—

(1) **IN GENERAL.**—If the **[Director]** *Bureau of Consumer Financial Protection* establishes a licensing system under section 1508 for any State, the **[Director]** *Bureau of Consumer Financial Protection* shall appoint examiners for the purposes of administering such section.

(2) **POWER TO EXAMINE.**—Any examiner appointed under paragraph (1) shall have power, on behalf of the **[Director]** *Bureau of Consumer Financial Protection*, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the **[Director]** *Bureau of Consumer Financial Protection* under section 1508 whenever the **[Director]** *Bureau of Consumer Financial Protection* determines an examination of any loan originator is necessary to determine the compliance by the originator with this title.

(3) **REPORT OF EXAMINATION.**—Each examiner appointed under paragraph (1) shall make a full and detailed report of examination of any loan originator examined to the **[Director]** *Bureau of Consumer Financial Protection*.

(4) **ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE.**—In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the **[Director]** *Bureau of Consumer Financial Protection* under section 1508, or with other types of investigations to determine compliance with applicable law and regulations, the **[Director]** *Bureau of Consumer Financial Protection* and examiners appointed by the **[Director]** *Bureau of Con-*

sumer Financial Protection may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) ASSESSMENTS.—The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the [Director] *Bureau of Consumer Financial Protection* under section 1508 shall be assessed by the [Director] *Bureau of Consumer Financial Protection* against the loan originator to meet the Secretary's expenses in carrying out such examination.

(c) CEASE AND DESIST PROCEEDING.—

(1) AUTHORITY OF [DIRECTOR] *BUREAU OF CONSUMER FINANCIAL PROTECTION*.—If the [Director] *Bureau of Consumer Financial Protection* finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the [Director] *Bureau of Consumer Financial Protection* under section 1508, the [Director] *Bureau of Consumer Financial Protection* may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the [Director] *Bureau of Consumer Financial Protection* may specify in such order. Any such order may, as the [Director] *Bureau of Consumer Financial Protection* deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the [Director] *Bureau of Consumer Financial Protection* may specify, with such provision or regulation with respect to any loan originator.

(2) HEARING.—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the [Director] *Bureau of Consumer Financial Protection* with the consent of any respondent so served.

(3) TEMPORARY ORDER.—Whenever the [Director] *Bureau of Consumer Financial Protection* determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, the [Director] *Bureau of Consumer Financial Protection* may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and

to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the [Director] *Bureau of Consumer Financial Protection* deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the [Director] *Bureau of Consumer Financial Protection* determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the [Director] *Bureau of Consumer Financial Protection* or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(4) REVIEW OF TEMPORARY ORDERS.—

(A) REVIEW BY [DIRECTOR] *BUREAU OF CONSUMER FINANCIAL PROTECTION*.—At any time after the respondent has been served with a temporary cease and desist order pursuant to paragraph (3), the respondent may apply to the [Director] *Bureau of Consumer Financial Protection* to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease and desist order entered without a prior hearing before the [Director] *Bureau of Consumer Financial Protection*, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the [Director] *Bureau of Consumer Financial Protection* shall hold a hearing and render a decision on such application at the earliest possible time.

(B) JUDICIAL REVIEW.—Within—

(i) 10 days after the date the respondent was served with a temporary cease and desist order entered with a prior hearing before the [Director] *Bureau of Consumer Financial Protection*; or

(ii) 10 days after the [Director] *Bureau of Consumer Financial Protection* renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease and desist order entered without a prior hearing before the [Director] *Bureau of Consumer Financial Protection*,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease and desist order entered without a prior hearing before the [Director] *Bureau of Consumer Financial Protection* may not apply to the court except after hearing and decision by the [Director] *Bureau of Consumer Financial Protection* on the respondent's application under subparagraph (A).

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B)

shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(5) **AUTHORITY OF THE [DIRECTOR] BUREAU OF CONSUMER FINANCIAL PROTECTION TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS.**—In any cease and desist proceeding under paragraph (1), the [Director] *Bureau of Consumer Financial Protection* may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the [Director] *Bureau of Consumer Financial Protection* shall determine, any person who has violated this title or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

(d) **AUTHORITY OF THE [DIRECTOR] BUREAU OF CONSUMER FINANCIAL PROTECTION TO ASSESS MONEY PENALTIES.**—

(1) **IN GENERAL.**—The [Director] *Bureau of Consumer Financial Protection* may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by the [Director] *Bureau of Consumer Financial Protection* under section 1508, if the [Director] *Bureau of Consumer Financial Protection* finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this title or any regulation prescribed by the [Director] *Bureau of Consumer Financial Protection* under this title or order issued under subsection (c).

(2) **MAXIMUM AMOUNT OF PENALTY.**—The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$25,000.

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SEC. 1516. REPORTS AND RECOMMENDATIONS TO CONGRESS.

(a) **ANNUAL REPORTS.**—Not later than 1 year after the date of enactment of this title, and annually thereafter, the [Director] *Bureau of Consumer Financial Protection* shall submit a report to Congress on the effectiveness of the provisions of this title, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, streamlining communication between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage originators or institutions that employ such brokers.

(b) **LEGISLATIVE RECOMMENDATIONS.**—Not later than 6 months after the date of enactment of this title, the [Director] *Bureau of Consumer Financial Protection* shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974, that the [Director] *Bureau of Consumer Financial Protection* deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

SEC. 1517. STUDY AND REPORTS ON DEFAULTS AND FORECLOSURES.

(a) **STUDY REQUIRED.**—The [Director] *Bureau of Consumer Financial Protection* shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.

(b) PRELIMINARY REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of this title, the [Director] *Bureau of Consumer Financial Protection* shall submit to Congress a preliminary report regarding the study required by this section.

(c) FINAL REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this title, the [Director] *Bureau of Consumer Financial Protection* shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.

TITLE 44, UNITED STATES CODE

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CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

SUBCHAPTER I—FEDERAL INFORMATION POLICY

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§ 3513. Director review of agency activities; reporting; agency response

(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—

- (1) be taken to address information resources management problems identified in the report; and
- (2) improve agency performance and the accomplishment of agency missions.

(c) COMPARABLE TREATMENT.—Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the [Director of the] Bureau of Consumer Financial Protection on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.

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TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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CHAPTER 4—INSPECTORS GENERAL

§ 401. Definitions

In this chapter:

(1) **ESTABLISHMENT.**—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, the Treasury, or Veterans Affairs; 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 Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, the Social Security Administration, the Federal Housing Finance Agency, the Tennessee Valley Authority, the Export-Import Bank of the United States, *the Bureau of Consumer Financial Protection*, the Commissions established under section 15301 of title 40, the National Security Agency, or the National Reconnaissance Office, as the case may be.

(2) **FEDERAL AGENCY.**—The term “Federal agency” means an agency as defined in section 552(f) of this title (including an establishment as defined in paragraph (1)), but shall not be construed to include the Government Accountability Office.

(3) **HEAD OF THE ESTABLISHMENT.**—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, the Treasury, or Veterans Affairs; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or the Federal Emergency Management Agency; the Director of the Office of Personnel Management; the Chairman of the Nuclear Regulatory Commission, the Federal Communications Commission, or the Railroad Retirement Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; 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 of the United States; *the Chair of the Bureau of Consumer Financial Protection*; the Federal Cochairpersons of the Commissions established under section 15301 of title 40;

the Director of the National Security Agency; or the Director of the National Reconnaissance Office; as the case may be.

(4) INSPECTOR GENERAL.—The term “Inspector General” means the Inspector General of an establishment.

(5) OFFICE.—The term “Office” means the Office of Inspector General of an establishment.

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§ 415. Requirements for Federal entities and designated Federal entities

(a) DEFINITIONS.—Notwithstanding section 401 of this title, in this section:

(1) DESIGNATED FEDERAL ENTITY.—

(A) IN GENERAL.—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 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 Denali Commission, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Election Commission, the Election Assistance Commission, 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 Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Development Finance Corporation, the United States International Trade Commission, the Postal Regulatory Commission, and the United States Postal Service.

(B) AMTRAK.—Effective at the beginning of the first fiscal year after a fiscal year for which Amtrak receives no Federal subsidy, subparagraph (A) is amended by striking “Amtrak,”.

(2) FEDERAL ENTITY.—The term “Federal entity” means any Government corporation (within the meaning of section 103(1) of this title), any Government controlled corporation (within the meaning of section 103(2) of this 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 401 of this title) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (1) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the Government Accountability 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.

(3) HEAD OF THE DESIGNATED FEDERAL ENTITY.—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);

(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of this title);

(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;

(I) with respect to the Peace Corps, such term means the Director of the Peace Corps; and

(J) with respect to the United States International Development Finance Corporation, such term means the Board of Directors of the United States International Development Finance Corporation.

(4) HEAD OF THE FEDERAL ENTITY.—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.

(5) INSPECTOR GENERAL.—The term “Inspector General” means an Inspector General of a designated Federal entity.

(6) OFFICE OF INSPECTOR GENERAL.—The term “Office of Inspector General” means an Office of Inspector General of a designated Federal entity.

(b) OFFICE OF INSPECTOR GENERAL IN EACH DESIGNATED FEDERAL ENTITY.—Not later than 180 days after October 18, 1988, 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) APPOINTMENT OF INSPECTOR GENERAL.—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) SUPERVISION.—

(1) IN GENERAL.—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) EXCEPTION RELATING TO INTELLIGENCE COMMUNITY.—

(A) IN GENERAL.—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), if the Secretary determines that the prohibition is necessary to protect vital national security interests of the United States.

(B) STATEMENT OF REASONS FOR EXERCISE OF AUTHORITY.—If the Secretary exercises the authority under subparagraph (A), the Secretary shall submit to the commit-

tees 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) NOTIFICATION TO INSPECTOR GENERAL.—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) ELEMENTS OF THE INTELLIGENCE COMMUNITY.—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) COMMITTEES OF CONGRESS.—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) REMOVAL.—

(1) BOARD, CHAIRMAN OF COMMITTEE, OR COMMISSION IS HEAD OF DESIGNATED FEDERAL ENTITY.—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 2/3 majority of the board, committee, or commission.

(2) INSPECTOR GENERAL REMOVED OR TRANSFERRED.—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) UNITED STATES POSTAL SERVICE.—

(1) APPOINTMENT.—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 shall be applied.

(2) OVERSIGHT RESPONSIBILITY OF INSPECTOR GENERAL FOR ACTIVITIES OF POSTAL INSPECTION SERVICE.—In carrying out

the duties and responsibilities specified in this chapter, 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) AUDITS AND INVESTIGATIONS.—

(A) AUTHORITY, DIRECTION, AND CONTROL OF GOVERNORS.—

(i) ACCESS TO SENSITIVE INFORMATION.—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) AUTHORITY TO PROHIBIT INSPECTOR GENERAL FROM CARRYING OUT OR COMPLETING AUDIT OR INVESTIGATION.—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 significant impairment to the national interests of the United States.

(iii) NOTIFICATION OF REASONS FOR EXERCISE OF POWER.—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 Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(B) INITIATING, CONDUCTING, AND SUPERVISING AUDITS AND INVESTIGATIONS.—In carrying out the duties and responsibilities specified in this chapter, 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 ensuring effective coordination and cooperation.

(C) REPORTING SERIOUS PROBLEMS, ABUSES, OR DEFICIENCIES.—Any report required to be transmitted by the Governors to the appropriate committees or subcommittees of the Congress under section 405(e) of this title shall also be transmitted, within the 7-day period specified under such section, to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives.

(4) LIMITATION.—Nothing in this chapter 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, 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) DEFINITION OF GOVERNORS.—In this subsection, the term “Governors” has the meaning given the term by section 102(3) of title 39.

(6) AUTHORIZATION OF APPROPRIATIONS.—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) SPECIAL APPLICATION.—

(1) SECTIONS 404, 405, 406, AND 407.—Sections 404, 405, 406 (other than paragraphs (7) and (8) of section 406(a)), and 407 of this title 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) PERSONNEL.—In addition to the other authorities specified in this chapter, 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 of experts or consultants, 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) APPLICATION OF SECTION 412(A).—Notwithstanding the last sentence of subsection (d)(1) of this section, the provisions of subsection (a) of section 412 of this title (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection

(a)(1) of section 412 of this title) 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) COUNSEL.—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) ANNUAL LISTING AND REPORT.—

(1) LISTING.—Each year, 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 designated 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)).

(2) REPORT.—On October 31 of each year, the head of each Federal entity (as defined under subsection (a)) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report that—

(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.

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CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

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§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(d)(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

(A) any projected increase in the cost of credit for small entities;

(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; **[and]**

(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b)**[. . .]**; *and*

(D) with respect to the Bureau of Consumer Financial Protection, if the Bureau does not adopt any alternatives described in paragraphs (1) through (4) of subsection (c), a detailed justification of the Bureau's determination that the relative size and resources of small entities should have no bearing on the rule, supported by factual, policy and legal reasons.

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each

one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; and

【(6) for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.】

(7) with respect to the Bureau of Consumer Financial Protection, a description of the steps the Bureau has taken to minimize any additional cost of credit for small entities and, where no significant alternatives for small entities was adopted, a detailed justification of the Bureau's determination that the relative size and resources of small entities should have no bearing on the rule, supported by factual, policy and legal reasons.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

* * * * *

ROGER WILLIAMS, TEXAS
CHAIRMAN

NYDIA M. VELAZQUEZ, NEW YORK
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2501 Rayburn House Office Building
Washington, DC 20515-6115

April 26, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman McHenry:

I write concerning H.R. 2798, the *CFPB Transparency and Accountability Reform Act*. The bill was referred primarily to the Committee on Financial Services, with additional referrals to the Committees on Oversight and Accountability, Judiciary, and Small Business. Specifically, provisions of H.R. 2798 fall within the Rule X jurisdiction of the Committee on Small Business.

I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, the Committee on Small Business will forgo action on the bill. However, this is conditional on our mutual understanding that doing so will not prejudice the Committee on Small Business with respect to the appointment of conferees or to any future jurisdictional claim over the subject matter contained in the bill or similar legislation that falls within the Committee on Small Business's Rule X jurisdiction. Further, should a conference on the bill be necessary, I appreciate your agreement to support my request to have the Committee represented on the conference committee.

Finally, I would ask that a copy of this letter and your response acknowledging our jurisdictional interest in the bill be included in the *Congressional Record* during consideration of H.R. 2798 on the House floor.

Sincerely,



Roger Williams
Chairman
House Committee on Small Business

cc: The Honorable Kevin McCarthy, Speaker
The Honorable Jamie Raskin, Ranking Member, Committee on Oversight and
Accountability
The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Nydia Velázquez, Ranking Member, Committee on Small Business
The Honorable Jason Smith, Parliamentarian

PATRICK MCHENRY, NC
CHAIRMANMAXINE WATERS, CA
RANKING MEMBERUnited States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2329 Rayburn House Office Building
Washington, DC 20515

April 27, 2023

The Honorable Roger Williams
Chairman
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Williams:

Thank you for agreeing to be discharged from further consideration of H.R. 2798, the *CFPB Transparency and Accountability Reform Act*, so that it may proceed expeditiously to the House Floor. I agree that by foregoing consideration of H.R. 2798 at this time, you do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that you will be appropriately consulted and involved on this or similar legislation as it moves forward.

As discussed, I will seek to place a copy of our exchange of letters on this bill in the *Congressional Record* during floor consideration thereof.

Sincerely,

Patrick McHenry
Chairman
Committee on Financial Services

cc: The Honorable Kevin McCarthy, Speaker
The Honorable Maxine Waters, Ranking Member, Committee on Financial Services
The Honorable Nydia Velázquez, Ranking Member, Committee on Small Business
The Honorable Jason Smith, Parliamentarian

JAMES COMER, KENTUCKY
CHAIRMAN

ONE HUNDRED EIGHTEENTH CONGRESS

JAMIE RASKIN, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<https://oversight.house.gov>

May 12, 2023

The Honorable Patrick McHenry
Chairman
Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman McHenry:

I write concerning H.R. 2798, the CFPB Transparency and Accountability Reform Act. This bill contains provisions within the jurisdiction of the Committee on Oversight and Accountability. As a result of your having consulted with me concerning the provisions of the bill that fall within our Rule X jurisdiction, I agree to forgo consideration of the bill, so the bill may proceed expeditiously to the House floor.

The Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 2798 we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and we will be appropriately consulted and involved as the bill or similar legislation moves forward so we may address any remaining issues within our Rule X jurisdiction.

Finally, I would ask that a copy of our exchange of letters on this matter be included in the bill report filed by the Committee on Financial Services. I appreciate your commitment to also include these letters in the Congressional Record during floor consideration thereof.

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Kevin McCarthy, Speaker
House of Representatives

The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Maxine Waters, Ranking Member
Financial Services Committee

Jason Smith, Parliamentarian
House of Representatives

PATRICK McHENRY, NC
CHAIRMAN



MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

May 9, 2023

The Honorable James Comer
Chairman
Committee on Oversight and Accountability
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Comer:

Thank you for agreeing to be discharged from further consideration of H.R. 2798, the *CFPB Transparency and Accountability Reform Act*, so that it may proceed expeditiously to the House Floor. I agree that by foregoing consideration of H.R. 2798 at this time, you do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that you will be appropriately consulted and involved on this or similar legislation as it moves forward.

As discussed, I will seek to place a copy of our exchange of letters on this bill in the *Congressional Record* during floor consideration thereof.

Sincerely,

Patrick McHenry
Chairman
Committee on Financial Services

cc: The Honorable Kevin McCarthy, Speaker
The Honorable Maxine Waters, Ranking Member, Committee on Financial Services
The Honorable Jamie Raskin, Ranking Member, Committee on Oversight and Accountability
The Honorable Jason Smith, Parliamentarian

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

April 27, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515


Dear Chairman McHenry:

I write regarding H.R. 2798, the “CFPB Transparency and Accountability Reform Act.” Provisions of this bill fall within the Judiciary Committee’s Rule X jurisdiction, and I appreciate that you consulted with us on those provisions. The Judiciary Committee agrees that it shall be discharged from further consideration of the bill so that it may proceed expeditiously to the House floor.

The Committee takes this action with the understanding that forgoing further consideration of this measure does not in any way alter the Committee’s jurisdiction or waive any future jurisdictional claim over these provisions or their subject matter. We also reserve the right to seek appointment of an appropriate number of conferees in the event of a conference with the Senate involving this measure or similar legislation.

I ask that you please include this letter in your committee’s report to accompany this legislation or insert this letter in the *Congressional Record* during consideration of H.R. 2798 on the House floor. I appreciate the cooperative manner in which our committees have worked on this matter, and I look forward to working collaboratively in the future on matters of shared jurisdiction. Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Maxine Waters, Ranking Member, Committee on Financial Services
The Honorable Jason Smith, Parliamentarian

PATRICK MCHENRY, NC
CHAIRMANMAXINE WATERS, CA
RANKING MEMBERUnited States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2139 Rayburn House Office Building
Washington, DC 20515

April 28, 2023

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Jordan:

Thank you for agreeing to be discharged from further consideration of H.R. 2798, the *CFPB Transparency and Accountability Reform Act*, so that it may proceed expeditiously to the House Floor. I agree that by foregoing consideration of H.R. 2798 at this time, you do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that you will be appropriately consulted and involved on this or similar legislation as it moves forward.

As discussed, I will seek to place a copy of our exchange of letters on this bill in the *Congressional Record* during floor consideration thereof.

Sincerely,

Patrick McHenry
Chairman
Committee on Financial Services

cc: The Honorable Kevin McCarthy, Speaker
The Honorable Maxine Waters, Ranking Member, Committee on Financial Services
The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Jason Smith, Parliamentarian

MINORITY VIEWS

This bill contains several measures that, taken together, strip the CFPB of the authority and independence that Congress granted it to effectively carry out its mission to protect consumers. Specifically, Titles I and II would change CFPB's independent funding, which is capped by statute, so that it becomes subject to the annual appropriations process, as well as the agency's single-director leadership structure to a bipartisan commission. These measures would dial back the impact of key decisions that Congress made in 2010, when it passed Dodd-Frank and created the CFPB, to insulate the agency from partisan and special interests, ensure it can operate nimbly and in an accountable manner, and has the resources needed to protect consumers in the financial marketplace. Congress purposefully designed the CFPB's independent funding mechanism and structure, including its leadership by a single Director, who is appointed by the President and approved by the Senate to be an effective watchdog for consumers. CFPB is not the only federal agency with a similar funding mechanism and leadership structure: the Office of the Comptroller of the Currency (OCC) is also led by a single Comptroller with its funding mechanism independent of the annual appropriations process. CFPB also demonstrates budget and funding accountability in several ways, including having the CFPB Director testify semiannually before the Committee, notifying Congress when it requests a transfer of funds from the Federal Reserve, and complying with financial audits by GAO, OIG as well as a private sector, independent audit.

In addition, Titles IV through VI would impose additional or duplicative requirements on the CFPB. Those measures would water down CFPB's existing authority to promulgate rules that protect consumers, slow down the CFPB's work, and make it easier for financial companies to challenge the consumer protections CFPB is authorized to enforce in the court system, among other things. Furthermore, those measures completely ignore the existing requirements CFPB must already meet, including conducting cost-benefit analyses during the rule-making process, as well as high standards the agency has to meet, including convening small business review panels and being subject to a provision allowing the Financial Stability Oversight Council (FSOC) to review and overturn its regulations.

For these reasons, the minority opposes H.R. 2798.

Sincerely,

MAXINE WATERS,
Ranking Member.
NYDIA M. VELÁZQUEZ,
DAVID SCOTT,
JUAN VARGAS,
STEPHEN F. LYNCH,

BRITTANY PETERSEN,
AYANNA PRESSLEY,
Members of Congress.

