TITLE VI—FURTHER IMPROVEMENTS TO THE
REGULATION OF BANK HOLDING COMPANIES AND
DEPOSITORY INSTITUTIONS

SEC. 601. SHORT TITLE.
This title may be cited as the “Bank Holding Company and Depository Institution Regulatory Improvements Act of 2009”.

SEC. 602. TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, THRIFTS, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT.

(a) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), is amended—

(1) in subsection (a)(5), by striking subsections (E) and (F);

(2) in subsection (c)(1)(A), by striking “insured bank” and inserting “insured depository institution”, and by striking “section 1813(h)” and inserting “section 1813(c)(2)”; and

(3) in subsection (c)(2), by striking subparagraphs (B), (D), (F) and (H), and redesignating existing subparagraphs (C), (E), and (G) as subparagraphs (B), (C), and (D).

(b) CEBA EXCEPTION.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), is amended—

(1) in subsection (f) by striking paragraphs (1) through (14) and inserting “[reserved]”;
(2) in subsection (g) by striking paragraphs (1) and (2) and inserting “[reserved]”;

and

(3) in subsection (i) by striking paragraphs (1) through (7) and inserting

“[reserved]”.

(c) CONFORMING CHANGES.— Section 4(h) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(h)), is amended—

(1) in paragraph (1), by striking “subparagraph (D), (F), (G), or (H)” and inserting

“subparagraph (D)”;

and

(2) in paragraph (2), by striking “subparagraph (D), (F), (G), or (H)” and inserting

“subparagraph (D)”.

(d) FOREIGN TIER 1 FINANCIAL HOLDING COMPANIES.—A Foreign Tier 1 financial holding company shall be subject to the provisions of section 2(h)(2) (12 U.S.C. 1841(h)(2)) in the same manner and to the same extent as if the Foreign Tier 1 financial holding company were a bank

holding company.

SEC. 603. REGISTRATION OF CERTAIN COMPANIES AS BANK HOLDING
COMPANIES.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following new subsection:

“(h) CONVERSION TO BANK HOLDING COMPANY BY OPERATION OF LAW.—

“(1) CONVERSION BY OPERATION OF LAW.—A company that, on the day before the date of enactment of the Bank Holding Company and Depository Institution Regulatory Improvements Act of 2009, was not a bank holding company but which, by reason of the amendments made in section 602 of the Bank Holding Company and Depository
Institution Regulatory Improvements Act of 2009, becomes a bank holding company by
operation of law, shall register as a bank holding company with the Board in accordance
with section 5(a) within 90 days of the date of enactment of that Act.

“(2) COMPLIANCE WITH BANK HOLDING COMPANY ACT.—With respect to any
company described in paragraph (1), the Board may grant temporary exemptions or
provide other appropriate temporary relief to permit such company to implement
measures necessary to comply with the requirements under the Bank Holding Company
Act.”.

SEC. 604. REPORTS AND EXAMINATIONS OF BANK HOLDING COMPANIES;
REGULATION OF FUNCTIONALLY REGULATED
SUBSIDIARIES.

(a) REPORTS OF BANK HOLDING COMPANIES.—Section 5(c)(1)(B) of the Bank Holding
Company Act of 1956 (12 U.S.C. 1844(c)(1)(B)) is amended to read as follows:

“(B) USE OF EXISTING REPORTS.—The Board shall, to the fullest extent
possible, use:

“(I) reports that a bank holding company or any subsidiary of such
company has been required to provide to other Federal or State regulatory
agencies;

“(II) information that is otherwise required to be reported publicly;

and

“(III) externally audited financial statements.”.

(b) FUNCTIONALLY REGULATED SUBSIDIARY.—Section 5(c)(1) of the Bank Holding
Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended by adding at the end the following new
“(C) DEFINITION.—For purposes of this subsection and section 6, the term ‘functionally regulated subsidiary’ means any:

“(i) national bank and Federal branch or Federal agency of a foreign bank, for which the Office of the Comptroller of the Currency is the Federal regulatory agency until the functions of the Office of the Comptroller of the Currency are transferred to the National Bank Supervisor, after which time the National Bank Supervisor will be the Federal regulatory agency;

“(ii) State-chartered bank (other than a member bank of the Federal Reserve System) and insured State branch of a foreign bank, for which the Federal Deposit Insurance Corporation is the Federal regulatory agency;

“(iii) savings association, for which the Office of Thrift Supervision is the Federal regulatory agency until the functions of the Office of Thrift Supervision are transferred to the National Bank Supervisor, after which time the National Bank Supervisor will be the Federal regulatory agency;

“(iv) broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, for which the Securities and Exchange Commission is the Federal regulatory agency;

“(v) investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency;
agency;

“(vi) investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency; and

“(vii) futures commission merchant, commodity trading advisor, and commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act, for which the Commodity Futures Trading Commission is the Federal regulatory agency.”.

(c) EXAMINATIONS OF BANK HOLDING COMPANIES.—Section 5(c)(2)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)(B)) is amended to read as follows:

“(B) FUNCTIONALLY REGULATED SUBSIDIARIES.— The Board shall, as far as possible, use reports of examination of bank holding companies and their functionally regulated subsidiaries made by other Federal or State regulatory authorities.”.

(d) REGULATION OF FINANCIAL HOLDING COMPANIES.—Section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) is amended by striking “(c) RESTRICTED FOCUS OF EXAMINATIONS” and all that follows in that subsection (c).

(f) ACQUISITIONS OF BANKS.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

“(7) FINANCIAL STABILITY.—In every case, the Board shall take into consideration the extent to which the proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States financial system or the economy of the United States.”.

SEC. 605. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN WELL CAPITALIZED AND WELL MANAGED

Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)), is amended—

(1) in subparagraph (B), by striking “and”;
(2) by redesignating subparagraph (C) as subparagraph (D);
(3) by adding after subparagraph (B) the following new subparagraph:

“(C) the bank holding company is well capitalized and well managed;

and”;

and

(4) by amending redesignated subparagraph (D)(ii) to read as follows:

“(ii) a certification that the company meets the requirements of subparagraphs A through C.”.

SEC. 606. STANDARDS FOR INTERSTATE ACQUISITIONS.

(a) Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended—

(1) by striking “adequately capitalized” and inserting “well capitalized”; and
(2) by striking “adequately managed” and inserting “well managed”.

Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended to read as follows:

“(B) the responsible agency determines that the resulting bank will be well capitalized and well managed upon the consummation of the transaction.”.

SEC. 607. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.

(a) Section 23A of the Federal Reserve Act (12 U.S.C. 371c), is amended—

(1) in subsection (b)(1), by amending subparagraph (D) to read as follows:

“(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and”;

(2) in subsection (b)(7)(A), by adding after “affiliate” the following: “(including a purchase of assets subject to an agreement to repurchase)”;

(3) in subsection (b)(7)(C), by striking “, including assets subject to an agreement to repurchase,”;

(4) in subsection (b)(7)(D), by adding after “acceptance of securities” the following: “or other debt obligations”, and by striking at the end “or”;

(5) in subsection (b)(7), by adding at the end the following:

“(F) securities borrowing and lending transactions with an affiliate to the extent that the transactions create credit exposure of the member bank to the affiliate; or

“(G) current and potential future credit exposure to the affiliate on derivative transactions with the affiliate;”;

(6) in subsection (c)(1), by striking “at the time of the transaction,” and adding in
lieu thereof “at all times”;

(7) in subsection (c), by striking paragraph (2) and redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively;

(8) in subsection (c)(3) (as redesignated by paragraph (7)), by adding after “securities” the following: “or other debt obligations”;

(9) in subsection (f)(2), by adding at the end the following: “The Board may not, by regulation or order, grant an exemption under this section unless the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.”; and

(10) in subsection (f), by redesignating paragraph (3) as paragraph (4) and adding after paragraph (2) a new paragraph (3) as follows:

“(3) With respect to a transaction or relationship involving an individual national bank, the Board may not grant an exemption under this section unless the Board obtains the concurrence of the Director of the National Bank Supervisor (in addition to obtaining the concurrence of the Chairman of the Federal Deposit Insurance Corporation under paragraph (2)).”.

(b) Section 23B(e) of the Federal Reserve Act (12 U.S.C. 371-1(e)), is amended by adding at the end a new paragraph as follows:

“(3) The Board may not grant an exemption or exclusion under this section unless the Board obtains the concurrence of the Chairman of the Federal Deposit Insurance Corporation.”.

SEC. 608. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.

Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended by striking
paragraph (3) in its entirety and redesignating the subsequent paragraphs accordingly.

SEC. 609. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended—

(1) in subsection (b)(1), by striking “shall include all direct or indirect” and all that follows in that paragraph through “commitment;” and adding in lieu the following:

“shall include—

(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

(B) to the extent specified by the National Bank Supervisor, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(C) credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and the person;”;

(2) in subsection (b) after “any similar entity or organization.”, by adding a new paragraph (3) as follows:

“(3) the term “derivative transaction” means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value
of, any interest in, or any quantitative measure or the occurrence of any event relating to,
one or more commodities, securities, currencies, interest or other rates, indices, or other
assets.”; and

(3) in subsection (d), after “attributed to another person.”, by adding a new
paragraph (3) as follows:

“(3) The National Bank Supervisor shall prescribe rules to administer and carry
out the purposes of this section with respect to credit exposures arising from any
derivative transaction, repurchase agreement, reverse repurchase agreement, securities
lending transaction, or securities borrowing transaction. Rules required to be prescribed
under this paragraph (3) shall take effect, in final form, not later than 180 days after the
date of enactment of this section.”.

SEC. 610. APPLICATION OF NATIONAL BANK LENDING LIMITS TO INSURED
STATE BANKS.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding
at the end a new subsection (y) as follows:

“(y) APPLICATION OF LENDING LIMITS TO INSURED STATE BANKS.—Section 84 of this
title shall apply to every insured depository institution in the same manner and to the same extent
as if the insured depository institution were a national banking association.”.

SEC. 611. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.

(a) CONVERSION OF A NATIONAL BANKING ASSOCIATION TO A STATE BANK.—The
National Bank Consolidation and Merger Act (12 U.S.C. 215, et seq.) is amended by adding a
new section 7 and renumbering accordingly:

“SEC. 7. PROHIBITION ON CONVERSION.”
“A national banking association may not convert to a State bank during any period of time in which it is subject to a Cease and Desist order, memorandum of understanding, or other enforcement action entered into with or issued by the National Bank Supervisor.”; and

(b) **CONVERSION OF A STATE BANK TO A NATIONAL BANK.**—Section 5154 of the Revised Statutes (12 U.S.C. 35) is amended by adding at the end the following new sentence:

> “The National Bank Supervisor shall not approve the conversion of a State bank to a national banking association during any period of time in which the State bank is subject to a Cease and Desist order, memorandum of understanding, or other enforcement action entered into or issued by a State bank supervisor, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or a Federal Reserve Bank.”.

**SEC. 612. DE NOVO BRANCHING INTO STATES.**

(a) **NATIONAL BANKS.**—Section 5155(g)(1)(A) of the Revised Statutes (12 U.S.C. 1336(g)(1)(A)) is amended to read as follows:

> “(A) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the national bank were a state bank chartered by such State;”.

(b) **STATE INSURED BANKS.**—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

> “(i) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State;”.

SEC. 613. LENDING LIMITS TO INSIDERS.

Section 22(h)(9)(D)(ii) of the Federal Reserve Act (12 U.S.C. 375b(h)(9)(D)(ii)) is amended by striking "." and adding ", except that a member bank shall be deemed to have extended credit to a person if the member bank has credit exposure to the person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.”.

SEC. 614. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.

(a) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

“(z) GENERAL PROHIBITION.—An insured depository institution shall not purchase an asset from, or sell an asset to, one of its executive officers, directors, or principal shareholders or any related interest of such person (as such terms are defined in 22(h) of Federal Reserve Act) unless the transaction is on market terms and, if the transaction represents more than 10 percent of the institution’s capital stock and surplus, the transaction has been approved in advance by a majority of the institution’s board of directors (with interested directors of the insured depository institution not participating in the approval of the transaction).”.

(b) FDIC RULEMAKING AUTHORITY.—The Federal Deposit Insurance Corporation may prescribe rules to implement the requirements of section (a).

(c) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 22(d) of the Federal Reserve Act (12 U.S.C. 375) is amended by striking the section in its entirety.
SEC. 615. ASSESSMENT OF FEES FOR EXAMINATIONS.

Section 36 of the Federal Deposit Insurance Act (12 U.S.C. 1831m) is amended by adding at the end the following:

“(k) Notwithstanding any other provision of law, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the National Bank Supervisor shall jointly adopt rules to coordinate the assessment of fees for the examination of banks subject to their jurisdiction as follows—

“(1) BANKS WITH ASSETS IN EXCESS OF $10 BILLION.—

“(A) The National Bank Supervisor shall assess fees on national banks with total consolidated assets greater than $10,000,000,000 in such amounts as are necessary to fully defray the costs of examination, taking into account their size, complexity, and financial condition, and to provide sufficient funds for the agency’s operations, taking into account the fees collected pursuant to paragraph (2).

“(B) The Board of Governors of the Federal Reserve System shall assess fees on State member banks with total consolidated assets greater than $10,000,000,000 at a rate that is identical to the rate that is assessed by the National Bank Supervisor.

“(C) The Federal Deposit Insurance Corporation shall assess fees on State nonmember banks with total consolidated assets greater than $10,000,000,000 at a rate that is identical to the rate that is assessed by the National Bank Supervisor.

Any fees collected by the Federal Deposit Insurance Corporation under this
subsection and not used to defray the cost of examinations shall be deposited into the Deposit Insurance Fund.

“(2) NATIONAL BANKS WITH ASSETS LESS THAN $10 BILLION.—The fees to be assessed by the National Bank Supervisor on national banks with total consolidated assets less than $10,000,000,000 shall not exceed the average fees assessed by the States for examinations on State banks taking into account their size, complexity and financial condition. In assessing fees, the National Bank Supervisor may provide for differential fees depending on the asset size of banks, except that the rates shall not exceed the average rate assessed by the States for examinations of State banks of comparable size.

“(3) HOLDING COMPANIES.—The Board of Governors of the Federal Reserve System or the Federal Reserve Banks shall assess fees on bank holding companies, including Tier 1 financial holding companies, sufficient to defray the cost of their examination.”.

SEC. 616. RULES REGARDING CAPITAL LEVELS OF BANK HOLDING COMPANIES.

Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended by adding after “evasions thereof” the following:

“, including regulations relating to the capital levels of bank holding companies.”.