JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H.R. 4173, to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—FINANCIAL STABILITY

Title I, which establishes a specific framework for ensuring financial stability, consists of three subtitles. Subtitle A establishes a Financial Stability Oversight Council to monitor potential threats to the financial system and provide for more stringent regulation of nonbank financial companies and financial activities that the Council determines, based on consideration of risk-related factors, pose risks to financial stability. Subtitle B establishes an Office of Financial Research that supports the Council by collecting information, conducting research, and analyzing data. Subtitle C provides a specific, more stringent supervisory framework for regulating large, interconnected bank holding companies, nonbank financial companies that the Council subjects to more stringent regulation, and activities and practices that the Council determines may pose systemic threats.

TITLE II—ORDERLY LIQUIDATION AUTHORITY

Title II establishes an orderly liquidation authority that may be used only if the Secretary of the Treasury (in consultation with the President), based on the written recommendation of two other federal regulators, agrees that doing so is necessary to mitigate serious adverse effects on financial stability in the United States. When the authority is used, the FDIC is appointed receiver and must liquidate the company in a manner that mitigates significant risks to financial stability and minimizes moral hazard. All costs of an orderly liquidation under this title are borne first by shareholders and unsecured creditors, and, if necessary, by risk-based assessments on large financial companies. Taxpayers specifically are protected from losses associated with use of this authority.

TITLE III—TRANSFER OF POWERS TO THE COMPTROLLER OF THE CURRENCY, THE CORPORATION, AND THE BOARD OF GOVERNORS

PRUDENTIAL REGULATOR RESTRUCTURING

Title III of the conference report transfers the functions of the Office of Thrift Supervision to the Office of the Comptroller of the Currency, which will now supervise federal thrifts, to the Federal Deposit Insurance Corporation ("FDIC"), which will supervise state-chartered thrifts, and to the Federal Reserve Board, which will supervise thrift holding companies.

The conference report also protects employees affected by the regulatory streamlining by preserving pay and benefits, and protecting them from involuntary separation or relocation for a period of time. Title III requires comprehensive coordination of the integration of the agencies, and reporting to the House Financial Services Committee and Senate Banking Committee regarding the implementation of the merger.

FEDERAL DEPOSIT INSURANCE REFORMS

The title revises the FDIC's assessment base for deposit insurance, maintaining the risk-based nature of the assessment structure but transitioning to a broader assessment base for bank premiums based on total assets (minus tangible equity). The conference report also includes additional reforms that will enhance FDIC's ability to manage the Deposit Insurance Fund.

The title makes permanent the increase in deposit insurance to $250,000, and makes the increase retroactive to January 1, 2008. Full insurance of noninterest-bearing transaction accounts is also extended for an additional two years and a comparable program is authorized for credit unions.

OFFICE OF MINORITY AND WOMEN INCLUSION

The title requires the establishment of offices of Minority and Women Inclusion by the Treasury Department, and the financial regulators, to coordinate technical assistance to minority-owned and women-owned businesses and to promote diversity in the workforce of the regulators.

TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

The conference report eliminates the "private adviser" exemption in the Investment Advisers Act of 1940 ("IAA") thus registering advisers to private funds with the U.S. Securities and Exchange Commission ("SEC"). It expands the advisers' reporting requirements to the SEC as necessary or appropriate in the public interest and for the protection of investors or for the assessment of risk by the Financial Stability Oversight Council. The SEC is authorized to take into account the size, governance, and investment strategy of an adviser to the fund to determine if the fund poses a systemic risk. The conference report also amends the IAA to allow the SEC to require investment advisers to disclose the identity, investments, or affairs of their clients for purposes of systemic risk.

The report includes exemptions for certain private fund advisers. It provides an exemption from registration requirements for advisers of private funds, each with less than $150 million in assets under management, while maintaining reporting requirements as directed by the SEC; an SEC reporting requirement for advisers to venture capital funds, as defined by the SEC and otherwise exempt from the framework; and an exemption for Family Offices. The conference report raises the assets threshold for federal regulation of investment advisers from $30 million to $100 million. Those advisers who qualify to register with their home state must register with the SEC should the adviser operate in more than 15 states.

Finally, the report clarifies the SEC's authority to make rules necessary for the exercise of the powers conferred upon the SEC by the IAA. The SEC must adjust for the effects of inflation any dollar amount measures used in making determinations of the qualified client standard.

Advisers must comply with the new provisions within one year of enactment of the conference report, though the report allows advisers to register earlier with the SEC.

TITLE V—INSURANCE

Subtitle A, the Federal Insurance Office Act of 2010, creates a Federal Insurance Office (FIO) in the Treasury Department to provide the Executive Branch and the Congress with a source of information on the national insurance marketplace. FIO is not a federal regulator or supervisor of insurance. Rather, its functions include collecting information about the insurance industry; monitoring for systemic risk in the insurance industry, including serving in an advisory capacity to the Financial Stability Oversight Council; and administering the Terrorism Risk Insurance Program. Further, FIO will consult with the states regarding insurance matters of national importance and prudential insurance matters of international importance. FIO will also coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters, including representing the United States in international insurance fora, and assisting the Treasury Secretary in negotiations of international insurance agreements with respect to the business of insurance or reinsurance. FIO will have a narrow and limited preemption power over state insurance measures that are inconsistent with such international insurance agreements.

The Federal Insurance Office Act of 2010 expressly provides the Secretary of the Treasury, jointly with the USTR, the authority to negotiate and enter into international insurance agreements. To assure uniform, national application of prudential measures such as reinsurance collateral requirements, the Federal Insurance Office Act provides the Director with the authority to identify and narrowly preempt state insurance measures inconsistent with a defined category of international insurance agreements.

Subtitle B, the Nonadmitted and Reinsurance Reform Act of 2010, will reform and modernize two important sectors of the commercial insurance marketplace, nonadmitted insurance (also known as 'surplus lines' insurance) and reinsurance. Specifically, the Nonadmitted and Reinsurance Reform Act of 2010 creates a uniform system for nonadmitted insurance premium tax payments based upon the home state of the policyholder, encourages the states to develop a compact or other procedural mechanism for uniform tax allocation, and establishes regulatory deference for the home state of the insured. The Act adopts uniform eligibility requirements for nonadmitted insurers as developed and promulgated by the National Association of Insurance Commissioners (NAIC) in the Nonadmitted Insurance Model Act. The Nonadmitted and Reinsurance Reform Act of 2010 will allow direct access to the nonadmitted insurance markets for certain sophisticated commercial purchasers. The Nonadmitted and Reinsurance Reform Act also streamlines the regulation of reinsurance by applying single state regulation for financial solvency and credit for reinsurance. Credit for reinsurance determinations will be controlled by the state of domicile of the ceding insurer. Reinsurance solvency regulation will be controlled by the state of domicile of the reinsurer provided such state is NAIC-accredited or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation. Under the Act, non-domiciliary states are specifically prohibited from applying their reinsurance laws in an extra-territorial manner.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

Title VI improves prudential regulation of banks, saving associations, and their holding companies. The improvements include significant limitations on proprietary trading and sponsoring or investing in hedge funds or private equity funds by banking entities through the Volcker rule, better supervision of nonbank subsidiaries of holding companies, enhanced restrictions on transactions with affiliates, limits on derivatives and securities lending credit exposure, and a requirement that any company that controls an insured depository institution serve as a source of financial strength to the institution.

TITLE VII—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

The conference report establishes a new regulatory framework to cover a broad range of participants and institutions in the over-the-counter derivatives market. The Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") are authorized to write rules for the swaps and security-based swaps markets, respectively. The Commissions shall consult and coordinate on rules and include the prudential regulators, to the extent possible, to assure regulatory consistency and comparability. The Commissions will register participants in the market including dealers, major participants, clearing agencies and organizations, exchanges, swap execution facilities, and trade repositories. Exemptions and exclusions from registration will apply as outlined in the report or at the discretion of the regulators. The Commissions will have enforcement authority in their jurisdictions while the prudential regulators maintain exclusive authority to enforce provisions for capital and margin for banks and branches or agencies of foreign banks.

The report provides definitions for terms used in the Commodity Exchange Act and Securities Exchange Act of 1934. The regulatory framework outlines provisions for:

Mandatory clearing of swaps and security-based swaps for those trades that are eligible for clearing as determined by both the clearing houses and the regulators;

Mandatory trading on an exchange or swap (or security based swap) execution facility should the transactions be cleared and a facility will accept it for trading;

Public trade reporting of all cleared and uncleared swaps and security-based swaps;

Regulators have authority to impose capital on dealers and major swap participants;

Regulators have authority to impose margin requirements only on dealers and major participants for uncleared swaps, adding safeguards to the system by ensuring dealers and major swap participants have adequate financial resources to meet obligations;

Position limits on swaps contracts that perform or affect a significant price discovery function and requirements to aggregate limits across markets; and

Prohibitions against market manipulation.

The report includes a prohibition of federal assistance to swaps and security-based swap entities, including federal deposit insurance, access to the Federal Reserve discount window or Federal Reserve credit facility, to swaps entities in connection with their trading in swaps or securities-based swaps.

The report establishes a code of conduct for all registered swap dealers and major swap participants requiring them to disclose to the swap entity the material risks and characteristics of a swap and any conflicts of interest or material incentives. When acting as counterparties to a pension fund, endowment fund, or state or local government, dealers are to have a reasonable basis to believe that the fund or governmental entity has an independent representative advising them.

The report requires a number of studies, including studies on international swap regulation, the regulation of carbon markets, stable value contracts, and the effect of position limits on exchanges.

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

Title VIII establishes a specific framework for promoting uniform risk-management standards for systemically important financial market utilities (FMUs) and systemically important payment, clearing, and settlement (PCS) activities conducted by financial institutions. The Board of Governors of the Federal Reserve System (Board), the Securities and Exchange Commission (SEC), or the Commodity Futures Trading Commission (CFTC), as appropriate, is primarily responsible for establishing and enforcing risk-management standards for FMUs and PCS activities that the Council identifies as systemically important. If the Board determines that the standards imposed by the SEC or the CFTC or the enforcement actions of such agencies are insufficient, then the Council can require the SEC or CFTC to impose additional standards or take additional enforcement actions.

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

Subtitle A—Increasing Investor Protection establishes mechanisms to assist investors in their dealings with the SEC by creating an Office of Investor Advocate and an Ombudsman. It also creates an Investor Advisory Committee at the SEC, and clarifies the authority of the SEC to engage in investor testing. Subtitle A directs the SEC to study the standards of care applicable to broker-dealers and investment advisers giving investment advice to retail customers, and it authorizes the SEC to promulgate rules imposing a fiduciary duty on broker-dealers and investment advisers to protect retail customers. In addition, the subtitle streamlines filing procedures for self-regulatory organizations. Subtitle A also clarifies the authority of the SEC to require investor disclosures before purchase of investment products and services. Finally, the subtitle requires studies on the enhancement of investment adviser examinations, financial literacy, mutual fund advertising, conflicts of interest, improved investor access to information on investment advisers and broker-dealers, and financial planners and the use of financial designations.

Subtitle B—Increasing Regulatory Enforcement and Remedies strengthens the SEC's authority to conduct investigations, impose liability on control persons, and assess penalties for violations of the securities laws. It also makes clear that the intent standard in SEC enforcement actions for aiding and abetting is recklessness, and it requires a study regarding the issue of aiding and abetting liability in private actions. Under subtitle B, the SEC has the authority to restrict pre-dispute mandatory arbitration. The subtitle further enhances incentives and protections for whistleblowers providing information leading to successful SEC enforcement actions. Awards to whistleblowers will range from 10 percent to 30 percent of the amounts collected by the SEC in actions where the SEC obtained monetary sanctions exceeding $1 million. The subtitle also works to protect the confidentiality of whistleblowers.

The subtitle further enhances the ability of the SEC to ban violators from all parts of the securities industry, disqualifies felons and other bad actors from using the Regulation D offering exemption, and provides for the equal treatment of self-regulatory organization (SRO) rules. It streamlines SRO rule filing procedures by requiring the SEC to complete the process of reviewing and taking action on proposed SRO rules within specified time frames. The subtitle enhances the ability of the SEC to issue subpoenas, bring cases against individuals, and share information with other authorities. It also updates the law governing the Securities Investor Protection Corporation (SIPC). These reforms include increasing the minimum assessments on SIPC members; raising penalties for fraud; and establishing civil and criminal penalties against any person who misrepresents membership in SIPC. Subtitle B gives the SEC authority to enhance public reporting of aggregate information on short selling, prohibits manipulative short sales, and requires notification to customers that they may choose not to allow their securities to be used in connection with short sales. The subtitle further establishes procedures to notify investors about missing securities, and it requires the SEC to complete investigations and examinations within certain time frames, subject to exceptions for complex cases. Finally, the subtitle requires a study regarding the issue of aiding and abetting liability in private actions for securities fraud.

Subtitle C—Improvement to the Regulation of Credit Rating Agencies gives broader powers to the SEC to regulate nationally recognized statistical rating organizations ("NRSROs"). A new Office of Credit Ratings ("Office") is required to examine NRSROs at least once a year and make key findings public. The Office will write new rules, including requiring NRSROs to (1) set up internal controls over the process for determining credit ratings; (2) establish an independent board of directors; (3) make greater disclosures to the public and investors; and (4) develop universal ratings across asset classes and types of issuer. The report also gives the Office the authority to deregister an NRSRO for providing bad ratings over time. New professional standards are established that require ratings analysts to pass qualifying exams and have continuing education.

The report includes provisions to address conflicts of interest. It prohibits compliance officers from working on ratings, methodologies, or sales and prevents other employees from both marketing ratings services and performing the ratings of securities. The subtitle includes on additional conflict of interest mitigation including a new requirement for NRSROs to conduct a one-year look-back review when an NRSRO employee goes to work for an obligor or underwriter of a security or money market instrument subject to a rating by that NRSRO; and report to the SEC when certain employees of the NRSRO go to work for an entity that the NRSRO has rated in the previous twelve months. The SEC shall make such reports publicly available.

To reduce the reliance on ratings, the report amends several statutes to remove references to credit ratings, credit rating agencies and NRSROs. The subtitle includes a requirement that all Federal agencies review their regulations, policies and practices that reference credit ratings, credit rating agencies, and NRSROs. After identifying where the agency relies on or makes these references, the agencies shall modify their regulations by striking these references and substituting a standard of creditworthiness to be established by the agencies.

New provisions address information gathering. NRSROs must consider information in their ratings that comes to their attention from a source other than the organizations being rated, if they find it credible. In addition, the subtitle includes an elimination of the credit rating agency exemption from Regulation Fair Disclosure, commonly known as Reg FD.

The report also addresses liability measures for the NRSRO. The report allows investors to bring private rights of action against credit rating agencies for a knowing or reckless failure to conduct a reasonable investigation of the facts or to obtain analysis from an independent source. The report also nullifies Rule 436(g) which provides an exemption for credit ratings provided by NRSROs from being considered a part of the registration statement prepared or certified by a person under the "expert liability" regime of Section 7 and Section 11 of the Securities Act of 1933. The subtitle requires all references to "furnish" be replaced with the word "file" in existing law. Information that is "furnished" to the SEC is subject to a lower standard of accuracy and liability than information "filed" with the SEC.

The report also directs the SEC to establish a system that prohibits issuers of structured finance from selecting the NRSRO that will provide the initial credit rating. The system would mandate that initial rating assignments for structured finance securities be made on a random or semi-random basis, unless the SEC determines, after study, that an alternative system of assigning ratings would better protect investors and serve the public interest.

Subtitle D—Improvements to Asset-Backed Securitization Process requires securitizers to retain an economic interest in a material portion of the credit risk for any asset that securitizers transfer, sell, or convey to a third party. Risk retention requirements and exemptions will be determined by regulators, which will include setting risk retention requirements for different asset classes that are securitized and allocating risk retention obligations between securitizers and originators. An exemption is provided for qualified residential mortgages, as defined by the regulators, but which can be no broader than the definition of qualified mortgage in Title XIV. Regulators may tailor risk retention requirements as appropriate to the structure of collateralized debt obligations and other complex asset-backed securities. Subtitle D also requires enhanced disclosure by issuers of asset-backed securities, including data related to the underlying loans or assets. Express exemptions are provided for the Farm Credit System and any residential, multifamily, or health care facility mortgage loan asset or securitization which is insured or guaranteed by the United States or an agency of the United States. Regulators also are required to issue total or partial exemptions from risk retention and disclosure requirements for municipal securities and for securitizations of assets issued or guaranteed by federal agencies, as long as the exemption is in the public interest and for the protection of investors.

Subtitle E—Accountability and Executive Compensation is designed to address shareholder rights and executive compensation practices. In this subtitle, Congress provides shareholders in a public company with a vote on executive compensation and additional disclosures involving compensation practices. Under the conference report, at least every three years shareholders can cast an advisory vote to approve the compensation of executives and, where appropriate, golden parachutes for executives. Also under this subtitle,

(i) board committees that set compensation policy will consist only of directors who are independent; (ii) companies will tell shareholders about the relationship between the executive compensation the company paid and the company's financial performance; (iii) companies will be required to have a policy to recover money erroneously paid to executives based on financials that later have to be restated due to an accounting error; and (iv) companies will be required to disclose in the annual proxy statement whether employees or members of the board may hedge or offset any decrease in the market value of equity securities granted. This subtitle also requires federal financial regulators to monitor incentive-based payment arrangements of federally regulated financial institutions larger than $1 billion and prohibit incentive-based payment arrangements that the regulators determine jointly could threaten financial institutions' safety and soundness or could have serious adverse effects on economic conditions or financial stability. Finally, subtitle E prohibits brokers who are not beneficial owners of a security from voting through company proxies unless the beneficial owner has instructed the broker to vote on the owner's behalf.

Subtitle F—Improvements to the Management of the Securities and Exchange Commission requires several reports designed to assess SEC performance and provide recommendations for improvements. These involve assessment of the management of the SEC related to internal supervisory controls, personnel management, financial controls, and oversight of national securities associations. Subtitle F also creates a suggestion program for SEC employees and requires the Divisions of Trading and Markets and Investment Management to have examiners on their staffs. It requires the SEC to hire a consultant to study the SEC's operations and determine whether there is a need for comprehensive reform. Finally, Subtitle F requires the GAO to study issues surrounding employees who leave the SEC to work in the securities industry.

Subtitle G—Strengthening Corporate Governance authorizes the SEC to write rules allowing shareholders to nominate candidates for an issuer's board of directors, and to have such candidates listed on the issuer's own proxy materials. In writing such rules, the SEC must consider the burden on small issuers, and may issue exemptions from proxy access rules. Issuers must also disclose why the issuer has chosen to have a single person, or different individuals, serve as CEO and Chairman of the board of the company.

Subtitle H—Municipal Securities requires the registration of municipal financial advisors and subjects them to rules to be promulgated by the Municipal Securities Rulemaking Board (MSRB), which will be enforced by the SEC. An Office of Municipal Securities is created within the SEC. The MSRB will be reconstituted, so that a majority of members are independent of the municipal securities industry. Municipal advisors will have a fiduciary duty to municipal entities. Subtitle H calls for studies of municipal securities markets, and ways to increase disclosure to investors. It also provides a certain source of funding for the Government Accounting Standards Board.

Subtitle I—Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters, subtitle I allows the Public

Company Accounting Oversight Board (PCAOB) to examine the auditors of broker-dealers. It further authorizes the PCAOB to share information with foreign authorities. The conference report also authorizes portfolio margining for accounts that hold both securities and futures. In response to problems related to securities borrowing and lending, the conference report requires more transparency. It also raises the dollar threshold that triggers a full "material loss review" by federal banking regulators' inspectors general. Subtitle I improves the coordination, activities, flexibility, and accountability of inspectors general at Federal financial agencies. Subtitle I also exempts small issuers (those with less than $75,000,000 in market capitalization) from the external audit of internal controls requirements of Sarbanes-Oxley Section 404(b), and requires studies on the impact of such an exemption and the exemption for mid-sized companies. The subtitle also creates an exemption for certain annuities from federal securities regulation. Further, it makes numerous technical and conforming changes to Federal securities laws.

Subtitle J—Securities and Exchange Commission Match Funding maintains the role of the Appropriations Committees in setting the Securities and Exchange Commission's annual budgets on and after FY2012. Transaction fee receipts would be treated as offsetting collections equal to the amount of the appropriation. Any excess collections would go to the Treasury as general revenue and not offset any current or future appropriations. Subtitle J sets annual registration fee targets that will produce $5 billion of revenues over ten years that will go to the Treasury general fund. It also requires SEC's budget to be submitted to Congress concurrent with the earliest submission to the Office of Management and Budget and submitted unaltered by the President; builds in flexibility for multi-year budget authority and unanticipated needs; and authorizes graduated funding level increases for the SEC for FYs 2011–2015.

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

Title X establishes the Bureau of Consumer Financial Protection (Bureau), which will be an independent bureau within the Federal Reserve System. It will be run by a Director who is Presidentially appointed and Senate confirmed. The Bureau will have the authority and accountability to ensure that existing consumer protection laws and regulations are comprehensive, fair, and vigorously enforced.

The Bureau will have authority to issue rules applicable to all financial institutions, including depository institutions that offer financial products and services to consumers. It will also have authority to issue rules under existing consumer banking statutes, including the Truth in Lending Act, the Equal Credit Opportunity Act, and the Real Estate Settlement Procedures Act. Furthermore, the Bureau will have authority to regulate unfair, deceptive and abusive practices and consumer products that it identifies (UDAP authority). The Bureau also may issue regulations relating to disclosures about consumer financial products and services.

Title X also establishes the Bureau as the federal agency with examination and enforcement authority over very large banks and nonbank financial institutions for compliance with the consumer protection laws. The prudential regulators will retain this authority for insured depository institutions and credit unions with assets of $10 billion or less. Exclusions from supervision and enforcement are provided for nonfinancial companies, including merchants, retailers, attorneys, accountants, and real estate brokers, that finance the purchase of their nonfinancial consumer products and services under certain conditions and where the nonfinancial company is not significantly engaged in such financing. There is also an exclusion from the authority of the Bureau for automobile dealers, for which the Federal Reserve Board will continue to write regulations under the enumerated federal consumer laws, to be enforced by the Federal Trade Commission (FTC). The FTC will also be able to write rules proscribing unfair or deceptive acts or practices with regard to auto dealers under the procedures set out under the Administrative Procedures Act.

The conference report also revises the standard the OCC will use to preempt state consumer protection laws. It codifies the standard in the 1996 Supreme Court case *Barnett Bank of Marion County, N.A.* v. *Nelson* to allow for the preemption of State consumer financial laws that prevent or significantly interfere with national banks' exercise of their powers. State Attorneys General also are given authority to enforce the UDAP and other authorities of the Bureau against banks and savings associations.

To address consumer protection and fair lending matters, Title X establishes the Office of Fair Lending and Equal Opportunity within the Bureau. This Office will oversee the enforcement of federal laws intended to ensure fair, equitable and nondiscriminatory access to credit for individuals and communities, including the Equal Credit Opportunity Act (ECOA) and Home Mortgage Disclosure Act (HMDA). The Office will promote coordination of fair lending enforcement efforts with other federal agencies and State regulators, as appropriate, to provide consistent, efficient and effective enforcement of federal fair lending laws.

The Bureau will also include an Office for Financial Education and an Office the Financial Protection of Older Americans. In addition, Title X provides for enhanced data collection required by HMDA and ECOA.

TITLE XI—FEDERAL RESERVE SYSTEM PROVISIONS

LIQUIDITY PROGRAMS

The Federal Reserve will be able to make 13(3) emergency loans only through widely available programs approved by the Secretary of the Treasury, and not to individual firms. FDIC programs to guarantee short-term debt during financial crises will be limited to solvent depository institutions and their holding companies, and can be created only after meeting several conditions including Congressional approval.

FEDERAL RESERVE GOVERNANCE AND OVERSIGHT

The Government Accountability Office will conduct an audit of Federal Reserve 13(3) emergency lending since December 1, 2007, and the Federal Reserve will publish details about such lending on December 1, 2010. The GAO will have ongoing audit authority over Federal Reserve discount window and open market operation transactions, and emergency lending. The Federal Reserve will publicly disclose data on discount window and open market operations, and details about emergency lending, after a delay that will allow these tools to function effectively.

The position of Vice Chairman for Supervision on the Federal Reserve Board of Governors is established, and the Federal Reserve is formally prohibited from delegating its functions for establishing regulatory or supervisory policy to Federal Reserve banks. The presidents of each Federal Reserve Bank will be elected by the directors selected to represent the public (Class B and C directors), and the directors representing the member banks (Class A directors) will no longer be authorized to vote.

TITLE XII—IMPROVING ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS

This title will expand access to safe and affordable bank accounts, credit and financial information for low-income, minority and other underserved families. Specifically, the title would address the following challenges facing low- and moderate-income families with three authorized programs:

authorizes a program to help low- and moderate-income individuals open low-cost checking or savings accounts at banks or credit unions;

increases access to objective advice through non-profits and others aiding in offering financial advice to consumers; and

creates a pool of capital to enable community development financial institutions (CDFIs) to establish and maintain small dollar loan programs, creating an alternative to pay day or car title loans in local communities.

TITLE XIII—PAY IT BACK ACT

Title XIII, the TARP Pay it Back Act, reduces the amount authorized under the Troubled Asset Repurchase Program to $475 billion, from the original $700 billion; prohibits Treasury from using repaid TARP funds; and prohibits Treasury from initiating new programs under TARP.

TITLE XIV—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

Title XIV enacts the Mortgage Reform and Anti-Predatory Lending Act. It sets minimum standards for mortgages by requiring lenders to establish that consumers have a reasonable ability to repay at the time the mortgage is consummated. It provides that certain high-quality, low-cost loans (defined as Qualified Mortgages) are presumed to meet this standard.

The Act also prohibits financial incentives (including payments known as "yield spread premiums") that may encourage mortgage originators, including mortgage brokers and loan officers of lending institutions, to steer consumers to higher-cost and more abusive mortgages. In addition, it prohibits prepayment penalties for any adjustable rate mortgage and other mortgages that do not meet the definition of Qualified Mortgage; limits prepayment penalties charged to borrowers who wish to prepay their mortgages (typically to refinance on more affordable terms); bans single premium credit insurance and prohibits mandatory arbitration clauses; and includes protections for renters of foreclosed properties. Finally, title XIV authorizes funds to provide legal assistance to homeowners and renters who are experiencing problems related to foreclosure.

Title XIV enhances and expands the scope of consumer protections for high-cost loans under the Home Ownership and Equity Protection Act (HOEPA) and requires additional disclosures to consumers. This title revises the benchmarks for determining loans subject to the heightened HOEPA standards. It also prohibits the financing of points and fees; excessive fees for payoff information, modifications, or late payments; and practices that increase the risk of foreclosure, such as balloon payments, encouraging a borrower to default, and call provisions. The title adds a requirement for pre-loan counseling.

The Act establishes an Office of Housing Counseling at HUD that will carry out and coordinate homeownership and rental housing counseling programs; requires the launch of a national public-service, multimedia campaign to promote housing counseling and the establishment of a website and toll-free hotline; authorizes the issuance of homeownership and rental housing counseling grants to HUD-approved housing counseling agencies and State housing finance agencies; and requires HUD to update the Mortgage Information Booklet to provide consumers with a greater understanding of the terms of the home buying process. Additionally, the title requires increased information to consumers about the need for home inspections and ways to avoid foreclosure scams.

Moreover, Title XIV requires all higher-cost mortgage borrowers to have escrow accounts established. It also requires lenders to provide written disclosures about the need to pay taxes and insurance premiums to all borrowers if they opt out of creating escrow accounts. With respect to mortgage servicing reforms, Title XIV updates the Real Estate Settlement Procedures Act to create new consumer protections related to force-placed insurance, swifter responses to inquiries, increased penalties, prompt crediting of payments, and the timely receipt of payoff statement quotes.

Concerning appraisal practices, Title XIV prohibits lenders from making a higher-cost mortgage without first obtaining a written appraisal. Lenders must additionally provide mortgage applicants with copies of any and all written appraisal reports and valuations developed in connection with a mortgage transaction at least 3 days before the scheduled closing date on the property. Title XIV further creates enforceable Federal appraisal independence standards with penalties within the Truth in Lending Act. These standards prohibit the parties involved in a real estate transaction from influencing the independent judgment of an appraiser through collusion, coercion, and bribery, among other activities. The bill also reforms the Federal oversight of the State appraisal regulatory system.

The Act provides $1 billion for "Emergency Mortgage Relief," in the form of loans to homeowners who lose their jobs, to help make mortgage payments while the homeowner is out of work. The Act also provides $1 billion for a third round of funding for the Neighborhood Stabilization Program to enable state and local governments to finance the purchase and redevelopment of foreclosed homes and residential properties. In addition, the Act authorizes a HUD-administered grant-making program to help entities that provide legal assistance to low- and moderate-income recipients on home ownership preservation, foreclosure prevention, and the rights of tenants associated with home foreclosure.

TITLE XV—MISCELLANEOUS PROVISIONS

Title XV of the conference report includes:

RESTRICTIONS ON USE OF U.S. FUNDS FOR FOREIGN GOVERNMENTS

The conference report requires the Administration to evaluate any proposed loan by the IMF to a middle-income country if that country's public debt exceeds its annual Gross Domestic Product, and to oppose the loan if it cannot certify to Congress that the loan is likely to be repaid.

EXTRACTIVE INDUSTRIES TRANSPARENCY

The conference report requires public disclosure to the SEC of any payment relating to the commercial development of oil, natural gas, and minerals made by any person to the U.S. or a foreign government, and includes as a "payment" taxes, royalties, fees, licenses, production entitlements, bonuses, and other material benefits, as determined by the Securities and Exchange Commission.

The conference report amends the Securities Exchange Act of 1934 to require the SEC to issue rules requiring each resource extraction issuer (an issuer that engages in the commercial development of oil, natural gas, or minerals) to include in an annual report information relating to any payment made by the issuer, a subsidiary or partner, or an entity under its control to the U.S. or a foreign government for the purpose of such commercial development. Requires such rules, to the extent practicable, to support the U.S. commitment to international transparency promotion efforts relating to such commercial development.

CONFLICT MINERALS

The conference report requires disclosure to the SEC by all persons otherwise required to file with the SEC for whom minerals originating in the Democratic Republic of Congo and adjoining countries are necessary to the functionality or production of a product manufactured by such person. Such a public disclosure report by the person must describe the measures taken to exercise due diligence on the source and chain of custody of such materials, the products manufactured, and other matters; requires an independent audit of the report.

The conference report requires that the Department of State, in consultation with others, submit to Congress a strategy to address the illicit minerals trade in the region, and a map to address linkages between conflict minerals and armed groups.

Section 1503 requires mining companies to disclose mining safety violations that are material to investors.

TITLE XVI—SECTION 1256 CONTRACTS

The title contains a provision to address the recharacterization of income as a result of increased exchange-trading of derivatives contracts by clarifying that section 1256 of the Internal Revenue Code does not apply to certain derivatives contracts transacted on exchanges.

Compliance with clause 9 of Rule XXI.—Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, neither this conference report nor the accompanying joint statement of managers contains any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

From the Committee on Financial Services, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

BARNEY FRANK of Massachusetts,
PAUL E. KANJORSKI,
MAXINE WATERS,
CAROLYN B. MALONEY,
LUIS V. GUTIERREZ,
MELVIN L. WATT,
GREGORY W. MEEKS of New York,
DENNIS MOORE of Kansas,
MARY JO KILROY,
GARY C. PETERS,

From the Committee on Agriculture, for consideration of subtitles A and B of title I, secs. 1303, 1609, 1702, 1703, title III (except secs. 3301 and 3302), secs. 4205(c), 4804(b)(8)(B), 5008, and 7509 of the House bill, and sec. 102, subtitle A of title I, secs. 406, 604(h), title VII, title VIII, secs. 983, 989E, 1027(j), 1088(a)(8), 1098, and 1099 of the Senate amendment, and modifications committed to conference:

COLLIN C. PETERSON,
LEONARD L. BOSWELL,

From the Committee on Energy and Commerce, for consideration of secs. 3009, 3102(a)(2), 4001, 4002, 4101–4114, 4201, 4202, 4204–4210, 4301–4311, 4314, 4401–4403, 4410, 4501–4509, 4601–4606, 4815, 4901, and that portion of sec. 8002(a)(3) which adds a new sec.313(d) to title 31, United States Code, of the House bill, and that portion of sec. 502(a)(3) which adds a new sec. 313(d) to title 31, United States Code, secs. 722(e), 1001, 1002, 1011–1018, 1021–1024, 1027–1029, 1031–1034, 1036, 1037, 1041, 1042, 1048, 1051–1058, 1061–1067, 1101, and 1105 of the Senate amendment, and modifications committed to conference:

BOBBY L. RUSH,

From the Committee on the Judiciary, for consideration of secs. 1101(e)(2), 1103(e)(2), 1104(i)(5) and (i)(6), 1105(h) and (i), 1110(c) and (d), 1601, 1605, 1607, 1609, 1610, 1612(a), 3002(c)(3) and (c)(4), 3006, 3119, 3206, 4205(n), 4306(b), 4501–4509, 4603, 4804(b)(8)(A), 4901(c)(8)(D) and (e), 6003, 7203(a), 7205, 7207, 7209, 7210, 7213–7216, 7220, 7302, 7507, 7508, 9004, 9104, 9105, 9106(a), 9110(b), 9111, 9118, 9203(c), and 9403(b) of the House bill, and secs. 112(b)(5)(B), 113(h), 153(f), 201, 202, 205, 208–210, 211(a) and (b), 316, 502(a)(3), 712(c), 718(b), 723(a)(3), 724(b), 725(c), 728, 731, 733, 735(b), 744, 748, 753, 763(a), (c) and (i), 764, 767, 809(f), 922, 924, 929B, 932, 991(b)(5), (c)(2)(G) and (c)(3)(H), 1023(c)(7) and (c)(8), 1024(c)(3)(B), 1027(e), 1042, 1044(a), 1046(a), 1047, 1051–1058, 1063, 1088(a)(7)(A), 1090, 1095, 1096, 1098, 1104, 1151(b), and 1156(c) of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
HOWARD L. BERMAN,

From the Committee on Oversight and Government Reform, for consideration of secs. 1000A, 1007, 1101(e)(3), 1203(d), 1212, 1217, 1254(c), 1609(h)(8)(B), 1611(d), 3301, 3302, 3304, 4106(b)(2) and (g)(4)(D), 4604, 4801, 4802, 5004, 7203(a), 7409, and 8002(a)(3) of the House bill, and secs. 111(g), (i) and (j), 152(d)(2), (g) and (k), 210(h)(8), 319, 322, 404, 502(a)(3), 723(a)(3), 748, 763(a), 809(g), 922(a), 988, 989B, 989C, 989D, 989E, 1013(a), 1022(c)(6), 1064, 1152, and 1159(a) and (b) of the Senate amendment, and modifications committed to conference:

EDOLPHUS TOWNS,
ELIJAH E. CUMMINGS,

From the Committee on Small Business, for consideration of secs. 1071 and 1104 of the Senate amendment, and modifications committed to conference:

NYDIA M. VELÁZQUEZ,
HEATH SHULER,
Managers on the Part of the House.

CHRISTOPHER J. DODD,
TIM JOHNSON,
JACK REED,
CHARLES E. SCHUMER,

From the Committee on Agriculture, Nutrition, and Forestry:

BLANCHE L. LINCOLN,
PATRICK J. LEAHY,
TOM HARKIN,
Managers on the Part of the Senate.

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