

1           **DIVISION A—IMPROVEMENTS TO SUPERVISION**

2                           **OF FINANCIAL FIRMS**

3                           **TITLE I—FINANCIAL SERVICES OVERSIGHT**

4   **COUNCIL**

5   **SEC. 101. SHORT TITLE.**

6           This title may be cited as the “Financial Services Oversight Council Act of 2009”.

7   **SEC. 102. FINANCIAL SERVICES OVERSIGHT COUNCIL ESTABLISHED.**

8           (a) ESTABLISHMENT.—Immediately upon enactment of this title, there is established a  
9   Financial Services Oversight Council.

10          (b) MEMBERSHIP.—The Financial Services Oversight Council shall consist of:

11                   (1) the Secretary of the Treasury, who shall serve as the Chairman of the Council;

12                   (2) the Chairman of the Board of Governors of the Federal Reserve System;

13                   (3) the Comptroller of the Currency, until the functions of the Comptroller of the  
14   Currency are transferred to the Director of the National Bank Supervisor, at which time  
15   the Director of the National Bank Supervisor shall succeed to the Comptroller’s  
16   membership on the Council;

17                   (4) the Director of the Office of Thrift Supervision, until the functions of the  
18   Director of the Office of Thrift Supervision are transferred to the Director of the National  
19   Bank Supervisor;

20                   (5) the Director of the Consumer Financial Protection Agency;

21                   (6) the Chairman of the Securities and Exchange Commission;

1 (7) the Chairman of the Commodity Futures Trading Commission;

2 (8) the Chairperson of the Federal Deposit Insurance Corporation; and

3 (9) the Director of the Federal Housing Finance Agency.

4 (c) PURPOSES AND FUNCTIONS.—

5 (1) The Financial Services Oversight Council shall—

6 (A) advise the Congress on financial regulation and make  
7 recommendations that will enhance the integrity, efficiency, orderliness,  
8 competitiveness, and stability of our nation's financial markets and maintain  
9 investor confidence;

10 (B) monitor the financial services marketplace to identify potential threats  
11 to the stability of the United States financial system;

12 (C) facilitate information sharing and coordination among the members of  
13 the Council regarding domestic financial services policy development,  
14 rulemakings, examinations, reporting requirements, and enforcement actions;

15 (D) advise the Board of Governors of the Federal Reserve System on the  
16 designation of Tier 1 financial holding companies (as defined in section 2(t) of the  
17 Banking Holding Company of 1956, as amended by section 203 of the Bank  
18 Holding Company Modernization Act of 2009), the designation of systemically  
19 important financial market utilities (as defined in section 803 of the Payment,  
20 Clearing, and Settlement Supervision Act of 2009) and payment, clearing, and  
21 settlement activities (as also defined in that section 803), and standards for such  
22 companies and activities; and

23 (E) provide a forum for discussion and analysis of emerging market

1           developments and financial regulatory issues and for resolution of jurisdictional  
2           disputes among the members of the Council.

3           (2) The Chairman of the Council shall advise the President on the operations of  
4  
5           the Council under this title.

6  
7 **SEC. 103. RECOMMENDATIONS AND CONSULTATION.**

8           (a) RECOMMENDATION AUTHORITY.—The Financial Services Oversight Council may  
9           recommend financial firms to the Board of Governors of the Federal Reserve System for  
10          designation as Tier 1 financial holding companies and may recommend financial market utilities  
11          and payment, clearing, and settlement activities for designation as systemically important.

12          (b) INFORMATION SHARING.—The Board of Governors of the Federal Reserve System is  
13          authorized to provide the Financial Services Oversight Council with information collected  
14          pursuant to the Board of Governors of the Federal Reserve System’s authority to designate and  
15          regulate Tier 1 financial holding companies and to designate and regulate systemically important  
16          financial market utilities and systemically important payment, clearing, and settlement activities.

17          (c) CONSULTATION ON REGULATIONS AND STANDARDS.—The Board of Governors of the  
18          Federal Reserve System shall consult with the Financial Services Oversight Council before—

19                 (1) prescribing rules for the designation of Tier 1 financial holding companies;

20                 (2) prescribing material prudential standards for Tier 1 financial holding  
21          companies;

22                 (3) designating any financial market utility or payment, clearing, and settlement  
23          activity as systemically important; and

24                 (4) prescribing material risk-management standards for systemically important  
25          financial market utilities and systemically important payment, clearing, and settlement

1 activities.

2 (d) CONSULTATION WITH OTHER AGENCIES AND ENTITIES.—The Financial Services  
3 Oversight Council, as appropriate, may consult with other agencies and entities to carry out any  
4 of the provisions of this title

5 **SEC. 104. FINANCIAL SERVICES OVERSIGHT COUNCIL AUTHORITY.**

6 (a) IN GENERAL.—The Financial Services Oversight Council, through its Chairman, is  
7 authorized to receive, and may request the production of, any data or information from members  
8 of the Council, as necessary—

9 (1) to monitor the financial services marketplace to identify potential threats to the  
10 stability of the United States financial system; or

11 (2) to otherwise carry out any of the provisions of this title.

12 (b) SUBMISSION BY COUNCIL MEMBERS.—Any member of the Council in possession of  
13 data or information requested by the Financial Services Oversight Council is authorized to  
14 provide that information to the Council.

15 (c) FINANCIAL DATA COLLECTION.—The Financial Services Oversight Council, through  
16 its Chairman, may require the submission of periodic and other reports from any United States  
17 financial firm solely for the purpose of assessing the extent to which a financial activity or  
18 financial market in which the firm participates poses a threat to financial stability. Before  
19 requiring the submission of reports from financial firms that are regulated by members of the  
20 Council, the Chairman shall coordinate with members of the Council and shall, whenever  
21 possible, rely on information already being collected from members of the Council.

22 **SEC. 105. TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.**

23 The Financial Services Oversight Council is authorized to appoint such special advisory,

1 technical, or professional committees as may be useful in carrying out its functions, and the  
2 members of such committees may be members of the Financial Services Oversight Council, or  
3 other persons, or both.

4 **SEC. 106. FINANCIAL SERVICES OVERSIGHT COUNCIL MEETINGS.**

5 The Financial Services Oversight Council shall meet as frequently as the Chairman  
6 deems necessary, but not less than quarterly.

7 **SEC. 107. ASSISTANCE FROM FEDERAL AGENCIES.**

8 (a) DEPARTMENT OF THE TREASURY.—The Secretary of the Treasury shall designate  
9 permanent staff to provide the Financial Services Oversight Council and any special advisory,  
10 technical, or professional committees appointed by the Council with professional and expert  
11 support and other services necessary for the performance of the Financial Services Oversight  
12 Council’s functions and fulfillment of its mission.

13 (b) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in  
14 subsection (a), departments and agencies of the United States are authorized to provide the  
15 Financial Services Oversight Council and any special advisory, technical, or professional  
16 committees appointed by the Council with such services, funds, facilities, staff, and other support  
17 services as they may determine advisable.

18 **SEC. 108. REPORTS TO CONGRESS.**

19 The Financial Services Oversight Council shall submit an annual report to the Committee  
20 on Financial Services of the House of Representatives and the Committee on Banking, Housing,  
21 and Urban Affairs of the Senate identifying significant financial market developments and  
22 potential emerging threats to the stability of the financial system.

23 **SEC. 109. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

1           The Federal Advisory Committee Act shall not apply to the Financial Services Oversight  
2 Council, or any special advisory, technical, or professional committees appointed by the  
3 Financial Services Oversight Council.

4

1                   **TITLE II—CONSOLIDATED SUPERVISION AND**  
2                   **REGULATION OF LARGE, INTERCONNECTED**  
3                   **FINANCIAL FIRMS**

4   **SEC. 201. SHORT TITLE.**

5           This Act may be cited as the “Bank Holding Company Modernization Act of 2009”.

6   **SEC. 202. FINDINGS AND PURPOSES.**

7           (a) The Congress finds that—

8                   (1) Inadequate consolidated supervision and regulation of large, highly leveraged,  
9                   and substantially interconnected financial companies was a key contributor to the recent  
10                   financial crisis;

11                   (2) The sudden collapses of large investment banks and insurance companies  
12                   based in the United States were among the most destabilizing events of the financial  
13                   crisis;

14                   (3) These companies were ineffectively supervised and regulated on a  
15                   consolidated basis, and, as a consequence, did not have sufficient capital or liquidity  
16                   buffers to withstand the deterioration in financial conditions that occurred in 2008; and

17                   (4) Although most of these financial companies owned federally insured  
18                   depository institutions, many chose to own depository institutions that were not  
19                   considered ‘banks’ under the Bank Holding Company Act of 1956. By doing so, these  
20                   financial companies chose to be subject to consolidated supervision and regulation under  
21                   statutory frameworks or voluntary agreements that were inherently weaker than the  
22                   framework applicable to bank holding companies.

1 (b) The purposes of this Act are to—

2 (1) Help ensure the financial distress, rapid deleveraging, or disorderly failure of  
3 large, highly leveraged, and substantially interconnected financial companies does not  
4 harm the financial system or the United States economy; and

5 (2) Mitigate threats to financial stability by subjecting all large, highly leveraged,  
6 and substantially interconnected financial companies and their subsidiaries to  
7 comprehensive and robust prudential supervision and regulation by the Board of  
8 Governors of the Federal Reserve System.

9 **SEC. 203. DEFINITIONS.**

10 Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), is amended by  
11 adding at the end the following new subsections--

12 “(r) UNITED STATES FINANCIAL COMPANY.— The term ‘United States financial company’  
13 means a bank holding company or any other company that is—

14 “(1) incorporated or organized under the laws of the United States or any State,  
15 territory, or possession of the United States, the District of Columbia, Commonwealth of  
16 Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or  
17 the United States Virgin Islands; and

18 “(2) in whole or in part engaged in, directly or indirectly, activities in the United  
19 States that are financial in nature.

20 “(s) FOREIGN FINANCIAL COMPANY.— The term ‘Foreign financial company’ means a  
21 bank holding company or any other company that is—

22 “(1) incorporated or organized in a country other than the United States; and

23 “(2) in whole or in part engaged in, directly or indirectly, including through a



1 branch in the United States, activities in the United States that are financial in nature.

2 “(t) TIER 1 FINANCIAL HOLDING COMPANY.—The term ‘Tier 1 financial holding company’  
3 means a United States financial company or a Foreign financial company that is designated by  
4 the Board as a Tier 1 financial holding company in accordance with section 6.

5 “(u) UNITED STATES TIER 1 FINANCIAL HOLDING COMPANY.—The term ‘United States  
6 Tier 1 financial holding company’ means a United States financial company that has been  
7 designated by the Board as a Tier 1 financial holding company.

8 “(v) FOREIGN TIER 1 FINANCIAL HOLDING COMPANY.—The term ‘Foreign Tier 1  
9 financial holding company’ means a Foreign financial company that has been designated by the  
10 Board as a Tier 1 financial holding company.

11 **SEC. 204. SUPERVISION AND REGULATION OF TIER 1 FINANCIAL HOLDING**  
12 **COMPANIES.**

13 (a) REGULATION OF TIER 1 FINANCIAL HOLDING COMPANIES.—Section 6 of the Bank  
14 Holding Company Act of 1956 (12 U.S.C. 1845), is amended to read as follows—

15 **“SEC. 6. SUPERVISION AND REGULATION OF TIER 1 FINANCIAL HOLDING**  
16 **COMPANIES.**

17 “(a) AUTHORITY TO DESIGNATE TIER 1 FINANCIAL HOLDING COMPANIES.—

18 “(1) DESIGNATION.—

19 “(A) UNITED STATES FINANCIAL COMPANIES.— The Board, on a non-  
20 delegable basis, may designate, by regulation or order, any United States financial  
21 company as a United States Tier 1 financial holding company, if it determines that  
22 material financial distress at the company could pose a threat to global or United  
23 States financial stability or the global or United States economy during times of

1 economic stress based on a consideration of the following criteria:

2 “(i) the amount and nature of the company’s financial assets;

3 “(ii) the amount and types of the company’s liabilities, including  
4 the degree of reliance on short-term funding;

5 “(iii) the extent of the company’s off-balance sheet exposures;

6 “(iv) the extent of the company’s transactions and relationships  
7 with other major financial companies;

8 “(v) the company’s importance as a source of credit for  
9 households, businesses and State and local governments and as a source of  
10 liquidity for the financial system;

11 “(vi) the recommendation, if any, of the Financial Services  
12 Oversight Council; and

13 “(vii) any other factors that the Board deems appropriate.

14 “(B) FOREIGN FINANCIAL COMPANIES.—The Board, on a non-delegable  
15 basis, may designate, by regulation or order, any Foreign financial company as a  
16 Foreign Tier 1 financial holding company, if it determines that material financial  
17 distress at the company could pose a threat to United States financial stability or  
18 the United States economy taking into consideration the principles of national  
19 treatment and equality of competitive opportunity and the following criteria:

20 “(i) the amount and nature of the company’s United States  
21 financial assets;

22 “(ii) the amount and types of the company’s liabilities used to fund  
23 activities and operations in the United States, including the degree of

1 reliance on short-term funding;

2 “(iii) the extent of the company’s United States-related off-balance  
3 sheet exposures;

4 “(iv) the extent of the company’s transactions or relationships with  
5 other major United States financial companies;

6 “(v) the company’s importance as a source of credit for United  
7 States households, businesses and State and local governments and as a  
8 source of liquidity for the financial system;

9 “(vi) the recommendation, if any, of the Financial Services  
10 Oversight Council; and

11 “(vii) any other factors that the Board deems appropriate, except  
12 that the Board may not make any such designation of a Foreign financial  
13 company that does not have substantial assets or operations in the United  
14 States.

15 “(C) REEVALUATION AND RESCISSION.—The Board shall at least annually  
16 reevaluate its designations under subparagraphs (A) and (B). The Board shall, by  
17 order, in accordance with subparagraph (D), rescind a designation of a company  
18 as a Tier 1 financial holding company if the Board determines that the company  
19 no longer meets the standards for designation under subparagraph (A) or (B).

20 “(D) NOTICE AND OPPORTUNITY FOR HEARING AND OF FINAL  
21 DETERMINATION.—The Board shall provide a company notice of the Board’s  
22 proposed determination to designate or rescind the designation of the company as  
23 a Tier 1 financial holding company. Within 30 days from the date of any notice of

1 the proposed designation or rescission of designation, the company may request in  
2 writing an opportunity for a written or oral hearing before the Board to contest the  
3 proposed designation or rescission of the designation of the company as a Tier 1  
4 financial holding company. Upon receipt of a timely request, the Board shall fix a  
5 time (not more than 30 days after receipt of the request) and place at which such  
6 company may appear, personally or through counsel, to submit written materials  
7 (or, at the sole discretion of the Board, oral testimony and oral argument). Within  
8 60 days of any such hearing, the Board shall notify the company of its final  
9 determination, which shall contain a statement of the basis for the Board's  
10 decision. If the company does not make a timely request for a hearing, the Board  
11 shall notify the company, in writing, of its final determination under subparagraph  
12 (A), (B), or (C), as appropriate not later than ten days after the expiration of the  
13 date by which the company may request a hearing.

14 “(E) EMERGENCY EXCEPTION.—The Board may waive or modify the  
15 requirements of subparagraph (D) with respect to a company if the Board  
16 determines, by an affirmative vote of not less than five members or if there are  
17 fewer than five members then serving by a unanimous vote of all available  
18 members then serving, that such waiver or modification is necessary or  
19 appropriate to prevent or mitigate threats posed by the company to financial  
20 stability. The Board shall provide notice of such waiver or modification to the  
21 company concerned as soon as practicable, which shall be no later than 24 hours  
22 after the waiver or modification. The Board shall also allow such company to  
23 request in writing an opportunity for a written or oral hearing before the Board to

1 contest the waiver or modification within 10 days of the receipt of notice of the  
2 waiver or modification by the company. Upon receipt of a timely request, the  
3 Board shall fix a time (not more than 15 days after receipt of the request) and  
4 place at which such company may appear, personally or through counsel, to  
5 submit written materials (or, at the sole discretion of the Board, oral testimony  
6 and oral argument). Within 30 days of any such hearing, the Board shall notify  
7 the company of its final determination, which shall contain a statement of the  
8 basis for the Board's decision.

9 “(F) CONSULTATION.—If the company has one or more functionally  
10 regulated subsidiaries, the Board shall consult with the primary Federal regulatory  
11 agency for each subsidiary before making any determination under subparagraph  
12 (A), (B), or (C).

13 “(2) COLLECTION OF INFORMATION.—

14 “(A) UNITED STATES FINANCIAL COMPANY.—The Board may require any  
15 United States financial company that, based on the most recent audited or  
16 unaudited financial statements available, has—

17 “(i) \$10 billion or more in assets;

18 “(ii) \$100 billion or more in assets under management; or

19 “(iii) \$2 billion or more in gross annual revenue,

20 to submit such information that the Board may reasonably require for the sole  
21 purpose of determining whether to designate the company as a United States Tier  
22 1 financial holding company.

23 “(B) FOREIGN FINANCIAL COMPANY.—The Board may require any

1 Foreign financial company that, based on its most recent audited or unaudited  
2 financial statements available, has—

3 “(i) \$10 billion or more in assets in the United States;

4 “(ii) \$100 billion or more in assets under management in the  
5 United States; or

6 “(iii) \$2 billion or more in gross annual revenue in the United  
7 States,

8 to submit such information that the Board may reasonably require for the sole  
9 purpose of determining whether to designate the company as a Foreign Tier 1  
10 financial holding company.

11 “(3) ADVANCE COORDINATION.—Before collecting any information under  
12 paragraph (2) from a company which has a primary Federal regulatory agency, the Board  
13 shall coordinate with such agency to determine if the information requested is available  
14 from or may be obtained by the Federal regulatory agency in the form, format, or detail  
15 required by the Board. Notwithstanding any other provision of law, each such relevant  
16 Federal regulatory agency is authorized to provide to the Board requested information  
17 about a company for which it is the regulator.

18 “(4) EXAMINATION.—If the Board is unable to determine whether a United States  
19 financial company’s financial activities pose a threat to financial stability based on  
20 regulatory reports obtained under paragraph (3), discussions with management, and  
21 publicly available information, the Board may conduct an examination of the United  
22 States financial company for the sole purpose of determining whether to designate the  
23 company as a United States Tier 1 financial holding company.

1           “(b) REGISTRATION OF TIER 1 FINANCIAL HOLDING COMPANIES.—Within one hundred and  
2 eighty days after receipt of the Board order or regulation designating a company as a Tier 1  
3 financial holding company, each Tier 1 financial holding company shall register with the Board  
4 on forms prescribed by the Board, which shall include such information as the Board may deem  
5 necessary or appropriate to carry out the purposes of this title. The Board may, in its discretion,  
6 extend the time within which a Tier 1 financial holding company shall—

7                   “(1) register and file the requisite information; or

8                   “(2) comply with the standards prescribed by the Board under subsection (c).

9           “(c) STANDARDS FOR TIER 1 FINANCIAL HOLDING COMPANIES.

10                   “(1) PRUDENTIAL STANDARDS FOR U.S. TIER 1 FINANCIAL HOLDING COMPANIES.—

11           In order to mitigate the risks to United States financial stability and the United States  
12 economy posed by United States Tier 1 financial holding companies, the Board shall  
13 prescribe, by regulation or order, prudential standards for United States Tier 1 financial  
14 holding companies to maximize financial stability at the least cost to long-term financial  
15 and economic growth. The prudential standards shall be more stringent than the  
16 standards applicable to bank holding companies to reflect the potential risk posed to  
17 financial stability by United States Tier 1 financial holding companies and shall include,  
18 but not be limited to—

19                           “(A) risk-based capital requirements;

20                           “(B) leverage limits;

21                           “(C) liquidity requirements; and

22                           “(D) overall risk management requirements.

23                   “(2) PRUDENTIAL STANDARDS FOR FOREIGN TIER 1 FINANCIAL HOLDING

1 COMPANIES.— In order to mitigate the risks to United States financial stability or the  
2 United States economy posed by Foreign Tier 1 financial holding companies, the Board  
3 shall prescribe, by regulation or order, prudential standards for Foreign Tier 1 financial  
4 holding companies giving due regard to the principle of national treatment and equality  
5 of competitive opportunity. The Board shall prescribe such prudential standards with a  
6 view to maximize financial stability at the least cost to long-term financial and economic  
7 growth. The prudential standards shall, at a minimum, include—

8 “(A) risk-based capital requirements;

9 “(B) leverage limits;

10 “(C) liquidity requirements for operations in the United States; and

11 “(D) overall risk management requirements.

12 “(3) CATEGORIZATION AND TIERING.— In prescribing prudential standards under  
13 paragraphs (1) and (2), the Board may differentiate among Tier 1 financial holding  
14 companies taking into consideration their risk, complexity, financial activities, the  
15 financial activities of their subsidiaries, and any other factors the Board deems  
16 appropriate.

17 “(4) CONSULTATION WITH THE FINANCIAL SERVICES OVERSIGHT COUNCIL.—The  
18 Board shall consult with the Financial Services Oversight Council regarding proposed  
19 regulations or guidance adopting, implementing, or revising material prudential standards  
20 for Tier 1 financial holding companies.

21 “(5) WELL CAPITALIZED AND WELL MANAGED.—A Tier 1 financial holding  
22 company shall at all times after it files its registration statement be well capitalized and  
23 well managed.



1           “(d) REPORTS, EXAMINATIONS OF, AND PUBLIC DISCLOSURES BY TIER 1 FINANCIAL  
2 HOLDING COMPANIES AND THEIR SUBSIDIARIES.—

3           “(1) REPORTS.—

4                   “(A) IN GENERAL.—The Board may require each Tier 1 financial holding  
5 company and any of its subsidiaries to submit reports under oath to keep the  
6 Board informed as to —

7                           “(i) its financial condition, systems for monitoring and controlling  
8 financial, operating and other risks, transactions with any depository  
9 institution subsidiaries, and the extent to which the activities and  
10 operations of the company and its subsidiaries pose a threat to financial  
11 stability; and

12                           “(ii) compliance by the company or its subsidiaries with applicable  
13 provisions of this chapter or any other Federal law that the Board has  
14 specific jurisdiction to enforce against such company or subsidiary.

15           “(B) RAPID AND ORDERLY RESOLUTION; CREDIT EXPOSURES.—The Board  
16 shall require each United States Tier 1 financial holding company to report  
17 periodically to the Board on:

18                           “(i) its plan for rapid and orderly resolution in the event of severe  
19 financial distress;

20                           “(ii) the nature and extent to which the Tier 1 financial holding  
21 company has credit exposure to other Tier 1 financial holding companies;  
22 and

23                           “(iii) the nature and extent to which other Tier 1 financial holding

1 companies have credit exposure to the Tier 1 financial holding company.

2 “(C) USE OF EXISTING REPORTS.—

3 “(i) IN GENERAL.—For purposes of compliance with this  
4 paragraph, the Board shall, to the fullest extent possible, use:

5 “(I) reports that a Tier 1 financial holding company or any  
6 functionally regulated subsidiary of such company has been  
7 required to provide to other Federal or State regulatory agencies;

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

10 “(III) externally audited financial statements.

11 “(ii) AVAILABILITY.—A Tier 1 financial holding company or any  
12 subsidiary of such company shall provide to the Board, at the request of  
13 the Board, a report referred to in subclause (i)(I).

14 “(2) EXAMINATION—

15 “(A) IN GENERAL.—The Board may make examinations of each United  
16 States Tier 1 financial holding company, each subsidiary of such company, and  
17 any United States subsidiaries, branches, or agencies of a Foreign Tier 1 financial  
18 holding company in order—

19 “(i) to inform the Board of the nature of the operations and  
20 financial condition of the company and such subsidiaries;

21 “(ii) to inform the Board of—

22 “(I) the financial, operational and other risks within the  
23 holding company that may pose a threat to the safety and

1 soundness of any depository institution subsidiary of such holding  
2 company or financial stability;

3 “(II) the systems for monitoring and controlling such risks;  
4 and

5 “(III) compliance with the provisions of this chapter or any  
6 other Federal law that the Board has specific jurisdiction to enforce  
7 against such company or subsidiary and those governing  
8 transactions and relationships between the company and any other  
9 Tier 1 financial holding company.

10 “(B) USE OF EXAMINATION REPORTS.—The Board shall, as far as possible,  
11 for the purposes of this paragraph, use reports of examination of United States  
12 Tier 1 financial holding companies and their functionally regulated subsidiaries  
13 made by other Federal or State regulatory authorities.

14 “(3) FEDERAL DEPOSIT INSURANCE CORPORATION BACK-UP EXAMINATION  
15 AUTHORITY FOR TIER 1 FINANCIAL HOLDING COMPANIES.—

16 “(A) FEDERAL DEPOSIT INSURANCE CORPORATION ACCESS TO BOARD  
17 EXAMINATION REPORTS.—The Board shall provide to the Federal Deposit  
18 Insurance Corporation, at the request of the Federal Deposit Insurance  
19 Corporation, any report prepared by the Board in connection with an examination  
20 of a Tier 1 financial holding company or one of its subsidiaries under this  
21 paragraph.

22 “(B) FEDERAL DEPOSIT INSURANCE CORPORATION BACK-UP EXAMINATION  
23 AUTHORITY.—

1                   “(i) REFERRAL.—If the Federal Deposit Insurance Corporation has  
2 reasonable cause to believe that a condition, practice, or activity of a Tier  
3 1 financial holding company or one of its subsidiaries does not comply  
4 with this Act or the rules or orders prescribed by the Board under this Act  
5 or otherwise poses a material risk to an affiliated depository institution or  
6 the Tier 1 financial holding company as a whole, the Federal Deposit  
7 Insurance Corporation may recommend in writing to the Board that the  
8 Board examine the Tier 1 financial holding company or one of its  
9 subsidiaries. The recommendation shall be accompanied by a written  
10 explanation of the concerns giving rise to the recommendation.

11                   “(ii) BACK-UP AUTHORITY.—If the Board does not, before the end  
12 of the 60-day period beginning on the date on which the Board receives a  
13 recommendation under clause (i), initiate the examination recommended  
14 by the Federal Deposit Insurance Corporation, the Federal Deposit  
15 Insurance Corporation may initiate an examination.”

16                   “(4) ENHANCED PUBLIC DISCLOSURES.—In order to support market evaluation of a  
17 Tier 1 financial holding company’s risk profile, capital adequacy, and risk management  
18 capabilities, the Board shall require a Tier 1 financial holding company to make such  
19 periodic public disclosures as the Board may, by regulation, prescribe.

20                   “(e) ENFORCEMENT.—

21                   “(1) IN GENERAL.—Except as provided in paragraph (2), a Tier 1 financial holding  
22 company and its subsidiaries (other than a bank) shall be subject to the provisions of  
23 subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C.

1 1818) in the same manner and to the same extent as if the Tier 1 financial holding  
2 company were a bank holding company and its subsidiaries (other than a bank) were  
3 State member insured depository institutions as provided in section 8(b)(3) of the Federal  
4 Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

5 “(2) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

6 “(A) REFERRAL.—If the Board believes that a condition, practice, or  
7 activity of a functionally regulated subsidiary of a Tier 1 financial holding  
8 company does not comply with this title or the regulations or orders prescribed by  
9 the Board under this title or otherwise poses a threat to financial stability, the  
10 Board may recommend in writing to the primary Federal regulatory agency for  
11 the subsidiary that it initiate a supervisory action or enforcement proceeding. The  
12 recommendation shall be accompanied by a written explanation of the concerns  
13 giving rise to the recommendation.

14 “(B) BACKSTOP AUTHORITY.—If the Federal regulatory agency does not,  
15 before the end of the 30-day period beginning on the date on which the Federal  
16 regulatory agency receives a recommendation under subparagraph (A), initiate a  
17 supervisory action or enforcement proceeding, the Board may initiate a  
18 supervisory action or enforcement proceeding.

19 “(f) REGULATIONS; ORDERS; INTERPRETATIONS; GUIDELINES.—

20 “(1) IN GENERAL.—The Board is authorized to issue such regulations, orders,  
21 interpretations, or guidelines as to enable it to administer and carry out the purposes of  
22 this title and prevent evasions thereof.

23 “(2) DESIGNATION REGULATION.—The Board shall prescribe regulations, in

1 consultation with the Secretary of the Treasury and the Financial Services Oversight  
2 Council, containing the criteria for designation of Tier 1 financial holding companies.

3 “(3) EXCEPTIONAL PRUDENTIAL REGULATIONS.—In order to mitigate any risk to  
4 financial stability posed by functionally regulated subsidiaries of Tier 1 financial holding  
5 companies, the Board may, under subsections (c) through (e), prescribe, by regulation or  
6 order, examine, and enforce more stringent prudential standards on functionally regulated  
7 subsidiaries if the Board determines it necessary or appropriate to prevent or mitigate  
8 such risk.

9 “(4) LIMITATIONS ON EXCEPTIONAL PRUDENTIAL REGULATIONS AND ORDERS.—

10 “(A) REGULATIONS.—In addition to consulting with the Financial Services  
11 Oversight Council on material prudential regulations as provided in paragraph  
12 (c)(4), the Board, prior to issuing regulations applicable to specific categories or  
13 classifications of functionally regulated subsidiaries, shall consult with the  
14 appropriate Federal regulatory agencies for such subsidiaries.

15 “(B) ORDERS.—The Board may issue an order regarding a functionally  
16 regulated subsidiary of a Tier 1 financial holding company only if the Board  
17 has—

18 “(i) reasonable cause to believe that the functionally regulated  
19 subsidiary is engaged in conduct, activities, transactions, or arrangements  
20 that could pose a threat to global or United States financial stability or the  
21 global or United States economy;

22 “(ii) notified, in writing, the relevant Federal regulatory agency of  
23 its belief under clause (i) with supporting documentation included and

1 with a recommendation that the relevant Federal regulatory agency take  
2 one or more specific supervisory actions against the subsidiary; and

3 “(iii) not been notified, in writing, by the relevant Federal  
4 regulatory agency of the commencement of a supervisory action  
5 recommended by the Board against the subsidiary within 30 days from the  
6 date of the notification under clause (ii).

7 “(g) FIVE-YEAR TRANSITION.

8 “(1) PHASE-IN.—A company that is designated by the Board as a Tier 1  
9 financial holding company under subsection (a) shall conform its activities to the  
10 requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C.  
11 1843) and any applicable regulation or orders prescribed by the Board under this  
12 chapter before the end of the five-year period beginning on the date of the Board’s  
13 written notification under subsection (a)(1)(D).

14 “(2) NON-FINANCIAL ACTIVITIES.—After the five-year period described in  
15 paragraph (1), a Tier 1 financial holding company shall be subject to the same  
16 activity restrictions applicable to financial holding companies under section 4 of  
17 the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

18 “(3) ESTABLISHMENT OF SINGLE INTERMEDIATE HOLDING COMPANY.—Any  
19 United States Tier 1 financial holding company which is engaged predominantly  
20 in activities which are not financial in nature shall, in accordance with regulations  
21 prescribed by the Board, establish and conduct its activities which are financial in  
22 nature through a single intermediate holding company during the phase-in period  
23 described in paragraph (1).

1                   “(4) DATE OF ESTABLISHMENT.—A Tier 1 financial holding company  
2 described in paragraph (3) shall establish an intermediate holding company as  
3 required by paragraph (3) no later than 90 days after it has been notified that it has  
4 been designated a Tier 1 financial holding company pursuant to subsection (a).

5                   “(5) SUPERVISION OF SINGLE INTERMEDIATE HOLDING COMPANY.—The  
6 Board is authorized to require registration, prescribe standards, collect  
7 information, require public disclosures, examine, and take enforcement action  
8 against any such intermediate holding company in the same manner and to the  
9 same extent as if the intermediate holding company were a Tier 1 financial  
10 holding company under subsections (b) through (e).

11                   “(6) RESTRICTIONS ON AFFILIATE TRANSACTIONS.—Transactions between  
12 any such intermediate holding company and its affiliates shall be subject to the  
13 restrictions and limitations contained in section 23A and 23B of the Federal  
14 Reserve Act as if the intermediate holding company were a member bank.

15                   “(h) AVOIDING DUPLICATION.—The Board shall take any action the Board deems  
16 appropriate to avoid imposing duplicative requirements under this chapter for Tier 1 financial  
17 holding companies that are also bank holding companies. Nothing contained in this section shall  
18 be construed as altering, modifying, or revising the applicability of any provision of this Act to a  
19 bank holding company.

20                   “(i) ACQUISITIONS.—

21                   “(1) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For  
22 purposes of section 3, a Tier 1 financial holding company shall be deemed to be, and  
23 shall be treated as, a bank holding company.



1 “(2) ACQUISITION OF NONBANK COMPANIES.

2 “(A) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section  
3 4(k)(6)(B), a Tier 1 financial holding company shall not acquire direct or indirect  
4 ownership or control of any voting shares of any company engaged in nonbanking  
5 activities with total consolidated assets of \$10 billion or greater without providing  
6 written notice to the Board in advance of the transaction.

7 “(B) EXEMPTIONS.—The prior notice requirement in subparagraph (A)  
8 shall not apply with regard to the acquisition of shares that would qualify for the  
9 exemptions in section 4(c) or section 4(k)(4)(E).

10 “(C) NOTICE PROCEDURES.—The notice procedures set forth in section  
11 4(j)(1), without regard to section 4(j)(3), shall apply to an acquisition of any  
12 company (other than an insured depository institution) by a Tier 1 financial  
13 holding company as described in subparagraph (A), including a company engaged  
14 in activities described in section 4(k).

15 “(D) STANDARDS FOR REVIEW.—

16 “(i) CRITERIA.—In addition to the standards provided in section  
17 4(j)(2), the Board shall consider the extent to which the proposed  
18 acquisition would result in greater or more concentrated risks to global or  
19 United States financial stability or the global or United States economy.

20 “(ii) WELL CAPITALIZED AND WELL MANAGED.—The Board shall  
21 deny any proposed acquisition for which notice has been submitted  
22 pursuant to subparagraph (A) by a Tier 1 financial holding company  
23 unless before and immediately after the proposed acquisition the Tier 1

1 financial holding company is and will be well capitalized and well  
2 managed.

3 “(E) APPLICATION OF BANK HOLDING COMPANY REQUIREMENTS.—

4 Nothing in this subsection is intended to nor shall it be deemed to annul, alter, or  
5 otherwise modify any requirement to which a Tier 1 financial holding company is  
6 otherwise subject as a result of its status as a bank holding company or financial  
7 holding company other than section 4(k)(6)(B), which shall be inapplicable to an  
8 acquisition of voting shares of any company engaged in nonbanking activities by  
9 a Tier 1 financial holding company that is subject to the filing requirement in  
10 subparagraph (A).

11 “(j) SAVINGS CLAUSE FOR FOREIGN TIER 1 FINANCIAL HOLDING COMPANIES.— A Foreign  
12 Tier 1 financial holding company shall be subject to the provisions of section 2(h)(2) (12 U.S.C.  
13 1841(h)(2)) in the same manner and to the same extent as if the Foreign Tier 1 financial holding  
14 company were a bank holding company.

15 “(k) PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN TIER 1 FINANCIAL  
16 HOLDING COMPANIES.—A Tier 1 financial holding company shall be treated as a bank holding  
17 company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C.  
18 3201 et seq.), except that the Board shall not exercise the authority provided in section 7 of that  
19 Act (12 U.S.C. 3207) to permit service by a management official of a United States Tier 1  
20 financial holding company as a management official of any other nonaffiliated United States Tier  
21 1 financial holding company (other than to provide a temporary exemption for interlocks  
22 resulting from a merger, acquisition, or consolidation).

23 (b) PROMPT CORRECTIVE ACTION FOR TIER 1 FINANCIAL HOLDING COMPANIES.—The Bank

1 Holding Company Act of 1956 is amended by adding after section 6, as amended by this Act, the  
2 following new section:

3 **“SECTION 6A. PROMPT CORRECTIVE ACTION FOR TIER 1 FINANCIAL**  
4 **HOLDING COMPANIES.**

5 “(a) PROMPT CORRECTIVE ACTION REQUIRED.—The Board shall take prompt corrective  
6 action to resolve the problems of United States Tier 1 financial holding companies.

7 “(b) DEFINITIONS.—For purposes of this section—

8 “(1) CAPITAL CATEGORIES.—

9 “(A) WELL CAPITALIZED.—A Tier 1 financial holding company is ‘well  
10 capitalized’ if it exceeds the required minimum level for each relevant capital  
11 measure.

12 “(B) UNDERCAPITALIZED.—A Tier 1 financial holding company is  
13 ‘undercapitalized’ if it fails to meet the required minimum level for any relevant  
14 capital measure.

15 “(C) SIGNIFICANTLY UNDERCAPITALIZED.—A Tier 1 financial holding  
16 company is ‘significantly undercapitalized’ if it is significantly below the required  
17 minimum level for any relevant capital measure.

18 “(D) CRITICALLY UNDERCAPITALIZED.—A Tier 1 financial holding  
19 company is ‘critically undercapitalized’ if it fails to meet any level specified in  
20 subsection (c)(3)(A).

21 “(2) OTHER DEFINITIONS.—

22 “(A) AVERAGE.—The ‘average’ of an accounting item (such as total assets  
23 or tangible equity) during a given period means the sum of that item at the close

1 of business on each business day during that period divided by the total number of  
2 business days in that period.

3 “(B) CAPITAL DISTRIBUTION.— The term ‘capital distribution’ means—

4 “(i) a distribution of cash or other property by a Tier 1 financial  
5 holding company to its owners made on account of that ownership, but not  
6 including any dividend consisting only of shares of the Tier 1 financial  
7 holding company or rights to purchase such shares;

8 “(ii) a payment by a Tier 1 financial holding company to  
9 repurchase, redeem, retire, or otherwise acquire any of its shares or other  
10 ownership interests, including any extension of credit to finance any  
11 person’s acquisition of those shares or interests; or

12 “(iii) a transaction that the Board determines, by order or  
13 regulation, to be in substance a distribution of capital to the owners of the  
14 Tier 1 financial holding company.

15 “(C) CAPITAL RESTORATION PLAN.—The term ‘capital restoration plan’  
16 means a plan submitted under subsection (e)(2).

17 “(D) COMPENSATION.—The term ‘compensation’ includes any payment of  
18 money or provision of any other thing of value in consideration of employment.

19 “(E) RELEVANT CAPITAL MEASURE.—The term ‘relevant capital measure’  
20 means the measures described in subsection (c).

21 “(F) REQUIRED MINIMUM LEVEL.—The term ‘required minimum level’  
22 means, with respect to each relevant capital measure, the minimum acceptable  
23 capital level specified by the Board by regulation.

1                   “(G) SENIOR EXECUTIVE OFFICER. The term ‘senior executive officer’ has  
2                   the same meaning as the term ‘executive officer’ in section 22(h) of the Federal  
3                   Reserve Act (12 U.S.C. § 375b).

4                   “(c) CAPITAL STANDARDS.—

5                   “(1) RELEVANT CAPITAL MEASURES.—

6                   “(A) IN GENERAL.—Except as provided in subparagraph (B)(ii), the capital  
7                   standards prescribed by the Board under subsection 6(c) of the Bank Holding  
8                   Company Act of 1956 (12 U.S.C. § 1845(c)) shall include—

9                                 “(i) a leverage limit; and

10                                “(ii) a risk-based capital requirement.

11                   “(B) OTHER CAPITAL MEASURES.—The Board may by regulation—

12                                “(i) establish any additional relevant capital measures to carry out  
13                   this section; or

14                                “(ii) rescind any relevant capital measure required under  
15                   subparagraph (A) upon determining that the measure is no longer an  
16                   appropriate means for carrying out this section.

17                   “(2) CAPITAL CATEGORIES GENERALLY.—The Board shall, by regulation, specify  
18                   for each relevant capital measure the levels at which a Tier 1 financial holding company  
19                   is well capitalized, undercapitalized, and significantly undercapitalized.

20                   “(3) CRITICAL CAPITAL.—

21                                “(A) BOARD TO SPECIFY LEVEL.—

22                                “(i) LEVERAGE LIMIT.—The Board shall, by regulation, specify the  
23                   ratio of tangible equity to total assets at which a Tier 1 financial holding

1 company is critically undercapitalized.

2 “(ii) OTHER RELEVANT CAPITAL MEASURES.—The Board may, by  
3 regulation, specify for 1 or more other relevant capital measures, the level  
4 at which a Tier 1 financial holding company is critically undercapitalized.

5 “(B) LEVERAGE LIMIT RANGE.— The level specified under subparagraph  
6 (A)(i) shall require tangible equity in an amount—

7 “(i) not less than 2 percent of total assets; and

8 “(ii) except as provided in clause (i), not more than 65 percent of  
9 the required minimum level of capital under the leverage limit.

10 “(d) CAPITAL DISTRIBUTIONS RESTRICTED.—

11 “(1) IN GENERAL.—A Tier 1 financial holding company shall make no capital  
12 distribution if, after making the distribution, the Tier 1 financial holding company would  
13 be undercapitalized.

14 “(2) EXCEPTION.— Notwithstanding paragraph (1), the Board may permit a Tier 1  
15 financial holding company to repurchase, redeem, retire, or otherwise acquire shares or  
16 ownership interests if the repurchase, redemption, retirement, or other acquisition—

17 “(A) is made in connection with the issuance of additional shares or  
18 obligations of the Tier 1 financial holding company in at least an equivalent  
19 amount; and

20 “(B) will reduce the Tier 1 financial holding company's financial  
21 obligations or otherwise improve the Tier 1 financial holding company's financial  
22 condition.

23 “(e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED TIER 1 FINANCIAL HOLDING

1 COMPANIES.—

2

3

“(1) MONITORING REQUIRED.—The Board shall—

4

“(A) closely monitor the condition of any undercapitalized Tier 1 financial holding company;

5

6

“(B) closely monitor compliance by any undercapitalized Tier 1 financial holding company with capital restoration plans, restrictions, and requirements imposed under this section; and

7

8

9

“(C) periodically review the plan, restrictions, and requirements applicable to any undercapitalized Tier 1 financial holding company to determine whether the plan, restrictions, and requirements are effective.

10

11

12

“(2) CAPITAL RESTORATION PLAN REQUIRED.—

13

“(A) IN GENERAL.—Any undercapitalized Tier 1 financial holding company shall submit an acceptable capital restoration plan to the Board within the time allowed by the Board under subparagraph (D).

14

15

16

“(B) CONTENTS OF PLAN.—The capital restoration plan shall—

17

“(i) specify—

18

“(I) the steps the Tier 1 financial holding company will take to become well capitalized;

19

20

“(II) the levels of capital to be attained by the Tier 1 financial holding company during each year in which the plan will be in effect;

21

22

23

“(III) how the Tier 1 financial holding company will comply with the restrictions or requirements then in effect under

24

1 this section; and

2 “(IV) the types and levels of activities in which the Tier 1  
3 financial holding company will engage; and

4 “(ii) contain such other information that the Board may require.

5 “(C) CRITERIA FOR ACCEPTING PLAN.—The Board shall not accept a  
6 capital restoration plan unless it determines that the plan—

7 “(i) complies with subparagraph (B);

8 “(ii) is based on realistic assumptions, and is likely to succeed in  
9 restoring the Tier 1 financial holding company's capital; and

10 “(iii) would not appreciably increase the risk (including credit risk,  
11 interest-rate risk, and other types of risk) to which the Tier 1 financial  
12 holding company is exposed.

13 “(D) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The Board  
14 shall, by regulation, establish deadlines that—

15 “(i) provide Tier 1 financial holding companies with reasonable  
16 time to submit capital restoration plans, and generally require a Tier 1  
17 financial holding company to submit a plan not later than 45 days after it  
18 becomes undercapitalized; and

19 “(ii) require the Board to act on capital restoration plans  
20 expeditiously, and generally not later than 60 days after the plan is  
21 submitted.

22 “(3) ASSET GROWTH RESTRICTED.—An undercapitalized Tier 1 financial holding  
23 company shall not permit its average total assets during any calendar quarter to exceed its



1 average total assets during the preceding calendar quarter unless—

2 “(A) the Board has accepted the Tier 1 financial holding company's capital  
3 restoration plan;

4 “(B) any increase in total assets is consistent with the plan; and

5 “(C) the Tier 1 financial holding company's ratio of tangible equity to total  
6 assets increases during the calendar quarter at a rate sufficient to enable it to  
7 become well capitalized within a reasonable time.

8 “(4) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS AND NEW LINES OF  
9 BUSINESS.—An undercapitalized Tier 1 financial holding company shall not, directly or  
10 indirectly, acquire any interest in any company or insured depository institution, or  
11 engage in any new line of business, unless—

12 “(A) the Board has accepted the Tier 1 financial holding company's capital  
13 restoration plan, the Tier 1 financial holding company is implementing the plan,  
14 and the Board determines that the proposed action is consistent with and will  
15 further the achievement of the plan;

16 “(B) the Board determines that the specific proposed action is appropriate;  
17 or

18 “(C) the Board has exempted the Tier 1 financial holding company from  
19 the requirements of this paragraph with respect to the class of acquisitions that  
20 includes the proposed action.

21 “(5) DISCRETIONARY SAFEGUARDS.— The Board may, with respect to any  
22 undercapitalized Tier 1 financial holding company, take actions described in any  
23 subparagraph of subsection (f)(2) if the Board determines that those actions are

1 necessary.

2 “(f) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED TIER 1 FINANCIAL  
3 HOLDING COMPANIES AND UNDERCAPITALIZED TIER 1 FINANCIAL HOLDING COMPANIES THAT  
4 FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

5 “(1) IN GENERAL.—This subsection shall apply with respect to any Tier 1 financial  
6 holding company that—

7 “(A) is significantly undercapitalized; or

8 “(B) is undercapitalized and—

9 “(i) fails to submit an acceptable capital restoration plan within the  
10 time allowed by the Board under subsection (e)(2)(D); or

11 “(ii) fails in any material respect to implement a capital restoration  
12 plan accepted by the Board.

13 “(2) SPECIFIC ACTIONS AUTHORIZED.—The Board shall carry out this subsection  
14 by taking 1 or more of the following actions—

15 “(A) REQUIRING RECAPITALIZATION.—Doing one or more of the  
16 following—

17 “(i) Requiring the Tier 1 financial holding company to sell enough  
18 shares or obligations of the Tier 1 financial holding company so that the  
19 Tier 1 financial holding company will be well capitalized after the sale.

20 “(ii) Further requiring that instruments sold under clause (i) be  
21 voting shares.

22 “(iii) Requiring the Tier 1 financial holding company to be  
23 acquired by or combine with another company.

1 “(B) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

2 “(i) Requiring the Tier 1 financial holding company to comply  
3 with section 23A of the Federal Reserve Act (12 U.S.C. 371c), as if it  
4 were a member bank.

5 “(ii) Further restricting the Tier 1 financial holding company's  
6 transactions with affiliates and insiders.

7 “(C) RESTRICTING ASSET GROWTH.—Restricting the Tier 1 financial  
8 holding company's asset growth more stringently than subsection (e)(3), or  
9 requiring the Tier 1 financial holding company to reduce its total assets.

10 “(D) RESTRICTING ACTIVITIES.—Requiring the Tier 1 financial holding  
11 company or any of its subsidiaries to alter, reduce, or terminate any activity that  
12 the Board determines poses excessive risk to the Tier 1 financial holding  
13 company.

14 “(E) IMPROVING MANAGEMENT.—Doing one or more of the following—

15 “(i) New election of directors.—Ordering a new election for the  
16 Tier 1 financial holding company's board of directors.

17 “(ii) Dismissing directors or senior executive officers.—Requiring  
18 the Tier 1 financial holding company to dismiss from office any director  
19 or senior executive officer who had held office for more than 180 days  
20 immediately before the Tier 1 financial holding company became  
21 undercapitalized. Dismissal under this clause shall not be construed to be a  
22 removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C.  
23 1818).

1                   “(iii) Employing qualified senior executive officers.— Requiring  
2                   the Tier 1 financial holding company to employ qualified senior executive  
3                   officers (who, if the Board so specifies, shall be subject to approval by the  
4                   Board).

5                   “(F) REQUIRING DIVESTITURE.—Requiring the Tier 1 financial holding  
6                   company to divest itself of or liquidate any subsidiary if the Board determines that  
7                   the subsidiary is in danger of becoming insolvent, poses a significant risk to the  
8                   Tier 1 financial holding company, or is likely to cause a significant dissipation of  
9                   the Tier 1 financial holding company's assets or earnings.

10                  “(G) REQUIRING OTHER ACTION.—Requiring the Tier 1 financial holding  
11                  company to take any other action that the Board determines will be better carry  
12                  out the purpose of this section than any of the actions described in this paragraph.

13                  “(3) PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with paragraph  
14                  (2), the Board shall take the following actions, unless the Board determines that the  
15                  actions would not be appropriate—

16                  “(A) The action described in clause (i) or (iii) of paragraph (2)(A) (relating  
17                  to requiring the sale of shares or obligations, or requiring the Tier 1 financial  
18                  holding company to be acquired by or combine with another company).

19                  “(B) The action described in paragraph (2)(B)(i) (relating to restricting  
20                  transactions with affiliates).

21                  “(4) SENIOR EXECUTIVE OFFICERS’ COMPENSATION RESTRICTED.—

22                  “(A) IN GENERAL.—The Tier 1 financial holding company shall not do any  
23                  of the following without the prior written approval of the Board—

1 “(i) Pay any bonus to any senior executive officer.

2 “(ii) Provide compensation to any senior executive officer at a rate  
3 exceeding that officer's average rate of compensation (excluding bonuses,  
4 stock options, and profit-sharing) during the 12 calendar months preceding  
5 the calendar month in which the Tier 1 financial holding company became  
6 undercapitalized.

7 “(B) FAILING TO SUBMIT PLAN.—The Board shall not grant any approval  
8 under subparagraph (A) with respect to a Tier 1 financial holding company that  
9 has failed to submit an acceptable capital restoration plan.

10 “(5) CONSULTATION WITH OTHER REGULATORS.—Before the Board makes a  
11 determination under paragraph (2)(F) with respect to a subsidiary that is a broker, dealer,  
12 government securities broker, government securities dealer, investment company, or  
13 investment adviser, the Board shall consult with the Securities and Exchange  
14 Commission and, in the case of any other subsidiary which is subject to any financial  
15 responsibility or capital requirement, any other appropriate regulator of such subsidiary  
16 with respect to the proposed determination of the Board and actions pursuant to such  
17 determination.

18 “(g) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

19 “(1) IN GENERAL.—If the Board determines (after notice and an opportunity for  
20 hearing) that a Tier 1 financial holding company is in an unsafe or unsound condition or,  
21 pursuant to section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8)),  
22 deems the Tier 1 financial holding company to be engaging in an unsafe or unsound  
23 practice, the Board may—

1                   “(A) if the Tier 1 financial holding company is well capitalized, require  
2                   the Tier 1 financial holding company to comply with one or more provisions of  
3                   subsections (d) and (e), as if the institution were undercapitalized; or

4                   “(B) if the Tier 1 financial holding company is undercapitalized, take any  
5                   one or more actions authorized under subsection (f)(2) as if the Tier 1 financial  
6                   holding company were significantly undercapitalized.

7                   “(2) CONTENTS OF PLAN.—A plan that may be required pursuant to paragraph  
8                   (1)(A) shall specify the steps that the Tier 1 financial holding company will take to  
9                   correct the unsafe or unsound condition or practice.

10                  “(h) MANDATORY BANKRUPTCY PETITION FOR CRITICALLY UNDERCAPITALIZED TIER 1  
11                  FINANCIAL HOLDING COMPANIES.—The Board shall, not later than 90 days after a Tier 1 financial  
12                  holding company becomes critically undercapitalized—

13                         “(1) require the Tier 1 financial holding company to file a petition for bankruptcy  
14                         under section 301 of title 11, United States Code; or

15                         “(2) file a petition for bankruptcy against the Tier 1 financial holding company  
16                         under section 303 of title 11, United States Code.

17                         “(i) IMPLEMENTATION.—The Board shall prescribe such regulations, issue such orders,  
18                         and take such other actions the Board determines to be necessary to carry out this section.

19                         “(j) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the  
20                         Board, any other Federal regulatory agency, or a State to take action in addition to (but not in  
21                         derogation of) that required under this section.

22                         “(k) CONSULTATION.—The Board and the Secretary of the Treasury shall consult with  
23                         their foreign counterparties and through appropriate multilateral organizations to reach

1 agreement to extend comprehensive and robust prudential supervision and regulation to all  
2 highly leveraged and substantially interconnected financial companies. In its regulation and  
3 supervision of Foreign Tier 1 financial holding companies, the Board shall take into account the  
4 extent to which such companies are subject to standards comparable to those applied to United  
5 States Tier 1 financial companies.”.

6 “(I) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

7 “(1) TIMELY PETITION REQUIRED.—A director or senior executive officer  
8 dismissed pursuant to an order under subsection (f)(2)(E)(ii) may obtain review of that  
9 order by filing a written petition for reinstatement with the Board not later than 10 days  
10 after receiving notice of the dismissal.

11 “(2) PROCEDURE.—

12 “(A) HEARING REQUIRED.—The Board shall give the petitioner an  
13 opportunity to—

14 “(i) submit written materials in support of the petition; and

15 “(ii) appear, personally or through counsel, before 1 or more  
16 members of the Board or designated employees of the Board.

17 “(B) DEADLINE FOR HEARING.—The Board shall—

18 “(i) schedule the hearing referred to in subparagraph (A)(ii)  
19 promptly after the petition is filed; and

20 “(ii) hold the hearing not later than 30 days after the petition is  
21 filed, unless the petitioner requests that the hearing be held at a later time.

22 “(C) DEADLINE FOR DECISION.—Not later than 60 days after the date of the  
23 hearing, the Board shall—

1 “(i) by order, grant or deny the petition;

2 “(ii) if the order is adverse to the petitioner, set forth the basis for  
3 the order; and

4 “(iii) notify the petitioner of the order.

5 “(3) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the  
6 burden of proving that the petitioner's continued employment would materially  
7 strengthen the Tier 1 financial holding company's ability—

8 “(A) to become well capitalized, to the extent that the order is based on the  
9 Tier 1 financial holding company's capital level or failure to submit or implement  
10 a capital restoration plan; and

11 “(B) to correct the unsafe or unsound condition or unsafe or unsound  
12 practice, to the extent that the order is based on subsection (g)(1).”.

13 “(m) ENFORCEMENT AUTHORITY FOR FOREIGN TIER 1 FINANCIAL HOLDING COMPANY.—

14 “(1) TERMINATION AUTHORITY.—If the Board believes that a condition, practice,  
15 or activity of a Foreign Tier 1 financial holding company does not comply with this title  
16 or the rules or orders prescribed by the Board under this title or otherwise poses a threat  
17 to financial stability, the Board may, after notice and opportunity for a hearing, order a  
18 Foreign Tier 1 financial holding company that operates a branch, agency or subsidiary in  
19 the United States to terminate the activities of such branch, agency, or subsidiary.

20 “(2) DISCRETION TO DENY HEARING.—The Board may issue an order under  
21 paragraph (1) without providing for an opportunity for a hearing if the Board determines  
22 that expeditious action is necessary in order to protect the public interest.”.

23 (c) AUTHORITY TO FILE INVOLUNTARY PETITION FOR BANKRUPTCY.—Section 303 of title



1 11, United States Code, is amended—

2 (1) in subsection (h)—

3 (A) by striking ‘or’ at the end of paragraph (1);

4 (B) by striking the period at the end of paragraph (2) and inserting “; or”;

5 and

6 (C) by adding the following new paragraph—

7 “(m) Notwithstanding subsections (a) and (b) of this section, an involuntary case may be  
8 commenced by the Board of Governors of the Federal Reserve System against a Tier 1 financial  
9 holding company as defined in section 2(t) of the Bank Holding Company Act of 1956. Such  
10 involuntary case may be commenced on the ground that the Tier 1 financial holding company is  
11 critically undercapitalized as defined in section 6A(b) of the Bank Holding Company Act of  
12 1956.”.

13 (d) CONCENTRATION LIMITS FOR TIER 1 FINANCIAL HOLDING COMPANIES.— The Bank  
14 Holding Company Act of 1956 is amended by adding after section 6A, as amended by this Act,  
15 the following new section:

16 **“SECTION 6B. CONCENTRATION LIMITS FOR TIER 1 FINANCIAL HOLDING**  
17 **COMPANIES.**

18 “(a) STANDARDS.—In order to limit the risks that the failure of any company could pose  
19 to a Tier 1 holding company and to the stability of the United States financial system, the Board,  
20 by regulation, shall prescribe standards that limit the risks posed by a Tier 1 financial holding  
21 company’s exposure to any other company.

22 “(b) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board shall  
23 prohibit each Tier 1 financial holding company from having credit exposure to any unaffiliated

1 company that exceeds 25% of the Tier 1 financial holding company’s capital stock and surplus  
2 or such lower amount as the Board may determine by regulation to be necessary to mitigate risks  
3 to financial stability.

4 “(c) CREDIT EXPOSURE.—For purposes of subsection (b), a Tier 1 financial holding  
5 company’s “credit exposure” to a company means—

6 “(1) All extensions of credit to the company, including loans, deposits, and lines  
7 of credit;

8 “(2) All repurchase agreements and reverse repurchase agreement with the  
9 company;

10 “(3) All securities borrowing and lending transactions with the company to the  
11 extent that such transactions create credit exposure of the Tier 1 financial holding  
12 company to the company;

13 “(4) All guarantees, acceptances, or letters of credit (including endorsement or  
14 standby letters of credit) issued on behalf of the company;

15 “(5) All purchases of or investment in securities issued by the company;

16 “(6) Counterparty credit exposure to the company in connection with a derivative  
17 transaction between the Tier 1 financial holding company and the company; and

18 “(7) Any other similar transactions that the Board by regulation determines to be a  
19 credit exposure for purposes of this section.

20 “(d) CONTRIBUTION RULE.—For purposes of this section, any transaction by a Tier 1  
21 financial holding company with any person is a transaction with an company to the extent that  
22 the proceeds of the transaction are used for the benefit of, or transferred to that company.

1           “(e) RULEMAKING.— The Board may issue such regulations and orders, including  
2 definitions consistent with this section, as may be necessary to administer and carry out the  
3 purpose of this section.

4           “(f) EXEMPTIONS.—The Board may by regulation or order, exempt transactions, in whole  
5 or in part, from the definition of credit exposure if it finds that the exemption is in the public  
6 interest and consistent with the purpose of this section.

7           “(g) TRANSITION PERIOD.—This section and any regulations and order of the Board under  
8 the authority of this section shall not be effective until three years from the effective date of this  
9 section. The Board can extend it for up to an additional two years to promote financial stability.

1                                   **TITLE III—IMPROVEMENTS TO**  
2                                   **SUPERVISION AND REGULATION OF**  
3                                   **FEDERAL DEPOSITORY INSTITUTIONS**

4   **SEC. 301. SHORT TITLE.**

5           This title may be cited as the “Federal Depository Institutions Supervision and Regulation  
6   Improvements Act of 2009”.

7   **SEC. 302. DEFINITIONS.**

8           For purposes of this title, the following definitions shall apply:

9                   (1) **BOARD OF GOVERNORS.**—The term “Board of Governors” means the Board of  
10   Governors of the Federal Reserve System.

11                   (2) **CORPORATION.**—The term “Corporation” means the Federal Deposit  
12   Insurance Corporation.

13                   (3) **DIRECTOR.**—The term “Director” means the Director of the National Bank  
14   Supervisor.

15                   (4) **OFFICE OF THE COMPTROLLER OF THE CURRENCY.**—The term “Office of the  
16   Comptroller of the Currency” means the office established by section 324 of the Revised  
17   Statutes (12 U.S.C. 1).

18                   (5) **OFFICE OF THRIFT SUPERVISION.**—The term “Office of Thrift Supervision”  
19   means the office established by section 3 of the Home Owners’ Loan Act (12 U.S.C.  
20   1462a).

21                   (6) **SECRETARY.**—The term “Secretary” means the Secretary of the Treasury.

22                   (7) **TRANSFER DATE.**—The term “transfer date” has the meaning provided in

1 section 322.

2 (8) CERTAIN OTHER TERMS.— The terms “affiliate”, “bank holding company”,  
3 “control” (when used with respect to a depository institution), “depository institution”,  
4 “Federal banking agency”, “Federal savings association”, “including”, “insured branch”,  
5 “insured depository institution”, “savings association”, “State savings association”, and  
6 “subsidiary” have the same meanings as in section 3 of the Federal Deposit Insurance Act  
7 (as amended by this title).

## 8 **Subtitle A—National Bank Supervisor Established**

### 9 **SEC. 311. ESTABLISHMENT.**

10 There is established the National Bank Supervisor as a bureau in the Department of the  
11 Treasury.

### 12 **SEC. 312. DIRECTOR.**

13 (a) BUREAU HEAD.—The National Bank Supervisor shall have a Director who shall be  
14 the head of the bureau.

15 (b) APPOINTMENT.—

16 (1) IN GENERAL.—The Director shall be appointed by the President, by and with  
17 the advice and consent of the Senate, from among individuals who are citizens of the  
18 United States.

19 (2) ACTING DIRECTOR UNTIL FIRST DIRECTOR APPOINTED.—The President may  
20 designate a person who serves in an office for which appointment is required to be made  
21 by the President, by and with the advice and consent of the Senate, to serve as acting  
22 Director and perform the functions and duties of Director until a Director has been  
23 appointed and qualified in the manner established in paragraph (1).

1 (c) TERM.—

2 (1) 5 YEARS.—The Director shall be appointed for a term of 5 years.

3 (2) CONTINUATION OF SERVICE.—The Director may continue to serve after the  
4 expiration of the term for which the Director was appointed until a successor has been  
5 appointed and qualified.

6 **SEC. 313. DEPUTY DIRECTOR.**

7 (a) APPOINTMENT.—The Secretary shall appoint a Deputy Director.

8 (b) SERVING AS ACTING DIRECTOR.—During the absence or disability of the Director, the  
9 Deputy Director shall serve as the acting Director and shall possess the powers and perform the  
10 duties attached by law to the office of the Director.

11 **SEC. 314. COMPENSATION.**

12 The Director shall receive compensation at the rate prescribed for Level III of the  
13 Executive Schedule under section 5314 of title 5, United States Code.

14 **SEC. 315. EFFECTIVE DATE.**

15 This subtitle shall become effective on the date of enactment of this Act.

16 **Subtitle B—Powers and Duties Transferred to**

17 **National Bank Supervisor**

18 **SEC. 321. POWERS AND DUTIES TRANSFERRED.**

19 (a) COMPTROLLER OF THE CURRENCY.—

20 (1) TRANSFER OF FUNCTIONS.—All functions of the Comptroller of the Currency  
21 are transferred to the Director of the National Bank Supervisor.

22 (2) DIRECTOR'S AUTHORITY.—The Director of the National Bank Supervisor shall

1 succeed to all powers, authorities, rights, and duties that were vested in the Comptroller  
2 of the Currency under Federal law, including the National Bank Act, on the day before  
3 the transfer date.

4 (b) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

5 (1) TRANSFER OF FUNCTIONS.—Except as provided in paragraph (3), all functions  
6 of the Director of the Office of Thrift Supervision are transferred to the Director of the  
7 National Bank Supervisor.

8 (2) DIRECTOR'S AUTHORITY.—Except as provided in paragraph (3), the Director  
9 of the National Bank Supervisor shall succeed to all powers, authorities, rights, and duties  
10 that were vested in the Director of the Office of Thrift Supervision under Federal law,  
11 including the Homeowners' Loan Act, on the day before the transfer date.

12 (3) FUNCTIONS RELATING TO SUPERVISION OF STATE SAVINGS ASSOCIATIONS.—

13 (A) TRANSFER OF FUNCTIONS.—All functions of the Director of the Office  
14 of Thrift Supervision relating to the supervision and regulation of State savings  
15 associations are transferred to the Corporation.

16 (B) CORPORATION'S AUTHORITY.—The Corporation shall succeed to all  
17 powers, authorities, rights, and duties that were vested in the Director of the  
18 Office of Thrift Supervision under Federal law, including the Homeowners' Loan  
19 Act, on the day before the transfer date, relating to the supervision and regulation  
20 of State savings associations.

21 (c) TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.—Nothing in subsection  
22 (a) or (b) shall affect the transfer of consumer financial protection functions of the Comptroller  
23 of the Currency and the Director of the Office of Thrift Supervision to the Consumer Financial

1 Protection Agency as provided in the Consumer Financial Protection Agency Act of 2009.

2 (d) EFFECTIVE DATE.—Subsections (a) and (b) shall become effective on the transfer  
3 date.

4 **SEC. 322. TRANSFER DATE.**

5 (a) IN GENERAL.—Except as provided in subsection (b), the date for the transfer of  
6 functions to the Director of the National Bank Supervisor and the Corporation under section 321  
7 shall be 1 year after the date of enactment of this Act.

8 (b) EXTENSION PERMITTED.—

9 (1) NOTICE REQUIRED.—The Secretary, in consultation with the Comptroller of  
10 the Currency and the Director of the Office of Thrift Supervision, may designate a  
11 calendar date for the transfer of functions to the Director of the National Bank Supervisor  
12 and the Corporation under section 321 that is later than 1 year after the date of enactment  
13 of this Act if the Secretary—

14 (A) transmits to the Committee on Banking, Housing, and Urban Affairs  
15 of the Senate and the Committee on Financial Services of the House of  
16 Representatives—

17 (i) a written determination that orderly implementation of this title  
18 is not feasible on the date that is 1 year after the date of enactment of this  
19 Act;

20 (ii) an explanation of why an extension is necessary for the orderly  
21 implementation of this title; and

22 (iii) a description of the steps that will be taken to effect an orderly  
23 and timely implementation of this title within the extended time period;



1 and

2 (B) publishes notice of that designated later date in the Federal Register.

3 (2) EXTENSION LIMITED.—In no case shall any date designated under paragraph  
4 (1) be later than 18 months after the date of enactment of this Act.

5 (3) EFFECT ON REFERENCES TO “TRANSFER DATE”.—If the Secretary takes the  
6 actions provided in paragraph (1) for designating a date for the transfer of functions to the  
7 Director of the National Bank Supervisor and the Corporation under section 321,  
8 references in this title to “transfer date” shall mean the date designated by the Secretary.

9 **SEC. 323. OFFICE OF COMPTROLLER OF THE CURRENCY ABOLISHED.**

10 Effective 90 days after the transfer date, the Office of the Comptroller of the Currency  
11 and the position of Comptroller of the Currency are abolished.

12 **SEC. 324. OFFICE OF THRIFT SUPERVISION ABOLISHED.**

13 Effective 90 days after the transfer date, the Office of Thrift Supervision and the position  
14 of Director of the Office of Thrift Supervision are abolished.

15 **SEC. 325. SAVINGS PROVISIONS.**

16 (a) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

17 (1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections  
18 321(a)(1) and 323 shall not affect the validity of any right, duty, or obligation of the  
19 United States, the Comptroller of the Currency, the Office of the Comptroller of the  
20 Currency, or any other person, that existed on the day before the transfer date.

21 (2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding  
22 commenced by or against the Comptroller of the Currency or the Office of the  
23 Comptroller of the Currency before the transfer date, except that the Director of the

1 National Bank Supervisor or the National Bank Supervisor shall be substituted for the  
2 Comptroller of the Currency or the Office of the Comptroller of the Currency, as the case  
3 may be, as a party to any such action or proceeding as of the transfer date.

4 (b) OFFICE OF THRIFT SUPERVISION.—

5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections  
6 321(b)(1) and 324 shall not affect the validity of any right, duty, or obligation of the  
7 United States, the Director of the Office of Thrift Supervision, the Office of Thrift  
8 Supervision, or any other person, that existed on the day before the transfer date.

9 (2) CONTINUATION OF SUITS.—This Act shall not abate any action or proceeding  
10 commenced by or against the Director of the Office of Thrift Supervision or the Office of  
11 Thrift Supervision before the transfer date, except that—

12 (A) for any action or proceeding arising out of a function of the Director  
13 of the Office of Thrift Supervision transferred to the Director of the National  
14 Bank Supervisor by this title, the Director of the National Bank Supervisor or the  
15 National Bank Supervisor shall be substituted for the Director of the Office of  
16 Thrift Supervision or the Office of Thrift Supervision, as the case may be, as a  
17 party to the action or proceeding as of the transfer date; and

18 (B) for any action or proceeding arising out of a function of the Director of  
19 the Office of Thrift Supervision transferred to the Corporation by this title, the  
20 Director of the National Bank Supervisor shall be substituted for the Corporation  
21 as a party to the action or proceeding as of the transfer date.

22 (c) CONTINUATION OF EXISTING ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS,  
23 REGULATIONS, ETC.—

1           (1) OCC ORDERS, ETC.—All orders, resolutions, determinations, agreements, and  
2 regulations, interpretative rules, other interpretations, guidelines, procedures, and other  
3 advisory materials, that have been issued, made, prescribed, or allowed to become  
4 effective by the Office of the Comptroller of the Currency, or by a court of competent  
5 jurisdiction, in the performance of functions that are transferred by this title and that are  
6 in effect on the day before the transfer date, shall continue in effect according to the  
7 terms of those orders, resolutions, determinations, agreements, and regulations,  
8 interpretative rules, other interpretations, guidelines, procedures, and other advisory  
9 materials, and shall be enforceable by or against the National Bank Supervisor until  
10 modified, terminated, set aside, or superseded in accordance with applicable law by the  
11 National Bank Supervisor, by any court of competent jurisdiction, or by operation of law.

12           (2) OTS ORDERS, ETC.—All orders, resolutions, determinations, agreements, and  
13 regulations, interpretative rules, other interpretations, guidelines, procedures, and other  
14 advisory materials, that have been issued, made, prescribed, or allowed to become  
15 effective by the Office of Thrift Supervision, or by a court of competent jurisdiction, in  
16 the performance of functions that are transferred by this title and that are in effect on the  
17 day before the transfer date, shall continue in effect according to the terms of those  
18 orders, resolutions, determinations, agreements, and regulations, interpretative rules,  
19 other interpretations, guidelines, procedures, and other advisory materials, and shall be  
20 enforceable by or against—

21                   (A) the National Bank Supervisor, in the case of a function of the Director  
22                   of the Office of Thrift Supervision transferred to the Director of the National  
23                   Bank Supervisor, until modified, terminated, set aside, or superseded in

1 accordance with applicable law by the National Bank Supervisor, by any court of  
2 competent jurisdiction, or by operation of law; or

3 (B) the Corporation, in the case of a function of the Director of the Office  
4 of Thrift Supervision transferred to the Corporation, until modified, terminated,  
5 set aside, or superseded in accordance with applicable law by the Corporation, by  
6 any court of competent jurisdiction, or by operation of law.

7 (d) IDENTIFICATION OF REGULATIONS CONTINUED.—

8 (1) BY THE NATIONAL BANK SUPERVISOR.—Not later than the transfer date, the  
9 Director shall—

10 (A) after consultation with the Chairperson of the Corporation, identify the  
11 regulations continued under subsection (c)(1) that will be enforced by the  
12 National Bank Supervisor; and

13 (B) publish a list of such regulations in the Federal Register.

14 (2) BY THE CORPORATION.—Not later than the transfer date, the Corporation  
15 shall—

16 (A) after consultation with the National Bank Supervisor, identify the  
17 regulations continued under subsection (c)(2) that will be enforced by the  
18 Corporation; and

19 (B) publish a list of such regulations in the Federal Register.

20 (e) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

21 (1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of the  
22 Comptroller of the Currency or the Office of Thrift Supervision, which that agency, in  
23 performing functions transferred by this title, has proposed before the transfer date but

1 has not published as a final regulation before that date, shall be deemed to be a proposed  
2 regulation of the National Bank Supervisor.

3 (2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the  
4 Office of the Comptroller of the Currency or the Office of Thrift Supervision, which that  
5 agency, in performing functions transferred by this title, has published before the transfer  
6 date but which has not become effective before that date, shall become effective as a  
7 regulation of the National Bank Supervisor according to its terms.

## 8 **Subtitle C—Operations of National Bank Supervisor**

### 9 **SEC. 331. REGULATIONS AND ORDERS.**

10 In addition to any powers transferred to the Director of the National Bank Supervisor by  
11 this title, the Director may prescribe such regulations and issue such orders as the Director  
12 determines to be appropriate to carry out this title and the powers and duties transferred to the  
13 Director by this title.

### 14 **SEC. 332. DELEGATION OF AUTHORITY.**

15 The Director of the National Bank Supervisor may delegate any authority of the Director  
16 to any employee of the National Bank Supervisor.

### 17 **SEC. 333. PERSONNEL.**

18 (a) APPOINTMENT.—In addition to any powers transferred to the Director of the National  
19 Bank Supervisor by this title, the Director of the National Bank Supervisor may fix the number  
20 of, and appoint and direct, all employees of the National Bank Supervisor notwithstanding  
21 section 301(f)(1) of title 31, United States Code, and section 5240 of the Revised Statutes (12  
22 U.S.C. 481).

23 (b) COMPENSATION: PAY AND BENEFITS.—

1           (1) PAY.—In addition to any powers transferred to the Director of the National  
2 Bank Supervisor by this title, the Director of the National Bank Supervisor shall fix,  
3 adjust, and administer the pay of all employees of the National Bank Supervisor without  
4 regard to the provisions of other laws applicable to officers or employees of the United  
5 States, including establishing a position classification system without regard to the  
6 provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

7           (2) ADDITIONAL BENEFITS.—In addition to any powers transferred to the Director  
8 of the National Bank Supervisor by this title, the Director of the National Bank  
9 Supervisor may provide benefits to employees of the National Bank Supervisor in  
10 addition to the retirement, health insurance, dental insurance, vision insurance, long term  
11 care insurance, and life insurance benefits provided to other employees of the United  
12 States under title 5, United States Code, without regard to the provisions of other laws  
13 applicable to officers or employees of the United States.

14           (3) COMPENSATION AND BENEFITS COMPARABLE TO OTHER FEDERAL BANKING  
15 AGENCIES.—The Director may provide additional compensation and benefits to  
16 employees of the National Bank Supervisor if the same type of compensation or benefits  
17 are then being provided by any other Federal banking agency or, if not then being  
18 provided, could be provided by such an agency under applicable provisions of law, rule,  
19 or regulation. In setting and adjusting the total amount of compensation and benefits for  
20 employees of the National Bank Supervisor, the Director shall consult with, and seek to  
21 maintain comparability with, other Federal banking agencies.

22           (4) ANNUAL REPORT REQUIRED.—The Director of the National Bank Supervisor  
23 shall report annually to the Congress on the structure of pay and benefits for employees

1 of the National Bank Supervisor.

2 **SEC. 334. FUNDING.**

3 (a) AUTHORITY TO IMPOSE AND COLLECT ASSESSMENTS, FEES, AND OTHER CHARGES.—

4 (1) ASSESSMENTS, FEES AND OTHER CHARGES.—

5 (A) IN GENERAL.—In addition to any powers transferred to the Director of  
6 the National Bank Supervisor by this title, the Director of the National Bank  
7 Supervisor may impose and collect assessments, fees, and other charges on any  
8 institution or entity (including any affiliates of the institution or entity) supervised  
9 or regulated by the National Bank Supervisor, as the Director deems necessary or  
10 appropriate to carry out the duties and responsibilities of the National Bank  
11 Supervisor. Such assessments fees, and other charges shall be set to meet the  
12 Director's expenses in carrying out authorized activities.

13 (C) REGULATIONS.—

14 (i) EXCLUSIVE AUTHORITY OF DIRECTOR.—Only the Director may  
15 prescribe regulations with respect to—

16 (I) the computation of, and assessment for, the cost of  
17 conducting examinations pursuant to the powers transferred to the  
18 Director by this title; and

19 (II) the collection and use of the assessments and fees under  
20 this section and the powers transferred to the Director by this title.

21 (ii) FEE FORMULAS TO COVER EXAMINATION AND PROCESSING  
22 COSTS.—The regulations may establish formulas to determine a fee or  
23 schedule of fees to cover the cost of examinations and also cover the cost

1 of processing applications, filings, notices, and requests for approvals by  
2 the Director or the Director's designee.

3 (b) NATIONAL BANK SUPERVISOR FUND.—

4 (1) SEPARATE FUND IN TREASURY ESTABLISHED.—There is established in the  
5 Treasury a separate fund called the “National Bank Supervisor Fund” (referred to in this  
6 section as the “Fund”).

7 (2) ALL TRANSFERRED FUNDS DEPOSITED.—All amounts transferred to the  
8 National Bank Supervisor under section 346 shall be deposited into the Fund.

9 (3) ALL RECEIPTS DEPOSITED.—The National Bank Supervisor shall deposit into  
10 the Fund all moneys that it receives, whether obtained under subsection (a) or otherwise.

11 (4) INVESTMENT.—

12 (A) AMOUNTS IN FUND MAY BE INVESTED.—The Director may request the  
13 Secretary to invest the portion of the Fund that is not, in the Director's judgment,  
14 required to meet the current needs of the Fund.

15 (B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary  
16 in obligations of the United States or obligations that are guaranteed as to  
17 principal and interest by the United States, with maturities suitable to the needs of  
18 the Fund as determined by the Director.

19 (C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the  
20 proceeds from the sale or redemption of, any obligations held in the Fund shall be  
21 credited to and form a part of the Fund.

22 (c) USE OF FUNDS.—

23 (1) IN GENERAL.—Funds transferred to, deposited into, or credited to the Fund



1 shall be immediately available to the National Bank Supervisor, and remain available  
2 until expended, to pay the expenses of the National Bank Supervisor in carrying out its  
3 duties and responsibilities. The compensation of the Director and other employees of the  
4 National Bank Supervisor and all other expenses thereof may be paid from assessments  
5 levied under this section and under powers transferred to the Director by this title.

6 (2) ASSESSMENTS AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds  
7 transferred to, deposited into, or credited to the Fund shall not be construed to be  
8 Government funds or appropriated monies.

9 (3) AMOUNTS IN FUND NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any  
10 other provision of law, amounts in the Fund shall not be subject to apportionment for  
11 purposes of chapter 15 of title 31, United States Code, or under any other authority.

## 12 **SEC. 335. CONTRACTING AND LEASING AUTHORITY**

13 In addition to any powers transferred to the Director of the National Bank Supervisor by  
14 this title, the Director may—

15 (1) enter into and perform contracts, execute instruments, and acquire, in any  
16 lawful manner, such goods and services, or personal or real property (or property interest)  
17 as the Director deems necessary or convenient to carry out the duties and responsibilities  
18 of the National Bank Supervisor; and

19 (2) hold, maintain, sell, lease, or otherwise dispose of that property (or property  
20 interest),

21 without regard to the Federal Property and Administrative Services Act of 1949 and other laws  
22 of a similar type governing the procurement of goods and services or the acquisition or  
23 disposition of personal or real property (or property interest) by executive agencies..

1 **SEC. 336. EFFECTIVE DATE.**

2 This subtitle shall become effective on the date of enactment of this Act.

3 **Subtitle D—Transitional Provisions**

4 **SEC. 341. INTERIM AUTHORITY OF NATIONAL BANK SUPERVISOR.**

5 Before the transfer date, the National Bank Supervisor shall—

6 (1) consult and cooperate with the Office of the Comptroller of the Currency and  
7 the Office of Thrift Supervision to facilitate the orderly transfer of functions to the  
8 National Bank Supervisor;

9 (2) determine and redetermine, from time to time—

10 (A) the amount of funds necessary to pay the expenses of the National  
11 Bank Supervisor (including expenses for personnel, property, and administrative  
12 services) during the period beginning on the date of enactment of this Act and  
13 ending on the transfer date;

14 (B) what personnel are appropriate to facilitate the orderly transfer of  
15 functions by this title; and

16 (C) what property and administrative services are necessary to support the  
17 National Bank Supervisor during the period beginning on the date of enactment of  
18 this Act and ending on the transfer date; and

19 (3) take such actions as may be necessary to provide for the orderly  
20 implementation of this title.

21 **SEC. 342. INTERIM RESPONSIBILITIES OF OFFICE OF THE COMPTROLLER OF**  
22 **THE CURRENCY AND OFFICE OF THRIFT SUPERVISION.**

23 (a) IN GENERAL.—When requested by the National Bank Supervisor to do so before the

1 transfer date, the Office of the Comptroller of the Currency and the Office of Thrift Supervision  
2 shall each—

3 (1) pay to the National Bank Supervisor, from funds obtained by those agencies  
4 through assessments, fees, or other charges that they are authorized by law to impose,  
5 one-half of the total amount that the Director determines to be necessary under section  
6 341(2)(A);

7 (2) detail to the National Bank Supervisor such personnel as the Director  
8 determines to be appropriate under section 341(2)(B); and

9 (3) make available to the National Bank Supervisor such property and provide the  
10 National Bank Supervisor such administrative services as the Director determines to be  
11 necessary under section 341(2)(C).

12 (b) NOTICE REQUIRED.—The National Bank Supervisor shall give the Office of the  
13 Comptroller of the Currency and the Office of Thrift Supervision reasonable prior notice of any  
14 request that the National Bank Supervisor intends to make under subsection (a).

15 **SEC. 343. INTERIM AUTHORITY OF THE SECRETARY.**

16 (a) IN GENERAL.—Until the Director is appointed, the Secretary is authorized to perform  
17 the functions of the Director under this subtitle relating to implementing the establishment of the  
18 National Bank Supervisor before the transfer of functions.

19 (b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The  
20 Department of the Treasury may provide administrative services necessary to support the  
21 National Bank Supervisor before the date on which the Office of the Comptroller of the  
22 Currency and the Office of Thrift Supervision are abolished.

23 (c) INTERIM FUNDING FOR THE SECRETARY.—

1 (1) FROM OCC AND OTS.—For the cost of the services provided under subsection  
2 (b), the Department of the Treasury may obtain reimbursement from the Office of the  
3 Comptroller of the Currency and the Office of Thrift Supervision as provided in section  
4 342(a)(1).

5 (2) USE BY TREASURY.—The Department of the Treasury may credit to an  
6 appropriation and spend amounts received under paragraph (1).

7 (3) TRANSFER UPON DIRECTOR’S APPOINTMENT.—Upon the appointment of the  
8 Director, the amounts paid to the Department of the Treasury under subsection (b) and  
9 not expended shall be paid by the Department to the National Bank Supervisor.

10 **SEC. 344. EMPLOYEES TRANSFERRED.**

11 (a) IN GENERAL.—

12 (1) OCC EMPLOYEES.—All employees of the Office of the Comptroller of the  
13 Currency shall be transferred to the National Bank Supervisor for employment.

14 (2) OTS EMPLOYEES.—

15 (A) IN GENERAL.—All employees of the Office of Thrift Supervision shall  
16 be transferred to either the National Bank Supervisor or the Corporation for  
17 employment.

18 (B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—  
19 The Director of the Office of Thrift Supervision, the Comptroller of the Currency,  
20 the Chairperson of the Corporation, and, when appointed, the Director of the  
21 National Bank Supervisor, shall—

22 (i) jointly estimate—

23 (I) the number of Federal savings associations that will

1 convert to a national bank as provided for in section 351, and  
2 thereafter will be supervised and regulated by the National Bank  
3 Supervisor; and

4 (II) the number of Federal Savings Associations that will  
5 convert to a State depository institution as provided for in section  
6 351, and thereafter will be supervised and regulated by the  
7 Corporation;

8 (ii) jointly determine the number of employees of the Office of  
9 Thrift supervision necessary to perform or support—

10 (I) the functions of the Office of Thrift Supervision that are  
11 transferred to the National Bank Supervisor by this title; and

12 (II) the functions of the Office of Thrift Supervision that  
13 are transferred to the Corporation by this title;

14 (iii) consistent with the numbers determined under clause (ii),  
15 jointly identify employees of the Office of Thrift Supervision for transfer  
16 to the National Bank Supervisor or the Corporation in a manner that the  
17 Director of the Office of Thrift Supervision, the Comptroller of the  
18 Currency, and the Chairperson of the Corporation, in their discretion,  
19 deem equitable; and

20 (iv) jointly revise their estimates, determinations, and  
21 identifications, as necessary, after the savings associations have delivered  
22 the notifications required under section 351.

23 (3) TRANSFER OF EMPLOYEES PERFORMING CONSUMER FINANCIAL PROTECTION

1 FUNCTIONS.—Nothing in paragraphs (1) or (2) shall affect the transfer of employees  
2 performing or supporting consumer financial protection functions of the Comptroller of  
3 the Currency and the Director of the Office of Thrift Supervision to the Consumer  
4 Financial Protection Agency as provided in the Consumer Financial Protection Agency  
5 Act of 2009.

6 (4) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

7 (A) IN GENERAL.—In the case of employees occupying positions in the  
8 excepted service, any appointment authority established pursuant to law or  
9 regulations of the Office of Personnel Management for filling such positions shall  
10 be transferred, subject to subparagraph (B).

11 (B) DECLINING TRANSFERS ALLOWED.—The National Bank Supervisor and  
12 the Corporation may decline to accept a transfer of authority under subparagraph  
13 (A) (and the employees appointed pursuant thereto) to the extent that such  
14 authority relates to positions excepted from the competitive service because of  
15 their confidential, policy-making, policy-determining, or policy-advocating  
16 character.

17 (b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be  
18 transferred under this section shall—

19 (1) be transferred not later than 90 days after the transfer date; and

20 (2) receive notice of his or her position assignment not later than 120 days after  
21 the effective date of his or her transfer.

22 (c) TRANSFER OF FUNCTION.—

23 (1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of

1 employees shall be deemed a transfer of functions for the purpose of section 3503 of title  
2 5, United States Code.

3 (2) PRIORITY OF THIS ACT.—If any provision of this title conflicts with any  
4 protection provided to transferred employees under section 3503 of title 5, United States  
5 Code, the provisions of this title shall control.

6 (d) EMPLOYEES' STATUS AND ELIGIBILITY.—The transfer of functions and employees  
7 under this title, and the abolition of the Office of the Comptroller of the Currency and the Office  
8 of Thrift Supervision, shall not affect the status of the transferred employees as employees of an  
9 agency of the United States under any provision of law.

10 (e) EQUAL STATUS AND TENURE POSITIONS.—

11 (1) OCC EMPLOYEES.—Each employee transferred from the Office of the  
12 Comptroller of the Currency shall be placed in a position at the National Bank Supervisor  
13 with the same status and tenure as he or she held on the day before the transfer date.

14 (2) OTS EMPLOYEES.—Each employee transferred from the Office of Thrift  
15 Supervision shall be placed in a position at either the National Bank Supervisor or the  
16 Corporation with the same status and tenure as he or she held on the day before the  
17 transfer date.

18 (f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—Examiners transferred to the  
19 National Bank Supervisor or the Corporation shall not be subject to any additional certification  
20 requirements before being placed in a comparable examiner's position at the National Bank  
21 Supervisor or the Corporation examining the same types of institutions as they examined before  
22 they were transferred.

23 (g) PERSONNEL ACTIONS LIMITED.—

1           (1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred  
2 employee holding a permanent position on the day before the transfer date shall not,  
3 during the 1-year period beginning on the transfer date, be involuntarily separated, or  
4 involuntarily reassigned outside his or her locality pay area as defined by the Office of  
5 Personnel Management.

6           (2) EXCEPTIONS.—Paragraph (1) does not limit the right of the National Bank  
7 Supervisor or the Corporation to—

8                   (A) separate an employee for cause or for unacceptable performance; or

9                   (B) terminate an appointment to a position excepted from the competitive  
10 service because of its confidential policy-making, policy-determining, or policy-  
11 advocating character.

12 (h) PAY.—

13           (1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred  
14 employee shall, during the 1-year period beginning on the transfer date, receive pay at a  
15 rate not less than the basic rate of pay (including any geographic differential) that the  
16 employee received during the 1-year period immediately before the transfer.

17           (2) EXCEPTIONS.—Paragraph (1) does not limit the right of the National Bank  
18 Supervisor or the Corporation to reduce a transferred employee's rate of basic pay—

19                   (A) for cause;

20                   (B) for unacceptable performance; or

21                   (C) with the employee's consent.

22           (3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred  
23 employee only while that employee remains employed by the National Bank Supervisor



1 or the Corporation.

2 (4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the  
3 National Bank Supervisor or the Corporation to increase a transferred employee’s pay.

4 (i) BENEFITS.—

5 (1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

6 (A) IN GENERAL.—

7 (i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each  
8 transferred employee shall remain enrolled in his or her existing retirement  
9 plan as long as he or she remains employed by the National Bank  
10 Supervisor.

11 (ii) EMPLOYER’S CONTRIBUTION.—The National Bank Supervisor  
12 or the Corporation shall pay any employer contributions to the existing  
13 retirement plan of each transferred employee as required under that plan.

14 (B) DEFINITION.—For purposes of this paragraph, the term “existing  
15 retirement plan” means, with respect to any employee transferred under this  
16 section, the particular retirement plan (including the Financial Institutions  
17 Retirement Fund) and any associated thrift savings plan of the agency from which  
18 the employee was transferred, which the employee was enrolled in on the day  
19 before the transfer date.

20 (2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

21 (A) DURING 1ST YEAR.—

22 (i) EXISTING PLANS CONTINUE.—Each transferred employee may,  
23 for 1 year after the transfer date, retain membership in any other employee

1 benefit program of the agency from which the employee transferred,  
2 including a dental, vision, long term care, or life insurance program, to  
3 which the employee belonged on the day before the transfer date.

4 (ii) EMPLOYER'S CONTRIBUTION.—The National Bank Supervisor  
5 or the Corporation shall pay any employer cost in continuing to extend  
6 coverage in the benefit program to the employee as required under that  
7 program or negotiated agreements.

8 (B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-  
9 year period beginning on the transfer date, the National Bank Supervisor or the  
10 Corporation decides not to continue participation in any dental, vision, or life  
11 insurance program of an agency from which employees transferred, a transferred  
12 employee who is a member of such a program may, before the decision of the  
13 National Bank Supervisor or the Corporation takes effect, elect to enroll, without  
14 regard to any regularly scheduled open season, in—

15 (i) the enhanced dental benefits program established by chapter  
16 89A of title 5, United States Code;

17 (ii) the enhanced vision benefits established by chapter 89B of title  
18 5, United States Code; and

19 (iii) the Federal Employees Group Life Insurance Program  
20 established by chapter 87 of title 5, United States Code, without regard to  
21 any requirement of insurability.

22 (C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year  
23 period beginning on the transfer date, the National Bank Supervisor or the

1 Corporation decides not to continue participation in any long term care insurance  
2 program of an agency from which employees transferred, a transferred employee  
3 who is a member of such a program may, before the decision of the National  
4 Bank Supervisor or the Corporation takes effect, elect to apply for coverage under  
5 the Federal Long Term Care Insurance Program established by chapter 90 of title  
6 5, United States Code, under the underwriting requirements applicable to a new  
7 active workforce member (as defined in Part 875, title 5, Code of Federal  
8 Regulations).

9 (D) EMPLOYEE'S CONTRIBUTION.—

10 (i) IN GENERAL.—Subject to clause (ii), an individual enrolled in  
11 the Federal Employees Health Benefits program under this subparagraph  
12 shall pay any employee contribution required by the plan.

13 (ii) COST DIFFERENTIAL.—The difference in costs between the  
14 benefits that the Office of the Comptroller of the Currency or the Office of  
15 Thrift Supervision are providing on the date of enactment of this Act and  
16 the benefits provided by this section shall be paid by the Director of the  
17 National Bank Supervisor or the Corporation.

18 (iii) FUNDS TRANSFER.—The National Bank Supervisor or the  
19 Corporation shall transfer to the Federal Employees Health Benefits Fund  
20 established under section 8909 of title 5, United States Code, an amount  
21 determined by the Director of the Office of Personnel Management, after  
22 consultation with the National Bank Supervisor or the Corporation and the  
23 Office of Management and Budget, to be necessary to reimburse the Fund

1 for the cost to the Fund of providing benefits under this subparagraph not  
2 otherwise paid for by the employee under clause (i).

3 (E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE  
4 BENEFITS.—

5 (i) IN GENERAL.—An annuitant (as defined in section 8901(3) of  
6 title 5, United States Code) who is enrolled in a life insurance plan  
7 administered by the Office of the Comptroller of the Currency or the  
8 Office of Thrift Supervision on the day before the transfer date shall be  
9 eligible for coverage by a life insurance plan under sections 8706(b),  
10 8714a, 8714b, and 8714c of title 5, United States Code, or in a life  
11 insurance plan established by the National Bank Supervisor or the  
12 Corporation, without regard to any regularly scheduled open season and  
13 requirement of insurability.

14 (ii) EMPLOYEE'S CONTRIBUTION.—

15 (i) IN GENERAL.—Subject to subclause (II), an individual  
16 enrolled in a life insurance plan under this clause shall pay any  
17 employee contribution required by the plan.

18 (II) COST DIFFERENTIAL.—The difference in costs between  
19 the benefits that the Office of the Comptroller of the Currency or  
20 the Office of Thrift Supervision are providing on the date of  
21 enactment of this Act and the benefits provided by this section  
22 shall be paid by the Director of the National Bank Supervisor or  
23 the Corporation.

1 (III) FUNDS TRANSFER.—The National Bank Supervisor or  
2 the Corporation shall transfer to the Employees’ Life Insurance  
3 Fund established under section 8714 of title 5, United States Code,  
4 an amount determined by the Director of the Office of Personnel  
5 Management, after consultation with the National Bank Supervisor  
6 or the Corporation and the Office of Management and Budget, to  
7 be necessary to reimburse the Fund for the cost to the Fund of  
8 providing benefits under this subparagraph not otherwise paid for  
9 by the employee under subclause (I).

10 (IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For  
11 employees transferred under this section, enrollment in a life  
12 insurance plan administered by the Office of the Comptroller of the  
13 Currency, the Office of Thrift Supervision, the National Bank  
14 Supervisor, or the Corporation immediately before enrollment in a  
15 life insurance plan under chapter 87 of title 5, United States Code,  
16 shall be considered as enrollment in a life insurance plan under that  
17 chapter for purposes of section 8706(b)(1)(A) of title 5, United  
18 States Code.

19 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2  
20 years after the transfer date, the National Bank Supervisor shall implement a uniform pay and  
21 classification system for all transferred employees.

22 (k) EQUITABLE TREATMENT.—In administering the provisions of this section, the  
23 National Bank Supervisor and the Corporation—

1 (1) shall take no action that would unfairly disadvantage transferred employees  
2 relative to each other based on their prior employment by the Office of the Comptroller  
3 of the Currency or the Office of Thrift Supervision; and

4 (2) may take such action as is appropriate in individual cases so that employees  
5 transferred under this section receive equitable treatment, with respect to those  
6 employees' status, tenure, pay, benefits (other than benefits under programs administered  
7 by the Office of Personnel Management), and accrued leave or vacation time, for prior  
8 periods of service with any Federal agency.

9 **SEC. 345. PROPERTY TRANSFERRED.**

10 (a) IN GENERAL.— Not later than 90 days after the transfer date, all property of the Office  
11 of the Comptroller of the Currency and the Office of Thrift Supervision shall be transferred to  
12 the National Bank Supervisor or the Corporation, allocated in a manner consistent with section  
13 344(a).

14 (b) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—All contracts, agreements, leases,  
15 licenses, permits, and similar arrangements relating to property transferred to the National Bank  
16 Supervisor or the Corporation by this section shall be transferred to the National Bank  
17 Supervisor or the Corporation together with that property.

18 (c) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall  
19 not be altered, destroyed, or deleted before transfer under this section.

20 (d) PROPERTY DEFINED.—For purposes of this section, the term “property” includes all  
21 real property (including leaseholds) and all personal property (including computers, furniture,  
22 fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of  
23 examination, work papers and correspondence related to such reports, and any other information

1 or materials).

2 **SEC. 346. FUNDS TRANSFERRED.**

3 Except to the extent needed to dispose of affairs under section 348, all funds that, on the  
4 day before the transfer date, are available to the Comptroller of the Currency and the Director of  
5 the Office of Thrift Supervision to pay the expenses of the Office of the Comptroller of the  
6 Currency and the Office of Thrift Supervision shall be transferred to the National Bank  
7 Supervisor or the Corporation, allocated in a manner consistent with section 344(a), on the  
8 transfer date.

9 **SEC. 347. INCIDENTAL TRANSFERS.**

10 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management  
11 and Budget, in consultation with the Director of the National Bank Supervisor and the  
12 Chairperson of the Corporation and the Chairperson of the Corporation, shall make such  
13 additional incidental transfers and dispositions of assets and liabilities held, used, arising from,  
14 available, or to be made available, in connection with the functions transferred by this title, as the  
15 Director of the Office and Management and Budget may determine necessary to accomplish the  
16 purposes of this title.

17 (b) SUNSET.—The authority provided in this section shall terminate 5 years after the date  
18 of enactment of this Act.

19 **SEC. 348. DISPOSITION OF AFFAIRS.**

20 (a) IN GENERAL.—During the 90-day period beginning on the transfer date, the  
21 Comptroller of the Currency and the Director of the Office of Thrift Supervision —

22 (1) shall, solely for the purpose of winding up the affairs of their respective  
23 agencies related to any function transferred to the National Bank Supervisor or the

1 Corporation by this title—

2 (A) manage the employees of those agencies and provide for the payment  
3 of the compensation and benefits of any such employee that accrue before the  
4 transfer date; and

5 (B) manage any property of those agencies until the property is transferred  
6 under section 345; and

7 (2) may take any other action necessary to wind up the affairs of their respective  
8 agencies relating to the transferred functions.

9 (b) AUTHORITY AND STATUS OF EXECUTIVES.—

10 (1) IN GENERAL.—Notwithstanding the transfers of functions under this title, the  
11 Comptroller of the Currency and the Director of the Office of Thrift Supervision shall,  
12 during the 90-day period beginning on the transfer date, retain and may exercise any  
13 authority vested in those persons on the day before the transfer date that is necessary to  
14 carry out the requirements of this title during that period.

15 (2) OTHER PROVISIONS.—For purposes of paragraph (1), the Comptroller of the  
16 Currency and the Director of the Office of Thrift Supervision shall, during the 90-day  
17 period beginning on the transfer date, continue to be—

18 (A) treated as officers of the United States; and

19 (B) entitled to receive compensation at the same annual rate of basic pay  
20 that they were receiving on the day before the transfer date.

21 **SEC. 349. CONTINUATION OF SERVICES.**

22 Any agency, department, or other instrumentality of the United States, and any successor  
23 to any such agency, department, or instrumentality, that was, before the transfer date, providing



1 support services to the Office of the Comptroller of the Currency or the Office of Thrift  
2 Supervision in connection with functions to be transferred to the National Bank Supervisor,  
3 shall—

4 (1) continue to provide those services, subject to reimbursement, until the transfer  
5 of those functions is complete; and

6 (2) consult with any such agency to coordinate and facilitate a prompt and orderly  
7 transition.

## 8 **Subtitle E—Termination of Federal Thrift Charter**

### 9 **SEC. 351. TERMINATION OF FEDERAL SAVINGS ASSOCIATIONS; TREATMENT** 10 **OF STATE SAVINGS ASSOCIATIONS AS BANKS FOR PURPOSES** 11 **FEDERAL BANKING LAW**

12 (a) ELECTION BY SAVINGS ASSOCIATION REQUIRED.—

13 (1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act,  
14 each savings association shall notify in writing the Office of Thrift Supervision, the  
15 Office of the Comptroller of the Currency, and the National Bank Supervisor whether the  
16 savings association elects to be a national bank, mutual national bank, State bank, or  
17 State savings association.

18 (2) CONVERSION TO A NATIONAL BANK OR MUTUAL NATIONAL BANK.—If a savings  
19 association gives notice under paragraph (1) of its intention to convert to a national bank  
20 or mutual national bank—

21 (A) the savings association shall provide the Office of the Comptroller of  
22 the Currency with such relevant supporting information as that Office may  
23 reasonably request; and

1 (B) the Office of the Comptroller shall issue a national bank or mutual  
2 national bank charter, as appropriate, not later than the end of the 1-year period  
3 beginning on the date of enactment of this Act.

4 (3) CONVERSION TO A STATE BANK.—If a savings association gives notice under  
5 paragraph (1) of its intention to convert to a State bank, the savings association shall  
6 apply for a State bank charter in compliance with applicable State law.

7 (4) CONVERSION TO A STATE SAVINGS ASSOCIATION.—If a Federal savings  
8 association gives notice under paragraph (1) of its intention to convert to a State savings  
9 association, the Federal savings association shall apply for a State savings association  
10 charter in compliance with applicable State law.

11 (5) CONVERSION TO NATIONAL BANK BY OPERATION OF LAW.—If a Federal savings  
12 association does not comply with paragraph (1) or if its application to become a State-  
13 chartered bank has not been approved by the State by the day before the end of the 1-year  
14 period beginning on the date of enactment of this Act, the Federal savings association  
15 shall—

16 (A) become a national bank or mutual national bank by operation of law  
17 effective at the end of the 1-year period beginning on the date of enactment of this  
18 Act;

19 (B) immediately file articles of association and an organizational  
20 certificate with the National Bank Supervisor in accordance with sections 5133,  
21 5134, and 5135 of the Revised Statutes of the United States; and

22 (C) cease to exist as a Federal savings association as of that date.

23 (6) CONDITIONS ON NEW CHARTERS.—The Office of the Comptroller of the

1 Currency and the appropriate State banking agency may impose such conditions in  
2 connection with the issuance of new charters, including charters issued under paragraph  
3 (5), as they determine in their sole discretion, to be appropriate to assure the safe and  
4 sound operation of the newly chartered bank.

5 (7) PROHIBITION OF NEW CHARTERS OF FEDERAL SAVINGS ASSOCIATIONS.—Neither  
6 the Director of the Office of Thrift Supervision nor the Director of the National Bank  
7 Supervisor may grant any charter for a Federal savings association after the date of  
8 enactment of this Act.

9 (b) TREATMENT OF STATE SAVINGS ASSOCIATIONS AS BANKS FOR PURPOSES OF FEDERAL  
10 LAW.—

11 (1) AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—Section 3 of the Federal  
12 Deposit Insurance Act (12 U.S.C. 1813) is amended—

13 (A) by striking paragraph (2) of subsection (a) and inserting the following  
14 new paragraph:

15 “(2) STATE BANK.—The term ‘State bank’ means any bank, banking association,  
16 trust company, savings bank, industrial bank (or similar depository institution which the  
17 Board of Directors finds to be operating substantially in the same manner as an industrial  
18 bank), building and loan association, savings and loan association, homestead  
19 association, cooperative bank, or other banking institution which—

20 “(A) is engaged in the business of receiving deposits, other than trust  
21 funds (as defined in this section); and

22 “(B) is incorporated under the laws of any State or which is operating  
23 under the Code of Law for the District of Columbia,

1 including any cooperative bank or other unincorporated bank the deposits of which were  
2 insured by the Corporation on the day before the date of enactment Financial Institutions  
3 Reform, Recovery, and Enforcement Act of 1989.”.

4 (2) AMENDMENTS TO THE FEDERAL RESERVE ACT.—The 2d and 3d paragraphs of  
5 the 1st section of the Federal Reserve Act (12 U.S.C. 221) are each amended by inserting  
6 “(as defined in section 3(a)(2) of the Federal Deposit Insurance Act)” after “State bank”.

7 (3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall become effective 1 year after  
8 the date of enactment of this Act.

## 9 **SEC. 352. TRANSITION PROVISIONS FOR ACTIVITIES OF SAVINGS**

### 10 **ASSOCIATIONS THAT CONVERT INTO OR BECOME TREATED** 11 **AS BANKS.**

12 (a) NONCONFORMING ACTIVITIES AND ASSETS.—

13 (1) 3-YEAR TRANSITION PERIOD.—A Federal savings association or State savings  
14 association that converts to a national bank or State bank pursuant to this title, or a State  
15 savings association that retains its existing charter under State law pursuant to this title,  
16 may continue to engage in any activity in which the institution was lawfully engaged and  
17 may continue to hold any assets lawfully held on the date before conversion during the 3-  
18 year period beginning on the date of enactment of this Act.

19 (2) CONDITIONS FROM, AND EXTENSIONS BY, APPROPRIATE FEDERAL BANKING  
20 AGENCY PERMITTED.—The appropriate Federal banking agency may, by regulation or  
21 order—

22 (A) impose such conditions on nonconforming activities or assets; and

23 (B) grant no more than two 1-year extensions of the period described in

1 paragraph (1),

2 as the agency determines, in its sole discretion, to be appropriate to assure the safe and  
3 sound operation of the bank.

4 (b) LIMITS ON RAPID EXPANSION OF NEW POWERS.— A Federal savings association or  
5 State savings association that converts to a national bank or a State bank, pursuant to this title,  
6 may not engage in an activity in excess of the authorization under the Home Owners' Loan Act  
7 or implementing regulations, except as provided in subsections (c) or (d).

8 (c) PHASE-IN SCHEDULE BASED ON PERCENTAGE OF ASSETS.—Unless the bank receives  
9 prior approval from its appropriate Federal banking agency, for activities subject to limitations  
10 based on a percentage of assets, a Federal savings association or State savings association that  
11 converts to a national bank or a State bank pursuant to this title may only increase the level of  
12 such activities as follows:

Period:	Permissible percentage increase:
During the 1-year period beginning on the date of enactment of this Act.	Permissible limit under Home Owners' Loan Act as of the date of enactment of this Act.
During the 1-year period beginning 1 year after the date of enactment of this Act.	20% of the difference between the maximum percentage permitted for national banks and the percentage of assets allocated to the activity by the savings association as of the date of enactment.
During the 1-year period beginning 2 years after the date of enactment of this Act.	40% of the difference between the maximum percentage permitted for national banks and the percentage of assets allocated to the activity by the savings association as of the date of enactment.
During the 1-year period beginning 3 years after the date of enactment of this Act.	60% of the difference between the maximum percentage permitted for national banks and the percentage of assets allocated to the activity by the savings association as of the date of enactment.
During the 1-year period beginning 4 years after the date of enactment of this Act.	80% of the difference between the maximum percentage permitted for national banks and the percentage of assets allocated to the activity by the savings association as of the date of enactment.
After 5 years from the date of enactment.	The maximum amount permitted for national banks.

1 (d) PHASE-IN SCHEDULE BASED ON OTHER LIMITATIONS.—For all other activities limited  
2 in amount by statute, a Federal savings association or State savings association that converts to a  
3 national bank or a State bank pursuant to this title may increase the level of such activities to a  
4 level permitted by the appropriate Federal banking agency by regulation or order, which shall  
5 include any applicable schedule or conditions.

6 (e) EFFECTIVE DATE.—Subsections (a) through (d) shall become effective on the date of  
7 enactment of this Act.

8 **SEC. 353. ADDITIONAL TRANSITIONAL PROVISIONS FOR MUTUAL SAVINGS**  
9 **ASSOCIATIONS.**

10 (a) MUTUAL NATIONAL BANKS AUTHORIZED; CONVERSION OF MUTUAL SAVINGS  
11 ASSOCIATIONS INTO NATIONAL BANKS.—

12 (1) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United  
13 States (12 U.S.C. 21 et seq.) is amended by inserting after section 5133 the following  
14 new section:

15 **“SEC. 5133A. MUTUAL NATIONAL BANKS.**

16 **“(a) IN GENERAL.—**Notwithstanding the section designated the ‘Third’ of section 5134,  
17 the Director of the National Bank Supervisor may charter national banks organized in the mutual  
18 form either de novo or through a conversion of any stock national or State bank (as defined in  
19 section 3 of the Federal Deposit Insurance Act) or any State mutual bank or credit union, subject  
20 to regulations prescribed by the Director of the National Bank Supervisor in accordance with this  
21 section.

22 **“(b) REGULATIONS.—**

23 **“(1) TRANSITION RULES.—**National banks organized in the mutual form shall be

1 subject to the regulations of the Director of the Office of Thrift Supervision governing  
2 corporate organization, governance, and conversion of mutual institutions, as in effect on  
3 the date of enactment of the Federal Depository Institutions Supervision and Regulation  
4 Improvements Act of 2009, including parts 543, 544, 546, 563b, and 563c of chapter V of  
5 title 12 of the Code of Federal Regulations (as in effect on that date), during the 3-year  
6 period beginning on the date of enactment of the Federal Depository Institutions  
7 Supervision and Regulation Improvements Act of 2009.

8 “(2) REGULATIONS OF THE DIRECTOR.—The Director of the National Bank  
9 Supervisor shall prescribe appropriate regulations for national banks organized in the  
10 mutual form, effective as of the end of the end of the 3-year period referred to in  
11 paragraph (1).

12 “(3) APPLICABILITY OF CAPITAL STOCK REQUIREMENTS.—The Director of the  
13 National Bank Supervisor shall prescribe regulations regarding the manner in which  
14 requirements of title LXII of the Revised Statutes of the United States with respect to  
15 capital stock, and limitations imposed on national banks under that title based on capital  
16 stock, shall apply to national banks organized in the mutual form under subsection (a).

17 “(c) CONVERSIONS.—

18 “(1) CONVERSION TO STOCK NATIONAL BANK.—Subject to such regulations as the  
19 Director of the National Bank Supervisor may prescribe for the protection of depositors’  
20 rights and for any other purpose the Director of the National Bank Supervisor may  
21 consider appropriate, any national bank that is organized in the mutual form under  
22 subsection (a) may reorganize as a stock national bank.

23 “(2) CONVERSION TO STATE BANKS.—Any national mutual bank may convert to a

1 State bank charter in accordance with regulations prescribed by the Director of the  
2 National Bank Supervisor and applicable State law.”.

3 (2) LIMITATION ON FEDERAL REGULATION OF STATE BANKS.—Except as otherwise  
4 provided in Federal law, the Director, Board of Governors of the Federal Reserve  
5 System, and Federal Deposit Insurance Corporation may not adopt or enforce any  
6 regulation that contravenes the corporate governance rules prescribed by State law or  
7 regulation for State banks unless the Director, Board, or Corporation finds that the  
8 Federal regulation is necessary to assure the safety and soundness of the State banks.

9 (3) CONVERSIONS OF MUTUAL SAVINGS ASSOCIATIONS TO MUTUAL NATIONAL  
10 BANKS BY OPERATION OF LAW.—Notwithstanding any other provision of Federal or State  
11 law, any savings association (as defined in section 3 of the Federal Deposit Insurance Act  
12 (as in effect on the date of enactment of this Act)) that is organized in the mutual form as  
13 of the date of the enactment of this Act may become a national mutual bank as provided  
14 in section 351.

15 (b) BRANCHES.—

16 (1) IN GENERAL.—Notwithstanding any provision of the Federal Deposit  
17 Insurance Act, the Bank Holding Company Act of 1956, or any other Federal or State  
18 law, any depository institution that

19 (A) as of the date of the enactment of this Act, is a savings association;

20 and

21 (B) becomes a bank before 1 year from the date of enactment of this Act,

22 or, pursuant to the amendments made by this subsection, is treated as a bank as of  
23 that date under the Federal Deposit Insurance Act,



1 and any depository institution or bank holding company that acquires that depository  
2 institution, may continue, after the depository institution becomes or commences to be  
3 treated as a bank, to operate any branch or agency that the savings association was  
4 operating as a branch or agency or was in the process of establishing as a branch or  
5 agency on the date of enactment of this Act.

6 (2) NO ADDITIONAL BRANCHES.—Paragraph (1) shall not be construed as  
7 authorizing the establishment, acquisition, or operation of any additional branch of a  
8 depository institution, or the conversion of any agency to a branch, in any State by virtue  
9 of the operation by that institution of a branch or agency in the State pursuant to that  
10 paragraph except to the extent the establishment, acquisition, operation, or conversion is  
11 permitted under the Federal Deposit Insurance Act, Bank Holding Company Act of 1956,  
12 and any other applicable Federal or State law without regard to the branch or agency.

13 (3) ESTABLISHING A BRANCH OR AGENCY.—For purposes of paragraph (1), a  
14 savings association shall be treated as having been in the process of establishing a branch  
15 or agency as of the date of enactment of this Act, if, as of that date, the savings  
16 association—

17 (A) had received approval from the Director to establish the branch or  
18 agency;

19 (B) had pending with the Director an application or notice to establish the  
20 branch or agency;

21 (C) had a legal and contractual obligation to establish the branch or  
22 agency;

23 (D) had received authority from the appropriate Federal banking agency to

1 establish the branch in connection with the assumption of liabilities or an  
2 acquisition of an insured depository institution pursuant to subsection (f) or (k) of  
3 section 13 of the Federal Deposit Insurance Act or such 408(m) of the National  
4 Housing Act (as in effect before the date of the enactment of the Financial  
5 Institutions Reform, Recovery, and Enforcement Act of 1989); or

6 (E) in the case of a well capitalized depository institution, is able to  
7 demonstrate to the appropriate Federal banking agency that the savings  
8 association—

9 (i) had made a significant financial commitment; and

10 (ii) had taken legally binding action or incurred a contractual  
11 obligation,

12 in furtherance of the establishment of the branch or agency.

13 (c) TRANSITION PROVISION RELATING TO LIMITATIONS ON LOANS TO 1 BORROWER.—

14 Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended by adding at  
15 the end the following new subsection:

16 “(e) TRANSITION PROVISION FOR SAVINGS ASSOCIATIONS CONVERTING TO NATIONAL  
17 BANKS.—In the case of any depository institution which, as of the date of enactment of this Act,  
18 is a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (as in  
19 effect on that date)) and becomes a national bank on or before 1 year from the date of enactment  
20 of the Federal Depository Institutions Supervision and Regulation Improvements Act of 2009,  
21 any loan, or legally binding commitment to make a loan, made or entered into by that institution  
22 that is outstanding on the date the institution becomes a national bank may continue to be held  
23 without regard to any limitation contained in this section during the 3-year period beginning on

1 the date of enactment of the Federal Depository Institutions Supervision and Regulation  
2 Improvements Act of 2009.”.

3 (d) RIGHTS AND AUTHORITY OF BANKS RESULTING FROM CONVERSIONS OF SAVINGS  
4 ASSOCIATIONS.—

5 (1) IN GENERAL.—Upon conversion of a savings association to a national or State  
6 bank in accordance with this title and the amendments made by this title or other  
7 provisions of law—

8 (A) the national or State bank shall succeed to all rights, benefits,  
9 privileges, powers, and franchises, and be subject to all the obligations, duties,  
10 restrictions, and disabilities, of that savings association under any contract,  
11 agreement, document, or instrument in effect at the time of the conversion to  
12 which the savings association was a party; and

13 (B) any reference to the savings association in any such contract,  
14 agreement, document, or instrument shall be deemed to be a reference to that  
15 national or State bank.

16 (2) TREATMENT OF BANK OR SAVINGS ASSOCIATION.—If the application of  
17 paragraph (1) with respect to any national or State bank referred to in that paragraph  
18 would—

19 (A) be inconsistent or in conflict with any contract, agreement, document,  
20 or instrument described in that paragraph;

21 (B) constitute a default under the contract, agreement, document, or  
22 instrument;

23 (C) cause that national or State bank to be in default or breach under any

1 provision of the contract, agreement, document, or instrument,  
2 the national or State bank shall be deemed to be, and treated as, a savings association for  
3 purposes of the contract, agreement, document, or instrument.

## 4 **Subtitle F—Conforming Amendments**

### 5 **CHAPTER 61—CONFORMING AMENDMENTS TO**

### 6 **FEDERAL DEPOSIT INSURANCE ACT**

#### 7 **SEC. 361. AMENDMENT TO SECTION 2.**

8 Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended—

9 (1) in subsection (a)(1)—

10 (A) in subparagraph (A), by striking “Comptroller of the Currency” and  
11 inserting “Director of the National Bank Supervisor”;

12 (B) in subparagraph (B), by striking “Director of the Office of Thrift  
13 Supervision” and inserting “Chairman of the Board of Governors of the Federal  
14 Reserve System, or such other member of the Board of Governors as the  
15 Chairman of the Board of Governors shall designate”;

16 (2) by amending subsection (d)(2) to read as follows:

17 “(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the  
18 Director of the National Bank Supervisor and pending the appointment of a successor, or  
19 during the absence or disability of the Director, the acting Director of the National Bank  
20 Supervisor shall be a member of the Board of Directors in the place of the Director.”; and

21 (3) in subsection (f)(2), by striking “Office of the Comptroller of the Currency or  
22 of the Office of Thrift Supervision” and inserting “National Bank Supervisor or  
23 Department of the Treasury”.

1 **SEC. 362. AMENDMENTS TO SECTION 3.**

2 Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

3 (1) in subsection (b)(1)(C) (relating to the definition of the term “savings  
4 association”), by striking “Director of the Office of Thrift Supervision” and inserting  
5 “Director of the National Bank Supervisor”;

6 (2) in subsection (l)(5) (relating to the definition of the term “deposit”), in the  
7 introductory text, by striking “Comptroller of the Currency, Director of the Office of  
8 Thrift Supervision,” and inserting “Director of the National Bank Supervisor,”;

9 (3) in subsection (q) (relating to the definition of the term “appropriate Federal  
10 banking agency”)—

11 (A) by amending paragraph (1) to read as follows:

12 “(1) the Director of the National Bank Supervisor, in the case of any national bank or  
13 any Federal branch or agency of a foreign bank;”;

14 (B) in paragraph (2)(F), by adding “and” at the end after the semi-colon;

15 (C) in paragraph (3), by striking “; and” and inserting a period; and

16 (D) by striking paragraph (4).

17 (4) in subsection (z) (relating to the definition of the term “Federal banking  
18 agency”), by striking “Comptroller of the Currency, the Director of the Office of Thrift  
19 Supervision,” and inserting “Director of the National Bank Supervisor,”.

20 **SEC. 363. AMENDMENTS TO SECTION 7.**

21 Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

22 (1) in paragraph (2)—

23 (A) in subparagraph (A)—

24 (i) in the first sentence, by striking “Comptroller of the Currency,

1 the Director of the Office of Thrift Supervision,” and inserting “Director  
2 of the National Bank Supervisor,”;

3 (ii) in the second sentence, by striking “Comptroller of the  
4 Currency, the Director of the Office of Thrift Supervision,” and inserting  
5 “Director of the National Bank Supervisor,”;

6 (B) in subparagraph (B), by striking “Comptroller of the Currency, the  
7 Board of Governors of the Federal Reserve System, and the Director of the Office  
8 of Thrift Supervision,” and inserting “Board of Governors of the Federal Reserve  
9 System and the Director of the National Bank Supervisor,”;

10 (2) in paragraph (3), in the first sentence, by striking “Comptroller of the  
11 Currency, the Chairman of the Board of Governors of the Federal Reserve System, and  
12 the Director of the Office of Thrift Supervision” and inserting “Chairman of the Board of  
13 Governors of the Federal Reserve System, and the Chair of the Director of the National  
14 Bank Supervisor”;

15 (3) in paragraph (7), by striking “Comptroller of the Currency, Director of the  
16 Office of Thrift Supervision,” and inserting “Director of the National Bank Supervisor,”;  
17 and

18 (4) in paragraph (8), by striking “the Comptroller of the Currency,” and inserting  
19 “Director of the National Bank Supervisor,”;

20 **SEC. 364. AMENDMENTS TO SECTION 8.**

21 Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

22 (1) in subsection (a)(8)(B)(ii), in the last sentence —

23 (A) by striking “Director of the Office of Thrift Supervision” each place it

1 appears and inserting “Director of the National Bank Supervisor”;

2 (B) by inserting “the Office of Thrift Supervision, as successor to” after  
3 “as a successor to” and before “the Federal Savings and Loan Insurance  
4 Corporation”;

5 (2) in subsection (b)(5), by striking “Comptroller of the Currency,” each place it  
6 appears and inserting “Director of the National Bank Supervisor,”

7 (3) in subsection (g)(2), in the second sentence, by striking “Comptroller of the  
8 Currency” and inserting “Director of the National Bank Supervisor”;

9 (4) in subsection (o)—

10 (A) by striking “Comptroller of the Currency” and inserting “Director of  
11 the National Bank Supervisor”;

12 (B) by striking “Director of the Office of Thrift Supervision” and inserting  
13 “Director of the National Bank Supervisor”;

14 (5) in subsection (w)(3)(A), by striking “Office of Thrift Supervision” and  
15 inserting “National Bank Supervisor”.

16 **SEC. 365. AMENDMENTS TO SECTION 11.**

17 Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

18 (1) in subsection (c)—

19 (A) in paragraph (6)—

20 (i) in the heading, by striking “DIRECTOR OF THE OFFICE OF THRIFT  
21 SUPERVISION” and inserting “DIRECTOR OF THE NATIONAL BANK  
22 SUPERVISOR”;

23 (ii) in subparagraph (A), by striking “Director of the Office of

1 Thrift Supervision” and inserting “Director of the National Bank  
2 Supervisor”;

3 (iii) in subparagraph (B), by striking “Director of the Office of  
4 Thrift Supervision” and inserting “Director of the National Bank  
5 Supervisor”;

6 (2) in subsection (d)—

7 (A) in paragraph (2)(F)(i), by striking “Director of the Office of Thrift  
8 Supervision” and inserting “Director of the National Bank Supervisor”;

9 (B) in paragraph (17)(A)—

10 (i) by striking “Comptroller of the Currency or the Director of the  
11 Office of Thrift Supervision” and inserting “Director of the National Bank  
12 Supervisor”; and

13 (B) by striking “appropriate”;

14 (C) in paragraph (18)(B), by striking “Comptroller of the Currency or the  
15 Director of the Office of Thrift Supervision” and inserting “Director of the  
16 National Bank Supervisor”;

17 (3) in subsection (m)—

18 (A) in paragraph (9), by striking “Comptroller of the Currency” and  
19 inserting “Director of the National Bank Supervisor”;

20 (B) in paragraph (16), by striking “Comptroller of the Currency” each  
21 place it appears and inserting “Director of the National Bank Supervisor”;

22 (C) in paragraph (18), by striking “Comptroller of the Currency” each  
23 place it appears and inserting “Director of the National Bank Supervisor”;



1 (4) in subsection (n)—

2 (A) in paragraph (1)(A), by striking “Office of the Comptroller of the  
3 Currency” and inserting “Director of the National Bank Supervisor”;

4 (B) in paragraph (2)(A), by striking “Comptroller of the Currency” and  
5 inserting “Director of the National Bank Supervisor”;

6 (C) in paragraph (4)—

7 (i) in subparagraph (D), by striking “Comptroller of the Currency”  
8 and inserting “Director of the National Bank Supervisor”; and

9 (ii) in subparagraph (G), by striking “Comptroller of the Currency”  
10 and inserting “Director of the National Bank Supervisor”; and

11 (D) in paragraph (12)(B), by striking “Comptroller of the Currency” each  
12 place it appears and inserting “Director of the National Bank Supervisor”.

13 **SEC. 366. AMENDMENTS TO SECTION 13.**

14 Section 13(k) (1)(A)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)  
15 (1)(A)(iv)) is amended by striking “Director of The Office of Thrift Supervision” and inserting  
16 “Director of the National Bank Supervisor”.

17 **SEC. 367. AMENDMENTS TO SECTION 18.**

18 Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

19 (1) in subsection (c)—

20 (A) in paragraph (2)—

21 (i) in subparagraph (A), by striking “Comptroller of the Currency”  
22 and inserting “Director of the National Bank Supervisor”;

23 (ii) in subparagraph (B), by adding “and” at the end after the semi-  
24 colon;

1 (iii) in subparagraph (C), by striking “; and” and inserting a period;

2 and

3 (iv) by striking subparagraph (D); and

4 (2) in subsection (g)(1), by striking “Director of the Office of Thrift Supervision”

5 and inserting “Director of the National Bank Supervisor”;

6 (3) in subsection (i)—

7 (A) in paragraph (2)—

8 (i) by amending subparagraph (B) to read as follows:

9 “(B) the corporation, if the resulting institution is to be a State nonmember  
10 insured bank or insured State savings association.”; and

11 (ii) by striking subparagraphs (C) and (D);

12 (4) in subsection (m)—

13 (A) in paragraph (1)—

14 (i) in subparagraph (A), by striking “Director of the Office of  
15 Thrift Supervision” and inserting “Director of the National Bank  
16 Supervisor”;

17 (ii) in subparagraph (B), by striking “Director of the Office of  
18 Thrift Supervision” and inserting “Director of the National Bank  
19 Supervisor”;

20 (B) in paragraph (2)—

21 (i) in subparagraph (A), by striking “Director of the Office of  
22 Thrift Supervision” and inserting “Director of the National Bank  
23 Supervisor”;

24 (ii) in subparagraph (B), by striking “Director of the Office of

1 Thrift Supervision” each place it appears and inserting “Director of the  
2 National Bank Supervisor”

3 (C) in paragraph (3)—

4 (i) in subparagraph (A), by striking “Director of the Office of  
5 Thrift Supervision” and inserting “Director of the National Bank  
6 Supervisor”; and

7 (ii) in subparagraph (B), by striking “Office of Thrift Supervision”  
8 and inserting “National Bank Supervisor”.

9 **SEC. 368. AMENDMENTS TO SECTION 28.**

10 Section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

11 (1) in subsection (e)—

12 (A) in paragraph (2)—

13 (i) in subparagraph (A)(ii), by striking “Director of the Office of  
14 Thrift Supervision” and inserting “Director of the National Bank  
15 Supervisor”;

16 (ii) in subparagraph (C), by striking “Director of the Office of  
17 Thrift Supervision” and inserting “Director of the National Bank  
18 Supervisor”;

19 (iii) in subparagraph (F), by striking “Director of the Office of  
20 Thrift Supervision” and inserting “Director of the National Bank  
21 Supervisor”;

22 (B) in paragraph (3)—

23 (i) in subparagraph (A), by striking “Director of the Office of

1 Thrift Supervision” and inserting “Director of the National Bank  
2 Supervisor”;

3 (ii) in subparagraph (B), by striking “Director of the Office of  
4 Thrift Supervision” and inserting “Director of the National Bank  
5 Supervisor”;

6 (2) in subsection (h)(2), by striking “Director of the Office of Thrift Supervision”  
7 and inserting “Director of the National Bank Supervisor”.

8 **CHAPTER 52—CONFORMING AMENDMENTS TO**  
9 **OTHER BANKING STATUTES**

10 **SEC. 371. AMENDMENTS TO THE ACT OF JUNE 30, 1876.**

11 (a) AMENDMENTS TO SECTION 1.—Section 1 of the Act of June 30, 1876 (12 U.S.C. 191),  
12 is amended—

13 (1) in subsection (a)—

14 (A) by striking “Comptroller of the Currency” and inserting “Director of  
15 the National Bank Supervisor”;

16 (B) by striking “Comptroller” and inserting “Director”; and

17 (C) by striking “Comptroller’s” and inserting “Director’s”;and

18 (2) in subsection (b) by striking “Comptroller of the Currency” each place it  
19 appears and inserting “Director of the National Bank Supervisor”.

20 (b) AMENDMENTS TO SECTION 3.—Section 3 of the Act of June 30, 1876 (12 U.S.C. 197),  
21 is amended—

22 (1) in subsection (a)—

23 (A) by striking “Comptroller of the Currency” and inserting “Director of

1 the National Bank Supervisor “;

2 (B) by striking “Comptroller” each place it appears and inserting

3 “Director”; and

4 (2) in subsection (b), by striking “Comptroller of the Currency” each place it  
5 appears and inserting “Director of the National Bank Supervisor”.

6 (c) AMENDMENT TO SECTION 6.—Section 6 of the Act of June 30, 1876 (omitted from the  
7 United States Code), is amended by striking “Comptroller of the Currency” and inserting  
8 “Director of the National Bank Supervisor “.

9 **SEC. 372. AMENDMENT TO THE ACT OF MARCH 29, 1886.**

10 (a) AMENDMENT TO FIRST UNDESIGNATED PARAGRAPH.—The first undesignated  
11 paragraph of the Act of March 29, 1886 (12 U.S.C. 198), is amended by striking “Comptroller of  
12 the Currency” each place it appears and inserting “Director of the National Bank Supervisor”.

13 (b) AMENDMENT TO SECTION 2.—Section 2 of the Act of March 29, 1886 (12 U.S.C. 199)  
14 is amended—

15 (1) by striking “Comptroller of the Currency” each place it appears and inserting  
16 “Director of the National Bank Supervisor”; and

17 (2) by striking “submitted to the Secretary of the Treasury”;

18 (3) by striking “him” and inserting “the Director”;

19 (4) by deleting the comma after “approvals”; and

20 (5) by deleting “shall be filed with the Treasurer of the United States”.

21 (c) AMENDMENTS TO SECTION 3.—Section 3 of the Act of March 29, 1886 (12 U.S.C.  
22 200) is amended—

23 (1) by striking “Comptroller of the Currency” each place it appears and inserting

1 “Director of the National Bank Supervisor “;

2 (2) by striking “,with the approval of the Secretary of the Treasury,”; and

3 (3) by striking “he” and inserting “the Director”.

4 **SEC. 373. AMENDMENTS TO THE ACT OF MAY 1, 1886.**

5 Section 2 of the Act of May 1, 1886 (12 U.S.C. 30) is amended—

6 (1) in subsection (a), by striking “Comptroller of the Currency” and inserting

7 “Director of the National Bank Supervisor “; and

8 (2) in subsection (b), by striking “Comptroller of the Currency” each place it

9 appears and inserting “Director of the National Bank Supervisor “.

10 **SEC. 374. AMENDMENTS TO THE ACT OF NOVEMBER 7, 1918.**

11 (a) AMENDMENTS TO THE FIRST SECTION.—The first section of the Act of November 7,  
12 1918 (12 U.S.C. 215) is amended—

13 (1) in subsection (a), by striking “Comptroller” each place it appears and inserting

14 “Director”;

15 (2) in subsection (b), by striking “Comptroller” each place it appears and inserting

16 “Director”;

17 (3) in the third sentence of subsection (c), by striking “Comptroller” and inserting

18 “Director”; and

19 (4) in subsection (d), by striking “Comptroller” each place it appears and inserting

20 “Director”.

21 (b) AMENDMENTS TO SECTION 2.—Section 2 of the Act of November 7, 1918 (12 U.S.C.  
22 215a) is amended—

23 (1) in subsection (a)—

1 (A) in the heading by striking “Comptroller” and inserting “Director” and

2 (B) by striking “Comptroller” each place it appears and inserting

3 “Director”;

4 (2) in subsection (b), by striking “Comptroller” each place it appears and inserting

5 “Director “;

6 (3) in the third sentence of subsection (c), by striking “Comptroller” and inserting

7 “Director”; and

8 (4) in subsection (d), by striking “Comptroller” each place it appears and inserting

9 “Director “.

10 (c) AMENDMENT TO SECTION 3.—Section 3(3) of the Act of November 7, 1918 (12

11 U.S.C. 215b(3) is amended to read as follows:

12 “(3) ‘Director’ means the Director of the National Bank Supervisor; and”.

13 (d) AMENDMENT TO SECTION 5.—Section 5 of the Act of November 7, 1918

14 (12 U.S.C. 215a-2) is amended—

15 (1) in subsection (a) by striking “Comptroller” each place it appears and inserting

16 “Director”; and

17 (2) in subsection (c) by striking “Comptroller” and inserting “Director”.

18 (e) AMENDMENT TO SECTION 6.—Section 6 of the Act of November 7, 1918 (12 U.S.C.

19 215a-3) is amended by striking “Comptroller” and inserting “Director”.

20 **SEC. 375 . AMENDMENT TO THE ACT OF FEBRUARY 25, 1930.**

21 The Act of February 25, 1930 (12 U.S.C. 67) is amended by striking “Comptroller of the

22 Currency” and inserting “Director of the National Bank Supervisor”.

23 **SEC. 376. AMENDMENTS TO THE ACT OF MARCH 9, 1933.**

1 (a) AMENDMENTS TO SECTION 4.—Section 4(b)(1) of the Act of March 9, 1933 (12  
2 U.S.C. 95(b)(1)) is amended by striking “Comptroller of the Currency” each place it appears and  
3 inserting “Director of the National Bank Supervisor”.

4 (b) AMENDMENT TO SECTION 301.—Section 301 of the Act of March 9, 1933 (12 U.S.C.  
5 51a) is amended—

6 (1) in the first sentence—

7 (A) by striking “Comptroller of the Currency” and inserting “Director of  
8 the National Bank Supervisor”; and

9 (B) by striking “said Comptroller” and inserting  
10 “Director”;

11 (2) in the second sentence—

12 (A) by striking “Comptroller of the Currency” and inserting “Director of  
13 the National Bank Supervisor”; and

14 (B) by striking “his” each place it appears and inserting “the Director’s” .

15 (c) AMENDMENT TO SECTION 302.—Section 302(a) of the Act of March 9, 1933 (12  
16 U.S.C. 51b(a)) is amended in the first sentence by striking “Comptroller of the Currency” and  
17 inserting “Director of the National Bank Supervisor”.

18 **SEC. 377. AMENDMENTS TO THE ACT OF AUGUST 17, 1950.**

19 Section 2 of the Act of August 17, 1950 (12 U.S.C. 214a) is amended—

20 (1) in subsection (a), by striking “Comptroller of the Currency” and inserting  
21 “Director of the National Bank Supervisor”; and

22 (2) in subsection (b)—

23 (A) in the third sentence, by striking “Comptroller of the Currency” and



1 inserting “Director of the National Bank Supervisor”; and

2 (B) by striking “Comptroller” each place it appears and inserting

3 “Director”.

4 **SEC. 378. AMENDMENTS TO THE ACT OF SEPTEMBER 8, 1959.**

5 Section 13 of the Act of September 8, 1959 (12 U.S.C. 21a) is amended in the last  
6 sentence—

7 (1) in the last sentence by striking “Comptroller of the Currency” and inserting

8 “Director of the National Bank Supervisor”; and

9 (2) by striking “his” and inserting “the Director ‘s”.

10 **SEC. 379. AMENDMENTS TO THE ACT OF SEPTEMBER 28, 1962.**

11 (a) AMENDMENTS TO THE FIRST SECTION.—The first undesignated section of the Act of  
12 September 28, 1962 (12 U.S.C. 92a) is amended—

13 (1) in subsection (a)—

14 (A) in the heading, by striking “COMPTROLLER OF THE CURRENCY” and  
15 inserting “DIRECTOR OF THE NATIONAL BANK SUPERVISOR”; and

16 (B) by striking “Comptroller of the Currency” and inserting “Director of  
17 the National Bank Supervisor”;

18 (2) in the second sentence of subsection (c), by striking “Comptroller of the  
19 Currency” and inserting “Director of the National Bank Supervisor”;

20 (3) in subsection (d), by striking “Comptroller of the Currency” and inserting  
21 “Director of the National Bank Supervisor”;

22 (4) in subsection (i), by striking “Comptroller of the Currency” and inserting  
23 “Director of the National Bank Supervisor”;

1 (5) in subsection (j)—

2 (A) in the heading by striking “Comptroller” and inserting  
3 “Director”;

4 (B) by striking “Comptroller of the Currency” each place it appears and  
5 inserting “Director of the National Bank Supervisor”;

6 (C) in the second sentence, by striking “his” and inserting “the Director of  
7 the National Bank Supervisor’s”; and

8 (D) in the last sentence, by striking “he” and inserting “the Director of the  
9 National Bank Supervisor”; and

10 (6) in subsection (k)—

11 (A) in the first sentence of paragraph (1), by striking “Comptroller of the  
12 Currency” and inserting “Director of the National Bank Supervisor”; and

13 (A) by striking “Comptroller” each place it appears and inserting “Director  
14 of the National Bank Supervisor”.

15 (b) AMENDMENTS TO SECTION 2.—Section 2 of the Act of September 28, 1962 (12 U.S.C.  
16 92a nt.) is amended in the second sentence by striking “Comptroller of the Currency” and  
17 inserting “Director of the National Bank Supervisor”.

18 **SEC. 380. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION**  
19 **PARITY ACT OF 1982.**

20 (a) AMENDMENTS TO SECTION 802.—Section 802(a)(3) of the Alternative Mortgage  
21 Transaction Parity Act of 1982 (12 U.S.C. 3801) is amended—

22 (1) by striking “Comptroller of the Currency,” and inserting “Director of the  
23 National Bank Supervisor and”; and

1 (2) by striking “, and the Director of the Office of Thrift Supervision”.

2 (b) AMENDMENTS TO SECTION 804.—Section 804(a) of the Alternative Mortgage  
3 Transaction Parity Act of 1982 (12 U.S.C. 3803) is amended—

4 (1) by amending paragraph (3) to read as follows:

5 “(2) with respect to all other housing creditors, including without limitation,  
6 banks, savings associations, mutual savings banks, and savings banks, only to  
7 transactions made in accordance with regulations governing alternative mortgage  
8 transactions as issued by the Director of the National Bank Supervisor for national banks,  
9 to the extent that such regulations are authorized by rulemaking authority granted to the  
10 Director of the National Bank Supervisor with regard to national banks under laws other  
11 than this section.”; and

12 (2) by striking paragraph (1); and

13 (3) by redesignating paragraph (2) as paragraph (1).

14 **SEC. 381. AMENDMENTS TO THE BANK CONSERVATION ACT.**

15 (a) AMENDMENT TO SECTION 202.—Section 202 of the Bank Conservation Act (12 U.S.C.  
16 202) is amended by striking “Comptroller of the Currency” each place it appears and inserting  
17 “Director of the National Bank Supervisor”.

18 (b) AMENDMENTS TO SECTION 203.—Section 203 of the Bank Conservation Act (12  
19 U.S.C. 203) is amended—

20 (1) in subsection (a), by striking “Comptroller of the Currency” each place it  
21 appears and inserting “Director of the National Bank Supervisor”; and

22 (2) in subsection (b)—

23 (A) by striking “Comptroller” each place it appears and inserting

1 “Director”;

2 (B) by striking “Comptroller’s” and inserting “Director’s”;

3 (3) in subsection (c), by striking “Comptroller” each place it appears and inserting  
4 “Director”;

5 (4) in subsection (d), by striking “Comptroller” each place it appears and inserting  
6 “Director”;

7 (5) in subsection (e)—

8 (A) by striking “Comptroller” and inserting “Director”; and

9 (B) by striking “Comptroller’s” and inserting “Director’s”.

10 (c) AMENDMENTS TO SECTION 204.—Section 204 of the Bank Conservation Act (12  
11 U.S.C. 204) is amended—

12 (1) in the first sentence, by striking “Comptroller of the Currency” and inserting  
13 “Director of the National Bank Supervisor”; and

14 (2) in the second sentence, by striking “Comptroller” and inserting “Director”.

15 (d) AMENDMENTS TO SECTION 205.—Section 205 of the Bank Conservation Act (12  
16 U.S.C. 205) is amended—

17 (1) in subsection (a), by striking “Comptroller” each place it appears and inserting  
18 “Director”;

19 (2) in subsection (b), by striking “Comptroller” and inserting  
20 “Director”; and

21 (3) in subsection (c), by striking “Comptroller” and inserting  
22 “Director”.

23 (e) AMENDMENTS TO SECTION 206.—Section 206 of the Bank Conservation Act (12

1 U.S.C. 206) is amended—

2 (1) in subsection (a), by striking “Comptroller” and inserting

3 “Director”;

4 (2) in subsection (b)—

5 (A) in the heading, by striking “COMPTROLLER” and inserting

6 “DIRECTOR”;

7 (B) by striking “Comptroller” and inserting “Director”;

8 (3) in subsection (c), by striking “Comptroller” each place it appears and inserting

9 “Director”;

10 (4) in subsection (d)—

11 (A) by striking “Comptroller of the Currency” and inserting “Director of

12 the National Bank Supervisor”;

13 (B) by striking “Comptroller” each place it appears and inserting

14 “Director”;

15 (f) AMENDMENT TO SECTION 209.—Section 209(c) of the Bank Conservation Act (12

16 U.S.C. 209(c)) is amended by striking “Comptroller” each place it appears and inserting

17 “Director”.

18 (g) AMENDMENT TO SECTION 210.—Section 210 of the Bank Conservation Act (12

19 U.S.C. 210) is amended by striking “Comptroller of the Currency” and inserting “Director of the

20 National bank Supervisor.”

21 (h) AMENDMENTS TO SECTION 211.—Section 211 of the Bank Conservation Act (12

22 U.S.C. 211) is amended—

23 (1) in subsection (a)—

1 (A) by striking “Comptroller of the Currency” and inserting “Director of  
2 the National Bank Supervisor”;

3 (B) by striking “Comptroller” and inserting “Director”;

4 (2) in subsection (b), by striking “Comptroller” and inserting “Director”.

5 **SEC. 382. AMENDMENTS TO THE BANK ENTERPRISE ACT OF 1991.**

6 (a) AMENDMENTS TO SECTION 232.—Subsection 232(a) of the Bank Enterprise Act of  
7 1991 (12 U.S.C. 1834(a)) is amended—

8 (1) in the heading, by striking “FEDERAL RESERVE BOARD” and inserting “THE  
9 DIRECTOR OF THE NATIONAL BANK SUPERVISOR”;

10 (2) in paragraph (1), by striking “Board of Governors of the Federal Reserve  
11 System,” and inserting “Director of the National Bank Supervisor”;

12 (3) in paragraph (2), by striking “Board” each place it appears and inserting  
13 “Director”

14 (3) in paragraph (3)—

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

16 “(A) DIRECTOR OF THE NATIONAL BANK SUPERVISOR.—The term  
17 ‘Director’ means the Director of the National Bank Supervisor”;

18 (B) in subparagraph (C), by striking “Board” and inserting “Director”.

19 **SEC. 383. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.**

20 (a) AMENDMENTS TO SECTION 2.—Section 2 of the Bank Holding Company Act of 1956  
21 (12 U.S.C. 1841) is amended by deleting subsections (i), (j) and (l) and re-lettering the remaining  
22 subsections accordingly.

23 (b) AMENDMENTS TO SECTION 3.—Section 3 of the Bank Holding Company Act of 1956

1 (12 U.S.C. 1842) is amended—

2 (1) in subsection (b)—

3 (A) in the heading by striking “Comptroller of the Currency” and  
4 inserting “Director of the National Bank Supervisor”;

5 (B) in paragraph (1) by striking “Comptroller of the Currency” each place  
6 it appears and inserting “Director of the National Bank Supervisor”;

7 (c) AMENDMENTS TO SECTION 4.—Section 4 of the Bank Holding Company Act of 1956  
8 (12 U.S.C. 1843) is amended—

9 (A) in subsection (f) paragraph (12)(A)—

10 (i) by striking “Resolution Trust Corporation”; and

11 (ii) by striking “Director of the Office of Thrift Supervision” and inserting  
12 “Director of the National Bank Supervisor “.

13 (d) AMENDMENTS TO SECTION 5.—Section 5 of the Bank Holding Company Act of 1956  
14 (12 U.S.C. 1844) is amended in subsection (e), in paragraph (1) by striking “Comptroller of the  
15 Currency” each place it appears and inserting “Director of the National Bank Supervisor” .

16 (e) AMENDMENTS TO SECTION 11.—Section 11 of the Bank Holding Company Act of  
17 1956 (12 U.S.C. 1849) is amended in the third sentence, by striking “Comptroller of the  
18 Currency” and inserting “Director of the National Bank Supervisor”.

19 **SEC. 384. AMENDMENTS TO THE BANK HOLDING COMPANY ACT**

20 **AMENDMENTS OF 1970.**

21 Section 106(b)(F)(ix) of the Bank Holding Company Act Amendments of 1970 (12  
22 U.S.C. 1972(2)(F)(ix)) is amended by striking “Comptroller of the Currency,” and inserting  
23 “Director of the National Bank Supervisor”.

1 **SEC. 385. AMENDMENTS TO THE BANK PROTECTION ACT OF 1968.**

2 (a) AMENDMENT TO TITLE.—The title of the Bank Protection Act of 1968 is amended to  
3 read as follows:

4 “AN ACT To provide security measures for banks and other financial institutions.”.

5 (b) AMENDMENT TO SECTION 2.—Section 2 of the Bank Protection Act of 1968 (12  
6 U.S.C. 1881) is amended—

7 (1) in paragraph (1) by striking “Comptroller of the Currency” and inserting  
8 “Director of the National Bank Supervisor.”;

9 (2) in paragraph (2), by inserting “and” at the end;

10 (3) in paragraph (3), by striking “, and” at the end of and inserting a period; and

11 (4) by striking paragraph (4).

12 **SEC. 386. AMENDMENTS TO THE BANK SERVICE CORPORATION ACT.**

13 (a) AMENDMENTS TO SECTION 1.—Section 1(b) of the Bank Service Corporation Act (12  
14 U.S.C. 1861(b)) is amended—

15 (1) in paragraph (4), by striking “Director of the Office of Thrift Supervision”  
16 and inserting “Director of the National bank Supervisor”

17 (2) by striking “, the Federal Savings and Loan Insurance Corporation,”.

18 **SEC. 387. AMENDMENTS TO THE BANKING ACT OF 1933.**

19 (a) AMENDMENT TO SECTION 22.—Section 22 of the Banking Act of 1933 (12 U.S.C.  
20 64a) is amended by striking “Comptroller of the Currency” each place it appears and inserting  
21 “Director of the National Bank Supervisor”.

22 (b) AMENDMENTS TO SECTION 29.—Section 29 of the Banking Act of 1933 (12 U.S.C.  
23 197a) is amended—



1 (1) in the first sentence—

2 (A) by striking “Comptroller of the Currency” and inserting “Director of  
3 the National Bank Supervisor”;

4 (B) by striking “Comptroller” and inserting “Director”;

5 (C) by striking “his” and inserting “Director”; and

6 (2) in the second sentence, by striking “Comptroller” each place it appears and  
7 inserting “Director”.

8 (c) AMENDMENTS TO SECTION 31.—Section 31 of the Banking Act of 1933 (12 U.S.C.  
9 71a) is amended in the second sentence, by striking “Comptroller of the Currency, the said  
10 Comptroller” and inserting “Director of the National Bank Supervisor.

11 **SEC. 388. AMENDMENTS TO THE BANKING ACT OF 1935.**

12 Section 345 of the Banking Act of 1935 (12 U.S.C. 51b-1) is amended by striking  
13 “Comptroller of the Currency” each place it appears and inserting “Director of the National Bank  
14 Supervisor”.

15 **SEC. 389. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.**

16 Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended—

17 (1) in subsection (1)—

18 (A) in paragraph (A) by striking “Comptroller of the Currency” and  
19 inserting “Director of the National Bank Supervisor”;

20 (B) by striking paragraph (D); and

21 (2) in subsection (3) by “, savings bank, savings and loan association”.

22 **SEC. 390. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT**  
23 **INTERLOCKS ACT.**

1 (a) AMENDMENTS TO SECTION 202.—Subsection 202 of the Depository Institution  
2 Management Interlocks Act (12 U.S.C. 3201) is amended—

3 (1) by striking paragraph (1) and inserting the following—

4 “(1) the term ‘depository institution’ means a commercial bank, a trust company  
5 or a credit union.”

6 (2) in paragraph (2), by placing a semi-colon after “thereof” and striking “, or a  
7 savings and loan holding company as defined in section 1730a(a)(1)(D) of this title;” and

8 (3) in paragraph (3)(A), by striking “or in section 1730a(a)(1)(H) of this title in  
9 the case of a savings and loan holding company”

10 (b) AMENDMENTS TO SECTION 205.—Section 205 of the Depository Institution  
11 Management Interlocks Act (12 U.S.C. 3204) is amended—

12 (1) by striking paragraph (8); and

13 (2) by striking paragraph (9)

14 (c) AMENDMENT TO SECTION 207.—Section 207 of the Depository Institution  
15 Management Interlocks Act (12 U.S.C. 3206) is amended—

16 (1) in paragraph (1) by striking “Comptroller of the Currency” and inserting  
17 “Director of the National Bank Supervisor” ;

18 (2) by striking paragraph (4); and

19 (3) by renumbering paragraphs (5) and (6) and paragraphs (4) and (5),  
20 respectively.

21 (d) AMENDMENT TO SECTION 209.—Section 209 of the Depository Institution  
22 Management Interlocks Act (12 U.S.C. 3207) is amended—

23 (1) in paragraph (1), by striking “Comptroller of the Currency” and inserting

1 “Director of the National Bank Supervisor”;

2 (2) by striking paragraph (4);

3 (3) by renumbering paragraph (5) and paragraph (4).

4 (f) AMENDMENT TO SECTION 210.—Subsection 210(a) of the Depository Institution  
5 Management Interlocks Act (12 U.S.C. 3208(a)) is amended by striking “his” and inserting “his  
6 or her”.

7 **SEC. 391. AMENDMENTS TO THE EMERGENCY HOMEOWNER’S RELIEF ACT.**

8 Section 110 of the Emergency Homeowner’s Relief Act (12 U.S.C. 2709) is amended—

9 (1) by striking “Comptroller of the Currency” and inserting “Director of the  
10 National Bank Supervisor”;

11 (2) by striking the “Federal Home Loan bank Board” and inserting “Federal  
12 Housing Finance Agency”; and

13 (3) by striking “the Federal Savings and Loan Insurance Corporation”.

14 **SEC. 392. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.**

15 Section 704 of the Equal Credit Opportunity Act (15 U.S.C. 1691c) is amended in  
16 subsection (a)—

17 (1) in paragraph (1)(A), by striking “Office of the Comptroller of the Currency”  
18 and inserting “National Bank Supervisor”;

19 (2) by striking paragraph (2); and

20 (3) by renumbering paragraphs (3) through (9) as paragraphs (2) through (8).

21 **SEC. 393. AMENDMENTS TO THE FEDERAL CREDIT UNION ACT.**

22 (a) AMENDMENTS TO SECTION 206.—Section 206 of the Federal Credit Union Act (12  
23 U.S.C. 1786) is amended—

1 (1) in subsection (g)(7)—

2 (A) in subparagraph (A)—

3 (i) in clause (vi)—

4 (I) by striking “Federal Housing Finance Board” and  
5 inserting “Federal Housing Finance Agency”;

6 (II) by striking “and” after the semi-colon;

7 (III) striking the semi-colon and inserting a period; and

8 (ii) by striking clause (vii)(2) in subparagraph (D)—

9 (I) in clause (iv), by striking at the end “; and” and inserting  
10 a period; and

11 (II) striking clause (v).

12 **SEC. 394. AMENDMENTS TO THE FEDERAL FINANCIAL INSTITUTIONS**

13 **EXAMINATION COUNCIL ACT OF 1978.**

14 (a) AMENDMENT TO SECTION 1002.—Section 1002 of the Federal Financial Institutions  
15 Examination Council Act of 1978 (12 U.S.C. 3301) is amended—

16 (1) by striking “Office of the Comptroller of the Currency” and inserting  
17 “National Bank Supervisor”; and

18 (2) striking “Federal Home Loan Bank Board” and inserting “Federal Housing  
19 Finance Agency”.

20 (b) AMENDMENT TO SECTION 1003.—Section 1003 of the Federal Financial Institutions  
21 Examination Council Act of 1978 (12 U.S.C. 3302) is amended—

22 (1) in paragraph (1)—

23 (A) by striking “Office of the Comptroller of the Currency” and inserting

1 “National Bank Supervisor”; and

2 (B) by striking “the Office of Thrift Supervision,”;

3 (2) by striking paragraph (3) and inserting the following—

4 “(3) the term ‘financial institution’ means a bank, a trust company, a  
5 homestead association, a cooperative bank , or a credit union.”

6 (c) AMENDMENTS TO SECTION 1004—Section 1004 of the Federal Financial Institutions  
7 Examination Council Act of 1978 (12 U.S.C. 3303) is amended in subsection (a)—

8 (1) in paragraph (1) by striking “Comptroller of the Currency,” and inserting  
9 “Director of the National Bank Supervisor,”;

10 (2) by striking paragraph (4); and

11 (3) by renumbering paragraph (5) as paragraph (4).

12 **SEC. 395. AMENDMENTS TO THE FEDERAL HOME LOAN BANK ACT.**

13 (a) AMENDMENTS TO SECTION 18.—Subsection 18(c) of the Federal Home Loan Bank  
14 Act (12 U.S.C. 1438(c)) is amended—

15 (1) by striking “Director of the Office of Thrift Supervision” each place it appears  
16 and inserting “Director of the National Bank Supervisor”;

17 (2) in paragraph (1)(B), by striking “and the agencies under its administration or  
18 supervision”;

19 (3) in paragraph (5), by striking “and such agencies”.

20 (b) AMENDMENTS TO SECTION 21A.—Section 21A of the Federal Home Loan Bank Act  
21 (12 U.S.C. 1441a) is repealed.

22 **SEC. 396. AMENDMENTS TO THE FEDERAL RESERVE ACT.**

23 (a) AMENDMENTS TO SECTION 2.—The sixth undesignated paragraph of section 2 of the

1 Federal Reserve Act (12 U.S.C. 501a) is amended by striking “Comptroller of the Currency” and  
2 inserting “Director of the National Bank Supervisor “.

3 (b) AMENDMENTS TO SECTION 4.—Section 4 of the Federal Reserve Act is amended—

4 (1) in the first undesignated paragraph (omitted from the United States Code), by  
5 striking “Comptroller of the Currency” each place it appears and inserting “Director of  
6 the National Bank Supervisor”;

7 (2) in the third undesignated paragraph (omitted from the United States Code)—

8 (A) by striking “Comptroller of the Currency” and inserting “Director of  
9 the National Bank Supervisor,”; and

10 (B) by striking “his office” and inserting “the Director’s office”;

11 (3) in the first sentence of the fourth undesignated paragraph (12 U.S.C. 341), by  
12 striking “Comptroller of the Currency” and inserting “Director of the National Bank  
13 Supervisor “; and

14 (4) in the fifth undesignated paragraph (12 U.S.C. 341), by striking “Comptroller  
15 of the Currency” and inserting “Director of the National Bank Supervisor”.

16 (c) AMENDMENT TO SECTION 6.—The first sentence of the second undesignated paragraph  
17 of section 6 of the Federal Reserve Act (12 U.S.C. 288) is amended by striking “Comptroller of  
18 the Currency may, if he deems it advisable,” and inserting “Director of the National Bank  
19 Supervisor may, if the Director deems it advisable,”.

20 (d) AMENDMENTS TO SECTION 9.—Section 9 of the Federal Reserve Act is amended—

21 (2) in the sixth undesignated paragraph (12 U.S.C. 324)—

22 (A) in the first sentence by striking “Comptroller of the Currency” and  
23 inserting “Director of the National Bank Supervisor”.

1 (e) AMENDMENTS TO SECTION 11.—Section 11 of the Federal Reserve Act (12 U.S.C.  
2 248) is amended in subsection (a) (2)(B)—

3 (1) in clause (i) by inserting “and” after “nonmember banks,” and by deleting  
4 “and mutual savings banks,”;

5 (2) by striking clause (iii) and renumbering clause (iv) as clause (iii).

6 (f) AMENDMENT TO SECTION 13.—The eleventh undesignated paragraph of section 13 of  
7 the Federal Reserve Act (12 U.S.C. 92) is amended by striking “Comptroller of the Currency”  
8 and inserting “Director of the National Bank Supervisor” .

9 (g) AMENDMENTS TO SECTION 19.—Section 19 of the Federal Reserve Act (12 U.S.C.  
10 461(b)) is amended—

11 (1) in subsection (b)—

12 (A) in paragraph (1)(A)—

13 (i) by striking clauses (ii), (iii) (v) and (vi);

14 (ii) by renumbering the remaining clauses as (ii) and (iii); and

15 (iii) in redesignated clause (iii), striking “clauses (i) through (vi)  
16 and inserting “in this subsection.”.

17 (B) in paragraph (B) by striking “other than a mutual savings bank or a  
18 savings bank as defined in such section”; and

19 (C) in paragraph (F) striking “the Director of the Office of Thrift  
20 Supervision” and inserting “the Director of the National Bank Supervisor”.

21 (2) in paragraph (4)(B), by striking “the Director of the Office of Thrift  
22 Supervision” and inserting “the Director of the National Bank Supervisor”.

23 (h) AMENDMENT TO SECTION 24.—Subsection 24(a) of the Federal Reserve Act (12

1 U.S.C. 371(a)) is amended—

2 (1) in the heading by striking “Comptroller of the Currency” and inserting

3 “Director of the National Bank Supervisor”;

4 (2) in subsection (a) by striking “Comptroller of the Currency” and inserting

5 “Director of the National Bank Supervisor “.

6 (i) AMENDMENTS TO SECTION 24A.—Section 24A of the Federal Reserve Act (12 U.S.C.

7 371d) is amended in subsection (a)—

8 (1) in paragraph (1) by striking “Comptroller of the Currency” and inserting

9 “Director of the National Bank Supervisor”; and

10 (2) in paragraph (3) subparagraph (B) clause (iii) by striking “Comptroller of the

11 Currency” and inserting “Director of the National Bank Supervisor”.

12 (j) AMENDMENTS TO SECTION 25.—Section 25 of the Federal Reserve Act (12 U.S.C.

13 602) is amended in the first undesignated paragraph by striking “Comptroller of the Currency”

14 and inserting “Director of National Bank Supervisor”.

15 (k) AMENDMENTS TO SECTION 25A.—Section 25A of the Federal Reserve Act (12 U.S.C.

16 611-631) is amended—

17 (1) in section 25A(16)—

18 (A) in subsection (a) by striking “Comptroller of the Currency”

19 and inserting “Director of the National Bank Supervisor “;

20 (B) in subsection (b) by striking “Comptroller of the Currency”

21 and inserting “Director of the National Bank Supervisor”;

22 (l) AMENDMENTS TO SECTION 29.—Section 29 of the Federal Reserve Act (12 U.S.C.

23 504) is amended—



1 (1) in subsection (e), by striking “ Comptroller of the Currency” and inserting  
2 “Director of the National Bank Supervisor “; and

3 (2) in subsection (i), by striking “Comptroller of the Currency” and inserting  
4 “Director of the National Bank Supervisor “.

5 **SEC. 397. AMENDMENTS TO THE FINANCIAL INSTITUTIONS REFORM,**  
6 **RECOVERY, AND ENFORCEMENT ACT OF 1989.**

7 (a) AMENDMENTS TO SECTION 302.—Section 302(1) of the Financial Institutions Reform,  
8 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1467a nt.) is amended by striking “Director  
9 of the Office of Thrift Supervision” and inserting “Director of the National Bank Supervisor”.

10 (b) AMENDMENT TO SECTION 305.—Section 305 of the Financial Institutions Reform,  
11 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1464 nt.) is amended—

12 (1) in subsection (b)—

13 (A) in paragraph (1)—

14 (i) by striking “Director of the Office of Thrift Supervision” and  
15 inserting “Director of the National Bank Supervisor”; and

16 (2) in subsection (c)—

17 (A) in paragraph (1), by striking “appropriate Federal banking agency”  
18 and inserting “Director of the National Bank Supervisor”; and

19 (B) in paragraph (2), by striking “appropriate Federal banking agency (as  
20 defined in section 3 of the Federal Deposit Insurance Corporation Act)” and  
21 inserting “Director of the National Bank Supervisor “.

22 (c) AMENDMENT TO SECTION 308.—Subsection 308(a) of the Financial Institutions  
23 Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 nt.) is amended by striking

1 “Director of the Office of Supervision” and Bank Supervisor of and inserting “ Director of the  
2 National Bank Supervisor”.

3 (d) AMENDMENTS TO SECTION 402.—Section 402 of the Financial Institutions Reform,  
4 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1437 nt.) is amended—

5 (1) in subsection (a), by striking “Director of the Office of Thrift Supervision”  
6 and inserting “Director of the National Bank Supervisor “;

7 (2) in subsection (b), by striking “Director of the Office of Thrift Supervision”  
8 and inserting “Chairperson of the Director of the National Bank Supervisor “;

9 (3) in subsection (e)—

10 (A) in paragraph (1), by striking “the Office of Thrift Supervision” and  
11 inserting “Director of the National Bank Supervisor “;

12 (B) in paragraph (2), by striking “Director of the Office of Thrift  
13 Supervision” each place it appears and inserting “Director of the National Bank  
14 Supervisor “;

15 (C) in paragraph (3), by striking “Director of the Office of Thrift  
16 Supervision” and inserting “Director of the National Bank Supervisor”; and

17 (D) in paragraph (4), by striking “Director of the Office of Thrift  
18 Supervision” and inserting “Director of the National Bank Supervisor “.

19 (e) AMENDMENT TO SECTION 1103.—Section 1103(a) of the Financial Institutions  
20 Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended by striking  
21 “and the Resolution Trust Corporation”.

22 (f) AMENDMENTS TO SECTION 1205.—Subsection 1205(b) of the Financial Institutions  
23 Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1818 nt.) is amended—

1 (1) in paragraph (1)—

2 (A) in subparagraph (B), by striking “Director of the Office of Thrift  
3 Supervision” and inserting “ Director of the National Bank Supervisor”;

4 (B) by striking subparagraph (D);

5 (C) by redesignating subparagraphs (E) and (F) as paragraphs (D) and (E),  
6 respectively;

7 (2) in paragraph (2), by striking “paragraph (1)(F)” and inserting “paragraph  
8 (1)(E)”;

9 (3) in paragraph (5), by striking “through (E)” and inserting “through (D)”.

10 (g) AMENDMENTS TO SECTION 1206.—Section 1206 of the Financial Institutions Reform,  
11 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) is amended—

12 (1) by striking “the Comptroller of the Currency” and inserting “Director of the  
13 National Bank Supervisor “;

14 (2) by striking “the Thrift Depositor Protection Oversight Board of the Resolution  
15 Trust Corporation”;

16 (3) by inserting “and” after “the Federal Housing Finance Board” and before “the  
17 Farm Credit Administration”; and

18 (4) by striking “, and the Office of Thrift Supervision”.

19 (h) AMENDMENTS TO SECTION 1216.—Section 1216 of the Financial Institutions Reform,  
20 Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e) is amended—

21 (1) in subsection (a)—

22 (A) in paragraph (1), by striking “Comptroller of the Currency” and  
23 inserting “Director of the National Bank Supervisor”;

1 (B) by striking paragraphs (2), (5), and (6); and

2 (C) by redesignating paragraphs (3), and (4), as paragraphs (2), and (3),

3 respectively;

4 (2) in subsection (c)—

5 (A) by striking “Comptroller of the Currency, the Director of the Office of  
6 Thrift Supervision” and inserting “Director of the National Bank Supervisor and”;

7 and

8 (B) by striking “the Thrift Depositor protection Oversight Board of the  
9 Resolution Trust Corporation, and the Resolution Trust Corporation”.

10 (3) in subsection (d)—

11 (A) in paragraph (2), by striking “Comptroller of the Currency” and  
12 inserting “Director of the National Bank Supervisor”;

13 (B) by striking paragraphs (3), (5) and (6); and

14 (C) by redesignating paragraphs (4), (7), and (8) as paragraphs (3), (4),  
15 and (5), respectively.

16 **SEC. 398. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT OF 1999.**

17 (a) AMENDMENTS TO SECTION 114.—Section 114(a) of the Gramm-Leach-Bliley Act (12  
18 U.S.C. 1828a(a)) is amended—

19 (1) in the heading, by striking “Comptroller of the Currency” and inserting  
20 “Director of the National Bank Supervisor”;

21 (2) by striking “Comptroller of the Currency” each place it appears and inserting  
22 “Director of the National Bank Supervisor”; and

23 (3) striking “Comptroller” and inserting “Director”; and

1 (b) AMENDMENTS TO SECTION 302.—Section 302(b) of the Gramm-Leach-Bliley Act (15  
2 U.S.C. 6712)) is amended by striking “Comptroller of the Currency” each place it appears and  
3 inserting “Director of the National Bank Supervisor”.

4 **SEC. 399. AMENDMENTS TO THE HOME OWNERS’ LOAN ACT.**

5 (a) AMENDMENT TO SECTION 1.—Section 1 of the Home Owners’ Loan Act (12 U.S.C.  
6 1461) is amended by striking “Director of the Office of Thrift Supervision” in the Table of  
7 Contents and inserting “Director of the National Bank Supervisor.”.

8 (b) AMENDMENTS TO SECTION 2.—Section 2 of the Home Owners’ Loan Act (12 U.S.C.  
9 1462) is amended—

10 (1) in paragraph (1) by striking “Director of the Office of Thrift Supervision”  
11 and inserting “Director of the National Bank Supervisor”;

12 (2) by striking paragraphs (3) through (5) and redesignating paragraphs (6)  
13 through (9) as paragraphs (3) through (6); and

14 (3) in redesignated paragraph (4), by striking “Office of the Comptroller of the  
15 Currency” and inserting “National Bank Supervisor”.

16 (c) AMENDMENTS TO SECTION 3.—Section 3 of the Home Owners’ Loan Act (12 U.S.C.  
17 1462a) is amended—

18 (1) in the heading, by striking “DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION”  
19 and inserting “DIRECTOR OF THE NATIONAL BANK SUPERVISOR”;

20 (2) by amending subsection (a) to read as follows:

21 “(a) ESTABLISHMENT OF NATIONAL BANK SUPERVISOR.—There is established the  
22 National Bank Supervisor, which shall be a bureau in the Department of the Treasury.”;

23 (3) by amending subsection (b)(1) to read as follows:

1           “(1) IN GENERAL.—There is established the position of the Director of the  
2 National Bank Supervisor, who shall be the head of the National Bank Supervisor and  
3 shall be subject to the general oversight of the secretary of the Treasury.”;

4           (4) in subsection (e)—

5                   (A) in the heading, by striking “DIRECTOR” and inserting “DIRECTOR OF  
6 THE NATIONAL BANK SUPERVISOR”;

7                   (B) by amending paragraph (1) to read as follows—

8                           “(1) were vested in the Office of Thrift Supervision or its Director on the  
9 day before the date of enactment of the Federal Depository Supervision and  
10 Regulation Improvements Act of 2009.”.

11           (5) in subsection (f), by striking “Office” each place it appears and inserting  
12 “Director of the National Bank Supervisor”;

13           (6) in subsection (g),

14                   (A) by striking “(1)”;

15                   (B) by striking “; and” and inserting a period; and

16                   (C) by striking “Office” each place it appears and inserting “National  
17 Bank Supervisor”; and

18                   (D) by striking paragraph (2);

19           (7) in subsection (h)—

20                   (C) in paragraph (1)—

21                           (i) by striking “Office of Thrift Supervision” and inserting

22                           “Director of the National Bank Supervisor”;

23                           (ii) by striking “notwithstanding section 301(f) of title 31, United

1 States Code”;

2 (D) in paragraph (3), by striking “Office” each time it appears and  
3 inserting ‘national Bank Supervisor’.

4 (E) by amending paragraph (4) to read as follows:

5 “(4) DELEGATION OF AUTHORITY.—

6 “(A) IN GENERAL.—The Director of the National Bank Supervisor may  
7 delegate to any employee, representative, or agent any power of the Director of  
8 the National Bank Supervisor .”

9 (8) in subsection (j), by deleting “Office of Thrift Supervision” and inserting  
10 “National Bank Supervisor”.

11 (d) AMENDMENTS TO SECTION 4.—Section 4 of the Home Owners’ Loan Act (12 U.S.C.  
12 1463) is amended—

13 (1) in subsection (a), in paragraph (2), by striking “or the Office”;

14 (2) in subsection (b)(2), by striking subsection (C); and

15 (3) in subsection (c), by striking “Comptroller of the Currency” and inserting  
16 “National Bank Supervisor”.

17 (e) AMENDMENTS TO SECTION 5.— Section 5 of the Home Owners’ Loan Act (12 U.S.C.  
18 1464) is amended—

19 (1) in subsection (a), by striking “thrift institutions “ and inserting “federal  
20 savings associations”

21 (2) in subsection (d), paragraph (2)—

22 (A) in paragraph (A), by striking “Director of the Office of Thrift  
23 Supervision” and inserting “Director of the National Bank Supervisor”;

1 (B) in paragraph (E)(ii)—

2 (i) in the title, by striking “or RTC”; and

3 (ii) by striking “or the Resolution Trust Corporation, as  
4 appropriate,”;

5 (C) in paragraph (B)—

6 (i) in the title, by striking “or RTC”; and

7 (ii) by striking “or the Resolution Trust Corporation”; and

8 (f) AMENDMENTS TO SECTION 10.—Section 10 of the Home Owners’ Loan Act (12  
9 U.S.C. 1467a) is repealed.

10 **SEC. 399A. AMENDMENTS TO THE HOUSING ACT OF 1948.**

11 Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended in the  
12 introductory text by striking “Director of the Office of Thrift Supervision” and inserting  
13 “Director of the National Bank Supervisor “.

14 **SEC. 399B. AMENDMENTS TO THE HOUSING AND COMMUNITY  
15 DEVELOPMENT ACT OF 1992.**

16 (a) AMENDMENTS TO SECTION 543.—Section 543 of the Housing and Community  
17 Development Act of 1992 (12 U.S.C. 1707 nt.) is amended—

18 (1) in subsection (c)(1)—

19 (A) by amending subparagraph (C) to read as follows:

20 “(C) Director of the National Bank Supervisor”; and

21 (B) by striking subparagraphs (D) through (F); and

22 (C) by redesignating subparagraphs (G) and (H) as subparagraphs (D) and

23 (E), respectively;



1 (2) in subsection (f)—

2 (A) in paragraph (2)—

3 (i) by striking “Comptroller of the Currency, the Office of Thrift  
4 Supervision, “Director of the National Bank Supervisor”; and

5 (ii) in subparagraph (D), by striking “Office of Thrift Supervision,”  
6 and inserting “Director of the National Bank Supervisor”;

7 (B) in paragraph (3)—

8 (i) by striking “the Office of Thrift Supervision,” Director of the  
9 National Bank Supervisor” ; and

10 (ii) in subparagraph (D), by striking “Office of Thrift Supervision,  
11 and inserting “Director of the National Bank Supervisor “.

12 (b) AMENDMENT TO SECTION 1315.—Section 1315(b) of the Housing and Community  
13 Development Act of 1992 (12 U.S.C. 4515(b)) is amended by striking “the Director of the  
14 National Bank Supervisor ,” .

15 (c) AMENDMENT TO SECTION 1317.—Section 1317(c) of the Housing and Community  
16 Development Act of 1992 (12 U.S.C. 4517(c)) is amended—

17 (1) by striking “the Comptroller of the Currency,” and inserting “the Director of  
18 the National Bank Supervisor”

19 (2) by striking “or the Director of the Office of Thrift Supervision” and inserting  
20 “or the Director of the National Bank Supervisor” .

21 (d) AMENDMENT TO SECTION 1542.—Section 1542 of the Housing and Community  
22 Development Act of 1992 (12 U.S.C. 1831m-1) is amended

23 **SEC. 399C. AMENDMENTS TO THE HOUSING AND URBAN-RURAL RECOVERY**

**ACT OF 1983.**

Section 469 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701p-1) is amended in the first sentence—

(a) by striking “Federal Home Loan Bank Board” and inserting “Federal Housing Finance Agency;” and

(b) by striking “the Comptroller of the Currency” and inserting “the Director of the National Bank Supervisor “.

**SEC. 399D. AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.**

(a) AMENDMENT TO SECTION 1.—Subsection 1(b)(4) of the International Banking Act of 1978 (12 U.S.C 3101) is amended by deleting paragraph (4) and inserting a new paragraph (4) to read as follows:

“(4) “Director means the Director of the National Bank Supervisor ;”;

(b) AMENDMENTS TO SECTION 4—Section 4 of the International Banking Act of 1978 (12 U.S.C. 3102) is amended—

(1) by striking “Comptroller” each place it appears and inserting “Director”;

(2) in subsection (a)(2) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”. (3) in subsection (g)—

(A) in paragraph (1), by striking “Comptroller” each time it appears and inserting “Director”;

(B) in paragraph (2), by striking “he” and inserting “Director”;

(4) in subsection (h)(2) by striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”;

(5) in the 3rd sentence of subsection (i)—

1 (A) by striking “his” and inserting “Director”; and

2 (B) by striking “he” and inserting “Director”; and

3 (6) in subsection (j)(1), by striking “he” and inserting “Director”.

4 (c) AMENDMENT TO SECTION 5.—Section 5 of the International Banking Act of 1978 (12  
5 U.S.C. 3103) is amended by striking “Comptroller of the Currency” each time it appears and  
6 inserting “Director of the National Bank Supervisor”.

7 (d) AMENDMENT TO SECTION 6.—Section 6 of the International Banking Act of 1978 (12  
8 U.S.C. 3104) is amended by striking “Comptroller” each place it appears and inserting “Director.

9 (e) AMENDMENTS TO SECTION 7.—Section 7 of the International Banking Act of 1978  
10 (12 U.S.C. 3105) is amended by striking “Comptroller of the Currency” each time it appears and  
11 inserting “Director of the National Bank Supervisor”.

12 (f) AMENDMENTS TO SECTION 9.—Section 9 of the International Banking Act of 1978 is  
13 amended—

14 (1) in subsection (a) (12 U.S.C. 601 nt.), by striking “Comptroller” and inserting  
15 “Director “; and

16 (2) in subsection (b)(2) (12 U.S.C. 3106a(2)), by striking “Comptroller” and  
17 inserting “Director”.

18 (g) AMENDMENTS TO SECTION 13.—Section 13 of the International Banking Act of 1978  
19 (12 U.S.C. 3108) is amended—

20 (1) by striking “Comptroller” each place it appears and inserting “Director”;

21 (2) by striking “Comptroller of the Currency” each place it appears and inserting  
22 “Director of the National Bank Supervisor”;

23 (h) AMENDMENT TO SECTION 14.—Section 14 of the International Banking Act of 1978

1 (12 U.S.C. 36 nt.) is amended by striking “Comptroller” and inserting “Director of the National  
2 Bank Supervisor “.

3 (i) AMENDMENTS TO SECTION 15.—Section 15 of the International Banking Act of 1978  
4 (12 U.S.C. 3109) is amended—

5 (1) by striking “ Comptroller of the Currency” each time it appears and inserting  
6 “Director of the National Bank Supervisor”

7 (2) by striking “Director of the Office of Thrift Supervision” each place it  
8 appears; and

9 (2) in subsection (a), by striking “Comptroller,”.

10 (j) AMENDMENTS TO SECTION 16.—Section 16 of the International Banking Act of  
11 1978(12 U.S.C. 3110) is amended by striking “Comptroller of the Currency” each place it  
12 appears and inserting “Director of the National Bank Supervisor”;

13 **SEC. 399E. AMENDMENTS TO THE NATIONAL HOUSING ACT.**

14 (a) AMENDMENTS TO SECTION 203.—Section 203(s) of the National Housing Act (12  
15 U.S.C. 1709(s)) is amended—

16 (1) in paragraph (5) by striking “Comptroller of the Currency” and inserting  
17 “Director of the National Bank Supervisor”;

18 (2) in paragraph (7), by adding “State savings association” after “State bank”; and

19 (3) in paragraph (8)—

20 (i) by striking “or State savings association”;

21 (ii) by striking “Office of Thrift Supervision” and inserting “National  
22 Bank Supervisor”.

23 **SEC. 399F. AMENDMENTS TO THE REVISED STATUTES.**

1 (a) TABLE OF CONTENTS AMENDED.—The table of sections for chapter 9 of title VII of  
2 the Revised Statutes is amended in the item relating to section 330, by striking “Comptroller of  
3 the Currency” and inserting “Director of the National Bank Supervisor”;

4 (b) AMENDMENT TO SECTION 324.—Section 324 of the Revised Statutes (12 U.S.C. 1) is  
5 amended to read as follows:

6 “SEC. 324. There shall be in the Department of the treasury a bureau, the chief officer of  
7 which bureau shall be called the Director of the National Bank Supervisor, and shall perform his  
8 or her duties under the general direction of the Secretary of the Treasury. The Director of the  
9 National Bank Supervisor shall have the same authority over matters within the jurisdiction of  
10 the Director of the National Bank Supervisor as under section 3(b)(3) of the Home Owners’  
11 Loan Act (12 U.S.C. 1462a(b)(3)). The Secretary of the Treasury may not delay the issuance of  
12 any rule or the promulgation of any regulation by the Director of the National Bank Supervisor.”.

13 (c) AMENDMENT TO SECTION 327A.—Section 327A of the Revised Statutes (12 U.S.C.  
14 4a) is amended by striking “Comptroller of the Currency” and inserting “Director of the National  
15 Bank Supervisor”.

16 (d) AMENDMENT TO SECTION 328.—Section 328 of the Revised Statutes (12 U.S.C. 8) is  
17 amended to read as follows:

18 “SEC. 328. The Director of the National Bank Supervisor shall employ, from time to  
19 time, the necessary clerks to discharge such duties as the Director shall direct.”.

20 (e) AMENDMENT TO SECTION 330.—Section 330 of the Revised Statutes (12 U.S.C. 12) is  
21 amended to read as follows:

22 “SEC. 330. The Director of National Bank Supervisor shall devise a seal, approved by  
23 the Secretary of the Treasury, which shall be the seal of the Director of the National Bank

1 Supervisor after the “transfer date” as provided in the Federal Depository Institutions  
2 Supervision and Regulation Improvements Act of 2009, and may be renewed when necessary by  
3 the Director. A description of the Board’s seal shall be filed in the office of the Secretary of  
4 State. The seal devised by the Director of the National bank Supervisor for his office, and  
5 approved by the Secretary of the Treasury, shall continue to be the seal of the Director of the  
6 National Bank Supervisor. “.

7 (f) AMENDMENT TO SECTION 333.—Section 333 of the Revised Statutes is amended by  
8 striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

9 (g) AMENDMENT TO SECTION 5133.—Section 5133 of the Revised Statutes (12 U.S.C. 21)  
10 is amended—

11 (1) by striking “Comptroller of the Currency” and inserting “Director of the  
12 National Bank Supervisor “; and

13 (2) by striking “his” and inserting “the Directors”.

14 (h) AMENDMENT TO SECTION 5135.—Section 5135 of the Revised Statutes (12 U.S.C. 23)  
15 is amended—

16 (1) by striking “Comptroller of the Currency” and inserting “Director of the  
17 National Bank Supervisor “; and

18 (2) by striking “his” and inserting “the Director’s”.

19 (i) AMENDMENT TO SECTION 5136.—Section 5136 of the Revised Statutes (12 U.S.C. 24)  
20 is amended—

21 (1) in the paragraph numbered “Seventh”, by striking “Comptroller of the  
22 Currency” each place it appears and inserting “Director of the National Bank Supervisor;

23 (2) in the paragraph numbered “Eleventh”—

1 (A) by striking “Comptroller of the Currency” and inserting “Director of  
2 the National Bank Supervisor”; and

3 (B) by striking “Comptroller” and inserting “Director”.

4 (j) AMENDMENT TO SECTION 5136A.—Section 5136A(e) of the Revised Statutes (12  
5 U.S.C. 25a(e)) is amended by striking “Comptroller of the Currency” and inserting “Director of  
6 the National Bank Supervisor”.

7 (k) AMENDMENT TO SECTION 5137.—Section 5137 of the Revised Statutes (12 U.S.C. 29)  
8 is amended by striking “Comptroller of the Currency” each place it appears and inserting  
9 “Director of the National Bank Supervisor”.

10 (l) AMENDMENTS TO SECTION 5142.—Section 5142 of the Revised Statutes (12 U.S.C.  
11 57) is amended—

12 (1) by striking “Comptroller of the Currency” each place it appears and inserting  
13 “Director of the National Bank Supervisor”;

14 (2) by striking “his” each place it appears and inserting “the Director”; and

15 (3) in the first sentence, by striking “said comptroller” and inserting “the  
16 Director”.

17 (m) AMENDMENT TO SECTION 5143.—Section 5143 of the Revised Statutes (12 U.S.C.  
18 59) is amended by striking “Comptroller of the Currency” each place it appears and inserting  
19 “Director of the National Bank Supervisor”.

20 (n) AMENDMENTS TO SECTION 5154.—Section 5154 of the Revised Statutes (12 U.S.C.  
21 35) is amended—

22 (1) by striking “Comptroller of the Currency” each place it appears and inserting  
23 “Director of the National Bank Supervisor “;

1 (2) by striking “Comptroller” each place it appears and inserting “Director” “;

2 (3) in the last sentence—

3 (A) by striking “his” and inserting “the Director’s”; and

4 (B) by striking “he” and inserting “the Director”.

5 (o) AMENDMENT TO SECTION 5155.—Section 5155 of the Revised Statutes (12 U.S.C. 36)

6 is amended by striking “Comptroller of the Currency” each place it appears and inserting

7 “Director of the National Bank Supervisor”.

8 (p) AMENDMENTS TO SECTION 5156A.—Subsection 5156A(b) of the Revised Statutes (12

9 U.S.C. 215c(b)) is amended—

10 (1) by striking “Comptroller of the Currency” each place it appears and inserting

11 “Director of the National Bank Supervisor”; and

12 (2) in paragraph (2)(B), by striking “Comptroller’s” and inserting “Directors”.

13 (q) AMENDMENT TO SECTION 5168.—Section 5168 of the Revised Statutes (12 U.S.C. 26)

14 is amended—

15 (1) by striking “Comptroller of the Currency” and inserting “Director of the

16 National Bank Supervisor”; and

17 (2) by striking “Comptroller” each place it appears and inserting “Director”.

18 (r) AMENDMENTS TO SECTION 5169.—Section 5169 of the Revised Statutes (12 U.S.C.

19 27) is amended—

20 (1) by striking “Comptroller” each place it appears and inserting “Director”;

21 (2) by striking “Comptroller of the Currency” each place it appears and inserting

22 “Director of the National Bank Supervisor”;

23 (3) in subsection (a)—



1 (A) by striking “appointed by him” and inserting “appointed by the  
2 Director”;

3 (B) by striking “his hand and official seal” and inserting “the Director’s  
4 official seal”;

5 (C) by striking “his certificate” and inserting “the Director’s certificate”;  
6 and

7 (D) by striking “whenever he has reason” and inserting “whenever the  
8 Director of the National Bank Supervisor has reason”.

9 (s) AMENDMENTS TO SECTION 5191.—Section 5191 of the Revised Statutes (12 U.S.C.  
10 143) is amended—

11 (1) by striking “Comptroller of the Currency” and inserting “Director of the  
12 National Bank Supervisor”; and

13 (2) by striking “Comptroller” and inserting “Director”.

14 (t) AMENDMENT TO SECTION 5192.—Section 5192 of the Revised Statutes (12 U.S.C.  
15 144) is amended by striking “Comptroller of the Currency” and inserting “Director of the  
16 National Bank Supervisor”.

17 (u) AMENDMENT TO SECTION 5199.—Subsection 5199(b) of the Revised Statutes (12  
18 U.S.C. 60(b)) is amended by striking “Comptroller of the Currency” and inserting “Director of  
19 the National Bank Supervisor”.

20 (v) AMENDMENT TO SECTION 5200.—Section 5200 of the Revised Statutes (12 U.S.C. 84)  
21 is amended—

22 (1) in subsection (b)(1), by striking “Comptroller of the Currency” and inserting  
23 “Director of the National Bank Supervisor”;

1 (2) in subsection (c)(7), by striking “Comptroller of the Currency” and inserting  
2 “Director of the National Bank Supervisor”;

3 (3) in subsection (d) by striking “Comptroller of the Currency” each time it  
4 appears and inserting “Director of the National Bank Supervisor”.

5 (w) AMENDMENTS TO SECTION 5205.—Section 5205 of the Revised Statutes (12 U.S.C.  
6 55) is amended—

7 (1) by striking “Comptroller of the Currency” each place it appears and inserting  
8 “Director of the National Bank Supervisor”; and

9 (2) by striking “Comptroller” and inserting “Director”.

10 (x) AMENDMENT TO SECTION 5208.—Section 5208 of the Revised Statutes (12 U.S.C.  
11 501) is amended by striking “Comptroller of the Currency” and inserting “Director of the  
12 National Bank Supervisor “.

13 (y) AMENDMENTS TO SECTION 5210.—Section 5210 of the Revised Statutes (12 U.S.C.  
14 62) is amended in the last sentence—

15 (1) by striking “Comptroller of the Currency” and inserting “Director of the  
16 National Bank Supervisor “; and

17 (2) by striking “him” and inserting “the Director”.

18 (z) AMENDMENTS TO SECTION 5211.—Section 5211 of the Revised Statutes (12 U.S.C.  
19 161) is amended—

20 (1) by striking “Comptroller of the Currency” each place it appears and inserting  
21 “Director of the National Bank Supervisor”;

22 (2) by striking “Comptroller” each place it appears and inserting “Director”;

23 (3) by striking “he” each place it appears and inserting “the Director”;

1 (4) by striking “him” each place it appears and inserting “the Director”;

2 (5) in the second sentence of subsection (a), by striking “his” each place it appears  
3 and inserting “the Director’s”; and

4 (6) in subsection (c)—

5 (A) by striking “his” each place it appears and inserting “the Director’s”;

6 (B) in the third sentence, by striking “inform himself” and inserting “be  
7 informed”.

8 (aa) AMENDMENTS TO SECTION 5213.—Section 5213 of the Revised Statutes (12 U.S.C.  
9 164) is amended—

10 (1) by striking “Comptroller of the Currency” each place it appears and inserting  
11 “Director of the National Bank Supervisor”; and

12 (2) by striking “Comptroller” each place it appears and inserting “Director”:

13 (bb) AMENDMENT TO SECTION 5216.—Section 5216 of the Revised Statutes (omitted  
14 from the United States Code) is amended by striking “Comptroller of the Currency” and  
15 inserting “Director of the National Bank Supervisor”.

16 (cc) AMENDMENT TO SECTION 5218.—Section 5218 of the Revised Statutes (omitted from  
17 the United States Code) is amended by striking “First Comptroller of the Treasury” and inserting  
18 “First Director of the National Bank Supervisor”.

19 (dd) AMENDMENT TO SECTION 5220.—Section 5220 of the Revised Statutes (12 U.S.C.  
20 181) is amended by striking “Comptroller of the Currency” each place it appears and inserting  
21 “Director of the National Bank Supervisor”.

22 (ee) AMENDMENT TO SECTION 5221.—Section 5221 of the Revised Statutes (12 U.S.C.  
23 182) is amended by striking “Comptroller of the Currency” and inserting “Director of the

1 National Bank Supervisor”.

2 (ff) AMENDMENTS TO SECTION 5234.—Section 5234 of the Revised Statutes (12 U.S.C.  
3 192) is amended—

4 (1) by striking “has refused to pay its circulating notes as therein mentioned, and”;

5 (2) by striking “Comptroller of the Currency” and inserting “Director of the  
6 National Bank Supervisor”;

7 (3) by striking “Comptroller” and “comptroller” each place they appear and  
8 inserting “Director”; and

9 (4) by striking “he” each place it appears and inserting “the Director”.

10 (gg) AMENDMENTS TO SECTION 5235.—Section 5235 of the Revised Statutes (12 U.S.C.  
11 193) is amended—

12 (1) by striking “Comptroller” and inserting “Director”; and

13 (2) by striking “he” and inserting “the Director”.

14 (hh) AMENDMENTS TO SECTION 5236.—Section 5236 of the Revised Statutes (12 U.S.C.  
15 194) is amended—

16 (1) by striking “, after full provision has been first made for refunding to the  
17 United States and deficiency in redeeming the notes of such association,”;

18 (2) by striking “Comptroller” and inserting “Director”;

19 (3) by striking “him” each place it appears and inserting “the Director”; and

20 (4) by striking “his” and inserting “the Director’s”.

21 (ii) AMENDMENT TO SECTION 5238.—Section 5238 of the Revised Statutes (12 U.S.C.  
22 196) is amended by striking the first sentence.

23 (jj) AMENDMENTS TO SECTION 5239.—Section 5239 of the Revised Statutes (12 U.S.C.

1 93) is amended—

2 (1) in subsection (a), by striking “Comptroller of the Currency, in his own name,”

3 and inserting “Director of the National Bank Supervisor”;

4 (2) in subsection (b)—

5 (A) by striking “Comptroller of the Currency” each place it appears and

6 inserting “Director of the National Bank Supervisor”;

7 (B) by striking “Comptroller’s” each place it appears and inserting

8 “Director of the National Bank Supervisor’s”;

9 (C) in paragraph (12), by striking “Comptroller” and inserting “Director of  
10 the National Bank Supervisor”.

11 (kk) AMENDMENT TO SECTION 5239A.—Section 5239A of the Revised Statutes (12  
12 U.S.C. 93a) is amended by striking “Comptroller of the Currency” and inserting “Director of the  
13 National Bank Supervisor”.

14 (ll) AMENDMENT TO SECTION 5240.—Section 5240 of the Revised Statutes (12 U.S.C.  
15 481, 482, 483, 484, and 485) is amended—

16 (1) by striking “Comptroller of the Currency” each place it appears and inserting  
17 “Director of the National Bank Supervisor”;

18 (2) by striking “Comptroller” each place it appears and inserting “Director”;

19 (3) in the last sentence of the first undesignated paragraph—

20 (A) by striking “he” and inserting “the Director”;

21 (B) by striking “his” and inserting “the Director’s”; (C) by striking

22 “Office” each place it appears and inserting “National Bank Supervisor”;

23 (5) by striking the fifth undesignated paragraph; and

1 (6) by striking the last sentence in the last paragraph.

2 **SEC. 399G. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF**  
3 **1978.**

4 Section 11(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is  
5 amended—

6 (1) by striking “Director, Office of Thrift Supervision” and inserting “Director of  
7 the National Bank Supervisor”;

8 (2) by striking subparagraph (E) ; and

9 (3) by designating subparagraphs (F) through (I) as subparagraphs (E) through  
10 (H).

11 **SEC. 399H. REPEAL OF OBSOLETE CURRENCY STATUTES.**

12 (a) OBSOLETE CURRENCY PROVISIONS REPEALED.—

13 (1) CURRENCY PROVISIONS IN REVISED STATUTES REPEALED.—The following  
14 sections of the Revised Statutes are repealed:

15 (A) Section 5203 (12 U.S.C. 87).

16 (B) Section 5206 (12 U.S.C. 88).

17 (C) Section 5196 (12 U.S.C. 89).

18 (D) Section 5158 (12 U.S.C. 102).

19 (E) Section 5159 (12 U.S.C. 101a).

20 (F) Section 5172 (12 U.S.C. 104).

21 (G) Section 5173 (12 U.S.C. 107).

22 (H) Section 5174 (12 U.S.C. 108).

23 (I) Section 5182 (12 U.S.C. 109).

- 1 (J) Section 5183 (12 U.S.C. 110).
- 2 (K) Section 5195 (12 U.S.C. 123).
- 3 (L) Section 5184 (12 U.S.C. 124).
- 4 (M) Section 5226 (12 U.S.C. 131).
- 5 (N) Section 5227 (12 U.S.C. 132).
- 6 (O) Section 5228 (12 U.S.C. 133).
- 7 (P) Section 5229 (12 U.S.C. 134).
- 8 (Q) Section 5230 (12 U.S.C. 137).
- 9 (R) Section 5231 (12 U.S.C. 138).
- 10 (S) Section 5232 (12 U.S.C. 135).
- 11 (T) Section 5233 (12 U.S.C. 136).
- 12 (U) Section 5185 (12 U.S.C. 151).
- 13 (V) Section 5186 (12 U.S.C. 152).
- 14 (W) Section 5160 (12 U.S.C. 168).
- 15 (X) Section 5161 (12 U.S.C. 169).
- 16 (Y) Section 5162 (12 U.S.C. 170).
- 17 (Z) Section 5163 (12 U.S.C. 171).
- 18 (AA) Section 5164 (12 U.S.C. 172).
- 19 (BB) Section 5165 (12 U.S.C. 173).
- 20 (CC) Section 5166 (12 U.S.C. 174).
- 21 (DD) Section 5167 (12 U.S.C. 175).
- 22 (EE) Section 5222 (12 U.S.C. 183).
- 23 (FF) Section 5223 (12 U.S.C. 184).

1 (GG) Section 5224 (12 U.S.C. 185).

2 (HH) Section 5225 (12 U.S.C. 186).

3 (II) Section 5237 (12 U.S.C. 195).

4 (2) CURRENCY PROVISIONS IN OTHER STATUTES REPEALED.—The following  
5 provisions of law are repealed:

6 (A) Section 12 of the Act entitled “An Act to define and fix the standard  
7 of value, to maintain the parity of all forms of money issued or coined by the  
8 United States, to refund the public debt, and for other purposes.” and approved  
9 March 14, 1900 (12 U.S.C. 101).

10 (B) Section 3 of the Act entitled “An Act to amend the laws relating to the  
11 denominations, and notes by national banks and to permit the issuance of notes of  
12 small denominations, and for other purposes.” and approved October 5, 1917 (12  
13 U.S.C. 103).

14 (C) The following sections of the Act entitled “An Act fixing the amount  
15 of United States notes, providing for a redistribution of the national-bank  
16 currency, and for other purposes.” and approved June 20, 1874:

17 (i) Section 5 (12 U.S.C. 105)

18 (ii) Section 3 (12 U.S.C. 121).

19 (iii) Section 8 (12 U.S.C. 126).

20 (iv) Section 4 (12 U.S.C. 176).

21 (D) The following sections of the Act entitled “An Act to enable national-  
22 banking associations to extend their corporate existence, and for other purposes.”  
23 and approved July 12, 1882:



1 (i) Section 8 (12 U.S.C. 177).

2 (ii) Section 9 (12 U.S.C. 178).

3 (3) OTHER STATUTES REPEALED.—

4 (A) The Act entitled “An Act to amend the National Bank Act in  
5 providing for redemption of national bank notes stolen from or lost by banks of  
6 issue.” and approved July 28, 1892 (12 U.S.C. 125) is repealed.

7 (B) The Act entitled “An Act authorizing the conversion of national gold  
8 banks.” and approved February 14, 1880 (12 U.S.C. 153) is repealed.

9 (b) FEDERAL RESERVE ACT AND OTHER LAWS AMENDED.—

10 (1) FEDERAL RESERVE ACT.—

11 (A) The eighth paragraph of the fourth undesignated paragraph of section  
12 4 of the Federal Reserve Act (12 U.S.C. 341) is amended by striking “Comptroller  
13 of the Currency” and inserting “Secretary of the Treasury”.

14 (B) Subsection 11(d) of the Federal Reserve Act (12 U.S.C. 248(d)) is  
15 amended—

16 (i) by striking “bureau under the charge of the Comptroller of the  
17 Currency” and inserting “Secretary of the Treasury”; and

18 (ii) by striking “Comptroller” the second place it appears and  
19 inserting “Secretary”.

20 (C) Section 16 of the Federal Reserve Act is amended—

21 (i) in the first sentence of the eighth undesignated paragraph (12  
22 U.S.C. 418), by striking “the Comptroller of the Currency shall, under the  
23 direction of the Secretary of the Treasury,” and inserting “the Secretary of

1 the Treasury shall”;

2 (ii) in the ninth undesignated paragraph (12 U.S.C. 419), to read as  
3 follows:

4 “When such notes have been prepared, the notes shall be delivered to the Board of  
5 Governors of the Federal Reserve System subject to the order of the Secretary of the  
6 Treasury for the delivery of such notes in accordance with this Act.”;

7 (iii) in the tenth undesignated paragraph (12 U.S.C. 420) by  
8 striking “Comptroller of the Currency” and inserting “Secretary of the  
9 Treasury”; and

10 (iv) in the eleventh undesignated paragraph (12 U.S.C. 421), to  
11 read as follows:

12 “The Secretary of the Treasury may examine the plates, dies, bed pieces, and  
13 other material used in the printing of Federal Reserve notes and may issue regulations  
14 relating to such examinations.”.

15 (D) The sixth undesignated paragraph of section 18 of the Federal Reserve  
16 Act (omitted from U.S. Code) is amended—

17 (i) by striking “Comptroller of the Currency” each place it appears  
18 and inserting “Secretary of the Treasury”; and

19 (ii) in the seventh sentence, by striking “Comptroller” and inserting  
20 “Secretary of the Treasury”.

21 (2) OTHER LAWS.—

22 (A) The Act entitled “An Act to provide for the redemption of national-  
23 bank notes, Federal Reserve notes, and Federal Reserve notes which cannot be

1 identified as to the bank of issue.” and approved June 13, 1933, is amended—

2 (i) in the first section (12 U.S.C. 121a)—

3 (I) by striking “whenever any national-bank notes, Federal  
4 Reserve bank notes,” and inserting “whenever any Federal Reserve  
5 bank notes”; and

6 (II) by striking “, and the notes, other than Federal Reserve  
7 notes, so redeemed shall be forwarded to the Comptroller of the  
8 Currency for cancellation and destruction”; and

9 (ii) in the second section (12 U.S.C. 122a)—

10 (I) by striking “National-bank notes and”; and

11 (II) by striking “national-bank notes and”.

12 (B) The first section of the Act entitled “An Act making appropriations for  
13 sundry civil expenses of Government for the fiscal year ending June thirtieth,  
14 eighteen hundred and seventy-six, and for other purposes.” and approved March  
15 3, 1875 (12 U.S.C. 106), is amended in the first paragraph that appears under the  
16 heading “NATIONAL CURRENCY.” by striking “Secretary of the Treasury:  
17 Provided, That” and all that follows through the period and inserting “Secretary of  
18 the Treasury.”.

19 (C) The Act entitled “An Act to simplify the accounts of the Treasurer of  
20 the United States, and for other purposes.” and approved October 10, 1940 (12  
21 U.S.C. 177a) is amended by striking all after the enacting clause and inserting the  
22 following: “The cost of transporting and redeeming outstanding national bank  
23 notes and Federal Reserve bank notes as may be presented to the Treasurer of the

1 United States for redemption shall be paid from the regular annual appropriation  
2 for the Department of the Treasury.”.

3 (D) Section 5234 of the Revised Statutes (12 U.S.C. 192) is amended by  
4 striking “has refused to pay its circulating notes as therein mentioned, and”;

5 (E) Section 5236 of the Revised Statutes (12 U.S.C. 194) is amended by  
6 striking “, after full provision has been first made for refunding to the United  
7 States any deficiency in redeeming the notes of such association,”.

8 (F) Section 5238 of the Revised Statutes (12 U.S.C. 196) is amended by  
9 striking the first sentence.

## 10 **CHAPTER 53—CONFORMING AMENDMENTS TO OTHER STATUTES**

### 11 **SEC. 399I. AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY**

#### 12 **DEFICIT CONTROL ACT OF 1985.**

13 (a) AMENDMENTS TO SECTION 255.—Section 255(g)(1)(A) of the Balanced Budget and  
14 Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended—

15 (1) by striking “Comptroller of the Currency” and inserting “Director of the  
16 National Bank Supervisor”; and

17 (2) by striking “Director of the Office of Thrift Supervision”.

18 (b) AMENDMENTS TO SECTION 256.—Section 256(h)(4) of the Balanced Budget and  
19 Emergency Deficit Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

20 (1) in subparagraph (A), by striking “Comptroller of the Currency” and inserting  
21 “Director of the National Bank Supervisor”;

22 (2) by striking subparagraphs (C) and (G); and

23 (3) by redesignating subparagraphs (D),(E), (F) and (H) as subparagraphs (C)

1 through (G), respectively.

2 **SEC. 399J. AMENDMENTS TO THE CRIME CONTROL ACT OF 1990.**

3 (a) AMENDMENTS TO SECTION 2539.—Section 2539(c)(2) of the Crime Control Act of  
4 1990, Public Law 101-647, is amended—

5 (1) in subparagraph (C), by striking “Office of Thrift Supervision” and inserting  
6 “National Bank Supervisor”; and

7 (2) by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as  
8 subparagraphs (F) through (G).

9 (b) AMENDMENT TO SECTION 2554.—Section 2554(b)(2) of the Crime Control Act of  
10 1990, Public Law 101-647, is amended by striking “Director of the Office of Thrift Supervision”  
11 and inserting “Director of the National bank Supervisor”.

12 **SEC. 399K. AMENDMENT TO THE ENERGY CONSERVATION AND PRODUCTION**  
13 **ACT.**

14 Section 303(7) of the Energy Conservation and Product Act (42 U.S.C. 6832(7)) is  
15 amended—

16 (1) by striking “Comptroller of the Currency” and inserting “Director of the  
17 National Bank Supervisor”;

18 (2) by striking “Federal Home Loan Bank Board” and inserting “Federal Housing  
19 Finance Agency”; and

20 (3) by striking “the Federal Savings and Loan Insurance Corporation,”.

21 **SEC. 399L. AMENDMENTS TO THE FARM CREDIT ACT OF 1971.**

22 (a) AMENDMENT TO SECTION 5.20.—Section 5.20 of the Farm Credit Act of 1971 (12  
23 U.S.C. 2255) is amended by striking “Comptroller of the Currency” and inserting “Director of

1 the National Bank Supervisor”.

2 (b) AMENDMENT TO SECTION 5.22.—Section 5.22 of the Farm Credit Act of 1971 (12  
3 U.S.C. 2257) is amended by striking “Comptroller of the Currency” and inserting “Director of  
4 the National Bank Supervisor”.

5 **SEC. 399M. AMENDMENT TO THE FINANCIAL REPORTS ACT OF 1988.**

6 Section 3602 of the Financial Reports Act of 1988 (22 U.S.C. 5352) is amended by  
7 striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor”.

8 **SEC. 399N. AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.**

9 Section 3(a)(5) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C.  
10 4003(a)(5)) is amended—

11 (1) by striking “Comptroller of the Currency” and inserting “Director of the National  
12 Bank Supervisor”; and

13 (2) by striking “the Office of Thrift Supervision.”.

14 **SEC. 399O. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.**

15 (a) AMENDMENT TO SECTION 581.—Section 581 of the Internal Revenue Code (26  
16 U.S.C. 581) is amended by striking “Comptroller of the Currency” and inserting “Federal  
17 Banking Commission”.

18 (b) AMENDMENT TO SECTION 584.—Section 584(a)(2) of the Internal Revenue Code (26  
19 U.S.C. 584(a)(2)) is amended by striking “Comptroller of the Currency” and inserting “Director  
20 of the National Bank Supervisor”.

21 (c) AMENDMENT TO SECTION 3305.—Section 3305(c) of the Internal Revenue Code (26  
22 U.S.C. 3305(c)) is amended by striking “Comptroller of the Currency” and inserting “Director of  
23 the National Bank Supervisor”.

1 (d) AMENDMENT TO SECTION 7507.—Section 7507(a) of the Internal Revenue Code (26  
2 U.S.C. 7507(a)) is amended by striking “Comptroller of the Currency” and inserting “Director of  
3 the National Bank Supervisor”.

4 **SEC. 399P. AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.**

5 Section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) is  
6 amended by striking “Comptroller of the Currency” and inserting “Director of the National Bank  
7 Supervisor”.

8 **SEC. 399Q. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940.**

9 (a) AMENDMENT TO SECTION 2.—Section 2(a)(5) of the Investment Company Act of  
10 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking “Comptroller of the Currency” and inserting  
11 “Director National Bank Supervisor”.

12 (b) AMENDMENT TO SECTION 6.—Section 6(a)(3) of the Investment Company Act of  
13 1940 (15 U.S.C. 80a-6(a)(3)) is amended by striking “Federal Savings and Loan Insurance  
14 Corporation” and inserting “Director of National Bank Supervisor”.

15 **SEC. 399R. AMENDMENTS TO THE NEIGHBORHOOD REINVESTMENT**  
16 **CORPORATION ACT.**

17 (a) AMENDMENTS TO SECTION 604.—Section 604 of The Neighborhood Reinvestment  
18 Corporation Act, as amended (42 U.S.C. 8103) is amended—

19 (1) in subsection (a)(5), by striking “Comptroller of the Currency” and inserting  
20 “Director of the National Bank Supervisor”; and

21 (2) in subsection (f), by striking “Comptroller of the Currency, through a duly  
22 designated Deputy Comptroller” and inserting “Director of the National Bank Supervisor  
23 through a duly designated Deputy Director”.

1 (b) AMENDMENT TO SECTION 606.—Section 606 of The Neighborhood Reinvestment  
2 Corporation Act, as amended (42 U.S.C. 8105(c)(3)) is amended—

3 (1) by striking the “Federal Home Loan Bank Board” and inserting “Federal  
4 Housing Finance Agency; and

5 (2) by striking “Comptroller of the Currency” and inserting “Director of the  
6 National Bank Supervisor”.

7 **SEC. 399S. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.**

8 (a) AMENDMENTS TO SECTION 3.—Section 3 of the Securities Exchange Act of 1934 (15  
9 U.S.C. 78c) is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (6), by striking “Comptroller of the Currency” and  
12 inserting “Director of the National Bank Supervisor”;

13 (B) in paragraph (34)(A)—

14 (i) in clause (i), by striking “Comptroller of the Currency” and  
15 inserting “Director of the National Bank Supervisor”;

16 (ii) in clause (iii) by adding “and” after the semi-colon;

17 (iii) by striking clause (iv); and

18 (iv) by redesignating clause (v) as clause (iv);

19 (C) in paragraph (B)—

20 (i) in clause(i), by striking “Comptroller of the Currency” and  
21 inserting “Director of the National Bank Supervisor”;

22 (ii) in clause (iii), by adding “and” after the semi-colon; a

23 (iii) by striking clause (iv); and



1 (iv) by redesignating clause (v) as clause (iv);

2 (D) in paragraph (C)—

3 (i) in clause (i), by striking “Comptroller of the Currency” and  
4 inserting “Director of the National Bank Supervisor”;

5 (ii) in clause (iii), by adding “and” after the semi-colon;

6 (iii) by striking clause (iv); and

7 (iv) by redesignating clause (v) as clause (iv);

8 (E) in paragraph (F)—

9 (i) in clause (i), by striking “Comptroller of the Currency” and  
10 inserting “Director of the National Bank Supervisor”;

11 (ii) by striking clause (ii); and

12 (iii) redesignating clauses (iii), (iv), and (v), as clauses (ii), (iii) and  
13 (iv), respectively.

14 (b) AMENDMENTS TO SECTION 15C.—Section 15C of the Securities Exchange Act of  
15 1934 (15 U.S.C. 78o-5) is amended in subsection (g)(1)—

16 (A) by striking “Comptroller of the Currency” and inserting “Director of  
17 the National Bank Supervisor”; and

18 (B) by striking “the Director of the Office of Thrift Supervision, the  
19 Federal Savings and Loan Insurance Corporation,”.

20 **SEC. 399T. AMENDMENTS TO TITLE 5, UNITED STATES CODE**

21 (a) AMENDMENT TO SECTION 3132.—Section 3132(a)(1)(D) of Title 5, United States  
22 Code (5 U.S.C. 3132(a)(1)(D)) is amended—

23 (1) by striking “Office of the Comptroller of the Currency” and inserting

1 “National Bank Supervisor”; and

2 (2) by striking “the Office of Thrift Supervision”

3 (b) AMENDMENTS TO SECTION 5314.—Section 5314 of Title 5, United States Code (5  
4 U.S.C. 5314) is amended—

5 (1) by adding at the end the following new item:

6 “Director of the National Bank Supervisor.”; and

7 (2) 90 days after the designated transfer date, by striking “Comptroller of the  
8 Currency” and “Director of the Office of Thrift Supervision.”

9 **SEC. 399U. AMENDMENTS TO TITLE 18, UNITED STATES CODE**

10 (a) AMENDMENT TO SECTION 212.—Section 212(c)(2) of Title 18, United States Code (18  
11 U.S.C. 212(c)(2)) is amended—

12 (1) in paragraph (A), by striking “Comptroller of the Currency” and inserting  
13 “Director National Bank Supervisor”;

14 (2) by striking (C); and

15 (2) by relettering (D) through (H) as (C) through (G).

16 (b) AMENDMENT TO SECTION 655.—Section 655 of Title 18, United States Code (18  
17 U.S.C. 655) is amended by striking “Comptroller of the Currency” and inserting “Director of the  
18 National Bank Supervisor”.

19 (c) AMENDMENT TO SECTION 657.—Section 657 of Title 18, United States Code (18  
20 U.S.C. 657) is amended by striking “Office of Thrift Supervision, the Resolution Trust  
21 Corporation” and inserting “National Bank Supervisor”.

22 (d) AMENDMENT TO SECTION 981.—Section 981(a)(1)(D) of Title 18, United States Code  
23 (18 U.S.C. 981(a)(1)(D)) is amended—

1 (1) by striking “Resolution Trust Corporation”; and

2 (2) by striking “Office of the Comptroller of the Currency or the Office of Thrift  
3 Supervision” and inserting “National Bank Supervisor”.

4 (e) AMENDMENT TO SECTION 982.—Section 982(a)(3) of Title 18, United States Code (18  
5 U.S.C. 982(a)(3)) is amended—

6 (1) by striking “Resolution Trust Corporation”;and

7 (2) by striking “Office of the Comptroller of the Currency or the Office of Thrift  
8 Supervision” and inserting “National Bank Supervisor”.

9 (f) AMENDMENT TO SECTION 1005.—Section 1005 of Title 18, United States Code (18  
10 U.S.C. 1005) is amended by striking “Comptroller of the Currency” and inserting “Director of  
11 the National Bank Supervisor”.

12 (g) AMENDMENT TO SECTION 1006.—Section 1006 of Title 18, United States Code (18  
13 U.S.C. 1006) is amended—

14 (1) by striking “Office of Thrift Supervision” and inserting “the National Bank  
15 Supervisor”; and

16 (2) by striking “the Resolution Trust Corporation”.

17 (h) AMENDMENT TO SECTION 1014.—Section 1014 of Title 18, United States Code (18  
18 U.S.C. 1014) is amended—

19 (1) by striking “Office of Thrift Supervision” and inserting “National Bank  
20 Supervisor”; and

21 (2) by striking “Resolution Trust Corporation.”

22 (i) AMENDMENT TO SECTION 1032.—Section 1032 of Title 18, United States Code (18  
23 U.S.C. 1032) is amended—

1 (1) by striking “Comptroller of the Currency or the Director of the Office of  
2 Thrift Supervision” and inserting “Director of the National Bank Supervisor”; and

3 (2) by striking “the Resolution Trust Corporation”;

4 (j) AMENDMENT TO SECTION 1906.—Section 1906 of Title 18, United States Code (18  
5 U.S.C. 1906) is amended by striking “Comptroller of the Currency” and inserting “Director of  
6 the National Bank Supervisor”;

7 **SEC. 399V. AMENDMENTS TO TITLE 28, UNITED STATES CODE.**

8 (a) AMENDMENT TO SECTION 1348.—Section 1348 of Title 28, United States Code (28  
9 U.S.C. 1348) is amended by striking “Comptroller of the Currency” and inserting “Director of  
10 the National Bank Supervisor”.

11 (b) AMENDMENTS TO SECTION 1394.—Section 1394 of Title 28, United States Code (28  
12 U.S.C. 1394) is amended ;

13 (1) in the heading of section 1394, by striking “Comptroller of the Currency” and  
14 inserting “Director of the National Bank Supervisor”; and

15 (2) by striking “Comptroller of the Currency” and inserting “Director of the  
16 National Bank Supervisor”.

17 (c) AMENDMENT TO SECTION 2001.—Section 2001(c) of Title 28, United States Code (28  
18 U.S.C. 2001(c)) is amended by striking “Comptroller of the Currency” and inserting “Director of  
19 the national bank Supervisor”.

20 (d) AMENDMENT TO SECTION 2002.—Section 2002 of Title 28, United States Code (28  
21 U.S.C. 2002) is amended by striking “Comptroller of the Currency” and inserting “Director of  
22 the National Bank Supervisor”.

23 (e) AMENDMENT TO SECTION 2004.—Section 2004 of Title 28, United States Code (28

1 U.S.C. 2004) is amended by striking “Comptroller of the Currency”.

2 **SEC. 399W. AMENDMENTS TO TITLE 31, UNITED STATES CODE**

3 (a) AMENDMENT TO SECTION 307.—Section 307 of Title 31, United States Code (31  
4 U.S.C. 307) is amended to read as follows:

5 **“SEC. 307 . NATIONAL BANK SUPERVISOR.**

6 The National Bank Supervisor, established by section 311 of the Federal Depository  
7 Institutions Supervision and Regulation Improvements Act of 2009, is a bureau in the  
8 Department of the Treasury.”.

9 (b) REPEAL OF SECTION 309.—Section 309 of Title 31, United States Code (31 U.S.C.  
10 309) is repealed.

11 (c) AMENDMENTS TO SECTION 321.—Section 321 of Title 31, United States Code (31  
12 U.S.C. 321) is amended—

13 (1) by inserting “and” at the end of subsection (c)(1);

14 (2) in subsection (c)(2) by striking “Comptroller of the Currency” and inserting  
15 “Director of the National Bank Supervisor”;

16 (3) by striking subsection (c)(3); and

17 (4) by striking subsection (e).

18 (d) AMENDMENTS TO SECTION 714.—Section 714 of Title 31, United States Code (31  
19 U.S.C. 714) is amended—

20 (1) in the heading of section 714, by striking “Office of the Comptroller of the  
21 Currency” and inserting “National Bank Supervisor”; and

22 (2) in subsection (a) by striking “Office of the Comptroller of the Currency, and  
23 the Office of Thrift Supervision” and inserting “National Bank Supervisor”.

1 (e) AMENDMENT TO SECTION 718.—Section 718(a) of Title 31, United States Code (31  
2 U.S.C. 718(a)) is amended by striking “Office of the Comptroller of the Currency” and inserting  
3 “National Bank Supervisor”.

4 (f) AMENDMENT TO SECTION 1321.—Section 1321(b) of Title 31, United States Code (31  
5 U.S.C. 1321) is amended by striking “Comptroller of the Currency” and inserting “Director of  
6 the National Bank Supervisor”.

7 **SEC. 399X. AMENDMENTS TO TITLE 44, UNITED STATES CODE.**

8 (a) AMENDMENT TO SECTION 1111.—Section 1111 of Title 44, United States Code (44  
9 U.S.C. 1111) is amended by striking “Comptroller of the Currency” and inserting “Director of  
10 the National Bank Supervisor”.

11 (b) AMENDMENT TO SECTION 1344.—Section 1344 of Title 44, United States Code (44  
12 U.S.C. 1344) is amended by striking “Comptroller of the Currency” each place it appears and  
13 inserting “Director of the National Bank Supervisor”.

14 **SEC. 399Y. AMENDMENT TO THE TRUST INDENTURE ACT OF 1939.**

15 Section 321(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77uuu(b)) is amended by  
16 striking “Comptroller of the Currency” and inserting “Director of the National Bank Supervisor.”

17 **CHAPTER 54—EFFECTIVE DATE OF CONFORMING AMENDMENTS**

18 **SEC. 399Z. EFFECTIVE DATE.**

19 The amendments made in chapter 51 through 53 shall become effective on the transfer  
20 date.



1                   “(ii) assets under management attributable to clients in the United  
2                   States of less than \$25,000,000, or such higher amount as the Commission  
3                   may, by rule, deem appropriate in accordance with the purposes of this  
4                   title; and

5                   “(C) neither holds itself out generally to the public in the United States as  
6                   an investment adviser, nor acts as an investment adviser to any investment  
7                   company registered under the Investment Company Act of 1940, or a company  
8                   which has elected to be a business development company pursuant to section 54  
9                   of the Investment Company Act of 1940 (15 U.S.C. 80a-53), and has not  
10                  withdrawn its election.”.

11 **SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED**  
12 **EXEMPTION FOR FOREIGN PRIVATE ADVISERS; LIMITED**  
13 **INTRASTATE EXEMPTION.**

14                  Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is  
15 amended—

16                  (a) in paragraph (1), by inserting “, except an investment adviser who acts as an  
17 investment adviser to any private fund,” after “investment adviser” the first time it appears;

18                  (b) by amending paragraph (3) to read as follows:

19                         “(3) any investment adviser that is a foreign private adviser;”; and

20                  (c) in paragraph (6)—

21                         (1) in subparagraph (A), by striking “or”;

22                         (2) in subparagraph (B), by striking the period at the end and adding “; or”; and

23                         (3) by adding at the end the following new subparagraph:



1 “(C) a private fund.”

2 **SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS;**  
3 **DISCLOSURES.**

4 Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4) is amended—

5 (a) by redesignating subsections (b) and (c) as subsections (c) and (d); and

6 (b) by inserting after subsection (a) the following new subsection (b):

7 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

8 “(1) IN GENERAL.—The Commission is authorized to require any investment  
9 adviser registered under this Act to maintain such records of and submit to the  
10 Commission such reports regarding private funds advised by the investment adviser as  
11 are necessary or appropriate in the public interest and for the assessment of systemic risk  
12 by the Board of Governors of the Federal Reserve System and the Financial Services  
13 Oversight Council, and to provide or make available to the Board of Governors of the  
14 Federal Reserve System and the Financial Services Oversight Council those reports or  
15 records or the information contained therein. The records and reports of any private fund  
16 would be an investment company, to which any such investment adviser provides  
17 investment advice, maintained or filed by an investment adviser registered under this Act  
18 shall be deemed to be the records and reports of the investment adviser.

19 “(2) REQUIRED INFORMATION.—The records and reports required to be filed with  
20 the Commission under this subsection shall include but shall not be limited to the  
21 following information for each private fund advised by the investment adviser:

22 “(A) amount of assets under management, use of leverage (including off-  
23 balance sheet leverage), counterparty credit risk exposures, trading and

1 investment positions, and trading practices; and

2 “(B) such other information as the Commission, in consultation with the  
3 Board of Governors of the Federal Reserve System, determines necessary or  
4 appropriate in the public interest and for the protection of investors or for the  
5 assessment of systemic risk.

6 “(3) MAINTENANCE OF RECORDS.—An investment adviser registered under this  
7 Act is required to maintain and keep such records of private funds advised by the  
8 investment adviser for such period or periods as the Commission, by rules and  
9 regulations, may prescribe as necessary or appropriate in the public interest and for the  
10 protection of investors or for the assessment of systemic risk.

11 “(4) EXAMINATION OF RECORDS.—

12 “(A) PERIODIC AND SPECIAL EXAMINATIONS.—All records of a private  
13 fund maintained by an investment adviser registered under this Act shall be  
14 subject at any time and from time to time to such periodic, special, and other  
15 examinations by the Commission, or any member or representative thereof, as the  
16 Commission may prescribe.

17 “(B) AVAILABILITY OF RECORDS.—An investment adviser registered under  
18 this Act shall make available to the Commission or its representatives any copies  
19 or extracts from such records as may be prepared without undue effort, expense or  
20 delay as the Commission or its representatives may reasonably request.

21 “(5) INFORMATION SHARING.— The Commission shall make available to the  
22 Board of Governors of the Federal Reserve System and the Financial Services Oversight  
23 Council copies of all reports, documents, records and information filed with or provided

1 to the Commission by an investment adviser under section 204(b) as the Board or the  
2 Council may consider necessary for the purpose of assessing the systemic risk of a  
3 private fund or assessing whether a private fund should be designated a Tier 1 financial  
4 holding company. All such reports, documents, records and information obtained by the  
5 Board or the Council from the Commission under this subsection shall be kept  
6 confidential.

7 “(6) DISCLOSURES BY PRIVATE FUND.—An investment adviser registered under  
8 this Act shall provide such reports, records and other documents to investors, prospective  
9 investors, counterparties, and creditors, of any private fund advised by the investment  
10 adviser as the Commission, by rules and regulations, may prescribe as necessary or  
11 appropriate in the public interest and for the protection of investors or for the assessment  
12 of systemic risk.

13 “(7) CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law,  
14 the Commission shall not be compelled to disclose any supervisory report or information  
15 contained therein required to be filed with the Commission under subsection (b).  
16 Nothing in this subsection shall authorize the Commission to withhold information from  
17 Congress or prevent the Commission from complying with a request for information from  
18 any other Federal department or agency or any self-regulatory organization requesting the  
19 report or information for purposes within the scope of its jurisdiction, or complying with  
20 an order of a court of the United States in an action brought by the United States or the  
21 Commission. For purposes of section 552 of title 5, United States Code, this subsection  
22 shall be considered a statute described in subsection (b)(3)(B) of such section 552.”

23 **SEC. 405. DISCLOSURE PROVISION ELIMINATED.**

1           Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by  
2 striking subsection (c).

3 **SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.**

4           Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended—

5                   (1) in subsection (a)—

6                           (A) by striking the second sentence; and

7                           (B) by striking the period at the end of the first sentence and inserting the  
8 following:

9 “, including rules and regulations defining technical, trade, and other terms used in this title. For  
10 the purposes of its rules and regulations, the Commission may—

11                   “(1) classify persons and matters within its jurisdiction and prescribe different  
12 requirements for different classes of persons or matters; and

13                   “(2) ascribe different meanings to terms (including the term ‘client’) used in  
14 different sections of this title as the Commission determines necessary to effect the  
15 purposes of this title.”; and

16                   (2) by adding at the end the following new subsection:

17                   “(e) The Commission and the Commodity Futures Trading Commission shall, after  
18 consultation with the Board of Governors of the Federal Reserve System, within 6 months after  
19 the date of enactment of the Private Fund Investment Advisers Registration Act of 2009, jointly  
20 promulgate rules to establish the form and content of the reports required to be filed with the  
21 Commission under subsection 204(b) and with the Commodity Futures Trading Commission by  
22 investment advisers that are registered both under the Investment Advisers Act of 1940 (15  
23 U.S.C. 80b *et seq.*) and the Commodity Exchange Act (7 U.S.C. 1a *et seq.*).”.

1           **TITLE V—OFFICE OF NATIONAL INSURANCE**

2   **SEC. 501. SHORT TITLE.**

3           This title may be cited as the “Office of National Insurance Act of 2009”.

4   **SEC. 502. OFFICE OF NATIONAL INSURANCE ESTABLISHED.**

5           (a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of title 31, United States  
6 Code, is amended—

7                   (1) by transferring and inserting section 312 after section 313;

8                   (2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and  
9           315, respectively; and

10                  (3) by inserting after section 312 (as so redesignated) the following new sections:

11   **“SEC. 313. OFFICE OF NATIONAL INSURANCE.**

12                  “(a) ESTABLISHMENT.—There is established the Office of National Insurance as an office  
13 in the Department of the Treasury.

14                  “(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by  
15 the Secretary of the Treasury. The position of such Director shall be a career reserved position in  
16 the Senior Executive Service.

17                  “(c) FUNCTIONS.—

18                          “(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office shall have  
19 the authority, pursuant to the direction of the Secretary, as follows:

20                                  “(A) to monitor all aspects of the insurance industry, including  
21 identifying issues or gaps in the regulation of insurers that could contribute to a  
22 systemic crisis in the insurance industry or the United States financial system;

23                                  “(B) to recommend to the Board of Governors of the Federal Reserve

1 System that it designate an insurer, including its affiliates, as an entity subject to  
2 regulation as a Tier 1 financial holding company under Section 6 of the Bank  
3 Holding Company Act of 1956 (12 U.S.C. 1845);

4 “(C) to assist the Secretary in administering the Terrorism Insurance  
5 Program established in the Department of the Treasury under the Terrorism Risk  
6 Insurance Act of 2002 (15 U.S.C. 6701 note);

7 “(D) to coordinate Federal efforts and establish Federal policy on  
8 prudential aspects of international insurance matters, including representing the  
9 United States as appropriate in the International Association of Insurance  
10 Supervisors and assisting the Secretary in negotiating International Insurance  
11 Agreements on Prudential Measures;

12 “(E) to determine, in accordance with subsection (f), whether State  
13 insurance measures are preempted by International Insurance Agreements on  
14 Prudential Measures;

15 “(F) to consult with the States regarding insurance matters of national  
16 importance and prudential insurance matters of international importance; and

17 “(G) To perform such other related duties and authorities as may be  
18 assigned to it by the Secretary.

19 “(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major  
20 domestic and prudential international insurance policy issues.

21 “(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except  
22 health insurance, as determined by the Secretary based on section 2791 of the Public Health  
23 Service Act (42 U.S.C. 300gg-91).

1 “(e) GATHERING OF INFORMATION.—

2 “(1) GENERAL.—In carrying out its functions under subsection (c), the Office may  
3 receive and collect data and information on and from the insurance industry and insurers,  
4 enter into information-sharing agreements, analyze and disseminate data and information,  
5 and issue reports regarding all lines of insurance except health insurance.

6 “(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as  
7 provided in paragraph (3), the Office may require an insurer, or affiliate of an insurer, to  
8 submit such data or information that the Office may reasonably require in carrying out its  
9 functions under subsection (c).

10 “(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect  
11 to any insurer or affiliate thereof that meets a minimum size threshold that may be  
12 established by the Office by order or rule.

13 “(4) ADVANCE COORDINATION.—Before collecting any data or information under  
14 paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with  
15 each relevant State insurance regulator (or other relevant Federal or State regulatory  
16 agency, if any, in the case of an affiliate of an insurer) to determine if the information to  
17 be collected is available from, or may be obtained in a timely manner by, such State  
18 insurance regulator or other regulatory agency. Notwithstanding any other provision of  
19 law, each such relevant State insurance regulator or other Federal or State regulatory  
20 agency is authorized to provide to the Office such data or information.

21 “(5) CONFIDENTIALITY.—

22 “(A) The submission of any non-publicly available data and information to  
23 the Office under this subsection shall not constitute a waiver of, or otherwise

1 affect, any privilege arising under Federal or State law (including the rules of any  
2 Federal or State Court) to which the data or information is otherwise subject;

3 “(B) any requirement under Federal or State law to the extent otherwise  
4 applicable, or any requirement pursuant to a written agreement in effect between  
5 the original source of any non-publicly available data or information and the  
6 source of such data or information to the Office, regarding the privacy or  
7 confidentiality of any data or information in the possession of the source to the  
8 Office, shall continue to apply to such data or information after the data or  
9 information has been provided pursuant to this subsection to the Office; and

10 “(C) any data or information submitted by an insurer, or affiliate of an  
11 insurer, contained in or related to examination, operating, or condition reports  
12 prepared by, or on behalf of, or for the use of a State insurance regulator or other  
13 Federal or State regulatory agency responsible for the insurer or affiliate’s  
14 regulation or supervision shall be considered to be subject to 5 U.S.C. 552(b)(8).

15 “(6) SUBPOENAS AND ENFORCEMENT.—The Office shall have power to require by  
16 subpoena the production of the data or information requested under paragraph (2).

17 Subpoenas shall bear the signature of the Director and shall be served by any person or  
18 class of persons designated by the Director for that purpose. In the case of contumacy or  
19 failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate  
20 district court of the United States. Any failure to obey the order of the court may be  
21 punished by the court as a contempt of court.

22 “(f) PREEMPTION OF STATE INSURANCE MEASURES.—

23 “(1) STANDARD.—A State insurance measure shall be preempted if, and only to



1 the extent that the Director determines, in accordance with this subsection, that the  
2 measure—

3 “(A) directly or indirectly treats a non-United States insurer domiciled in a  
4 foreign jurisdiction that is subject to an International Insurance Agreement on  
5 Prudential Measures less favorably than it treats a United States insurer  
6 domiciled, licensed, admitted, or otherwise authorized in that State; and

7 “(B) is inconsistent with an International Insurance Agreement on  
8 Prudential Measures.

9 “(2) DETERMINATION.—

10 “(A) NOTICE OF POTENTIAL INCONSISTENCY.— Before making any  
11 determination of inconsistency, the Director shall—

12 “(i) cause to be published in the Federal Register notice of the  
13 issue regarding the potential inconsistency or preemption, including a  
14 description of each State insurance measure at issue and any applicable  
15 International Insurance Agreement on Prudential Measures;

16 “(ii) provide interested parties a reasonable opportunity to submit  
17 written comments to the Office; and

18 “(iii) consider any comments received.

19 “(B) NOTICE OF DETERMINATION OF INCONSISTENCY.— Upon making any  
20 determination of inconsistency, the Director shall

21 “(i) notify the appropriate State of the determination; and

22 “(ii) establish a reasonable period of time before the determination  
23 shall become effective.

1           “(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in  
2 paragraph (2)(B)(ii), if the basis for the determination of inconsistency still exists, the  
3 determination shall become effective and the Director shall—

4                   “(i) cause to be published notice in the Federal Register that the  
5 preemption has become effective, as well as the effective date; and

6                   “(ii) notify the appropriate State.

7           “(4) LIMITATION.—No State may enforce a State insurance measure to the extent  
8 that it has been preempted under this subsection.

9           “(g) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders,  
10 regulations, policies and procedures to implement this section.

11           “(h) CONSULTATION.—The Director shall consult with State insurance regulators, to the  
12 extent the Director determines appropriate, in carrying out the functions of the Office.

13           “(i) SAVINGS PROVISIONS.—Nothing in this section shall—

14                   “(1) preempt any State insurance measure that governs any insurer’s rates,  
15 premiums, underwriting or sales practices, or State coverage requirements for insurance,  
16 or to the application of the antitrust laws of any State to the business of insurance;

17                   “(2) be construed to alter, amend, or limit any provision of the Consumer  
18 Financial Protection Agency Act of 2009; or

19                   “(3) affect the preemption of any State insurance measure otherwise inconsistent  
20 with and preempted by Federal law.

21           “(j) ANNUAL REPORT TO CONGRESS.—Beginning September 30, 2011, the Director shall  
22 submit a report on or before September 30 of each calendar year to the President and to the  
23 Committee on Financial Services of the House of Representatives and the Committee on

1 Banking, Housing, and Urban Affairs of the Senate on the insurance industry, any actions taken  
2 by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance  
3 measures), and any other information as deemed relevant by the Director or as requested by such  
4 Committees.

5 “(k) USE OF EXISTING RESOURCES—To carry out this section, the Office may employ  
6 personnel, facilities, and other Department of the Treasury resources available to the Secretary.

7 “(l) DEFINITIONS—For purposes of this section and section 314, the following definitions  
8 shall apply:

9 “(1) AFFILIATE.—The term ‘affiliate’ means, with respect to an insurer, any  
10 person that controls, is controlled by, or is under common control with the insurer.

11 “(2) DETERMINATION OF INCONSISTENCY.—The term ‘determination of  
12 inconsistency’ means a determination that a State insurance measure is preempted under  
13 subsection (f).

14 “(3) INSURER.—The term ‘insurer’ means any person engaged in the business of  
15 insurance, including reinsurance.

16 “(4) INTERNATIONAL INSURANCE AGREEMENT ON PRUDENTIAL MEASURES.—The  
17 term ‘International Insurance Agreement on Prudential Measures’ means a written  
18 bilateral or multilateral agreement entered into between the United States and a foreign  
19 government, authority, or regulatory entity regarding prudential measures applicable to  
20 the business of insurance or reinsurance.

21 “(5) NON-UNITED STATES INSURER.—The term ‘non-United States insurer’ means  
22 an insurer that is organized under the laws of a jurisdiction other than a State, but does  
23 not include any United States branch of such an insurer.

1           “(6) OFFICE.—The term ‘Office’ means the Office of National Insurance  
2 established by this section.

3           “(7) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

4           “(8) STATE.—The term ‘State’ means any State, commonwealth, territory, or  
5 possession of the United States, the District of Columbia, the Commonwealth of Puerto  
6 Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or  
7 the United States Virgin Islands.

8           “(9) STATE INSURANCE MEASURE.—The term ‘State insurance measure’ means  
9 any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to  
10 or affecting prudential measures applicable to insurance or reinsurance.

11           “(10) STATE INSURANCE REGULATOR.—The term “State insurance regulator”  
12 means any State regulatory authority responsible for the supervision of insurers.

13           “(11) UNITED STATES INSURER.—The term ‘United States insurer’ means—

14                   “(A) an insurer that is organized under the laws of a State; or

15                   “(B) a United States branch of a non-United States insurer.

16           “(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for  
17 the Office such sums as may be necessary for each fiscal year.

18           **“SEC. 314 INTERNATIONAL INSURANCE AGREEMENTS ON PRUDENTIAL**  
19                   **MEASURES.**

20           “(a) PURPOSE.—It is the sense of the Congress that the insurance marketplace  
21 increasingly operates globally with many significant foreign participants. There is increasing  
22 tension in the current regulatory systems as the result of an absence of clear and settled means  
23 for governments to enter into agreements on prudential measures with respect to the business of

1 insurance or reinsurance. This impairs the ability of domestic and foreign-based companies to  
2 participate fully in each others' markets.

3       “(b) AUTHORITY.—The Secretary is authorized to negotiate and enter into International  
4 Insurance Agreements on Prudential Measures on behalf of the United States.”.

5       (b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is  
6 amended—

7             (1) in paragraph (7), by striking “and” at the end;

8             (2) in paragraph (8)(C), by striking the period at the end and inserting “; and”; and

9             (3) by adding at the end the following new paragraph:

10            “(9) advise the President on major domestic and international prudential policy  
11 issues in connection with all lines of insurance except health insurance.”.

12       (c) CLERICAL AMENDMENT—The table of sections for subchapter I of chapter 3 of title  
13 31, United States Code, is amended by striking the item relating to section 312 and inserting the  
14 following new items:

15             “Sec. 312. Terrorism and Financial Intelligence.

16             “Sec. 313. Office of National Insurance.

17             “Sec. 314. International Insurance Agreements on Prudential Measures.

18             “Sec. 315. Continuing in office.”.

1                   **TITLE VI—FURTHER IMPROVEMENTS TO THE**  
2                   **REGULATION OF BANK HOLDING COMPANIES AND**  
3                   **DEPOSITORY INSTITUTIONS**

4                   **SEC. 601. SHORT TITLE.**

5                   This title may be cited as the “Bank Holding Company and Depository Institution  
6                   Regulatory Improvements Act of 2009”.

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

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

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

13                                   (2) in subsection (c)(1)(A), by striking “insured bank” and inserting “insured  
14                   depository institution”, and by striking “section 1813(h)” and inserting “section  
15                   1813(c)(2)”; and

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

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

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

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

2 and

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

4 “[reserved]”.

5 (c) CONFORMING CHANGES.— Section 4(h) of the Bank Holding Company Act of 1956

6 (12 U.S.C. 1843(h)), is amended—

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

8 “subparagraph (D)”; and

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

10 “subparagraph (D)”.

11 (d) FOREIGN TIER 1 FINANCIAL HOLDING COMPANIES.—A Foreign Tier 1 financial holding

12 company shall be subject to the provisions of section 2(h)(2) (12 U.S.C. 1841(h)(2)) in the same

13 manner and to the same extent as if the Foreign Tier 1 financial holding company were a bank

14 holding company.

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

16 **COMPANIES.**

17 Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by

18 adding at the end the following new subsection:

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

20 “(1) CONVERSION BY OPERATION OF LAW.—A company that, on the day before the

21 date of enactment of the Bank Holding Company and Depository Institution Regulatory

22 Improvements Act of 2009, was not a bank holding company but which, by reason of the

23 amendments made in section 602 of the Bank Holding Company and Depository

1 Institution Regulatory Improvements Act of 2009, becomes a bank holding company by  
2 operation of law, shall register as a bank holding company with the Board in accordance  
3 with section 5(a) within 90 days of the date of enactment of that Act.

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

9 **SEC. 604. REPORTS AND EXAMINATIONS OF BANK HOLDING COMPANIES;**  
10 **REGULATION OF FUNCTIONALLY REGULATED**  
11 **SUBSIDIARIES.**

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

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

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

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

20 and

21 “(III) externally audited financial statements.”.

22 (b) FUNCTIONALLY REGULATED SUBSIDIARY.—Section 5(c)(1) of the Bank Holding  
23 Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended by adding at the end the following new



1 subparagraph:

2 “(C) DEFINITION.—For purposes of this subsection and section 6, the term

3 ‘functionally regulated subsidiary’ means any:

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

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

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

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

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

1 agency;

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

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

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

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

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

20 (e) AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK  
21 HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841, *et seq.*) is  
22 amended by striking section 10A (12 U.S.C. 1848a) in its entirety.

1 (f) ACQUISITIONS OF BANKS.—Section 3(c) of the Bank Holding Company Act of 1956  
2 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

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

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

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

11 (1) in subparagraph (B), by striking “and”;

12 (2) by redesignating subparagraph (C) as subparagraph (D);

13 (3) by adding after subparagraph (B) the following new subparagraph:

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

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

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

19 **SEC. 606. STANDARDS FOR INTERSTATE ACQUISITIONS.**

20 (a) Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C.  
21 1842(d)(1)(A)) is amended—

22 (1) by striking “adequately capitalized” and inserting “well capitalized”; and

23 (2) by striking “adequately managed” and inserting “well managed”.

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

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

5 **SEC. 607. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS**  
6 **WITH AFFILIATES.**

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

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

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

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

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

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

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

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

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

23 (6) in subsection (c)(1), by striking “at the time of the transaction,” and adding in

1 lieu thereof “at all times”;

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

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

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

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

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

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

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

21 **SEC. 608. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL**  
22 **SUBSIDIARIES.**

23 Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended by striking

1 paragraph (3) in its entirety and redesignating the subsequent paragraphs accordingly.

2 **SEC. 609. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON**  
3 **DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS,**  
4 **REVERSE REPURCHASE AGREEMENTS, AND SECURITIES**  
5 **LENDING AND BORROWING TRANSACTIONS.**

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

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

9 “shall include—

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

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

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

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

22 “(3) the term “derivative transaction” means any transaction that is a contract,  
23 agreement, swap, warrant, note, or option that is based, in whole or in part, on the value

1 of, any interest in, or any quantitative measure or the occurrence of any event relating to,  
2 one or more commodities, securities, currencies, interest or other rates, indices, or other  
3 assets.”; and

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

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

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

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

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

19 **SEC. 611. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.**

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

23 **“SEC. 7. PROHIBITION ON CONVERSION.**

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

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

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

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

13 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the Revised Statutes (12 U.S.C.  
14 36(g)(1)(A)) is amended to read as follows:

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

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

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



1 **SEC. 613. LENDING LIMITS TO INSIDERS.**

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

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

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

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

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

19 (c) AMENDMENTS TO THE FEDERAL RESERVE ACT.— Section 22(d) of the Federal Reserve  
20 Act (12 U.S.C. 375) is amended by striking the section in its entirety.

21

1 **SEC. 615. ASSESSMENT OF FEES FOR EXAMINATIONS.**

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

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

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

9 “(A) The National Bank Supervisor shall assess fees on national banks  
10 with total consolidated assets greater than \$10,000,000,000 in such amounts as are  
11 necessary to fully defray the costs of examination, taking into account their size,  
12 complexity, and financial condition, and to provide sufficient funds for the  
13 agency’s operations, taking into account the fees collected pursuant to paragraph  
14 (2).

15 “(B) The Board of Governors of the Federal Reserve System shall assess  
16 fees on State member banks with total consolidated assets greater than  
17 \$10,000,000,000 at a rate that is identical to the rate that is assessed by the  
18 National Bank Supervisor.

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

22 Any fees collected by the Federal Deposit Insurance Corporation under this

1 subsection and not used to defray the cost of examinations shall be deposited into  
2 the Deposit Insurance Fund.

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

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

14 **SEC. 616. RULES REGARDING CAPITAL LEVELS OF BANK HOLDING**  
15 **COMPANIES.**

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

18 “, including regulations relating to the capital levels of bank holding companies.”.  
19  
20

1           **TITLE VII—IMPROVEMENTS TO REGULATION OF**  
2           **OVER-THE-COUNTER DERIVATIVES MARKETS**

3           **SEC. 701. SHORT TITLE.**

4           This title may be cited as the “Over-the-Counter Derivatives Markets Act of 2009”.

5                           **Subtitle A—Regulation of Swap Markets**

6           **SEC. 711. DEFINITIONS.**

7           (a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of  
8           the Commodity Exchange Act (7 U.S.C. 1a) is amended—

9                           (1) by redesignating paragraphs (9) through (34) as paragraphs (10) through (35),  
10                          respectively;

11                          (2) by adding after paragraph (8) the following:

12                           “(9) DERIVATIVE.—The term ‘derivative’ means—

13   “(A) a contract of sale of a commodity for future delivery; or

14   “(B) a swap.”;

15                          (3) by redesignating paragraph (35) (as redesignated by subsection (a)) as  
16                          paragraph (36);

17                          (4) by adding after paragraph (34) (as redesignated by subsection (a)) the  
18                          following:

19                           “(35) SWAP.—

20   “(A) IN GENERAL.—Except as provided in subparagraph (B), the term  
21                           ‘swap’ means any agreement, contract, or transaction that—

22   “(i) is a put, call, cap, floor, collar, or similar option of any kind for

1 the purchase or sale of, or based on the value of, one or more interest or  
2 other rates, currencies, commodities, securities, instruments of  
3 indebtedness, indices, quantitative measures, or other financial or  
4 economic interests or property of any kind;

5 “(ii) provides for any purchase, sale, payment, or delivery (other  
6 than a dividend on an equity security) that is dependent on the occurrence,  
7 non-occurrence, or the extent of the occurrence of an event or contingency  
8 associated with a potential financial, economic, or commercial  
9 consequence;

10 “(iii) provides on an executory basis for the exchange, on a fixed  
11 or contingent basis, of one or more payments based on the value or level  
12 of one or more interest or other rates, currencies, commodities, securities,  
13 instruments of indebtedness, indices, quantitative measures, or other  
14 financial or economic interests or property of any kind, or any interest  
15 therein or based on the value thereof, and that transfers, as between the  
16 parties to the transaction, in whole or in part, the financial risk associated  
17 with a future change in any such value or level without also conveying a  
18 current or future direct or indirect ownership interest in an asset (including  
19 any enterprise or investment pool) or liability that incorporates the  
20 financial risk so transferred, including any agreement, contract, or  
21 transaction commonly known as an interest rate swap, a rate floor, rate  
22 cap, rate collar, cross-currency rate swap, basis swap, currency swap, total  
23 return swap, equity index swap, equity swap, debt index swap, debt swap,

1 credit spread, credit default swap, credit swap, weather swap, energy  
2 swap, metal swap, agricultural swap, emissions swap, or commodity swap;

3 “(iv) is an agreement, contract, or transaction that is, or in the  
4 future becomes, commonly known to the trade as a swap; or

5 “(v) is any combination or permutation of, or option on, any  
6 agreement, contract, or transaction described in any of clauses (i) through  
7 (iv);

8 “(B) EXCLUSIONS.—The term ‘swap’ does not include:

9 “(i) any contract of sale of a commodity for future delivery or  
10 security futures product traded on or subject to the rules of any board of  
11 trade designated as a contract market under section 5 or 5f;

12 “(ii) any sale of a nonfinancial commodity for deferred shipment or  
13 delivery, so long as such transaction is physically settled;

14 “(iii) any put, call, straddle, option, or privilege on any security,  
15 certificate of deposit, or group or index of securities, including any interest  
16 therein or based on the value thereof, that is subject to the Securities Act  
17 of 1933 (15 U.S.C. 77a *et seq.*) and the Securities Exchange Act of 1934  
18 (15 U.S.C. 78a *et seq.*);

19 “(iv) any put, call, straddle, option, or privilege relating to foreign  
20 currency entered into on a national securities exchange registered pursuant  
21 to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a);

22 “(v) any agreement, contract, or transaction providing for the  
23 purchase or sale of one or more securities on a fixed basis that is subject to

1 the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Securities  
2 Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

3 “(vi) any agreement, contract, or transaction providing for the  
4 purchase or sale of one or more securities on a contingent basis that is  
5 subject to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the  
6 Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), unless such  
7 agreement, contract, or transaction predicates such purchase or sale on the  
8 occurrence of a bona fide contingency that might reasonably be expected  
9 to affect or be affected by the creditworthiness of a party other than a party  
10 to the agreement, contract, or transaction;

11 “(vii) any note, bond, or evidence of indebtedness that is a security  
12 as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C.  
13 77b(a)(1)); or

14 “(viii) any agreement, contract, or transaction that is—

15 “(I) based on a security; and

16 “(II) entered into directly or through an underwriter (as  
17 defined in section 2(a)(11) of the Securities Act of 1933) (15  
18 U.S.C. 77b(a)(11)) by the issuer of such security for the purposes  
19 of raising capital, unless such agreement, contract, or transaction is  
20 entered into to manage a risk associated with capital raising;

21 “(ix) any foreign exchange swap;

22 “(x) any foreign exchange forward;

23 “(xi) any agreement, contract, or transaction a counterparty of

1 which is a Federal Reserve bank, the United States government or an  
2 agency of the United States government that is expressly backed by the  
3 full faith and credit of the United States; and

4 “(xii) any security-based swap, other than a security-based swap as  
5 described in subparagraph 38(C).

6 “(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The  
7 term ‘swap’ shall be construed to include a master agreement that provides for an  
8 agreement, contract, or transaction that is a swap pursuant to subparagraph (A),  
9 together with all supplements to any such master agreement, without regard to  
10 whether the master agreement contains an agreement, contract, or transaction that  
11 is not a swap pursuant to subparagraph (A), except that the master agreement shall  
12 be considered to be a swap only with respect to each agreement, contract, or  
13 transaction under the master agreement that is a swap pursuant to subparagraph  
14 (A).”.

15 (5) in paragraph (13) (as redesignated by subsection (a))—

16 (A) in subparagraph (A)—

17 (i) in clause (vii), by striking “\$25,000,000” and inserting  
18 “\$50,000,000”;

19 (ii) in clause (xi), by striking “total assets in an amount” and  
20 inserting “amounts invested on a discretionary basis”; and

21 (B) in paragraph (C), by striking “determines” and inserting “and the  
22 Securities and Exchange Commission may further jointly determine”.

23 (6) in paragraph (30) (as redesignated by subsection (a)), by—



1 (A) redesignating subparagraph (E) as subparagraph (G);

2 (B) in subparagraph (D), by striking “and”; and

3 (C) inserting after subparagraph (D) the following:

4 “(E) an alternative swap execution facility registered under section 5h;

5 “(F) a swap repository; and”; and

6 (7) by adding after paragraph (36) (as redesignated by subsection (c)) the  
7 following:

8 “(37) BOARD.—The term ‘Board’ means the Board of Governors of the Federal  
9 Reserve System.”.

10 (8) by adding after paragraph (37) the following:

11 “(38) SECURITY-BASED SWAP.—

12 “(A) IN GENERAL.—Except as provided in subparagraph (B), the term  
13 ‘security-based swap’ means any agreement, contract, or transaction that would  
14 be a swap under paragraph (35) (without regard to paragraph (35)(B)(xii)), and  
15 that—

16 “(i) is based on an index that is a narrow-based security  
17 index, including any interest therein or based on the value thereof;

18 “(ii) is based on a single security or loan, including any  
19 interest therein or based on the value thereof; or

20 “(iii) is based on the occurrence, non-occurrence, or extent  
21 of the occurrence of an event relating to a single issuer of a  
22 security or the issuers of securities in a narrow-based security  
23 index, provided that such event must directly affect the financial

1 statements, financial condition, or financial obligations of the  
2 issuer.

3 “(B) EXCLUSION.—The term ‘security-based swap’ does not include any  
4 agreement, contract, or transaction that meets the definition of security-based  
5 swap only because it references or is based upon a government security.

6 “(C) MIXED SWAP.—The term ‘security-based swap’ includes any  
7 agreement, contract, or transaction that is as described in subparagraph (A) and  
8 also is based on the value of one or more interest or other rates, currencies,  
9 commodities, instruments of indebtedness, indices, quantitative measures, other  
10 financial or economic interest or property of any kind (other than a single security  
11 or a narrow-based security index), or the occurrence, non-occurrence, or the  
12 extent of the occurrence of an event or contingency associated with a potential  
13 financial, economic, or commercial consequence (other than an event described in  
14 subparagraph (A)(iii)).

15 “(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The  
16 term ‘security-based swap’ shall be construed to include a master agreement that  
17 provides for an agreement, contract, or transaction that is a security-based swap  
18 pursuant to subparagraph (A), together with all supplements to any such master  
19 agreement, without regard to whether the master agreement contains an  
20 agreement, contract, or transaction that is not a security-based swap pursuant to  
21 subparagraph (A), except that the master agreement shall be considered to be a  
22 security-based swap only with respect to each agreement, contract, or transaction  
23 under the master agreement that is a security-based swap pursuant to

1           subparagraph (A).”.

2           (9) by adding after paragraph (38) the following:

3           “(39) SWAP DEALER.—

4                     “(A) IN GENERAL.—The term ‘swap dealer’ means any person engaged in  
5           the business of buying and selling swaps for such person's own account, through a  
6           broker or otherwise.

7                     “(B) EXCEPTION.—The term ‘swap dealer’ does not include a person that  
8           buys or sells swaps for such person's own account, either individually or in a  
9           fiduciary capacity, but not as a part of a regular business.”.

10          (10) by adding after paragraph (39) the following:

11          “(40) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ means any  
12          person who is not a swap dealer and who maintains a substantial net position in  
13          outstanding swaps, other than to create and maintain an effective hedge under generally  
14          accepted accounting principles, as the Commission and the Securities and Exchange  
15          Commission may further jointly define by rule or regulation.”;

16          (11) by adding after paragraph (40) the following:

17          “(41) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-  
18          based swap participant’ means any person who is not a security-based swap dealer and  
19          who maintains a substantial net position in outstanding security-based swaps, other than  
20          to create and maintain an effective hedge under generally accepted accounting principles,  
21          as the Commission and the Securities and Exchange Commission may further jointly  
22          define by rule or regulation.”.

23          (12) by adding after paragraph (41) the following:

1 “(42) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal  
2 banking agency’ has the same meaning as in section 3(q) of the Federal Deposit  
3 Insurance Act (12 U.S.C. 1813(q)).”.

4 (13) by adding after paragraph (42) the following:

5 “(43) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ means—

6 “(A) the Board in the case of a swap dealer, major swap participant,  
7 security-based swap dealer or major security-based swap participant that is—

8 “(i) a state chartered bank that is a member of the Federal Reserve  
9 System; or

10 “(ii) a state chartered branch or agency of a foreign bank;

11 “(B) the Office of the Comptroller of the Currency in the case of a swap  
12 dealer, major swap participant, security-based swap dealer or major security-  
13 based swap participant that is—

14 “(i) a national bank; or

15 “(ii) a federally chartered branch or agency of a foreign bank; and

16 “(C) the Federal Deposit Insurance Corporation in the case of a swap  
17 dealer, major swap participant, security-based swap dealer or major security-  
18 based swap participant that is a state-chartered bank that is not a member of the  
19 Federal Reserve System.”.

20 (14) by adding after paragraph (43) the following:

21 “(44) SECURITY-BASED SWAP DEALER.—

22 “(A) IN GENERAL.—The term ‘security-based swap dealer’ means any  
23 person engaged in the business of buying and selling security-based swaps for

1 such person's own account, through a broker or otherwise.

2 “(B) EXCEPTION.—The term ‘security-based swap dealer’ does not include  
3 a person that buys or sells security-based swaps for such person's own account,  
4 either individually or in a fiduciary capacity, but not as a part of a regular  
5 business.”.

6 (15) by adding after paragraph (44) the following:

7 “(45) GOVERNMENT SECURITY.—The term ‘government security’ has the same  
8 meaning as in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C.  
9 78c(a)(42)).”.

10 (16) by adding after paragraph (45) the following:

11 “(46) FOREIGN EXCHANGE FORWARD.—The term ‘foreign exchange forward’  
12 means a transaction that solely involves the exchange of 2 different currencies on a  
13 specific future date at a fixed rate agreed at the inception of the contract.”.

14 (17) by adding after paragraph (46) the following:

15 “(47) FOREIGN EXCHANGE SWAP.—The term ‘foreign exchange swap’ means a  
16 transaction that solely involves the exchange of 2 different currencies on a specific date at  
17 a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2  
18 currencies at a date further in the future and at a fixed rate agreed at the inception of the  
19 contract.”.

20 (18) by adding after paragraph (47) the following:

21 “(48) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR  
22 SECURITY-BASED SWAP PARTICIPANT.—The term ‘person associated with a security-based  
23 swap dealer or major security-based swap participant’ or ‘associated person of a security-

1 based swap dealer or major security-based swap participant’ means any partner, officer,  
2 director, or branch manager of such security-based swap dealer or major security-based  
3 swap participant (or any person occupying a similar status or performing similar  
4 functions), any person directly or indirectly controlling, controlled by, or under common  
5 control with such security-based swap dealer or major security-based swap participant, or  
6 any employee of such security-based swap dealer or major security-based swap  
7 participant, except that any person associated with a security-based swap dealer or major  
8 security-based swap participant whose functions are solely clerical or ministerial shall not  
9 be included in the meaning of such term other than for purposes of section 15F(e)(2) of  
10 the Securities Exchange Act of 1934 (15 U.S.C. 78o-10).

11 (19) by adding after paragraph (48) the following:

12 “(49) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—

13 The term ‘person associated with a swap dealer or major swap participant’ or ‘associated  
14 person of a swap dealer or major swap participant’ means any partner, officer, director, or  
15 branch manager of such swap dealer or major swap participant (or any person occupying  
16 a similar status or performing similar functions), any person directly or indirectly  
17 controlling, controlled by, or under common control with such swap dealer or major swap  
18 participant, or any employee of such swap dealer or major swap participant, except that  
19 any person associated with a swap dealer or major swap participant whose functions are  
20 solely clerical or ministerial shall not be included in the meaning of such term other than  
21 for purposes of section 4s(b)(6) of this Act.

22 (20) by adding after paragraph (49) the following:

23 “(50) SWAP REPOSITORY.—The term ‘swap repository’ means an entity that

1 collects and maintains the records of the terms and conditions of swaps or security-based  
2 swaps entered into by third parties.”.

3 (b) JOINT RULE-MAKING ON FURTHER DEFINITION OF TERMS.—

4 (1) IN GENERAL.—The Commodity Futures Trading Commission and the  
5 Securities and Exchange Commission shall jointly adopt a rule further defining the terms  
6 “swap,” “security-based swap,” “swap dealer,” “security-based swap dealer,” “major  
7 swap participant,” “major security-based swap participant,” and “eligible contract  
8 participant” no later than 180 days after the effective date of this Act.

9 (2) PREVENTION OF EVASIONS .—The Commodity Futures Trading Commission  
10 and the Securities and Exchange Commission may prescribe rules defining the term  
11 “swap” or “security-based swap” to include transactions that have been structured to  
12 evade this Act.

13 (c) JOINT RULEMAKING UNDER THIS ACT.—

14 (1) UNIFORM RULES.—Rules and regulations prescribed jointly under this Act by  
15 the Commodity Futures Trading Commission and the Securities and Exchange  
16 Commission shall be uniform.

17 (2) TREASURY DEPARTMENT.—In the event that the Commodity Futures Trading  
18 Commission and the Securities and Exchange Commission fail to jointly prescribe  
19 uniform rules and regulations under any provision of this Act in a timely manner, the  
20 Secretary of the Treasury, in consultation with the Commodity Futures Trading  
21 Commission and the Securities and Exchange Commission, shall prescribe rules and  
22 regulations under such provision. A rule prescribed by the Secretary of the Treasury shall  
23 be enforced as if prescribed jointly by the Commodity Futures Trading Commission and

1 the Securities and Exchange Commission and shall remain in effect until the Secretary  
2 rescinds the rule or until the effective date of a corresponding rule prescribed jointly by  
3 the Commodity Futures Trading Commission and the Securities and Exchange  
4 Commission in accordance with this section, whichever is later.

5 (3) DEADLINE.—The Secretary of the Treasury shall adopt rules and regulations  
6 under paragraph (2) within 180 days of the time that the Commodity Futures Trading  
7 Commission and the Securities and Exchange Commission failed to adopt uniform rules  
8 and regulations.

9 (4) TREATMENT OF SIMILAR PRODUCTS.—In adopting joint rules and regulations  
10 under this Act, the Commodity Futures Trading Commission and the Securities and  
11 Exchange Commission shall prescribe requirements to treat functionally or economically  
12 similar products similarly.

13 (5) TREATMENT OF DISSIMILAR PRODUCTS.—Nothing in this Act shall be  
14 construed to require the Commodity Futures Trading Commission and the Securities and  
15 Exchange Commission to adopt joint rules that treat functionally or economically  
16 different products identically.

17 (6) JOINT INTERPRETATION.— Any interpretation of, or guidance regarding, a  
18 provision of this Act, shall be effective only if issued jointly by the Commodity Futures  
19 Trading Commission and the Securities and Exchange Commission if this Act requires  
20 the Commodity Futures Trading Commission and the Securities and Exchange  
21 Commission to issue joint regulations to implement the provision.

22 (d) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is  
23 amended by adding at the end the following: “The Commission shall not have the authority to



1 grant exemptions from the swap-related provisions of the Over-the-Counter Derivatives Market  
2 Act of 2009, except as expressly authorized under the provisions of that Act.”.

3 **SEC. 712. JURISDICTION.**

4 (a) EXCLUSIVE JURISDICTION.—The first sentence of section 2(a)(1)(A) of the  
5 Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended—

6 (1) by striking “(C)” and “(D)” and inserting “(C), (D), and (G)”;

7 (2) by striking “subsections (c) through (i)” and inserting “subsections (c) and  
8 (f)”;

9 (3) by striking “involving contracts of sale” and inserting “involving swaps or  
10 contracts of sale”.

11 (b) NO LIMITATION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1))  
12 is amended by inserting after subparagraph (F) the following—

13 “(G) Nothing contained in this subsection (a)(1) shall supersede or limit  
14 the jurisdiction conferred on the Securities and Exchange Commission or other  
15 regulatory authority by, or otherwise restrict the authority of the Securities and  
16 Exchange Commission or other regulatory authority under, the Over-the-Counter  
17 Derivatives Markets Act of 2009, including with respect to a security-based swap  
18 as described in subparagraph 38(C) of section 1a of the Commodity Exchange  
19 Act.”.

20 (c) ADDITIONS.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C.  
21 2(c)(2)(A)) is amended—

22 (1) in clause (i) by striking “or”;

23 (2) by redesignating clause (ii) as clause (iii); and

1 (3) by inserting after clause (i) the following:

2 “(ii) a swap; or”.

3 **SEC. 713. CLEARING.**

4 (a) CLEARING REQUIREMENT.—

5 (1) Sections 2(d), 2(e), 2(g), and 2(h) of the Commodity Exchange Act (7 U.S.C.  
6 2(d), 2(e), 2(g), and 2(h)) are repealed.

7 (2) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by  
8 inserting after subsection (c) the following:

9 “(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (f), and  
10 (j), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9,  
11 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are  
12 applicable by their terms to registered entities and Commission registrants) governs or applies to  
13 a swap.

14 “(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an  
15 eligible contract participant, to enter into a swap unless the swap is entered into on or subject to  
16 the rules of a board of trade designated as a contract market under section 5.”.

17 (3) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by  
18 inserting after subsection (i) the following:

19 “(j) CLEARING REQUIREMENT.—

20 “(1) IN GENERAL.—Except as provided in paragraph (8), it shall be unlawful to  
21 enter into a swap that is standardized unless—

22 “(A) the swap is cleared by a derivatives clearing organization registered  
23 under this Act; and

1                   “(B) the rules of the derivatives clearing organization described in  
2                   subparagraph (A) prescribe that all swaps with the same terms and conditions are  
3                   fungible and may be offset with each other.

4                   “(2) STANDARDIZATION IF CLEARED.—A swap that is accepted for clearing by any  
5                   registered derivatives clearing organization shall be presumed to be standardized.

6                   “(3) SWAPS DESIGNATED AS STANDARDIZED.—

7                   “(A) Within 180 days of the enactment of the Over-the-Counter  
8                   Derivatives Markets Act of 2009, the Commission and the Securities and  
9                   Exchange Commission shall jointly adopt rules to further define the term  
10                  ‘standardized.’ In adopting such rules, the Commission and the Securities and  
11                  Exchange Commission shall jointly define the term ‘standardized’ as broadly as  
12                  possible, after taking into account the following factors:

13                               “(i) the extent to which any of the terms of the swap, including  
14                               price, are disseminated to third parties or are referenced in other  
15                               agreements, contracts, or transactions;

16                               “(ii) the volume of transactions in the swap;

17                               “(iii) the extent to which the terms of the swap are similar to the  
18                               terms of other agreements, contracts, or transactions that are centrally  
19                               cleared;

20                               “(iv) whether any differences in the terms of the swap, compared  
21                               to other agreements, contracts, or transactions that are centrally cleared,  
22                               are of economic significance; and

23                               “(v) any other factors the Commission and the Securities and

1 Exchange Commission determine to be appropriate.

2 “(B) The Commission may separately designate a particular swap or class  
3 of swaps as standardized, taking into account the factors enumerated in  
4 subparagraph (A)(i)-(v) and the joint rules adopted under paragraph (3)(A).

5 “(4) PREVENTION OF EVASION.—The Commission and the Securities and  
6 Exchange Commission shall have authority to prescribe rules under this subsection, or  
7 issue interpretations of such rules, as necessary to prevent evasions of this Act provided  
8 that any such rules or interpretations must be issued jointly to be effective.

9 “(5) REQUIRED REPORTING.— Both counterparties to a swap that is not accepted  
10 for clearing by any derivatives clearing organization shall report such a swap either to a  
11 swap repository described in section 21 or, if there is no repository that would accept the  
12 swap, to the Commission pursuant to section 4r within such time period as the  
13 Commission may by rule or regulation prescribe.

14 “(6) TRANSITION RULES.—Rules adopted by the Commission under this section  
15 shall provide for the reporting of data, as follows:

16 “(A) swaps that were entered into before the date of enactment of the  
17 Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a  
18 registered swap repository or the Commission no later than 180 days after the  
19 effective date of the Over-the-Counter Derivatives Markets Act of 2009; and

20 “(B) swaps that were entered into on or after the date of enactment of the  
21 Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a  
22 registered swap repository or the Commission no later than the later of—

23 “(i) 90 days after the effective date of the Over-the-Counter

1 Derivatives Markets Act of 2009; or

2 “(ii) such other time after entering into the swap as the  
3 Commission may prescribe by rule or regulation.”.

4 “(7) MANDATORY TRADING.—Except as provided in paragraph (8), a swap that is  
5 standardized shall be traded on a board of trade designated as a contract market under  
6 section 5 or on an alternative swap execution facility registered under section 5h.

7 “(8) EXCEPTIONS.—The requirements of subsection (j)(1) and (7) do not apply to  
8 a swap if—

9 “(A) no derivatives clearing organization registered under this Act will  
10 accept the swap for clearing; or

11 “(B) one of the counterparties to the swap—

12 “(i) is not a swap dealer or major swap participant; and

13 “(ii) does not meet the eligibility requirements of any derivatives  
14 clearing organization that clears the swap.”.

15 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

16 (1) Subsections (a) and (b) of section 5b of the Commodity Exchange Act (7  
17 U.S.C. 7a-1) are amended to read as follows:

18 “(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing  
19 organization, unless registered with the Commission, directly or indirectly to make use of the  
20 mails or any means or instrumentality of interstate commerce to perform the functions of a  
21 derivatives clearing organization described in section 1a(10) of this Act with respect to—

22 “(1) a contract of sale of a commodity for future delivery (or option on such a  
23 contract) or option on a commodity, in each case unless the contract or option is—

1                   “(A) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or  
2                   “(B) a security futures product cleared by a clearing agency registered  
3                   with the Securities and Exchange Commission under the Securities Exchange Act  
4                   of 1934 (15 U.S.C. 78a, *et seq.*) ; or  
5                   “(2) a swap.

6                   “(b) VOLUNTARY REGISTRATION.—

7                   “(1) DERIVATIVES CLEARING ORGANIZATIONS.—A person that clears agreements,  
8                   contracts, or transactions that are not required to be cleared under this Act may register  
9                   with the Commission as a derivatives clearing organization.

10                  “(2) CLEARING AGENCIES.—A derivatives clearing organization may clear  
11                  security-based swaps that are required to be cleared by a person who is registered as a  
12                  clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*.”

13                  (2) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended by  
14                  adding at the end the following:

15                  “(g) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is  
16                  required to be registered as a derivatives clearing organization under this section shall register  
17                  with the Commission regardless of whether the person is also a bank or a clearing agency  
18                  registered with the Securities and Exchange Commission under the Securities Exchange Act of  
19                  1934 (15 U.S.C. 78a, *et seq.*).

20                  “(h) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the  
21                  Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and  
22                  Exchange Commission shall jointly adopt uniform rules governing persons that are registered as  
23                  derivatives clearing organizations for swaps under this subsection and persons that are registered

1 as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15  
2 U.S.C. 78a, *et seq.*).

3 “(i) CONSULTATION.—The Commission and the Securities and Exchange Commission  
4 shall consult with the appropriate Federal banking agencies prior to adopting rules under this  
5 section with respect to swaps.

6 “(j) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a  
7 derivatives clearing organization from registration under this section for the clearing of swaps if  
8 the Commission finds that such derivatives clearing organization is subject to comparable,  
9 comprehensive supervision and regulation on a consolidated basis by the Securities and  
10 Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the  
11 organization’s home country.

12 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

13 “(1) IN GENERAL.—Each derivatives clearing organization shall designate an  
14 individual to serve as a compliance officer.

15 “(2) DUTIES.—The compliance officer shall—

16 “(A) report directly to the board or to the senior officer of the derivatives  
17 clearing organization; and

18 “(B) shall—

19 “(i) review compliance with the core principles in section 5b(c)(2).

20 “(ii) in consultation with the board of the derivatives clearing  
21 organization, a body performing a function similar to that of a board, or  
22 the senior officer of the derivatives clearing organization, resolve any  
23 conflicts of interest that may arise;

1                   “(iii) be responsible for administering the policies and procedures  
2                   required to be established pursuant to this section; and

3                   “(iv) ensure compliance with commodity laws and the rules and  
4                   regulations issued thereunder, including rules prescribed by the  
5                   Commission pursuant to this section.

6                   “(C) The compliance officer shall establish procedures for remediation of  
7                   non-compliance issues found during compliance office reviews, lookbacks,  
8                   internal or external audit findings, self-reported errors, or through validated  
9                   complaints. Procedures will establish the handling, management response,  
10                  remediation, re-testing, and closing of non-compliant issues.

11                  “(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare  
12                  and sign a report on the compliance of the derivatives clearing organization with the  
13                  commodity laws and its policies and procedures, including its code of ethics and conflict  
14                  of interest policies, in accordance with rules prescribed by the Commission. Such  
15                  compliance report shall accompany the financial reports of the derivatives clearing  
16                  organization that are required to be furnished to the Commission pursuant to this section  
17                  and shall include a certification that, under penalty of law, the report is accurate and  
18                  complete.”.

19                  (3) Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)) is  
20                  amended to read as follows:

21                  “(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

22                  “(A) IN GENERAL.—To be registered and to maintain registration as a  
23                  derivatives clearing organization, a derivatives clearing organization shall comply



1 with the core principles specified in this paragraph and any requirement that the  
2 Commission may impose by rule or regulation pursuant to section 8a(5). Except  
3 where the Commission determines otherwise by rule or regulation, a derivatives  
4 clearing organization shall have reasonable discretion in establishing the manner  
5 in which it complies with the core principles.

6 “(B) FINANCIAL RESOURCES.—

7 “(i) The derivatives clearing organization shall have adequate  
8 financial, operational, and managerial resources to discharge its  
9 responsibilities.

10 “(ii) Financial resources shall at a minimum exceed the total  
11 amount that would—

12 “(I) enable the derivatives clearing organization to meet its  
13 financial obligations to its members and participants  
14 notwithstanding a default by the member or participant creating the  
15 largest financial exposure for that derivatives clearing organization  
16 in extreme but plausible market conditions; and

17 “(II) enable the derivatives clearing organization to cover  
18 its operating costs for a period of one year, calculated on a rolling  
19 basis.

20 “(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

21 “(i) The derivatives clearing organization shall establish—

22 “(I) appropriate admission and continuing eligibility  
23 standards (including sufficient financial resources and operational

1 capacity to meet obligations arising from participation in the  
2 derivatives clearing organization) for members of and participants  
3 in the organization; and

4 “(II) appropriate standards for determining eligibility of  
5 agreements, contracts, or transactions submitted to the derivatives  
6 clearing organization for clearing.

7 “(ii) The derivatives clearing organization shall have procedures in  
8 place to verify that participation and membership requirements are met on  
9 an ongoing basis.

10 “(iii) The derivatives clearing organization’s participation and  
11 membership requirements shall be objective, publicly disclosed, and  
12 permit fair and open access.

13 “(D) RISK MANAGEMENT.—

14 “(i) The derivatives clearing organization shall have the ability to  
15 manage the risks associated with discharging the responsibilities of a  
16 derivatives clearing organization through the use of appropriate tools and  
17 procedures.

18 “(ii) The derivatives clearing organization shall measure its credit  
19 exposures to its members and participants at least once each business day  
20 and shall monitor such exposures throughout the business day.

21 “(iii) Through margin requirements and other risk control  
22 mechanisms, a derivatives clearing organization shall limit its exposures to  
23 potential losses from defaults by its members and participants so that the

1 operations of the derivatives clearing organization would not be disrupted  
2 and non-defaulting members or participants would not be exposed to  
3 losses that they cannot anticipate or control.

4 “(iv) Margin required from all members and participants shall be  
5 sufficient to cover potential exposures in normal market conditions.

6 “(v) The models and parameters used in setting margin  
7 requirements shall be risk-based and reviewed regularly.

8 “(E) SETTLEMENT PROCEDURES.—The derivatives clearing organization  
9 shall—

10 “(i) complete money settlements on a timely basis, and not less  
11 than once each business day;

12 “(ii) employ money settlement arrangements that eliminate or  
13 strictly limit the derivatives clearing organization’s exposure to settlement  
14 bank risks, such as credit and liquidity risks from the use of banks to effect  
15 money settlements;

16 “(iii) ensure money settlements are final when effected;

17 “(iv) maintain an accurate record of the flow of funds associated  
18 with each money settlement;

19 “(v) have the ability to comply with the terms and conditions of  
20 any permitted netting or offset arrangements with other clearing  
21 organizations; and

22 “(vi) for physical settlements, establish rules that clearly state the  
23 derivatives clearing organization’s obligations with respect to physical

1 deliveries. The risks from these obligations shall be identified and  
2 managed.

3 “(F) TREATMENT OF FUNDS.—

4 “(i) The derivatives clearing organization shall have standards and  
5 procedures designed to protect and ensure the safety of member and  
6 participant funds and assets.

7 “(ii) The derivatives clearing organization shall hold member and  
8 participant funds and assets in a manner whereby risk of loss or of delay in  
9 the derivatives clearing organization’s access to the assets and funds is  
10 minimized.

11 “(iii) Assets and funds invested by the derivatives clearing  
12 organization shall be held in instruments with minimal credit, market, and  
13 liquidity risks.

14 “(G) DEFAULT RULES AND PROCEDURES.—

15 “(i) The derivatives clearing organization shall have rules and  
16 procedures designed to allow for the efficient, fair, and safe management  
17 of events when members or participants become insolvent or otherwise  
18 default on their obligations to the derivatives clearing organization.

19 “(ii) The derivatives clearing organization’s default procedures  
20 shall be clearly stated, and they shall ensure that the derivatives clearing  
21 organization can take timely action to contain losses and liquidity  
22 pressures and to continue meeting its obligations.

23 “(iii) The default procedures shall be publicly available.

1 “(H) RULE ENFORCEMENT.—The derivatives clearing organization shall—

2 “(i) maintain adequate arrangements and resources for the effective  
3 monitoring and enforcement of compliance with rules of the derivatives  
4 clearing organization and for resolution of disputes; and

5 “(ii) have the authority and ability to discipline, limit, suspend, or  
6 terminate a member’s or participant’s activities for violations of rules of  
7 the derivatives clearing organization.

8 “(I) SYSTEM SAFEGUARDS.—The derivatives clearing organization shall—

9 “(i) establish and maintain a program of risk analysis and oversight  
10 to identify and minimize sources of operational risk through the  
11 development of appropriate controls and procedures, and the development  
12 of automated systems, that are reliable, secure, and have adequate scalable  
13 capacity;

14 “(ii) establish and maintain emergency procedures, backup  
15 facilities, and a plan for disaster recovery that allows for the timely  
16 recovery and resumption of operations and the fulfillment of the  
17 derivatives clearing organization’s responsibilities and obligations; and

18 “(iii) periodically conduct tests to verify that backup resources are  
19 sufficient to ensure continued order processing and trade matching, price  
20 reporting, market surveillance, and maintenance of a comprehensive and  
21 accurate audit trail.

22 “(J) REPORTING.—The derivatives clearing organization shall provide to  
23 the Commission all information necessary for the Commission to conduct

1 oversight of the derivatives clearing organization.

2 “(K) RECORDKEEPING.—The derivatives clearing organization shall  
3 maintain records of all activities related to the business of the derivatives clearing  
4 organization as a derivatives clearing organization in a form and manner  
5 acceptable to the Commission for a period of 5 years.

6 “(L) PUBLIC INFORMATION.—

7 “(i) The derivatives clearing organization shall provide market  
8 participants with sufficient information to identify and evaluate accurately  
9 the risks and costs associated with using the derivatives clearing  
10 organization’s services.

11 “(ii) The derivatives clearing organization shall make information  
12 concerning the rules and operating procedures governing its clearing and  
13 settlement systems (including default procedures) available to market  
14 participants.

15 “(iii) The derivatives clearing organization shall disclose publicly  
16 and to the Commission information concerning—

17 “(I) the terms and conditions of contracts, agreements, and  
18 transactions cleared and settled by the derivatives clearing  
19 organization;

20 “(II) clearing and other fees that the derivatives clearing  
21 organization charges its members and participants;

22 “(III) the margin-setting methodology and the size and  
23 composition of the financial resource package of the derivatives

1 clearing organization;

2 “(IV) other information relevant to participation in the  
3 settlement and clearing activities of the derivatives clearing  
4 organization; and

5 “(V) daily settlement prices, volume, and open interest for  
6 all contracts settled or cleared by it.

7 “(M) INFORMATION-SHARING.—The derivatives clearing organization  
8 shall—

9 “(i) enter into and abide by the terms of all appropriate and  
10 applicable domestic and international information-sharing agreements; and

11 “(ii) use relevant information obtained from the agreements in  
12 carrying out the clearing organization’s risk management program.

13 “(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the  
14 purposes of this chapter, the derivatives clearing organization shall avoid—

15 “(i) adopting any rule or taking any action that results in any  
16 unreasonable restraint of trade; or

17 “(ii) imposing any material anticompetitive burden.

18 “(O) GOVERNANCE FITNESS STANDARDS.—

19 “(i) The derivatives clearing organization shall establish  
20 governance arrangements that are transparent in order to fulfill public  
21 interest requirements and to support the objectives of owners and  
22 participants.

23 “(ii) The derivatives clearing organization shall establish and

1 enforce appropriate fitness standards for directors, members of any  
2 disciplinary committee, and members of the derivatives clearing  
3 organization, and any other persons with direct access to the settlement or  
4 clearing activities of the derivatives clearing organization, including any  
5 parties affiliated with any of the persons described in this subparagraph.

6 “(P) CONFLICTS OF INTEREST.—The derivatives clearing organization shall  
7 establish and enforce rules to minimize conflicts of interest in the decision-  
8 making process of the derivatives clearing organization and establish a process for  
9 resolving such conflicts of interest.

10 “(Q) COMPOSITION OF THE BOARDS.—The derivatives clearing  
11 organization shall ensure that the composition of the governing board or  
12 committee includes market participants.

13 “(R) LEGAL RISK.—The derivatives clearing organization shall have a well  
14 founded, transparent, and enforceable legal framework for each aspect of its  
15 activities.”.

16 (4) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is further  
17 amended by adding after subsection (j), as added by this section, the following:

18 “(k) REPORTING.—

19 “(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall  
20 provide to the Commission all information determined by the Commission to be  
21 necessary to perform its responsibilities under this Act. The Commission shall adopt data  
22 collection and maintenance requirements for swaps cleared by derivatives clearing  
23 organizations that are comparable to the corresponding requirements for swaps accepted



1 by swap repositories and swaps traded on alternative swap execution facilities. Subject to  
2 section 8, the Commission shall share such information, upon request, with the Board, the  
3 Securities and Exchange Commission, the appropriate Federal banking agencies, the  
4 Financial Services Oversight Council, and the Department of Justice or to other persons  
5 the Commission deems appropriate, including foreign financial supervisors (including  
6 foreign futures authorities), foreign central banks, and foreign ministries.

7 “(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps  
8 shall provide to the Commission, or its designee, such information as is required by, and  
9 in a form and at a frequency to be determined by, the Commission, in order to comply  
10 with the public reporting requirements contained in section 8(j).”.

11 (6) Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in  
12 the last sentence by adding “central bank and ministries” after “department” each place it  
13 appears.

14 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

15 (1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal  
16 Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2))  
17 are repealed.

18 (2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products  
19 Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

20 **“SEC 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

21 “(a) EXCLUSION.—Except as provided in subsection (b), no provisions of the Commodity  
22 Exchange Act (7 U.S.C. 1, *et seq.*) shall apply to, and the Commodity Futures Trading  
23 Commission and the Securities and Exchange Commission shall not exercise regulatory

1 authority under the Commodity Exchange Act with respect to, an identified banking product.

2 “(b) EXCEPTION.—An appropriate Federal banking agency may except an identified  
3 banking product from the exclusion in subsection (a) if the agency determines, in consultation  
4 with the Commodity Futures Trading Commission and the Securities and Exchange  
5 Commission, that the product—

6 “(1) would meet the definition of swap in section 1a(35) of the Commodity  
7 Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 1a(38) of the  
8 Commodity Exchange Act(7 U.S.C. 1a(38)); and

9 “(2) has become known to the trade as a swap or security-based swap, or  
10 otherwise has been structured as an identified banking product for the purpose of evading  
11 the provisions of the Commodity Exchange Act (7 U.S.C. 1, *et seq.*), the Securities Act of  
12 1933 (15 U.S.C. 77a, *et seq.*), or the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et*  
13 *seq.*.”.

14 **SEC. 714. PUBLIC REPORTING OF AGGREGATE SWAP DATA.**

15 Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding after  
16 subsection (i) the following:

17 “(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

18 “(1) IN GENERAL.— The Commission, or a person designated by the Commission  
19 pursuant to paragraph (2), shall make available to the public, in a manner that does not  
20 disclose the business transactions and market positions of any person, aggregate data on  
21 swap trading volumes and positions from the sources set forth in paragraph (3);

22 “(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a  
23 derivatives clearing organization or a swap repository to carry out the public reporting

1 described in paragraph (1).

2 “(3) SOURCES OF INFORMATION.—The sources of the information to be publicly  
3 reported as described in paragraph (1) are—

4 “(A) derivatives clearing organizations pursuant to section 5b(k)(2);

5 “(B) swap repositories pursuant to section 21(c)(3); and

6 “(C) reports received by the Commission pursuant to section 4r.”.

7 **SEC. 715. SWAP REPOSITORIES.**

8 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by inserting after section  
9 20 the following:

10 **“SEC. 21. SWAP REPOSITORIES.**

11 “(a) REGISTRATION REQUIREMENT.—

12 “(1) IN GENERAL.—It shall be unlawful for any person, unless registered with the  
13 Commission, directly or indirectly to make use of the mails or any means or  
14 instrumentality of interstate commerce to perform the functions of a swap repository.

15 “(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be  
16 subject to inspection and examination by any representative of the Commission.

17 “(b) STANDARD SETTING.—

18 “(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that  
19 specify the data elements for each swap that shall be collected and maintained by each  
20 registered swap repository.

21 “(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe  
22 data collection and data maintenance standards for swap repositories.

23 “(3) COMPARABILITY.—The standards prescribed by the Commission under this

1 subsection shall be comparable to the data standards imposed by the Commission on  
2 derivatives clearing organizations that clear swaps.

3 “(c) DUTIES.—A swap repository shall—

4 “(1) accept data prescribed by the Commission for each swap under subsection  
5 (b);

6 “(2) maintain such data in such form and manner and for such period as may be  
7 required by the Commission;

8 “(3) provide to the Commission, or its designee, such information as is required  
9 by, and in a form and at a frequency to be determined by, the Commission, in order to  
10 comply with the public reporting requirements contained in section 8(j); and

11 “(4) make available, on a confidential basis pursuant to section 8, all data  
12 obtained by the swap repository, including individual counterparty trade and position  
13 data, to the Commission, the appropriate Federal banking agencies, the Financial Services  
14 Oversight Council, the Securities and Exchange Commission, and the Department of  
15 Justice or to other persons the Commission deems appropriate, including foreign financial  
16 supervisors (including foreign futures authorities), foreign central banks, and foreign  
17 ministries.

18 “(d) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person  
19 that is required to be registered as a swap repository under this section shall register with the  
20 Commission regardless of whether that person also is registered with the Securities and  
21 Exchange Commission as a security-based swap repository.

22 “(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the  
23 Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and

1 Exchange Commission shall jointly adopt uniform rules governing persons that are registered  
2 under this section and persons that are registered as security-based swap repositories under the  
3 Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), including uniform rules that specify  
4 the data elements that shall be collected and maintained by each repository.

5 “(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a  
6 swap repository from the requirements of this section if the Commission finds that such swap  
7 repository is subject to comparable, comprehensive supervision and regulation on a consolidated  
8 basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate  
9 governmental authorities in the organization’s home country.”.

10 **SEC. 716. REPORTING AND RECORDKEEPING.**

11 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by inserting after section  
12 4q the following:

13 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.**

14 “(a) IN GENERAL.—Any person who enters into a swap and—

15 “(1) did not clear the swap in accordance with section 2(j)(1); and

16 “(2) did not have data regarding the swap accepted by a swap repository in  
17 accordance with rules (including timeframes) adopted by the Commission under section  
18 21,

19 “shall meet the requirements in subsection (b).

20 “(b) REPORTS.—Any person described in subsection (a) shall—

21 “(1) make such reports in such form and manner and for such period as the  
22 Commission shall prescribe by rule or regulation regarding the swaps held by the  
23 person; and

1                   “(2) keep books and records pertaining to the swaps held by the person in  
2                   such form and manner and for such period as may be required by the  
3                   Commission, which books and records shall be open to inspection by any  
4                   representative of the Commission, an appropriate Federal banking agency, the  
5                   Securities and Exchange Commission, the Financial Services Oversight Council,  
6                   and the Department of Justice.

7                   “(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall  
8                   require persons described in subsection (a) to report the same or a more comprehensive set of  
9                   data than the Commission requires swap repositories to collect under section 21.”.

10                   **SEC. 717. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR**  
11                   **SWAP PARTICIPANTS.**

12                   The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by inserting after section  
13                   4r (as added by section 716) the following:

14                   **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR**  
15                   **SWAP PARTICIPANTS.**

16                   “(a) REGISTRATION.—

17                   “(1) It shall be unlawful for any person to act as a swap dealer unless such person is  
18                   registered as a swap dealer with the Commission.

19                   “(2) It shall be unlawful for any person to act as a major swap participant unless such  
20                   person shall have registered as a major swap participant with the Commission.

21                   “(b) REQUIREMENTS.—

22                   “(1) IN GENERAL.—A person shall register as a swap dealer or major swap  
23                   participant by filing a registration application with the Commission.

1           “(2) CONTENTS.—The application shall be made in such form and manner as  
2 prescribed by the Commission, giving any information and facts as the Commission may  
3 deem necessary concerning the business in which the applicant is or will be engaged.  
4 Such person, when registered as a swap dealer or major swap participant, shall continue  
5 to report and furnish to the Commission such information pertaining to such person's  
6 business as the Commission may require.

7           “(3) EXPIRATION.—Each registration shall expire at such time as the Commission  
8 may by rule or regulation prescribe.

9           “(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission  
10 may prescribe rules applicable to swap dealers and major swap participants, including  
11 rules that limit the activities of swap dealers and major swap participants.

12           “(5) TRANSITION.—Rules adopted under this section shall provide for the  
13 registration of swap dealers and major swap participants no later than one year after the  
14 effective date of the Over-the-Counter Derivatives Markets Act of 2009.

15           “(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically  
16 provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major  
17 swap participant to permit any person associated with a swap dealer or a major swap  
18 participant who is subject to a statutory disqualification to effect or be involved in  
19 effecting swaps on behalf of such swap dealer or major swap participant, if such swap  
20 dealer or major swap participant knew, or in the exercise of reasonable care should have  
21 known, of such statutory disqualification.

22           “(c) DUAL REGISTRATION.—

23           “(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer

1 under this section shall register with the Commission regardless of whether that person  
2 also is a bank or is registered with the Securities and Exchange Commission as a  
3 security-based swap dealer.

4 “(2) MAJOR SWAP PARTICIPANT.—Any person that is required to be registered as a  
5 major swap participant under this section shall register with the Commission regardless  
6 of whether that person also is a bank or is registered with the Securities and Exchange  
7 Commission as a major security-based swap participant.

8 “(d) JOINT RULES.—

9 “(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-  
10 the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and  
11 Exchange Commission shall jointly adopt uniform rules for persons that are registered as  
12 swap dealers or major swap participants under this section and persons that are registered  
13 as security-based swap dealers or major security-based swap participants under the  
14 Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*).

15 “(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the  
16 Securities and Exchange Commission shall not prescribe rules imposing prudential  
17 requirements (including activity restrictions) on swap dealers, major swap participants,  
18 security-based swap dealers, or major security-based swap participants for which there is  
19 a Prudential Regulator. This provision shall not be construed as limiting the authority of  
20 the Commission and the Securities and Exchange Commission to prescribe appropriate  
21 business conduct, reporting, and recordkeeping requirements to protect investors.

22 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

23 “(1) IN GENERAL.—



1                   “(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each  
2 registered swap dealer and major swap participant for which there is a Prudential  
3 Regulator shall meet such minimum capital requirements and minimum initial and  
4 variation margin requirements as the Prudential Regulators shall by rule or  
5 regulation jointly prescribe to help ensure the safety and soundness of the swap  
6 dealer or major swap participant.

7                   “(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each  
8 registered swap dealer and major swap participant for which there is not a  
9 Prudential Regulator shall meet such minimum capital requirements and  
10 minimum initial and variation margin requirements as the Commission and the  
11 Securities and Exchange Commission shall by rule or regulation jointly prescribe  
12 to help ensure the safety and soundness of the swap dealer or major swap  
13 participant.

14                   “(2) JOINT RULES.—

15                   “(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180  
16 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009,  
17 the Prudential Regulators, in consultation with the Commission and the Securities  
18 and Exchange Commission, shall jointly adopt rules imposing capital and margin  
19 requirements under this subsection for swap dealers and major swap participants.

20                   “(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within  
21 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of  
22 2009, the Commission and the Securities and Exchange Commission, in  
23 consultation with the Prudential Regulators, shall jointly adopt rules imposing

1 capital and margin requirements under this subsection for swap dealers and major  
2 swap participants for which there is no Prudential Regulator.

3 “(3) CAPITAL.—

4 “(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—In setting  
5 capital requirements under this subsection, the Prudential Regulators shall  
6 impose:

7 “(i) a capital requirement that is greater than zero for swaps that  
8 are cleared by a derivatives clearing organization; and

9 “(ii) to offset the greater risk to the swap dealer or major swap  
10 participant and to the financial system arising from the use of swaps that  
11 are not centrally cleared, higher capital requirements for swaps that are not  
12 cleared by a registered derivatives clearing organization than for swaps  
13 that are centrally cleared.

14 “(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Capital  
15 requirements set by the Commission and the Securities and Exchange  
16 Commission under this subsection shall be as strict as or stricter than the capital  
17 requirements set by the Prudential Regulators under this subsection.

18 “(C) BANK HOLDING COMPANIES.—Capital requirements set by the Board  
19 for swaps of bank holding companies and Tier 1 financial holding companies on a  
20 consolidated basis shall be as strict as or stricter than the capital requirements set  
21 by the Prudential Regulators under this subsection.

22 “(4) MARGIN.—

23 “(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.— The

1 Prudential Regulators shall impose both initial and variation margin requirements  
2 under this subsection on all swaps that are not cleared by a registered derivatives  
3 clearing organization, except that the Prudential Regulators may, but are not  
4 required to, impose margin requirements with respect to swaps in which one of  
5 the counterparties is—

6 “(i) neither a swap dealer, major swap participant, security-based  
7 swap dealer nor a major security-based swap participant;

8 “(ii) using the swap as part of an effective hedge under generally  
9 accepted accounting principles; and

10 “(iii) predominantly engaged in activities that are not financial in  
11 nature, as defined in section 4(k) of the Bank Holding Company Act of  
12 1956 (12 U.S.C. 1843(k)).

13 “(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Margin  
14 requirements for swaps set by the Commission and the Securities and Exchange  
15 Commission under this subsection shall be as strict as or stricter than margin  
16 requirements for swaps set by the Prudential Regulators.

17 “(f) REPORTING AND RECORDKEEPING.—

18 “(1) IN GENERAL.—Each registered swap dealer and major swap participant—

19 “(A) shall make such reports as are prescribed by the Commission by rule  
20 or regulation regarding the transactions and positions and financial condition of  
21 such person;

22 “(B) for which

23 “(i) there is a Prudential Regulator shall keep books and records of

1 all activities related to its business as a swap dealer or major swap  
2 participant in such form and manner and for such period as may be  
3 prescribed by the Commission by rule or regulation;

4 “(ii) there is no Prudential Regulator shall keep books and records  
5 in such form and manner and for such period as may be prescribed by the  
6 Commission by rule or regulation; and

7 “(C) shall keep such books and records open to inspection and  
8 examination by any representative of the Commission.

9 “(2) RULES.—Within 365 days of the enactment of the Over-the-Counter  
10 Derivatives Markets Act of 2009, the Commission and the Securities and Exchange  
11 Commission, in consultation with the appropriate Federal banking agencies, shall jointly  
12 adopt rules governing reporting and recordkeeping for swap dealers, major swap  
13 participants, security-based swap dealers, and major security-based swap participants.

14 “(g) DAILY TRADING RECORDS.—

15 “(1) IN GENERAL.—Each registered swap dealer and major swap participant shall  
16 maintain daily trading records of its swaps and all related records (including related cash  
17 or forward transactions) and recorded communications including but not limited to  
18 electronic mail, instant messages, and recordings of telephone calls, for such period as  
19 may be prescribed by the Commission by rule or regulation.

20 “(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such  
21 information as the Commission shall prescribe by rule or regulation.

22 “(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap  
23 participant shall maintain daily trading records for each customer or counterparty in such

1 manner and form as to be identifiable with each swap transaction.

2 “(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall  
3 maintain a complete audit trail for conducting comprehensive and accurate trade  
4 reconstructions.

5 “(5) RULES.—Within 365 days of the enactment of the Over-the-Counter  
6 Derivatives Markets Act of 2009, the Commission and the Securities and Exchange  
7 Commission, in consultation with the appropriate Federal banking agencies, shall jointly  
8 adopt rules governing daily trading records for swap dealers, major swap participants,  
9 security-based swap dealers, and major security-based swap participants.

10 “(h) BUSINESS CONDUCT STANDARDS.—

11 “(1) IN GENERAL.—Each registered swap dealer and major swap participant shall  
12 conform with business conduct standards as may be prescribed by the Commission by  
13 rule or regulation addressing—

14 “(A) fraud, manipulation, and other abusive practices involving swaps  
15 (including swaps that are offered but not entered into);

16 “(B) diligent supervision of its business as a swap dealer;

17 “(C) adherence to all applicable position limits; and

18 “(D) such other matters as the Commission shall determine to be  
19 necessary or appropriate.

20 “(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements  
21 adopted by the Commission shall—

22 “(A) establish the standard of care for a swap dealer or major swap  
23 participant to verify that any counterparty meets the eligibility standards for an

1 eligible contract participant;

2 “(B) require disclosure by the swap dealer or major swap participant to  
3 any counterparty to the transaction (other than a swap dealer, major swap  
4 participant, security-based swap dealer or major security-based swap participant)  
5 of:

6 “(i) information about the material risks and characteristics of the  
7 swap;

8 “(ii) the source and amount of any fees or other material  
9 remuneration that the swap dealer or major swap participant would  
10 directly or indirectly expect to receive in connection with the swap; and

11 “(iii) any other material incentives or conflicts of interest that the  
12 swap dealer or major swap participant may have in connection with the  
13 swap; and

14 “(C) establish such other standards and requirements as the Commission  
15 may determine are necessary or appropriate in the public interest, for the  
16 protection of investors, or otherwise in furtherance of the purposes of this title.

17 “(3) RULES.—The Commission and the Securities and Exchange Commission, in  
18 consultation with the appropriate Federal banking agencies, shall jointly prescribe rules  
19 under this subsection governing business conduct standards for swap dealers, major swap  
20 participants, security-based swap dealers, and major security-based swap participants  
21 within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of  
22 2009.

23 “(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

1           “(1) IN GENERAL.—Each registered swap dealer and major swap participant shall  
2 conform with standards, as may be prescribed by the Commission by rule or regulation,  
3 addressing timely and accurate confirmation, processing, netting, documentation, and  
4 valuation of all swaps.

5           “(2) RULES.—Within 365 days of the enactment of the Over-the-Counter  
6 Derivatives Markets Act of 2009, the Commission and the Securities and Exchange  
7 Commission, in consultation with the appropriate Federal banking agencies, shall adopt  
8 rules governing documentation and back office standards for swap dealers, major swap  
9 participants, security-based swap dealers, and major security-based swap participants.

10          “(j) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant  
11 at all times shall comply with the following requirements:

12           “(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall  
13 monitor its trading in swaps to prevent violations of applicable position limits.

14           “(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap  
15 participant shall disclose to the Commission and to the Prudential Regulator for such  
16 swap dealer or major swap participant, as applicable, information concerning—

17                   “(A) terms and conditions of its swaps;

18                   “(B) swap trading operations, mechanisms, and practices;

19                   “(C) financial integrity protections relating to swaps; and

20                   “(D) other information relevant to its trading in swaps.

21           “(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap  
22 participant shall—

23                   “(A) establish and enforce internal systems and procedures to obtain any

1 necessary information to perform any of the functions described in this section;  
2 and

3 “(B) provide the information to the Commission and to the Prudential  
4 Regulator for such swap dealer or major swap participant, as applicable, upon  
5 request.

6 “(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall  
7 implement conflict-of-interest systems and procedures that—

8 “(A) establish structural and institutional safeguards to assure that the  
9 activities of any person within the firm relating to research or analysis of the price  
10 or market for any commodity are separated by appropriate informational  
11 partitions within the firm from the review, pressure, or oversight of those whose  
12 involvement in trading or clearing activities might potentially bias their judgment  
13 or supervision; and

14 “(B) address such other issues as the Commission determines appropriate.

15 “(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve  
16 the purposes of this Act, the swap dealer or major swap participant shall avoid—

17 “(A) adopting any processes or taking any actions that result in any  
18 unreasonable restraints of trade; or

19 “(B) imposing any material anticompetitive burden on trading.”.

20 “(k) RULES.—The Commission, the Securities and Exchange Commission, and the  
21 Prudential Regulators shall consult with each other prior to adopting any rules under the Over-  
22 the-Counter Derivatives Markets Act of 2009.”.

23 **SEC. 718. CONFLICTS OF INTEREST.**



1 Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

2 (1) redesignating subsection (c) as subsection (d); and

3 (2) inserting after subsection (b) the following:

4 “(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission  
5 merchants and introducing brokers implement conflict-of-interest systems and procedures that—

6 “(1) establish structural and institutional safeguards to assure that the activities of  
7 any person within the firm relating to research or analysis of the price or market for any  
8 commodity are separated by appropriate informational partitions within the firm from the  
9 review, pressure, or oversight of those whose involvement in trading or clearing activities  
10 might potentially bias their judgment or supervision; and

11 “(2) address such other issues as the Commission determines appropriate.”.

12 **SEC. 719. ALTERNATIVE SWAP EXECUTION FACILITIES.**

13 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by inserting after section  
14 5g the following:

15 **“SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.**

16 “(a) REGISTRATION.—

17 “(1) IN GENERAL.—No person may operate a facility for the trading of swaps  
18 unless the facility is registered as an alternative swap execution facility under this section.

19 “(2) DUAL REGISTRATION.—Any person that is required to be registered as an  
20 alternative swap execution facility under this section shall register with the Commission  
21 regardless of whether that person also is registered with the Securities and Exchange  
22 Commission as an alternative swap execution facility.

23 “(b) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is

1 registered under subsection (a) may trade any swap.

2 “(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market  
3 shall, to the extent that the board of trade also operates an alternative swap execution facility and  
4 uses the same electronic trade execution system for trading on the contract market and the  
5 alternative swap execution facility, identify whether the electronic trading is taking place on the  
6 contract market or the alternative swap execution facility.

7 “(d) CRITERIA FOR REGISTRATION.—

8 “(1) IN GENERAL.—To be registered as an alternative swap execution facility, the  
9 facility shall be required to demonstrate to the Commission that it meets the criteria  
10 specified herein.

11 “(2) DETERRENCE OF ABUSES.—The swap execution facility shall establish and  
12 enforce trading and participation rules that will deter abuses and have the capacity to  
13 detect, investigate, and enforce those rules, including means to—

14 “(A) obtain information necessary to perform the functions required under  
15 this section; or

16 “(B) use means to—

17 “(i) provide market participants with impartial access to the  
18 market; and

19 “(ii) capture information that may be used in establishing whether  
20 rule violations have occurred.

21 “(3) TRADING PROCEDURES.—The swap execution facility shall establish and  
22 enforce rules or terms and conditions defining, or specifications detailing, trading  
23 procedures to be used in entering and executing orders traded on or through its facilities.

1           “(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility  
2 shall establish and enforce rules and procedures for ensuring the financial integrity of  
3 swaps entered on or through its facilities, including the clearance and settlement of the  
4 swaps pursuant to section 2(j)(1).

5           “(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—

6           “(1) IN GENERAL.—To maintain its registration as an alternative swap execution  
7 facility, the facility shall comply with the core principles specified in this subsection and  
8 any requirement that the Commission may impose by rule or regulation pursuant to  
9 section 8a(5). Except where the Commission determines otherwise by rule or regulation,  
10 the facility shall have reasonable discretion in establishing the manner in which it  
11 complies with these core principles.

12           “(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and  
13 enforce compliance with any of the rules of the facility, including the terms and  
14 conditions of the swaps traded on or through the facility and any limitations on access to  
15 the facility.

16           “(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution  
17 facility shall permit trading only in swaps that are not readily susceptible to manipulation.

18           “(4) MONITORING OF TRADING.—The swap execution facility shall monitor  
19 trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery  
20 or cash settlement process through surveillance, compliance, and disciplinary practices  
21 and procedures, including methods for conducting real-time monitoring of trading and  
22 comprehensive and accurate trade reconstructions.

23           “(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

1                   “(A) establish and enforce rules that will allow the facility to obtain any  
2 necessary information to perform any of the functions described in this  
3 subsection;

4                   “(B) provide the information to the Commission upon request; and

5                   “(C) have the capacity to carry out such international information-sharing  
6 agreements as the Commission may require.

7                   “(6) POSITION LIMITS OR ACCOUNTABILITY.—

8                   “(A) To reduce the potential threat of market manipulation or congestion,  
9 especially during trading in the delivery month, and to eliminate or prevent  
10 excessive speculation as described in section 4a(a), the swap execution facility  
11 shall adopt for each of its contracts, where necessary and appropriate, position  
12 limitations or position accountability for speculators.

13                   “(B) For any contract that is subject to a position limitation established by  
14 the Commission pursuant to section 4a(a), the swap execution facility shall set its  
15 position limitation at a level no higher than the Commission limitation.

16                   “(7) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to  
17 provide for the exercise of emergency authority, in consultation or cooperation with the  
18 Commission, where necessary and appropriate, including the authority to liquidate or  
19 transfer open positions in any swap or to suspend or curtail trading in a swap.

20                   “(8) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution  
21 facility shall make public timely information on price, trading volume, and other trading  
22 data on swaps to the extent prescribed by the Commission.

23                   “(9) RECORDKEEPING AND REPORTING.—The swap execution facility shall

1 maintain records of all activities related to the business of the facility, including a  
2 complete audit trail, in a form and manner acceptable to the Commission for a period of 5  
3 years, and report to the Commission all information determined by the Commission to be  
4 necessary or appropriate for the Commission to perform its responsibilities under this Act  
5 in a form and manner acceptable to the Commission. The Commission shall adopt data  
6 collection and reporting requirements for alternative swap execution facilities that are  
7 comparable to corresponding requirements for derivatives clearing organizations and  
8 swap repositories.

9 “(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve  
10 the purposes of this Act, the swap execution facility shall avoid—

11 “(A) adopting any rules or taking any actions that result in any  
12 unreasonable restraints of trade; or

13 “(B) imposing any material anticompetitive burden on trading on the swap  
14 execution facility.

15 “(11) CONFLICTS OF INTEREST.—The swap execution facility shall—

16 “(A) establish and enforce rules to minimize conflicts of interest in its  
17 decision-making process; and

18 “(B) establish a process for resolving the conflicts of interest.

19 “(12) DESIGNATION OF COMPLIANCE OFFICER.—

20 “(A) IN GENERAL.—Each alternative swap execution facility shall  
21 designate an individual to serve as a compliance officer.

22 “(B) DUTIES.—The compliance officer shall—

23 “(i) report directly to the board or to the senior officer of the

1 facility; and

2 “(ii) shall—

3 “(I) review compliance with the core principles in section  
4 5h(e).

5 “(II) in consultation with the board of the facility, a body  
6 performing a function similar to that of a board, or the senior  
7 officer of the facility, resolve any conflicts of interest that may  
8 arise;

9 “(III) be responsible for administering the policies and  
10 procedures required to be established pursuant to this section; and

11 “(IV) ensure compliance with commodity laws and the  
12 rules and regulations issued thereunder, including rules prescribed  
13 by the Commission pursuant to this section.

14 “(iii) The compliance officer shall establish procedures for  
15 remediation of non-compliance issues found during compliance office  
16 reviews, lookbacks, internal or external audit findings, self-reported errors,  
17 or through validated complaints. Procedures will establish the handling,  
18 management response, remediation, re-testing, and closing of non-  
19 compliant issues.

20 “(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually  
21 prepare and sign a report on the compliance of the facility with the commodity  
22 laws and its policies and procedures, including its code of ethics and conflict of  
23 interest policies, in accordance with rules prescribed by the Commission. Such

1 compliance report shall accompany the financial reports of the facility that are  
2 required to be furnished to the Commission pursuant to this section and shall  
3 include a certification that, under penalty of law, the report is accurate and  
4 complete.

5 “(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an  
6 alternative swap execution facility from registration under this section if the Commission finds  
7 that such facility is subject to comparable, comprehensive supervision and regulation on a  
8 consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the  
9 appropriate governmental authorities in the organization’s home country.

10 “(g) HARMONIZATION OF RULES.—Within 180 days of the enactment of the Over-the-  
11 Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange  
12 Commission shall jointly prescribe rules governing the regulation of alternative swap execution  
13 facilities under this section and section 3B of the Securities Exchange Act of 1934 (15 U.S.C.  
14 78c-2).”.

15 **SEC. 720. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT**  
16 **BOARDS OF TRADE.**

17 Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 1, *et seq.*) are repealed.

18 **SEC. 721. DESIGNATED CONTRACT MARKETS.**

19 (a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking  
20 paragraph (9) and inserting the following:

21 “(9) EXECUTION OF TRANSACTIONS.—

22 “(A) The board of trade shall provide a competitive, open, and efficient  
23 market and mechanism for executing transactions that protects the price discovery

1 process of trading in the board of trade’s centralized market.

2 “(B) The rules may authorize, for bona fide business purposes—

3 “(i) transfer trades or office trades;

4 “(ii) an exchange of

5 “(I) futures in connection with a cash commodity  
6 transaction;

7 “(II) futures for cash commodities; or

8 “(III) futures for swaps; or

9 “(iii) A futures commission merchant, acting as principal or agent,  
10 to enter into or confirm the execution of a contract for the purchase or sale  
11 of a commodity for future delivery if the contract is reported, recorded, or  
12 cleared in accordance with the rules of the contract market or a derivatives  
13 clearing organization.”.

14 (b) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by adding  
15 after paragraph (18) the following:

16 “(19) FINANCIAL RESOURCES.—The board of trade shall demonstrate that it has  
17 adequate financial, operational, and managerial resources to discharge the responsibilities  
18 of a contract market. For the board of trade’s financial resources to be considered  
19 adequate, their value shall exceed the total amount that would enable the contract market  
20 to cover its operating costs for a period of one year, calculated on a rolling basis.

21 “(20) SYSTEM SAFEGUARDS.—The board of trade shall—

22 “(A) establish and maintain a program of risk analysis and oversight to  
23 identify and minimize sources of operational risk through the development of



1 appropriate controls and procedures, and the development of automated systems,  
2 that are reliable, secure, and give adequate scalable capacity;

3 “(B) establish and maintain emergency procedures, backup facilities, and a  
4 plan for disaster recovery that allow for the timely recovery and resumption of  
5 operations and the fulfillment of the board of trade’s responsibilities and  
6 obligations; and

7 “(C) periodically conduct tests to verify that back-up resources are  
8 sufficient to ensure continued order processing and trade matching, price  
9 reporting, market surveillance, and maintenance of a comprehensive and accurate  
10 audit trail.”.

11 **SEC. 722. MARGIN.**

12 Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended in paragraph  
13 (7)(C), by striking “, excepting the setting of levels of margin”.

14 **SEC. 723. POSITION LIMITS.**

15 (a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

16 (1) inserting “(1)” after “(a),”;

17 (2) striking “on electronic trading facilities with respect to a significant price  
18 discovery contract” in the first sentence and inserting “swaps that perform or affect a  
19 significant price discovery function with respect to regulated markets”;

20 (3) inserting “, including any group or class of traders,” in the second sentence  
21 after “held by any person”;

22 (4) striking “on an electronic trading facility with respect to a significant price  
23 discovery contract,” in the second sentence and inserting “swaps that perform or affect a

1 significant price discovery function with respect to regulated markets,”; and

2 (5) inserting at the end the following:

3 “(2) AGGREGATE POSITION LIMITS.—The Commission may, by rule or regulation,  
4 establish limits (including related hedge exemption provisions) on the aggregate number  
5 or amount of positions in contracts based upon the same underlying commodity (as  
6 defined by the Commission) that may be held by any person, including any group or class  
7 of traders, for each month across—

8 “(A) contracts listed by designated contract markets;

9 “(B) contracts traded on a foreign board of trade that provides members or  
10 other participants located in the United States with direct access to its electronic  
11 trading and order matching system; and

12 “(C) swap contracts that perform or affect a significant price discovery  
13 function with respect to regulated markets.

14 “(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination  
15 whether a swap performs or affects a significant price discovery function with respect to  
16 regulated markets, the Commission shall consider, as appropriate:

17 “(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise  
18 relies on a daily or final settlement price, or other major price parameter, of  
19 another contract traded on a regulated market based upon the same underlying  
20 commodity, to value a position, transfer or convert a position, financially settle a  
21 position, or close out a position;

22 “(B) ARBITRAGE.—The extent to which the price for the swap is  
23 sufficiently related to the price of another contract traded on a regulated market

1 based upon the same underlying commodity so as to permit market participants to  
2 effectively arbitrage between the markets by simultaneously maintaining positions  
3 or executing trades in the swaps on a frequent and recurring basis;

4 “(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent  
5 and recurring basis, bids, offers, or transactions in a contract traded on a regulated  
6 market are directly based on, or are determined by referencing, the price  
7 generated by the swap;

8 “(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps  
9 being traded in the commodity is sufficient to have a material effect on another  
10 contract traded on a regulated market; and

11 “(E) OTHER MATERIAL FACTORS.—Such other material factors as the  
12 Commission specifies by rule or regulation as relevant to determine whether a  
13 swap serves a significant price discovery function with respect to a regulated  
14 market.

15 “(4) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt,  
16 conditionally or unconditionally, any person or class of persons, any swap or class of  
17 swaps, or any transaction or class of transactions from any requirement it may establish  
18 under this section with respect to position limits.”.

19 (b) Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

20 (1) in paragraph (1), by striking “or derivatives transaction execution facility or  
21 facilities or electronic trading facility” and inserting “or alternative swap execution  
22 facility or facilities”; and

23 (2) in paragraph (2), by striking “or derivatives transaction execution facility or

1 facilities or electronic trading facility” and inserting “or alternative swap execution  
2 facility”.

3 **SEC. 724. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.**

4 (a) Section 5(d)(1) of the Commodity Exchange Act (7 U.S.C. 7(d)(1)) is amended by  
5 striking “The board of trade shall have” and inserting “Except where the Commission otherwise  
6 determines by rule or regulation pursuant to section 8a(5), the board of trade shall have”.

7 (b) Section 5b(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)(A)) is  
8 amended by striking “The applicant shall have” and inserting “Except where the Commission  
9 otherwise determines by rule or regulation pursuant to section 8a(5), the applicant shall have”.

10 (c) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is amended—

11 (1) in paragraph (1), by striking “5a(d) and 5b(c)(2)” and inserting “5b(c)(2) and  
12 5h(e)”; and

13 (2) in paragraph (2), by striking “shall not” and inserting “may”.

14 (d) Section 5c(c)(1) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)(1)) is amended  
15 by inserting “(A)” after “IN GENERAL.—” and adding at the end the following:

16 “(B) Unless section 805(e) of the Payment, Clearing, and Settlement  
17 Supervision Act of 2009 applies, the new contract or instrument or clearing of the  
18 new contract or instrument, new rule, or rule amendment shall become effective,  
19 pursuant to the registered entity’s certification, 10 business days after the  
20 Commission’s receipt of the certification (or such shorter period determined by  
21 the Commission by rule or regulation) unless the Commission notifies the  
22 registered entity within such time that it is staying the certification because there  
23 exist novel or complex issues that require additional time to analyze, an

1 inadequate explanation by the submitting registered entity, or a potential  
2 inconsistency with this Act (including regulations under this Act).

3 “(C) A notification by the Commission pursuant to subparagraph (B) shall  
4 stay the certification of the new contract or instrument or clearing of the new  
5 contract or instrument, new rule or new amendment for up to an additional 90  
6 days from the date of such notification.”.

7 (e) Section 5c(d) of the Commodity Exchange Act (7 U.S.C. 7a-2(d)) is repealed.

8 **SEC. 725. FOREIGN BOARDS OF TRADE.**

9 (a) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended by striking  
10 “No rule or regulation” and inserting “Except as provided in paragraphs (1) and (2), no rule or  
11 regulation”.

12 (b) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is further amended by  
13 inserting before “The Commission” the following:

14 “(1) REGISTRATION.—The Commission may adopt rules and regulations requiring  
15 registration with the Commission for a foreign board of trade that provides the members  
16 of the foreign board of trade or other participants located in the United States direct  
17 access to the electronic trading and order matching system of the foreign board of trade,  
18 including rules and regulations prescribing procedures and requirements applicable to the  
19 registration of such foreign boards of trade. For purposes of this paragraph, “direct  
20 access” refers to an explicit grant of authority by a foreign board of trade to an identified  
21 member or other participant located in the United States to enter trades directly into the  
22 trade matching system of the foreign board of trade.

23 “(2) LINKED CONTRACTS.— It shall be unlawful for a foreign board of trade to

1 provide to the members of the foreign board of trade or other participants located in the  
2 United States direct access to the electronic trading and order-matching system of the  
3 foreign board of trade with respect to an agreement, contract, or transaction that settles  
4 against any price (including the daily or final settlement price) of 1 or more contracts  
5 listed for trading on a registered entity, unless the Commission determines that—

6 “(A) the foreign board of trade makes public daily trading information  
7 regarding the agreement, contract, or transaction that is comparable to the daily  
8 trading information published by the registered entity for the 1 or more contracts  
9 against which the agreement, contract, or transaction traded on the foreign board  
10 of trade settles; and

11 “(B) the foreign board of trade (or the foreign futures authority that  
12 oversees the foreign board of trade)—

13 “(i) adopts position limits (including related hedge exemption  
14 provisions) for the agreement, contract, or transaction that are comparable  
15 to the position limits (including related hedge exemption provisions)  
16 adopted by the registered entity for the 1 or more contracts against which  
17 the agreement, contract, or transaction traded on the foreign board of trade  
18 settles;

19 “(ii) has the authority to require or direct market participants to  
20 limit, reduce, or liquidate any position the foreign board of trade (or the  
21 foreign futures authority that oversees the foreign board of trade)  
22 determines to be necessary to prevent or reduce the threat of price  
23 manipulation, excessive speculation as described in section 4a, price

1 distortion, or disruption of delivery or the cash settlement process;

2 “(iii) agrees to promptly notify the Commission, with regard to the  
3 agreement, contract, or transaction that settles against any price (including  
4 the daily or final settlement price) of 1 or more contracts listed for trading  
5 on a registered entity, of any change regarding—

6 “(I) the information that the foreign board of trade will  
7 make publicly available;

8 “(II) the position limits that the foreign board of trade or  
9 foreign futures authority will adopt and enforce;

10 “(III) the position reductions required to prevent  
11 manipulation, excessive speculation as described in section 4a,  
12 price distortion, or disruption of delivery or the cash settlement  
13 process; and

14 “(IV) any other area of interest expressed by the  
15 Commission to the foreign board of trade or foreign futures  
16 authority;

17 “(iv) provides information to the Commission regarding large  
18 trader positions in the agreement, contract, or transaction that is  
19 comparable to the large trader position information collected by the  
20 Commission for the 1 or more contracts against which the agreement,  
21 contract, or transaction traded on the foreign board of trade settles; and

22 “(v) provides the Commission with information necessary to  
23 publish reports on aggregate trader positions for the agreement, contract,

1 or transaction traded on the foreign board of trade that are comparable to  
2 such reports on aggregate trader positions for the 1 or more contracts  
3 against which the agreement, contract, or transaction traded on the foreign  
4 board of trade settles.

5 “(3) EXISTING FOREIGN BOARDS OF TRADE.—Paragraphs (1) and (2) shall not be  
6 effective with respect to any foreign board of trade to which the Commission has granted  
7 direct access permission before the date of the enactment of this subsection until the date  
8 that is 180 days after such date of enactment.

9 “(4) PERSONS LOCATED IN THE UNITED STATES.—”.

10 (c) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

11 (1) Section 4(a) of the Commodity Exchange Act (7. U.S.C. 6(a)) is amended by  
12 inserting “or by subsection (f)” after “Unless exempted by the Commission pursuant to  
13 subsection (c)”; and

14 (2) Section 4 of the Commodity Exchange Act (7 U.S.C 6) is further amended by  
15 adding at the end the following:

16 “(f) A person registered with the Commission, or exempt from registration by the  
17 Commission, under this Act may not be found to have violated subsection (a) with  
18 respect to a transaction in, or in connection with, a contract of sale of a commodity for  
19 future delivery if the person has reason to believe that the transaction and the contract is  
20 made on or subject to the rules of a foreign board of trade that has complied with  
21 subsections (b)(1) and (b)(2).”.

22 (d) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the  
23 Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:



1           “(5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract  
2 of sale of a commodity for future delivery traded or executed on or through the facilities  
3 of a board of trade, exchange, or market located outside the United States for purposes of  
4 section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract  
5 shall not be entitled to rescind or recover any payment made with respect to the contract,  
6 based on the failure of the foreign board of trade to comply with any provision of this  
7 Act.” .

8 **SEC. 726. LEGAL CERTAINTY FOR SWAPS.**

9           Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read  
10 as follows:

11           “(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

12                   “(A) No hybrid instrument sold to any investor shall be void, voidable, or  
13 unenforceable, and no party to such hybrid instrument shall be entitled to rescind,  
14 or recover any payment made with respect to, such a hybrid instrument under this  
15 section or any other provision of Federal or State law, based solely on the failure  
16 of the hybrid instrument to comply with the terms or conditions of section 2(f) or  
17 regulations of the Commission; and

18                   “(B) No agreement, contract, or transaction between eligible contract  
19 participants or persons reasonably believed to be eligible contract participants  
20 shall be void, voidable, or unenforceable, and no party thereto shall be entitled to  
21 rescind, or recover any payment made with respect to, such agreement, contract,  
22 or transaction under this section or any other provision of Federal or State law,  
23 based solely on the failure of the agreement, contract, or transaction to meet the

1 definition of a swap set forth in section 1a or to be cleared pursuant to section  
2 2(j)(1).”.

3 **SEC. 727. MULTILATERAL CLEARING ORGANIZATIONS.**

4 (a) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of  
5 1991 (12 U.S.C. 4421(2)(C)) is amended by striking “section 2(c), 2(d), 2(f), or 2(g) of such Act,  
6 or exempted under section 2(h) or 4(c) of such Act” and inserting “section 2(c) or 2(f) of such  
7 Act”;

8 (b) Section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991  
9 (12 U.S.C. 4421) is further amended by inserting at the end the following:

10 “(4) The term “over-the-counter derivative instrument” does not include a swap or  
11 a security-based swap as defined in sections 1a(35) and 1a(38) of the Commodity  
12 Exchange Act (7 U.S.C. 1a(35) and 1a(38)).”.

13 **SEC. 728. PRIMARY ENFORCEMENT AUTHORITY.**

14 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by adding the following  
15 new section after section 4b:

16 **“SEC. 4b-1. PRIMARY ENFORCEMENT AUTHORITY.**

17 “(a) CFTC.—Except as provided in subsections (b), (c), and (d), the Commission shall  
18 have primary authority to enforce the provisions of Subtitle A of the Over-the-Counter  
19 Derivatives Market Act of 2009 with respect to any person.

20 “(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive  
21 authority to enforce the provisions of section 4s(e) and other prudential requirements of this Act  
22 with respect to banks, and branches or agencies of foreign banks that are swap dealers or major  
23 swap participants.

1           “(c) REFERRAL.—If the Prudential Regulator for a swap dealer or major swap participant  
2 has cause to believe that such swap dealer or major swap participant may have engaged in  
3 conduct that constitutes a violation of the nonprudential requirements of section 4s or rules  
4 adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to  
5 the Commission that the Commission initiate an enforcement proceeding as authorized under this  
6 Act. The recommendation shall be accompanied by a written explanation of the concerns giving  
7 rise to the recommendation.

8           “(d) BACKSTOP ENFORCEMENT AUTHORITY. —If the Commission does not initiate an  
9 enforcement proceeding before the end of the 90 day period beginning on the date on which the  
10 Commission receives a recommendation under subsection (c), the Prudential Regulator may  
11 initiate an enforcement proceeding as permitted under Federal law.”.

12 **SEC. 729. ENFORCEMENT.**

13           (a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by  
14 striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section  
15 5a(g),” and inserting “or swap,”; and

16           (b) Section 4b(b) of the Commodity Exchange Act (7 U.S.C. 6b(b)) is amended by  
17 striking “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section  
18 5a(g),” and inserting “or swap,”;

19           (c) Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by  
20 inserting “or swap” before “if the transaction is used or may be used”;

21           (d) Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by  
22 inserting “or of any swap,” before “or to corner”;

23           (e) Section 9(a)(4) of the Commodity Exchange Act (7 U.S.C. 13(a)(4)) is amended by

1 inserting “swap repository,” before “or futures association”;

2 (f) Section 9(e)(1) of the Commodity Exchange Act (7 U.S.C. 13(e)(1)) is amended by  
3 inserting “swap repository,” before “or registered futures association” and by inserting “, or  
4 swaps,” before “on the basis”; and

5 (g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by  
6 adding the following new paragraph (6) and renumber existing paragraphs (6) through (10) as (7)  
7 through (11):

8 “(6) This section shall apply to any swap dealer, major swap participant, security-  
9 based swap dealer, major security-based swap participant, derivatives clearing  
10 organization, swap repository or alternative swap execution facility, whether or not it is  
11 an insured depository institution, for which the Board, the Corporation, or the Office of  
12 the Comptroller of the Currency is the appropriate Federal banking agency or Prudential  
13 Regulator for purposes of the Over-the-Counter Derivatives Markets Act of 2009.”.

14 **SEC. 730. RETAIL COMMODITY TRANSACTIONS.**

15 Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

16 (1) in paragraph (1), by striking “(to the extent provided in section 5a(g), 5b, 5d,  
17 or 12(e)(2)(B))” and inserting “5b, or 12(e)(2)(B))”;

18 (2) in paragraph (2), by inserting after subparagraph (C) the following:

19 “(D) RETAIL COMMODITY TRANSACTIONS.—

20 “(i) This subparagraph shall apply to any agreement, contract, or  
21 transaction in any commodity that is—

22 “(I) entered into with, or offered to (even if not entered into  
23 with), a person that is not an eligible contract participant or eligible

1 commercial entity; and

2 “(II) entered into, or offered (even if not entered into), on a  
3 leveraged or margined basis, or financed by the offeror, the  
4 counterparty, or a person acting in concert with the offeror or  
5 counterparty on a similar basis.

6 “(ii) Clause (i) shall not apply to—

7 “(I) an agreement, contract, or transaction described in  
8 paragraph (1) or subparagraphs (A), (B), or (C), including any  
9 agreement, contract, or transaction specifically excluded from  
10 subparagraph (A), (B), or (C);

11 “(II) any security;

12 “(III) a contract of sale that—

13 “(aa) results in actual delivery within 28 days or  
14 such other period as the Commission may determine by  
15 rule or regulation based upon the typical commercial  
16 practice in cash or spot markets for the commodity  
17 involved; or

18 “(bb) creates an enforceable obligation to deliver  
19 between a seller and a buyer that have the ability to deliver  
20 and accept delivery, respectively, in connection with their  
21 line of business.

22 “(IV) an agreement, contract, or transaction that is listed on  
23 a national securities exchange registered under section 6(a) of the

1 Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

2 “(V) an identified banking product, as defined in section  
3 402(b) of the Legal Certainty for Bank Products Act of 2000 (7  
4 U.S.C. 27(b)).

5 “(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement,  
6 contract or transaction described in clause (i), that is not excluded from  
7 clause (i) by clause (ii), as if the agreement, contract, or transaction were a  
8 contract of sale of a commodity for future delivery.

9 “(iv) This subparagraph shall not be construed to limit any  
10 jurisdiction that the Commission may otherwise have under any other  
11 provision of this Act over an agreement, contract, or transaction that is a  
12 contract of sale of a commodity for future delivery;

13 “(v) This subparagraph shall not be construed to limit any  
14 jurisdiction that the Commission or the Securities and Exchange  
15 Commission may otherwise have under any other provisions of this Act  
16 with respect to security futures products and persons effecting transactions  
17 in security futures products;

18 “(vi) For the purposes of this subparagraph, an agricultural  
19 producer, packer, or handler shall be considered an eligible commercial  
20 entity for any agreement, contract, or transaction for a commodity in  
21 connection with its line of business.”.

22 **SEC. 731. LARGE SWAP TRADER REPORTING.**

23 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by adding after section 4s

1 (as added by section 717) the following:

2 **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

3 “(a) It shall be unlawful for any person to enter into any swap that performs or affects a  
4 significant price discovery function with respect to regulated markets if—

5 “(1) such person shall directly or indirectly enter into such swaps during any one  
6 day in an amount equal to or in excess of such amount as shall be fixed from time to time  
7 by the Commission; and

8 “(2) such person shall directly or indirectly have or obtain a position in such  
9 swaps equal to or in excess of such amount as shall be fixed from time to time by the  
10 Commission,

11 “unless such person files or causes to be filed with the properly designated officer of the  
12 Commission such reports regarding any transactions or positions described in paragraphs (1) and  
13 (2) as the Commission may by rule or regulation require and unless, in accordance with the rules  
14 and regulations of the Commission, such person shall keep books and records of all such swaps  
15 and any transactions and positions in any related commodity traded on or subject to the rules of  
16 any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale  
17 commitments of, such a commodity.

18 “(b) Such books and records shall show complete details concerning all transactions and  
19 positions as the Commission may by rule or regulation prescribe.

20 “(c) Such books and records shall be open at all times to inspection and examination by  
21 any representative of the Commission.

22 “(d) For the purpose of this subsection, the swaps, futures and cash or spot transactions  
23 and positions of any person shall include such transactions and positions of any persons directly

1 or indirectly controlled by such person.

2 “(e) In making a determination whether a swap performs or affects a significant price  
3 discovery function with respect to regulated markets, the Commission shall consider the factors  
4 set forth in section 4a(a)(3).”.

5 **SEC. 732. OTHER AUTHORITY.**

6 Unless otherwise provided by its terms, this title does not divest any appropriate Federal  
7 banking agency, the Commission, the Securities and Exchange Commission, or other Federal or  
8 State agency, of any authority derived from any other applicable law.

9 **SEC. 733. ANTITRUST.**

10 Nothing in the amendments made by this title shall be construed to modify, impair, or  
11 supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term  
12 “antitrust laws” has the same meaning given such term in subsection (a) of the first section of the  
13 Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to  
14 the extent that such section 5 applies to unfair methods of competition.

15 **SEC. 734. EFFECTIVE DATE.**

16 This title is effective 180 days after the date of enactment.

17 **Subtitle B—Regulation of Security-Based Swap Markets**

18 **SEC. 751. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.**

19 Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

20 (1) in paragraph (5)(A) and (B), by inserting “(but not security-based swaps, other  
21 than security-based swaps with or for persons that are not eligible contract participants)”  
22 after the word “securities” in each place it appears;

23 (2) in paragraph (10), by inserting “security-based swap,” after “security future,”;



1 (3) in paragraph (13), by adding at the end the following:

2 “For security-based swaps, such terms include the execution, termination (prior to  
3 its scheduled maturity date), assignment, exchange, or similar transfer or  
4 conveyance of, or extinguishing of rights or obligations under, a security-based  
5 swap, as the context may require.”;

6 (4) in paragraph (14), by adding at the end the following:

7 “For security-based swaps, such terms include the execution, termination (prior to  
8 its scheduled maturity date), assignment, exchange, or similar transfer or  
9 conveyance of, or extinguishing of rights or obligations under, a security-based  
10 swap, as the context may require.”;

11 (5) in paragraph (39)—

12 (A) by striking “or government securities dealer” and adding “government  
13 securities dealer, security-based swap dealer or major security-based swap  
14 participant” in its place in subparagraph (B)(i)(I);

15 (B) by adding “security-based swap dealer, major security-based swap  
16 participant,” after “government securities dealer,” in subparagraph (B)(i)(II);

17 (C) by striking “or government securities dealer” and adding “government  
18 securities dealer, security-based swap dealer or major security-based swap  
19 participant” in its place in subparagraph (C); and

20 (D) by adding “security-based swap dealer, major security-based swap  
21 participant,” after “government securities dealer,” in subparagraph (D); and

22 (6) by adding at the end the following:

23 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’

1 has the same meaning as in section 1a(13) of the Commodity Exchange Act (7 U.S.C.  
2 1a(13)).

3 “(66) MAJOR SWAP PARTICIPANT.—The term ‘major swap participant’ has the  
4 same meaning as in section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

5 “(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term ‘major security-  
6 based swap participant’ has the same meaning as in section 1a(41) of the Commodity  
7 Exchange Act (7 U.S.C. 1a(41)).

8 “(68) SECURITY-BASED SWAP.—The term ‘security-based swap’ has the same  
9 meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

10 “(69) SWAP.—The term ‘swap’ has the same meaning as in section 1a(35) of the  
11 Commodity Exchange Act (7 U.S.C. 1a(35)).

12 “(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR  
13 SECURITY-BASED SWAP PARTICIPANT.—The term ‘person associated with a security-  
14 based swap dealer or major security-based swap participant’ or ‘associated person of a  
15 security-based swap dealer or major security-based swap participant’ has the same  
16 meaning as in section 1a(48) of the Commodity Exchange Act (7 U.S.C. 1a(48)).

17 “(71) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’  
18 has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C.  
19 1a(44)).

20 “(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal  
21 banking agency’ has the same meaning as in section 3(q) of the Federal Deposit  
22 Insurance Act (12 U.S.C. 1813(q)).

23 “(73) BOARD.—The term ‘Board’ means the Board of Governors of the Federal

1 Reserve System.

2 “(74) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ has the same  
3 meaning as in section 1a(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

4 “(75) SWAP DEALER.—The term ‘swap dealer’ has the same meaning as in section  
5 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

6 ”(76) SECURITY-BASED SWAP AGREEMENT.—

7 “(A) IN GENERAL.—For purposes of sections 10, 16, 20, and 21A of this  
8 Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term  
9 ‘security-based swap agreement’ means a swap agreement as defined in section  
10 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material  
11 term is based on the price, yield, value, or volatility of any security or any group  
12 or index of securities, or any interest therein.

13 “(B) EXCLUSIONS.—The term ‘security-based swap agreement’ does not  
14 include any security-based swap.”.

15 **SEC. 752. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED**  
16 **SWAPS.**

17 (a) REPEAL OF LAW.— Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c  
18 note) is repealed and the section is reserved;

19 (b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

20 (1) Section 2A(b) is amended by striking “(as defined in section 206B of the  
21 Gramm-Leach-Bliley Act)” each place that such term appears;

22 (2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

23 (A) in subsection (a)—

1 (i) by inserting “(including security-based swaps)” after  
2 “securities”; and  
3 (ii) by striking “206B of the Gramm-Leach-Bliley Act” and  
4 inserting “3(a)(76) of the Securities Exchange Act of 1934”; and  
5 (B) in subsection (d), by striking “206B of the Gramm-Leach-Bliley Act”  
6 and inserting “3(a)(76) of the Securities Exchange Act of 1934”.

7 (c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The  
8 Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) is amended—

9 (1) Section 3A (15 U.S.C. 78c-1) is amended by striking “(as defined in section  
10 206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

11 (2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through  
12 (5) and inserting:

13 “(2) To effect, alone or with one or more other persons, a series of transactions in  
14 any security registered on a national securities exchange or in connection with any  
15 security-based swap with respect to such security creating actual or apparent active  
16 trading in such security, or raising or depressing the price of such security, for the  
17 purpose of inducing the purchase or sale of such security by others.

18 “(3) If a dealer, broker, security-based swap dealer, major security-based swap  
19 participant or other person selling or offering for sale or purchasing or offering to  
20 purchase the security to induce the purchase or sale of any security registered on a  
21 national securities exchange or any security-based swap with respect to such security by  
22 the circulation or dissemination in the ordinary course of business of information to the  
23 effect that the price of any such security will or is likely to rise or fall because of market

1 operations of any one or more persons conducted for the purpose of raising or depressing  
2 the price of such security.

3 “(4) If a dealer, broker, security-based swap dealer, major security-based swap  
4 participant or other person selling or offering for sale or purchasing or offering to  
5 purchase the security, to make, regarding any security registered on a national securities  
6 exchange or any security-based swap with respect to such security, for the purpose of  
7 inducing the purchase or sale of such security or such security-based swap, any statement  
8 which was at the time and in the light of the circumstances under which it was made,  
9 false or misleading with respect to any material fact, and which he knew or had  
10 reasonable ground to believe was so false or misleading.

11 “(5) For a consideration, received directly or indirectly from a dealer, broker,  
12 security-based swap dealer, major security-based swap participant or other person selling  
13 or offering for sale or purchasing or offering to purchase the security, to induce the  
14 purchase of any security registered on a national securities exchange or any security-  
15 based swap with respect to such security by the circulation or dissemination of  
16 information to the effect that the price of any such security will or is likely to rise or fall  
17 because of the market operations of any one or more persons conducted for the purpose  
18 of raising or depressing the price of such security.”.

19 (3) Section 10 (15 U.S.C. 78j) is amended by striking “(as defined in section  
20 206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

21 (4) Section 15(c)(1) is amended—

22 (A) in subparagraph (A, by striking “, or any security-based swap  
23 agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),”; and

1 (B) in subparagraphs (B) and (C), by striking “agreement (as defined in  
2 section 206B of the Gramm-Leach-Bliley Act)” in each place that the term  
3 appears;

4 (5) Section 15(i) (15 U.S.C. 78o(i), as added by section 303(f) of the Commodity  
5 Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A-455) is  
6 amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” ;

7 (6) Section 16 (15 U.S.C. 78p) is amended—

8 (A) in subsection (a)(2)(C), by striking “(as defined in section 206(b) of  
9 the Gramm-Leach-Bliley Act)”;

10 (B) in subsection (b), by striking “(as defined in section 206B of the  
11 Gramm-Leach-Bliley Act)” in each place that the term appears;

12 (C) in subsection (g), by striking “(as defined in section 206B of the  
13 Gramm-Leach-Bliley Act)”;

14 (7) Section 20 (15 U.S.C. 78t) is amended —

15 (A) in subsection (d), by striking “(as defined in section 206B of the  
16 Gramm-Leach-Bliley Act)” and,

17 (B) in subsection (f), by striking “(as defined in section 206B of the  
18 Gramm-Leach-Bliley Act)”;

19 (8) Section 21A (15 U.S.C. 78u-1) is amended—

20 (A) in subsection (a)(1), by striking “(as defined in section 206B of the  
21 Gramm-Leach-Bliley Act)” and,  
22

23 (B) in subsection (g), by striking “(as defined in section 206B of the  
24 Gramm-Leach-Bliley Act)”.

25 **SEC. 753. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.**

1 (a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15  
2 U.S.C. 78a, *et seq.*) is amended by adding the following section after section 3:

3 **“SEC. 3A. CLEARING FOR SECURITY-BASED SWAPS.**

4 “(a) CLEARING REQUIREMENT.—

5 “(1) IN GENERAL.—Except as provided in paragraph (7), it shall be unlawful to  
6 enter into a security-based swap that is standardized unless—

7 “(A) the security-based swap is cleared by a clearing agency registered  
8 under section 17A of this Act; and

9 “(B) the rules of the clearing agency described in subparagraph (A)  
10 prescribe that all security-based swaps with the same terms and conditions are  
11 fungible and may be offset with each other.

12 “(2) STANDARDIZATION IF CLEARED.—A security-based swap that is accepted for  
13 clearing by any clearing agency shall be presumed to be standardized.

14 “(3) SECURITY-BASED SWAPS DESIGNATED AS STANDARDIZED.—

15 “(A) JOINT RULES.—Within 180 days of the enactment of the Over-the-  
16 Counter Derivatives Markets Act of 2009, the Commission and the Commodity  
17 Futures Trading Commission shall jointly adopt rules to further define the term  
18 ‘standardized.’ In adopting such rules, the Commission and the Commodity  
19 Futures Trading Commission shall jointly define the term ‘standardized’ as  
20 broadly as possible, after taking into account the following factors:

21 “(i) the extent to which any of the terms of the security-based  
22 swap, including price, are disseminated to third parties or are referenced in  
23 other agreements, contracts, or transactions;

1                   “(ii) the volume of transactions in the security-based swap;

2                   “(iii) the extent to which the terms of the security-based swap are  
3 similar to the terms of other agreements, contracts, or transactions that are  
4 centrally cleared;

5                   “(iv) whether any differences in the terms of the security-based  
6 swap, compared to other agreements, contracts, or transactions that are  
7 centrally cleared, are of economic significance; and

8                   (v) any other factors the Commission and Commodity Futures  
9 Trading Commission determine to be appropriate.

10                  “(B) The Commission may separately designate a particular security-based  
11 swap or class of security-based swaps as standardized, taking into account the  
12 factors enumerated in paragraphs (3)(i)-(v) and the joint rules adopted in  
13 subparagraph (A).

14                  “(4) PREVENTION OF EVASION.— The Commission shall have authority to  
15 prescribe rules under this section, or issue interpretations of such rules, as necessary to  
16 prevent evasions of this Act.

17                  “(5) REQUIRED REPORTING.—Both counterparties to a security-based swap that is  
18 not accepted for clearing by any clearing agency shall report such a security-based swap  
19 either to a security-based swap repository described in subsection 13(n) or, if there is no  
20 repository that would accept the security-based swap, to the Commission pursuant to  
21 section 13A within such time period as the Commission may by rule or regulation  
22 prescribe.

23                  “(6) TRANSITION RULES.—Rules adopted by the Commission under this section



1 shall provide for the reporting of data, as follows:

2 “(A) Security-based swaps that were entered into before the date of  
3 enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be  
4 reported to a registered security-based swap repository or the Commission no  
5 later than 180 days after the effective date of the Over-the-Counter Derivatives  
6 Markets Act of 2009.

7 “(B) Security-based swaps that were entered into on or after the date of  
8 enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be  
9 reported to a registered security-based swap repository or the Commission no  
10 later than the later of:

11 “(i) 90 days after the effective date of the Over-the-Counter  
12 Derivatives Markets Act of 2009; or

13 “(ii) such other time after entering into the swap as the  
14 Commission may prescribe by rule or regulation.

15 “(7) MANDATORY TRADING.—Except as provided in paragraph (8), a security-  
16 based swap that is standardized shall be traded on an exchange or an alternative swap  
17 execution facility registered under section 3B.

18 “(8) EXCEPTION.—The requirements of subsection (a)(1) and (7) do not apply to a  
19 security-based swap if—

20 “(A) no clearing agency will accept the security-based swap for clearing;

21 or

22 “(B) one of the counterparties to the security-based swap—

23 “(i) is not a security-based swap dealer or a major security-based

1 swap participant; and

2 “(ii) does not meet the eligibility requirements of any clearing  
3 agency that clears the security-based swap.

4 “(9) VOLUNTARY REGISTRATION.—

5 “(A) CLEARING AGENCIES.—A person that clears agreements, contracts, or  
6 transactions that are not required to be cleared under this Act may register with  
7 the Commission as a clearing agency.

8 “(B) DERIVATIVES CLEARING ORGANIZATIONS.—A clearing agency may  
9 clear swaps that are required to be cleared by a person who is registered as a  
10 derivatives clearing organization under the Commodity Exchange Act (7 U.S.C.  
11 1, *et seq.*).

12 “(10) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person  
13 that is required to be registered as a clearing agency under this section shall register with  
14 the Commission regardless of whether the person is also a bank or a derivatives clearing  
15 organization registered with the Commodity Futures Trading Commission under the  
16 Commodity Exchange Act (7 U.S.C. 1, *et seq.*).

17 “(b) REPORTING.—

18 “(1) IN GENERAL.—A clearing agency that clears security-based swaps shall  
19 provide to the Commission all information determined by the Commission to be  
20 necessary to perform its responsibilities under this Act. The Commission shall adopt data  
21 collection and maintenance requirements for security-based swaps cleared by clearing  
22 agencies that are comparable to the corresponding requirements for security-based swaps  
23 accepted by security-based swap repositories and security-based swaps traded on

1 alternative swap execution facilities. The Commission shall share such information,  
2 upon request, with the Board, the Commodity Futures Trading Commission, the  
3 appropriate Federal banking agencies, the Financial Services Oversight Council, and the  
4 Department of Justice or to other persons the Commission deems appropriate, including  
5 foreign financial supervisors (including foreign futures authorities), foreign central banks,  
6 and foreign ministries.

7 “(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps  
8 shall provide to the Commission, or its designee, such information as is required by, and  
9 in a form and at a frequency to be determined by, the Commission, in order to comply  
10 with the public reporting requirements contained in section 13.

11 “(c) DESIGNATION OF COMPLIANCE OFFICER.—

12 “(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall  
13 designate an individual to serve as a compliance officer.

14 “(2) DUTIES.—The compliance officer shall—

15 “(A) report directly to the board or to the senior officer of the clearing  
16 agency; and

17 “(B) shall, in consultation with the board of the clearing agency, a body  
18 performing a function similar to that of a board, or the senior officer of the  
19 clearing agency, resolve any conflicts of interest that may arise;

20 “(C) be responsible for administering the policies and procedures required  
21 to be established pursuant to this section; and

22 “(D) ensure compliance with securities laws and the rules and regulations  
23 issued thereunder, including rules prescribed by the Commission pursuant to this

1 section.

2 “(E) The compliance officer shall establish procedures for remediation of  
3 non-compliance issues found during compliance office reviews, lookbacks,  
4 internal or external audit findings, self-reported errors, or through validated  
5 complaints. Procedures will establish the handling, management response,  
6 remediation, re-testing, and closing of non-compliant issues.

7 “(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare  
8 and sign a report on the compliance of the clearing agency with the securities laws and its  
9 policies and procedures, including its code of ethics and conflict of interest policies, in  
10 accordance with rules prescribed by the Commission. Such compliance report shall  
11 accompany the financial reports of the clearing agency that are required to be furnished to  
12 the Commission pursuant to this section and shall include a certification that, under  
13 penalty of law, the report is accurate and complete.

14 “(d) CONSULTATION.—The Commission and the Commodity Futures Trading  
15 Commission shall consult with the appropriate Federal banking agencies and each other prior to  
16 adopting rules under this section.

17 “(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the  
18 Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures  
19 Trading Commission shall jointly adopt uniform rules governing persons that are registered as  
20 derivatives clearing organizations for swaps under the Commodity Exchange Act (7 U.S.C. 1, *et*  
21 *seq.*) and persons that are registered as clearing agencies for security-based swaps under the  
22 Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*)”.

23 (b) ALTERNATIVE SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934

1 (15 U.S.C. 78a, *et seq.*) is amended by adding after section 3A the following:

2 **“SEC. 3B. ALTERNATIVE SWAP EXECUTION FACILITIES.**

3 “(a) REGISTRATION.—

4 (1) IN GENERAL.—No person may operate a facility for the trading of security-  
5 based swaps unless the facility is registered as an alternative swap execution facility  
6 under this section.

7 “(2) DUAL REGISTRATION.—Any person that is required to be registered as an  
8 alternative swap execution facility under this section shall register with the Commission  
9 regardless of whether that person also is registered with the Commodity Futures Trading  
10 Commission as an alternative swap execution facility.

11 “(b) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is  
12 registered under subsection (a) may trade any security-based swap.

13 “(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also  
14 operates an alternative swap execution facility and uses the same electronic trade execution  
15 system for trading on the exchange and the alternative swap execution facility, identify whether  
16 the electronic trading is taking place on the exchange or the alternative swap execution facility.

17 “(d) CRITERIA FOR REGISTRATION.—

18 “(1) IN GENERAL.—To be registered as an alternative swap execution facility, the  
19 facility shall be required to demonstrate to the Commission that it meets the criteria  
20 specified herein.

21 “(2) DETERRENCE OF ABUSES.—The swap execution facility shall establish and  
22 enforce trading and participation rules that will deter abuses and have the capacity to  
23 detect, investigate, and enforce those rules, including means to—

1                   “(A) obtain information necessary to perform the functions required under  
2                   this section; or

3                   “(B) use means to—

4                               “(i) provide market participants with impartial access to the  
5                               market; and

6                               “(ii) capture information that may be used in establishing whether  
7                               rule violations have occurred.

8                   “(3) TRADING PROCEDURES.—The swap execution facility shall establish and  
9                   enforce rules or terms and conditions defining, or specifications detailing, trading  
10                   procedures to be used in entering and executing orders traded on or through its facilities.

11                   “(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall  
12                   establish and enforce rules and procedures for ensuring the financial integrity of security-  
13                   based swaps entered on or through its facilities, including the clearance and settlement of  
14                   the security-based swaps.

15                   “(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—

16                               “(1) IN GENERAL.—To maintain its registration as an alternative swap execution  
17                               facility, the facility shall comply with the core principles specified in this subsection and  
18                               any requirement that the Commission may impose by rule or regulation. Except where  
19                               the Commission determines otherwise by rule or regulation, the facility shall have  
20                               reasonable discretion in establishing the manner in which it complies with these core  
21                               principles.

22                               “(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and  
23                               enforce compliance with any of the rules of the facility, including the terms and

1 conditions of the security-based swaps traded on or through the facility and any  
2 limitations on access to the facility.

3 “(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The  
4 swap execution facility shall permit trading only in security-based swaps that are not  
5 readily susceptible to manipulation.

6 “(4) MONITORING OF TRADING.—The swap execution facility shall monitor  
7 trading in security-based swaps to prevent manipulation and price distortion through  
8 surveillance, compliance, and disciplinary practices and procedures, including methods  
9 for conducting real-time monitoring of trading and comprehensive and accurate trade  
10 reconstructions.

11 “(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

12 “(A) establish and enforce rules that will allow the facility to obtain any  
13 necessary information to perform any of the functions described in this  
14 subsection;

15 “(B) provide the information to the Commission upon request; and

16 “(C) have the capacity to carry out such international information-sharing  
17 agreements as the Commission may require.

18 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

19 “(A) To reduce the potential threat of market manipulation or congestion,  
20 the swap execution facility shall adopt for each of its contracts, where necessary  
21 and appropriate, position limitations or position accountability.

22 “(B) For any contract that is subject to a position limitation established by  
23 the Commission pursuant to section 10B, the swap execution facility shall set its

1 position limitation at a level no higher than the Commission limitation.

2 “(7) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to  
3 provide for the exercise of emergency authority, in consultation or cooperation with the  
4 Commission, where necessary and appropriate, including the authority to suspend or  
5 curtail trading in a security-based swap.

6 “(8) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution  
7 facility shall make public timely information on price, trading volume, and other trading  
8 data to the extent prescribed by the Commission.

9 “(9) RECORDKEEPING AND REPORTING.—The swap execution facility shall  
10 maintain records of all activities related to the business of the facility, including a  
11 complete audit trail, in a form and manner acceptable to the Commission for a period of 5  
12 years, and report to the Commission all information determined by the Commission to be  
13 necessary or appropriate for the Commission to perform its responsibilities under this Act  
14 in a form and manner acceptable to the Commission. The Commission shall adopt data  
15 collection and reporting requirements for alternative swap execution facilities that are  
16 comparable to corresponding requirements for clearing agencies and security-based swap  
17 repositories.

18 “(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve  
19 the purposes of this Act, the swap execution facility shall avoid—

20 “(A) adopting any rules or taking any actions that result in any  
21 unreasonable restraints of trade; or

22 “(B) imposing any material anticompetitive burden on trading on the swap  
23 execution facility.



1 “(11) CONFLICTS OF INTEREST.—The swap execution facility shall—

2 “(A) establish and enforce rules to minimize conflicts of interest in its  
3 decision-making process; and

4 “(B) establish a process for resolving the conflicts of interest.

5 “(12) DESIGNATION OF COMPLIANCE OFFICER.—

6 “(A) IN GENERAL.—Each alternative swap execution facility shall  
7 designate an individual to serve as a compliance officer.

8 “(B) DUTIES.—The compliance officer shall—

9 “(i) report directly to the board or to the senior officer of the  
10 facility; and

11 “(ii) shall—

12 “(I) review compliance with the core principles in section  
13 3B(e).

14 “(II) in consultation with the board of the facility, a body  
15 performing a function similar to that of a board, or the senior  
16 officer of the facility, resolve any conflicts of interest that may  
17 arise;

18 “(III) be responsible for administering the policies and  
19 procedures required to be established pursuant to this section; and

20 “(IV) ensure compliance with securities laws and the rules  
21 and regulations issued thereunder, including rules prescribed by  
22 the Commission pursuant to this section.

1                   “(iii) The compliance officer shall establish procedures for  
2                   remediation of non-compliance issues found during compliance office  
3                   reviews, lookbacks, internal or external audit findings, self-reported errors,  
4                   or through validated complaints. Procedures will establish the handling,  
5                   management response, remediation, re-testing, and closing of non-  
6                   compliant issues.

7                   “(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually  
8                   prepare and sign a report on the compliance of the facility with the securities laws  
9                   and its policies and procedures, including its code of ethics and conflict of interest  
10                  policies, in accordance with rules prescribed by the Commission. Such  
11                  compliance report shall accompany the financial reports of the facility that are  
12                  required to be furnished to the Commission pursuant to this section and shall  
13                  include a certification that, under penalty of law, the report is accurate and  
14                  complete.”;

15                  “(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an  
16                  alternative swap execution facility from registration under this section if the Commission finds  
17                  that such organization is subject to comparable, comprehensive supervision and regulation on a  
18                  consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or  
19                  the appropriate governmental authorities in the organization’s home country.

20                  “(g) HARMONIZATION OF RULES.—Within 180 days of the enactment of the Over-the-  
21                  Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading  
22                  Commission shall jointly prescribe rules governing the regulation of alternative swap execution  
23                  facilities under this section and section 5h of the Commodity Exchange Act (7 U.S.C. 7b-3).”.

1 (c) TRADING IN SECURITY-BASED SWAP AGREEMENTS.—Section 6 of the Securities  
2 Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

3 “(1) It shall be unlawful for any person to effect a transaction in a security-based  
4 swap with or for a person that is not an eligible contract participant unless such  
5 transaction is effected on a national securities exchange registered pursuant to subsection  
6 (b).”.

7 (d) REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP  
8 PARTICIPANTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) is amended by  
9 inserting after section 15E (15 U.S.C. 78o-7) the following:

10 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP**  
11 **DEALERS AND MAJOR SECURITY-BASED SWAP**  
12 **PARTICIPANTS.**

13 “(a) REGISTRATION.—

14 “(1) It shall be unlawful for any person to act as a security-based swap dealer  
15 unless such person is registered as a security-based swap dealer with the Commission.

16 “(2) It shall be unlawful for any person to act as a major security-based swap  
17 participant unless such person is registered as a major security-based swap participant with  
18 the Commission.

19 “(b) REQUIREMENTS.—

20 “(1) IN GENERAL.—A person shall register as a security-based swap dealer or  
21 major security-based swap participant by filing a registration application with the  
22 Commission.

23 “(2) CONTENTS.—The application shall be made in such form and manner as

1 prescribed by the Commission, giving any information and facts as the Commission may  
2 deem necessary concerning the business in which the applicant is or will be engaged.  
3 Such person, when registered as a security-based swap dealer or major security-based  
4 swap participant, shall continue to report and furnish to the Commission such information  
5 pertaining to such person's business as the Commission may require.

6 “(3) EXPIRATION.—Each registration shall expire at such time as the Commission  
7 may by rule or regulation prescribe.

8 “(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission  
9 may prescribe rules applicable to security-based swap dealers and major security-based  
10 swap participants, including rules that limit the activities of security-based swap dealers  
11 and major security-based swap participants. Except as provided in subsections (c) and  
12 (e), the Commission may provide conditional or unconditional exemptions from rules  
13 prescribed under this section for security-based swap dealers and major security-based  
14 swap participants that are subject to substantially similar requirements as brokers or  
15 dealers.

16 “(5) TRANSITION.—Rules adopted under this section shall provide for the  
17 registration of security-based swap dealers and major security-based swap participants no  
18 later than 1 year after the effective date of the Over-the-Counter Derivatives Markets Act  
19 of 2009.

20 “(c) DUAL REGISTRATION.—

21 “(1) SECURITY-BASED SWAP DEALERS.—Any person that is required to be  
22 registered as a security-based swap dealer under this section shall register with the  
23 Commission regardless of whether that person also is a bank or is registered with the

1 Commodity Futures Trading Commission as a swap dealer.

2 “(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Any person that is required  
3 to be registered as a major security-based swap participant under this section shall  
4 register with the Commission regardless of whether that person also is a bank or is  
5 registered with the Commodity Futures Trading Commission as a major swap participant.

6 “(d) JOINT RULES.—

7 “(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-  
8 the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity  
9 Futures Trading Commission shall jointly adopt uniform rules for persons that are  
10 registered as security-based swap dealers or major security-based swap participants under  
11 this Act and persons that are registered as swap dealers or major swap participants under  
12 the Commodity Exchange Act (7 U.S.C. 1, *et seq.*).

13 “(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the  
14 Commodity Futures Trading Commission shall not prescribe rules imposing prudential  
15 requirements (including activity restrictions) on security-based swap dealers or major  
16 security-based swap participants for which there is a Prudential Regulator. This  
17 provision shall not be construed as limiting the authority of the Commission and the  
18 Commodity Futures Trading Commission to prescribe appropriate business conduct,  
19 reporting, and recordkeeping requirements to protect investors.

20 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

21 “(1) IN GENERAL.—

22 “(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED  
23 SWAP PARTICIPANTS.—Each registered security-based swap dealer and major

1 security-based swap participant for which there is a Prudential Regulator shall  
2 meet such minimum capital requirements and minimum initial and variation  
3 margin requirements as the Prudential Regulators shall by rule or regulation  
4 jointly prescribe to help ensure the safety and soundness of the security-based  
5 swap dealer or major security-based swap participant.

6 “(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-  
7 BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and  
8 major security-based swap participant for which there is not a Prudential  
9 Regulator shall meet such minimum capital requirements and minimum initial and  
10 variation margin requirements as the Commission and the Commodity Futures  
11 Trading Commission shall by rule or regulation jointly prescribe to help ensure  
12 the safety and soundness of the security-based swap dealer or major security-  
13 based swap participant.

14 “(2) JOINT RULES.—

15 “(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED  
16 SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter  
17 Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with  
18 the Commission and the Commodity Futures Trading Commission, shall jointly  
19 adopt rules imposing capital and margin requirements under this subsection for  
20 security-based swap dealers and major security-based swap participants.

21 “(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-  
22 BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-  
23 Counter Derivatives Markets Act of 2009, the Commission and the Commodity

1 Futures Trading Commission, in consultation with the Prudential Regulators, shall  
2 jointly adopt rules imposing capital and margin requirements under this  
3 subsection for security-based swap dealers and major security-based swap  
4 participants for which there is no Prudential Regulator.

5 “(3) CAPITAL.—

6 “(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED  
7 SWAP PARTICIPANTS.—In setting capital requirements under this subsection, the  
8 Prudential Regulators shall impose:

9 “(i) a capital requirement that is greater than zero for security-  
10 based swaps that are cleared by a clearing agency; and

11 “(ii) to offset the greater risk to the security-based swap dealer or  
12 major security-based swap participant and to the financial system arising  
13 from the use of security-based swaps that are not centrally cleared, higher  
14 capital requirements for security-based swaps that are not cleared by a  
15 clearing agency than for security-based swaps that are centrally cleared.

16 “(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-  
17 BASED SWAP PARTICIPANTS.—Capital requirements set by the Commission and the  
18 Commodity Futures Trading Commission under this subsection shall be as strict  
19 as or stricter than the capital requirements set by the Prudential Regulators under  
20 this subsection.

21 “(C) BANK HOLDING COMPANIES.—Capital requirements set by the Board  
22 for security-based swaps of bank holding companies on a consolidated basis shall  
23 be as strict as or stricter than the capital requirements set by the Prudential

1 Regulators under this subsection.

2 “(4) MARGIN.—

3 “(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED  
4 SWAP PARTICIPANTS.—The Prudential Regulators shall impose both initial and  
5 variation margin requirements under this subsection on all security-based swaps  
6 that are not cleared by a registered clearing agency, except that the Prudential  
7 Regulators may, but are not required to, impose margin requirements with respect  
8 to security-based swaps in which—

9 “(i) one of the counterparties is not a swap dealer, major swap  
10 participant, security-based swap dealer or major security-based swap  
11 participant;

12 “(ii) the counterparty is using the security-based swap as part of an  
13 effective hedge under generally accepted accounting principles; and

14 “(iii) the counterparty is predominantly engaged in activities that  
15 are not financial in nature, as defined in section 4(k) of the Bank Holding  
16 Company Act of 1956 (12 U.S.C. 1843(k)).

17 “(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-  
18 BASED SWAP PARTICIPANTS.—Margin requirements for security-based swaps set  
19 by the Commission and the Commodity Futures Trading Commission under this  
20 subsection shall be as strict as or stricter than margin requirements for security-  
21 based swaps set by the Prudential Regulators.

22 “(f) REPORTING AND RECORDKEEPING.—

23 “(1) IN GENERAL.—Each registered security-based swap dealer and major



1 security-based swap participant—

2 “(A) shall make such reports as are prescribed by the Commission by rule  
3 or regulation regarding the transactions and positions and financial condition of  
4 such person;

5 “(B) for which—

6 “(i) there is a Prudential Regulator shall keep books and records of  
7 all activities related to its business as a security-based swap dealer or  
8 major security-based swap participant in such form and manner and for  
9 such period as may be prescribed by the Commission by rule or  
10 regulation;

11 “(ii) there is no Prudential Regulator shall keep books and records  
12 in such form and manner and for such period as may be prescribed by the  
13 Commission by rule or regulation; and

14 “(C) shall keep such books and records open to inspection and  
15 examination by any representative of the Commission.

16 “(2) RULES.—Within 365 days of the enactment of the Over-the-Counter  
17 Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading  
18 Commission, in consultation with the appropriate Federal banking agencies, shall jointly  
19 adopt rules governing reporting and recordkeeping for swap dealers, major swap  
20 participants, security-based swap dealers and major security-based swap participants.

21 “(g) DAILY TRADING RECORDS.—

22 “(1) IN GENERAL.—Each registered security-based swap dealer and major  
23 security-based swap participant shall maintain daily trading records of its security-based

1 swaps and all related records (including related transactions) and recorded  
2 communications including but not limited to electronic mail, instant messages, and  
3 recordings of telephone calls, for such period as may be prescribed by the Commission  
4 by rule or regulation.

5 “(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such  
6 information as the Commission shall prescribe by rule or regulation.

7 “(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major  
8 security-based swap participant shall maintain daily trading records for each customer or  
9 counterparty in such manner and form as to be identifiable with each security-based swap  
10 transaction.

11 “(4) AUDIT TRAIL.—Each registered security-based swap dealer or major security-  
12 based swap participant shall maintain a complete audit trail for conducting  
13 comprehensive and accurate trade reconstructions.

14 “(5) RULES.—Not later than 1 year after the date of the enactment of the Over-  
15 the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity  
16 Futures Trading Commission, in consultation with the appropriate Federal banking  
17 agencies, shall jointly adopt rules governing daily trading records for swap dealers, major  
18 swap participants, security-based swap dealers, and major security-based swap  
19 participants.

20 “(h) BUSINESS CONDUCT STANDARDS.—

21 “(1) IN GENERAL.—Each registered security-based swap dealer and major  
22 security-based swap participant shall conform with business conduct standards as may be  
23 prescribed by the Commission by rule or regulation addressing—

1                   “(A) fraud, manipulation, and other abusive practices involving security-  
2 based swaps (including security-based swaps that are offered but not entered  
3 into);

4                   “(B) diligent supervision of its business as a security-based swap dealer;

5                   “(C) adherence to all applicable position limits; and

6                   “(D) such other matters as the Commission shall determine to be  
7 necessary or appropriate.

8                   “(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements  
9 adopted by the Commission shall—

10                   “(A) establish the standard of care for a security-based swap dealer or  
11 major security-based swap participant to verify that any security-based swap  
12 counterparty meets the eligibility standards for an eligible contract participant;

13                   “(B) require disclosure by the security-based swap dealer or major  
14 security-based swap participant to any counterparty to the security-based swap  
15 (other than a swap dealer, major swap participant, security-based swap dealer or  
16 major security-based swap participant) of:

17                   “(i) information about the material risks and characteristics of the  
18 security-based swap;

19                   “(ii) the source and amount of any fees or other material  
20 remuneration that the security-based swap dealer or major security-based  
21 swap participant would directly or indirectly expect to receive in  
22 connection with the security-based swap; and

23                   “(iii) any other material incentives or conflicts of interest that the

1 security-based swap dealer or major security-based swap participant may  
2 have in connection with the security-based swap; and

3 “(C) establish such other standards and requirements as the Commission  
4 may determine are necessary or appropriate in the public interest, for the  
5 protection of investors, or otherwise in furtherance of the purposes of this title.

6 “(3) RULES.—The Commission and the Commodity Futures Trading  
7 Commission, in consultation with the appropriate Federal banking agencies, shall jointly  
8 prescribe rules under this subsection governing business conduct standards for swap  
9 dealers, major swap participants, security-based swap dealers, and major security-based  
10 swap participants within 365 days of the enactment of the Over-the-Counter Derivatives  
11 Markets Act of 2009.

12 “(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

13 “(1) IN GENERAL.—Each registered security-based swap dealer and major  
14 security-based swap participant shall conform with standards, as may be prescribed by  
15 the Commission by rule or regulation, addressing timely and accurate confirmation,  
16 processing, netting, documentation, and valuation of all security-based swaps.

17 “(2) RULES.—Within 365 days of the enactment of the Over-the-Counter  
18 Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading  
19 Commission, in consultation with the appropriate Federal banking agencies, shall jointly  
20 adopt rules governing documentation and back office standards for swap dealers, major  
21 swap participants, security-based swap dealers, and major security-based swap  
22 participants.

23 “(j) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major

1 security-based swap participant at all times shall comply with the following requirements:

2 “(1) MONITORING OF TRADING.—The security-based swap dealer or major  
3 security-based swap participant shall monitor its trading in security-based swaps to  
4 prevent violations of applicable position limits.

5 “(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or  
6 major security-based swap participant shall disclose to the Commission and to the  
7 Prudential Regulator for such security-based swap dealer or major security-based swap  
8 participant, as applicable, information concerning—

9 “(A) terms and conditions of its security-based swaps;

10 “(B) security-based swap trading operations, mechanisms, and practices;

11 “(C) financial integrity protections relating to security-based swaps; and

12 “(D) other information relevant to its trading in security-based swaps.

13 “(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major  
14 swap security-based participant shall—

15 “(A) establish and enforce internal systems and procedures to obtain any  
16 necessary information to perform any of the functions described in this section;  
17 and

18 “(B) provide the information to the Commission and to the Prudential  
19 Regulator for such security-based swap dealer or major security-based swap  
20 participant, as applicable, upon request.

21 “(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major  
22 security-based swap participant shall implement conflict-of-interest systems and  
23 procedures that—

1                   “(A) establish structural and institutional safeguards to assure that the  
2                   activities of any person within the firm relating to research or analysis of the price  
3                   or market for any security are separated by appropriate informational partitions  
4                   within the firm from the review, pressure, or oversight of those whose  
5                   involvement in trading or clearing activities might potentially bias their judgment  
6                   or supervision; and

7                   “(B) address such other issues as the Commission determines appropriate.

8                   “(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve  
9                   the purposes of this Act, the security-based swap dealer or major security-based swap  
10                  participant shall avoid—

11                  “(A) adopting any processes or taking any actions that result in any  
12                  unreasonable restraints of trade; or

13                  “(B) imposing any material anticompetitive burden on trading.”.

14                  “(k) RULES.—The Commission, the Commodity Futures Trading Commission, and the  
15                  Prudential Regulators shall consult with each other prior to adopting any rules under the Over-  
16                  the-Counter Derivatives Markets Act of 2009.

17                  “(l) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically  
18                  provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-  
19                  based swap dealer or a major security-based swap participant to permit any person associated  
20                  with a security-based swap dealer or a major security-based swap participant who is subject to a  
21                  statutory disqualification to effect or be involved in effecting security-based swaps on behalf of  
22                  such security-based swap dealer or major security-based swap participant, if such security-based  
23                  swap dealer or major security-based swap participant knew, or in the exercise of reasonable care

1 should have known, of such statutory disqualification.

2 “(m) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

3 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

4 “(A) SEC.—Except as provided in subsection (b), the Commission shall  
5 have primary authority to enforce the provisions of Subtitle B of the Over-the-  
6 Counter Derivatives Market Act of 2009 with respect to any person.

7 “(B) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have  
8 exclusive authority to enforce the provisions of section 15F(e) and other  
9 prudential requirements of this Act with respect to banks, and branches or  
10 agencies of foreign banks that are security-based swap dealers or major security-  
11 based swap participants.

12 “(C) REFERRAL.—If the Prudential Regulator for a security-based swap  
13 dealer or major security-based swap participant has cause to believe that such  
14 security-based swap dealer or major security-based swap participant may have  
15 engaged in conduct that constitutes a violation of the nonprudential requirements  
16 of section 15F or rules adopted by the Commission thereunder, that Prudential  
17 Regulator may recommend in writing to the Commission that the Commission  
18 initiate an enforcement proceeding as authorized under this Act. The  
19 recommendation shall be accompanied by a written explanation of the concerns  
20 giving rise to the recommendation.

21 “(D) BACKSTOP ENFORCEMENT AUTHORITY. —If the Commission does not  
22 initiate an enforcement proceeding before the end of the 90 day period beginning  
23 on the date on which the Commission receives a recommendation under

1           subparagraph (C), the Prudential Regulator may initiate an enforcement  
2           proceeding as permitted under Federal law.

3           “(2) The Commission, by order, shall censure, place limitations on the activities,  
4           functions, or operations of, or reject the filing of any security-based swap dealer or major  
5           security-based swap participant that has registered with the Commission pursuant to  
6           subsection (b) if it finds, on the record after notice and opportunity for hearing, that such  
7           censure, placing of limitations, or rejection is in the public interest and that such security-  
8           based swap dealer or major security-based swap participant, or any person associated  
9           with such security-based swap dealer or major security-based swap participant effecting  
10          or involved in effecting transactions in security-based swaps on behalf of such security-  
11          based swap dealer or major security-based swap participant, whether prior or subsequent  
12          to becoming so associated—

13                   “(A) has committed or omitted any act, or is subject to an order or finding,  
14                   enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

15                   “(B) has been convicted of any offense specified in subparagraph (B) of  
16                   such paragraph (4) within 10 years of the commencement of the proceedings  
17                   under this subsection;

18                   “(C) is enjoined from any action, conduct, or practice specified in  
19                   subparagraph (C) of such paragraph (4);

20                   “(D) is subject to an order or a final order specified in subparagraph (F) or  
21                   (H), respectively, of such paragraph (4); or

22                   “(E) has been found by a foreign financial regulatory authority to have  
23                   committed or omitted any act, or violated any foreign statute or regulation,



1 enumerated in subparagraph (G) of such paragraph (4).

2 “(3) With respect to any person who is associated, who is seeking to become  
3 associated, or, at the time of the alleged misconduct, who was associated or was seeking  
4 to become associated with a security-based swap dealer or major security-based swap  
5 participant for the purpose of effecting or being involved in effecting security-based  
6 swaps on behalf of such security-based swap dealer or major security-based swap  
7 participant, the Commission, by order, shall censure, place limitations on the activities or  
8 functions of such person, or suspend for a period not exceeding 12 months, or bar such  
9 person from being associated with a security-based swap dealer or major security-based  
10 swap participant, if the Commission finds, on the record after notice and opportunity for a  
11 hearing, that such censure, placing of limitations, suspension, or bar is in the public  
12 interest and that such person—

13 “(A) has committed or omitted any act, or is subject to an order or finding,  
14 enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

15 “(B) has been convicted of any offense specified in subparagraph (B) of  
16 such paragraph (4) within 10 years of the commencement of the proceedings  
17 under this subsection;

18 “(C) is enjoined from any action, conduct, or practice specified in  
19 subparagraph (C) of such paragraph (4);

20 “(D) is subject to an order or a final order specified in subparagraph (F) or  
21 (H), respectively, of such paragraph (4); or

22 “(E) has been found by a foreign financial regulatory authority to have  
23 committed or omitted any act, or violated any foreign statute or regulation,

1 enumerated in subparagraph (G) of such paragraph (4).

2 “(4) It shall be unlawful—

3 “(A) for any person as to whom an order under paragraph (3) is in effect,  
4 without the consent of the Commission, willfully to become, or to be, associated  
5 with a security-based swap dealer or major security-based swap participant in  
6 contravention of such order; or

7 “(B) for any security-based swap dealer or major security-based swap  
8 participant to permit such a person, without the consent of the Commission, to  
9 become or remain a person associated with the security-based swap dealer or  
10 major security-based swap participant in contravention of such order, if such  
11 security-based swap dealer or major security-based swap participant knew, or in  
12 the exercise of reasonable care should have known, of such order.”.

13 (e) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—

14 Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C.  
15 78i(b)(1) – (3)) are amended to read as follows:

16 “(1) any transaction in connection with any security whereby any party to such  
17 transaction acquires (A) any put, call, straddle, or other option or privilege of buying the  
18 security from or selling the security to another without being bound to do so; (B) any  
19 security futures product on the security; or (C) any security-based swap involving the  
20 security or the issuer of the security; or

21 “(2) any transaction in connection with any security with relation to which he has,  
22 directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege;  
23 (B) such security futures product; or (C) such security-based swap; or

1           “(3) any transaction in any security for the account of any person who he has  
2           reason to believe has, and who actually has, directly or indirectly, any interest in any (A)  
3           such put, call, straddle, option, or privilege; (B) such security futures product with  
4           relation to such security; or (C) any security-based swap involving such security or the  
5           issuer of such security.”.

6           (f) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE  
7           CONDUCT IN SECURITY-BASED SWAPS.—

8           Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding  
9           at the end the following:

10           “(i) It shall be unlawful for any person, directly or indirectly, by the use of any means or  
11           instrumentality of interstate commerce or of the mails, or of any facility of any national securities  
12           exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of,  
13           any security-based swap, in connection with which such person engages in any fraudulent,  
14           deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any  
15           transaction, practice, or course of business which operates as a fraud or deceit upon any person.  
16           The Commission shall, for the purposes of this paragraph, by rules and regulations define, and  
17           prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of  
18           business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.”.

19           (g) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAP S.—

20           The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j-  
21           1) the following new section:

22           **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR**  
23           **SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.**

1           “(a) AGGREGATE POSITION LIMITS.—As a means reasonably designed to prevent fraud  
2 and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the  
3 public interest or for the protection of investors, establish limits (including related hedge  
4 exemption provisions) on the aggregate number or amount of positions that may be held by any  
5 person or persons across—

6                   “(1) securities listed on a national securities exchange; and

7                   “(2) security-based swaps that perform or affect a significant price discovery  
8 function with respect to regulated markets.

9           “(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or  
10 unconditionally exempt any person or class of persons, any security-based swap or class of  
11 security-based swaps, or any transaction or class of transactions from any requirement it may  
12 establish under this section with respect to position limits.

13           “(c) SRO RULES.—As a means reasonably designed to prevent fraud or manipulation, the  
14 Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for  
15 the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a  
16 self-regulatory organization:

17                   “(1) to adopt rules regarding the size of positions in any security-based swap and  
18 any security on which such security-based swap is based that may be held by (A) any  
19 member of such self-regulatory organization or (B) any person for whom a member of  
20 such self-regulatory organization effects transactions in such security-based swap or other  
21 security; and

22                   “(2) to adopt rules reasonably designed to ensure compliance with requirements  
23 prescribed by the Commission under paragraph (a).”.

1 “(d) LARGE SECURITY-BASED SWAP TRADER REPORTING.—

2 “(1) It shall be unlawful for any person to enter into any security-based swap that  
3 performs or affects a significant price discovery function with respect to regulated  
4 markets if—

5 “(A) such person shall directly or indirectly enter into such security-based  
6 swaps during any one day in an amount equal to or in excess of such amount as  
7 shall be fixed from time to time by the Commission; and

8 “(B) such person shall directly or indirectly have or obtain a position in  
9 such security-based swaps equal to or in excess of such amount as shall be fixed  
10 from time to time by the Commission,

11 “unless such person files or causes to be filed with the properly designated officer of the  
12 Commission such reports regarding any transactions or positions described in  
13 subparagraphs (A) and (B) as the Commission may by rule or regulation require and  
14 unless, in accordance with the rules and regulations of the Commission, such person shall  
15 keep books and records of all such security-based swaps and any transactions and  
16 positions in any related security traded on or subject to the rules of any national securities  
17 exchange, and of purchase and sale commitments of, such a security.

18 “(2) Such books and records shall show complete details concerning all  
19 transactions and positions as the Commission may by rule or regulation prescribe.

20 “(3) Such books and records shall be open at all times to inspection and  
21 examination by any representative of the Commission.

22 “(4) For the purpose of this subsection, the security-based swaps, and securities  
23 transactions and positions of any person shall include such security-based swaps,

1 transactions and positions of any persons directly or indirectly controlled by such person.

2 “(e) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a  
3 security-based swap performs or affects a significant price discovery function with respect to  
4 regulated markets, the Commission shall consider, as appropriate:

5 “(1) PRICE LINKAGE.—The extent to which the security-based swap uses or  
6 otherwise relies on a daily or final settlement price, or other major price parameter, of a  
7 security traded on a national securities exchange, to value a position, transfer or convert a  
8 position, financially settle a position, or close out a position;

9 “(2) ARBITRAGE.—The extent to which the price for the security-based swap is  
10 sufficiently related to the price of a security traded on a national securities exchange so as  
11 to permit market participants to effectively arbitrage between the markets by  
12 simultaneously maintaining positions or executing trades in both markets on a frequent  
13 and recurring basis;

14 “(3) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and  
15 recurring basis, bids, offers, or transactions in a security traded on a national securities  
16 exchange are directly based on, or are determined by referencing, the price generated by  
17 the security-based swap;

18 “(4) MATERIAL LIQUIDITY.—The extent to which the volume of security-based  
19 swaps being traded is sufficient to have a material effect on a security traded on a  
20 national securities exchange; and

21 “(5) OTHER MATERIAL FACTORS.—Such other material factors as the Commission  
22 specifies by rule or regulation as relevant to determine whether a security-based swap  
23 serves a significant price discovery function with respect to a regulated market.

1 (h) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—

2 Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the  
3 end the following:

4 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

5 “(1) IN GENERAL.— The Commission, or a person designated by the Commission  
6 pursuant to paragraph (2), shall make available to the public, in a manner that does not  
7 disclose the business transactions and market positions of any person, aggregate data on  
8 security-based swap trading volumes and positions from the sources set forth in  
9 paragraph (3);

10 “(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing  
11 agency or a security-based swap repository to carry out the public reporting described in  
12 paragraph (1).

13 “(3) SOURCES OF INFORMATION.—The sources of the information to be publicly  
14 reported as described in paragraph (1) are—

15 “(A) clearing agencies pursuant to section 3A;

16 “(B) security-based swap repositories pursuant to subsection (n); and

17 “(C) reports received by the Commission pursuant to section 13A.

18 “(n) SECURITY-BASED SWAP REPOSITORIES.—

19 “(1) REGISTRATION REQUIREMENT.—

20 “(A) IN GENERAL.—It shall be unlawful for a security-based swap  
21 repository, unless registered with the Commission, directly or indirectly to make  
22 use of the mails or any means or instrumentality of interstate commerce to  
23 perform the functions of a security-based swap repository.

1                   “(B) INSPECTION AND EXAMINATION.—Registered security-based swap  
2 repositories shall be subject to inspection and examination by any representatives  
3 of the Commission.

4                   “(2) STANDARD SETTING.—

5                   “(A) DATA IDENTIFICATION.—The Commission shall prescribe standards  
6 that specify the data elements for each security-based swap that shall be collected  
7 and maintained by each security-based swap repository.

8                   “(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall  
9 prescribe data collection and data maintenance standards for security-based swap  
10 repositories.

11                   “(C) COMPARABILITY.—The standards prescribed by the Commission  
12 under this subsection shall be comparable to the data standards imposed by the  
13 Commission on clearing agencies that clear security-based swaps.

14                   “(3) DUTIES.—A security-based swap repository shall—

15                   “(A) accept data prescribed by the Commission for each security-based  
16 swap under this paragraph (2);

17                   “(B) maintain such data in such form and manner and for such period as  
18 may be required by the Commission;

19                   “(C) provide to the Commission, or its designee, such information as is  
20 required by, and in a form and at a frequency to be determined by, the  
21 Commission, in order to comply with the public reporting requirements contained  
22 in subsection (m); and

23                   “(D) make available, on a confidential basis, all data obtained by the



1 security-based swap repository, including individual counterparty trade and  
2 position data, to the Commission, the appropriate Federal banking agencies, the  
3 Commodity Futures Trading Commission, the Financial Services Oversight  
4 Council, and the Department of Justice or to other persons the Commission deems  
5 appropriate, including foreign financial supervisors (including foreign futures  
6 authorities), foreign central banks, and foreign ministries.

7 “(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any  
8 person that is required to be registered as a securities-based swap repository under this  
9 subsection shall register with the Commission, regardless of whether that person also is  
10 registered with the Commodity Futures Trading Commission as a swap repository.

11 “(5) HARMONIZATION OF RULES.—Not later than 180 days after the effective date  
12 of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the  
13 Commodity Futures Trading Commission shall jointly adopt uniform rules governing  
14 persons that are registered under this section and persons that are registered as swap  
15 repositories under the Commodity Exchange Act (7 U.S.C. 1, *et seq.*), including uniform  
16 rules that specify the data elements that shall be collected and maintained by each  
17 repository.

18 “(6) EXEMPTIONS.—The Commission may exempt, conditionally or  
19 unconditionally, a security-based swap repository from the requirements of this section if  
20 the Commission finds that such security-based swap repository is subject to comparable,  
21 comprehensive supervision or regulation on a consolidated basis by the Commodity  
22 Futures Trading Commission, a Prudential Regulator or the appropriate governmental  
23 authorities in the organization’s home country.”.

1 **SEC. 754. REPORTING AND RECORDKEEPING.**

2 (a) The Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) is amended by inserting  
3 after section 13 the following section:

4 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-**  
5 **BASED SWAPS.**

6 “(a) IN GENERAL.—Any person who enters into a security-based swap and—

7 “(1) did not clear the security-based swap in accordance with section 3A; and

8 “(2) did not have data regarding the security-based swap accepted by a security-  
9 based swap repository in accordance with rules adopted by the Commission under section  
10 13(n),

11 shall meet the requirements in subsection (b).

12 “(b) REPORTS.—Any person described in subsection (a) shall—

13 “(1) make such reports in such form and manner and for such period as the  
14 Commission shall prescribe by rule or regulation regarding the security-based swaps held  
15 by the person; and

16 “(2) keep books and records pertaining to the security-based swaps held by the  
17 person in such form and manner and for such period as may be required by the  
18 Commission, which books and records shall be open to inspection by any representative  
19 of the Commission, an appropriate Federal banking agency, the Commodity Futures  
20 Trading Commission, the Financial Services Oversight Council, and the Department of  
21 Justice.

22 “(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall  
23 require persons described in subsection (a) to report the same or more comprehensive data than

1 the Commission requires security-based swap repositories to collect under subsection (n).”.

2 (b) BENEFICIAL OWNERSHIP REPORTING.—

3 (1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C.  
4 78m(d)(1)) is amended by inserting “or otherwise becomes or is deemed to become a  
5 beneficial owner of any of the foregoing upon the purchase or sale of a security-based  
6 swap or other derivative instrument that the Commission may define by rule, and” after  
7 “Alaska Native Claims Settlement Act,”; and

8 (2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C.  
9 78m(g)(1)) is amended by inserting “or otherwise becomes or is deemed to become a  
10 beneficial owner of any security of a class described in subsection (d)(1) upon the  
11 purchase or sale of a security-based swap or other derivative instrument that the  
12 Commission may define by rule” after “subsection (d)(1) of this section”.

13 (c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the  
14 Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting “or otherwise  
15 becomes or is deemed to become a beneficial owner of any security of a class described in  
16 subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative  
17 instrument that the Commission may define by rule,” after “subsection (d)(1) of this section”.

18 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities  
19 Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

20 (1) in subparagraph (C), by adding “security-based swap dealer, major security-  
21 based swap participant,” after “government securities dealer,”; and

22 (2) in subparagraph (F), by adding “, or security-based swap dealer, or a major  
23 security-based swap participant” after “or dealer”.

1 (e) TRANSACTIONS BY CORPORATE INSIDERS.—Section 16(f) of the Securities Exchange  
2 Act of 1934 (15 U.S.C.78p) is amended by inserting “or security-based swaps” after “security  
3 futures products”.

4 **SEC. 755. STATE GAMING AND BUCKET SHOP LAWS.**

5 Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to  
6 read as follows:

7 “(a) Except as provided in subsection (f), the rights and remedies provided by this title  
8 shall be in addition to any and all other rights and remedies that may exist at law or in equity; but  
9 no person permitted to maintain a suit for damages under the provisions of this title shall recover,  
10 through satisfaction of judgment in one or more actions, a total amount in excess of his actual  
11 damages on account of the act complained of. Except as otherwise specifically provided in this  
12 title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency  
13 or officer performing like functions) of any State over any security or any person insofar as it  
14 does not conflict with the provisions of this title or the rules and regulations thereunder. No  
15 State law which prohibits or regulates the making or promoting of wagering or gaming contracts,  
16 or the operation of ‘bucket shops’ or other similar or related activities, shall invalidate (1) any  
17 put, call, straddle, option, privilege, or other security subject to this title (except a security-based  
18 swap agreement and any security that has a pari-mutuel payout or otherwise is determined by the  
19 Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or  
20 apply to any activity which is incidental or related to the offer, purchase, sale, exercise,  
21 settlement, or closeout of any such security, (2) any security-based swap between eligible  
22 contract participants, or (3) any security-based swap effected on a national securities exchange  
23 registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or

1 distribution of securities shall apply to any transaction in a security-based swap or a security  
2 futures product, except that this sentence shall not be construed as limiting any State antifraud  
3 law of general applicability.”.

4 **SEC. 756. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF**  
5 **SECURITY-BASED SWAPS.**

6 (a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is  
7 amended—

8 (1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

9 (2) in paragraph (3) by adding at the end the following:

10 “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities  
11 upon which such security-based swap is based or is referenced, an affiliate of the issuer,  
12 or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to  
13 sell such securities,”; and

14 (3) by adding at the end the following:

15 “(17) The terms “swap” and “security-based swap” have the same meanings as  
16 provided in sections 1a(35) and (38) of the Commodity Exchange Act (7 U.S.C. 1a(35)  
17 and (38)).

18 “(18) The terms “purchase” or “sale” of a security-based swap shall be deemed to  
19 mean the execution, termination (prior to its scheduled maturity date), assignment,  
20 exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations  
21 under, a security-based swap, as the context may require.”.

22 (b) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933  
23 (15 U.S.C. 77e) is amended by adding at the end the following:

1           “(d) Notwithstanding the provisions of section 3 or section 4, unless a registration  
2 statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-  
3 based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means  
4 or instruments of transportation or communication in interstate commerce or of the mails to offer  
5 to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible  
6 contract participant as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C.  
7 1a(13)).”.

8 **SEC. 757. OTHER AUTHORITY.**

9           Unless otherwise provided by its terms, this title does not divest any appropriate Federal  
10 banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal  
11 or State agency, of any authority derived from any other applicable law.

12 **SEC. 758. JURISDICTION.**

13           Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by  
14 adding at the end the following new subsection:

15           “(c) DERIVATIVES.—The Commission shall not have the authority to grant exemptions  
16 from the security-based swap provisions of the Over-the-Counter Derivatives Market Act of  
17 2009, except as expressly authorized under the provisions of that Act.”.

1                                   **TITLE VIII—PAYMENT, CLEARING AND**  
2                                   **SETTLEMENT SUPERVISION**

3   **SEC. 801. SHORT TITLE.**

4                   This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of  
5   2009”.

6   **SEC. 802. FINDINGS AND PURPOSES.**

7                   (a) FINDINGS.—The Congress finds that—

8                               (1) The proper functioning of the financial markets is dependent upon safe and  
9                               efficient arrangements for the clearing and settlement of payment, securities and other  
10                              financial transactions.

11                             (2) Financial market utilities that conduct or support multilateral payment,  
12                             clearing, or settlement activities may reduce risks for their participants and the broader  
13                             financial system, but such utilities may also concentrate and create new risks and thus  
14                             must be well designed and operated in a safe and sound manner.

15                             (3) Payment, clearing and settlement activities conducted by financial institutions  
16                             also present important risks to the participating financial institutions and to the financial  
17                             system.

18                             (4) Enhancements to the regulation and supervision of systemically important  
19                             financial market utilities and the conduct of systemically important payment, clearing,  
20                             and settlement activities by financial institutions are necessary to provide consistency, to  
21                             promote robust risk management and safety and soundness, to reduce systemic risks, and  
22                             to support the stability of the broader financial system.

1 (b) PURPOSES.—The purposes of this title are to mitigate systemic risk in the financial  
2 system and promote financial stability by—

3 (1) authorizing the Board of Governors of the Federal Reserve System to  
4 prescribe uniform standards for the management of risks by systemically important  
5 financial market utilities and for the conduct of systemically important payment, clearing  
6 and settlement activities by financial institutions;

7 (2) providing the Board of Governors of the Federal Reserve System an enhanced  
8 role in the supervision of risk management standards for systemically important financial  
9 market utilities;

10 (3) strengthening the liquidity of systemically important financial market utilities;  
11 and

12 (4) providing the Board of Governors of the Federal Reserve System an enhanced  
13 role in the supervision of risk management standards for systemically important payment,  
14 clearing, and settlement activities by financial institutions.

15 **SEC. 803. DEFINITIONS.**

16 For purposes of this title, the following definitions shall apply:

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

19 (2) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial  
20 regulator” means—

21 (A) the Comptroller of the Currency, with respect to national banks and  
22 any Federal branch or Federal agency of a foreign bank, until the functions of the  
23 Comptroller of the Currency are transferred to the Director of the National Bank



1 Supervisor, after which time the term means the Director of the National Bank  
2 Supervisor with respect to those entities;

3 (B) the Board of Directors of the Corporation, with respect to state-  
4 chartered banks insured by the Corporation (other than member banks of the  
5 Federal Reserve System) and insured State branches of foreign banks;

6 (C) the Director of the Office of Thrift Supervision, with respect to any  
7 savings association and any savings and loan holding company, until the functions  
8 of the Director of the Office of Thrift Supervision are transferred to the Director  
9 of the National Bank Supervisor, after which time the term means the Director of  
10 the National Bank Supervisor with respect to those entities;

11 (D) the Board, with respect to member banks of the Federal Reserve  
12 System (other than national banks), branches and agencies of foreign banks (other  
13 than Federal branches, Federal agencies, and insured State branches of foreign  
14 banks), commercial lending companies owned or controlled by foreign banks,  
15 organizations operating under section 25 or 25A of the Federal Reserve Act (12  
16 U.S.C. § 601 *et seq.* or § 611 *et seq.*), and bank holding companies and their  
17 nonbank subsidiaries (except brokers, dealers, investment companies, and  
18 investment advisers registered with the Securities and Exchange Commission, and  
19 futures commission merchants, commodity trading advisors, and commodity pool  
20 operators registered with the Commodity Futures Trading Commission);

21 (E) the National Credit Union Administration Board, with respect to any  
22 insured credit union under the Federal Credit Union Act (12 U.S.C. § 1751 *et*  
23 *seq.*);

1 (F) the Securities and Exchange Commission, with respect to—

2 (i) any broker or dealer registered with the Securities and  
3 Exchange Commission under the Securities Exchange Act of 1934 (15  
4 U.S.C. § 78a *et seq.*);

5 (ii) any investment company registered with the Securities and  
6 Exchange Commission under the Investment Company Act of 1940 (15  
7 U.S.C. § 80a-1 *et seq.*); and

8 (iii) any investment adviser registered with the Securities and  
9 Exchange Commission under the Investment Advisers Act of 1940 (15  
10 U.S.C. § 80b-1 *et seq.*);

11 (G) the Commodity Futures Trading Commission, with respect to futures  
12 commission merchants, commodity trading advisors, and commodity pool  
13 operators registered with the Commodity Futures Trading Commission under the  
14 Commodity Exchange Act (7 U.S.C. § 1 *et seq.*);

15 (H) the applicable State insurance authority, with respect to any financial  
16 institution engaged in providing insurance under State insurance law; and

17 (I) the Board, with respect to any other financial institution engaged in a  
18 designated activity.

19 (3) BOARD.—The term “Board” means the Board of Governors of the Federal  
20 Reserve System.

21 (4) CORPORATION.—The term “Corporation” means the Federal Deposit  
22 Insurance Corporation.

23 (5) DESIGNATED ACTIVITY.—The term “designated activity” means a payment,

1 clearing, or settlement activity that the Board has designated as systemically important  
2 under section 804.

3 (6) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial  
4 market utility” means a financial market utility that the Board has designated as  
5 systemically important under section 804.

6 (7) FINANCIAL INSTITUTION.—The term “financial institution” means—

7 (A) a depository institution as defined in section 3 of the Federal Deposit  
8 Insurance Act (12 U.S.C. § 1813);

9 (B) a branch or agency of a foreign bank (as defined in section 1(b) of the  
10 International Banking Act of 1978) (12 U.S.C. § 3101);

11 (C) an organization operating under section 25 or 25A of the Federal  
12 Reserve Act (12 U.S.C. § 601 *et seq.* and § 611 *et seq.*);

13 (D) a credit union (as defined in section 101 of the Federal Credit Union  
14 Act) (12 U.S.C. § 1752);

15 (E) a broker or dealer (as defined in section 3 of the Securities Exchange  
16 Act of 1934) (15 U.S.C. § 78c);

17 (F) an investment company (as defined in section 3 of the Investment  
18 Company Act of 1940) (15 U.S.C. § 80a-3);

19 (G) an insurance company (as defined in section 2 of the Investment  
20 Company Act of 1940) (15 U.S.C. § 80a-2);

21 (H) an investment adviser (as defined in section 202 of the Investment  
22 Advisers Act of 1940) (15 U.S.C. § 80b-2);

23 (I) a futures commission merchant, commodity trading advisor, or

1 commodity pool operator (as defined in section 1a of the Commodity Exchange  
2 Act) (7 U.S.C. § 1a); and

3 (J) any company engaged in activities that are financial in nature or  
4 incidental to a financial activity, as described in section 4 of the Bank Holding  
5 Company Act of 1956 (12 U.S.C. § 1843(k)).

6 (8) FINANCIAL MARKET UTILITY.—The term “financial market utility” means any  
7 person that manages or operates a multilateral system for the purpose of transferring,  
8 clearing, or settling payments, securities, or other financial transactions among financial  
9 institutions or between financial institutions and the person.

10 (9) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—The term “payment,  
11 clearing, or settlement activity” means an activity carried out by one or more financial  
12 institutions to facilitate the completion of financial transactions. Financial transactions  
13 include funds transfers, securities contracts, contracts of sale of a commodity for future  
14 delivery, forward contracts, repurchase agreements, swap agreements, foreign exchange  
15 contracts, financial derivatives contracts, and any similar transaction that the Board  
16 determines, by rule or order, to be a financial transaction for purposes of this title. When  
17 conducted with respect to financial transactions, payment, clearing, and settlement  
18 activities may include the calculation and communication of unsettled obligations  
19 between counterparties; the netting of transactions; provision and maintenance of trade,  
20 contract, or instrument information; the management of risks and activities associated  
21 with continuing obligations; transmittal and storage of payment instructions; the  
22 movement of funds; the final settlement of obligations; and other similar functions.

23 (10) PERSON.—The term “person” means any corporation, company, association,

1 firm, partnership, society, joint stock company, or other legal entity other than a natural  
2 person.

3 (11) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

4 (12) STATE.—The term “State” means any State, commonwealth, territory, or  
5 possession of the United States, the District of Columbia, the Commonwealth of Puerto  
6 Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or  
7 the United States Virgin Islands.

8 (13) SUPERVISORY AGENCY.—The term “Supervisory Agency” means the Federal  
9 agency that has primary jurisdiction over a designated financial market utility under  
10 Federal banking, securities, or commodity futures laws, including—

11 (A) the Securities and Exchange Commission, with respect to a designated  
12 financial market utility that is a clearing agency registered with the Securities and  
13 Exchange Commission;

14 (B) the Commodity Futures Trading Commission, with respect to a  
15 designated financial market utility that is a derivatives clearing organization  
16 registered with the Commodity Futures Trading Commission;

17 (C) the Board of Directors of the Corporation, with respect to a designated  
18 financial market utility that is an insured State nonmember bank or an insured  
19 branch of a foreign bank;

20 (D) the Comptroller of the Currency, with respect to a designated financial  
21 market utility that is a national bank or a Federal branch (other than an insured  
22 branch) or a Federal agency of a foreign bank, until the functions of the  
23 Comptroller of the Currency are transferred to the Director of the National Bank

1 Supervisor, after which time the term means the Director of the National Bank  
2 Supervisor with respect to those entities; and

3 (E) the Director of the Office of Thrift Supervision, with respect to a  
4 designated financial market utility that is a savings association or a savings and  
5 loan holding company, until the functions of the Director of the Office of Thrift  
6 Supervision are transferred to the Director of the National Bank Supervisor, after  
7 which time the term means the Director of the National Bank Supervisor with  
8 respect to those entities.

9 (14) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms  
10 “systemically important” and “systemic importance” mean a situation where the failure  
11 of or a disruption to the functioning of a financial market utility or the conduct of a  
12 payment, clearing, or settlement activity could create, or increase, the risk of significant  
13 liquidity or credit problems spreading among financial institutions or markets and thereby  
14 threaten the stability of the financial system.

15 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

16 (a) DESIGNATION.—

17 (1) BOARD.—The Board, on a nondelegable basis, shall designate a financial  
18 market utility or a payment, clearing, or settlement activity that it determines is, or is  
19 likely to become, systemically important.

20 (2) CONSIDERATIONS.—In determining whether a financial market utility or  
21 payment, clearing, or settlement activity is, or is likely to become, systemically  
22 important, the Board shall take into consideration the following:

23 (A) the aggregate monetary value of transactions processed by the

1 financial market utility or carried out through the payment, clearing, or settlement  
2 activity;

3 (B) the relationship, interdependencies, or other interactions of the  
4 financial market utility or payment, clearing, or settlement activity with other  
5 financial market utilities or payment, clearing, or settlement activities;

6 (C) the effect that the failure of or a disruption to the financial market  
7 utility or payment, clearing, or settlement activity would have on critical markets,  
8 financial institutions, or the broader financial system;

9 (D) the recommendation, if any, of the Financial Services Oversight  
10 Council; and

11 (E) any other factors that the Board deems appropriate.

12 (b) RESCISSION OF DESIGNATION.—The Board, on a nondelegable basis, shall rescind a  
13 designation of systemic importance for a designated financial market utility or designated  
14 activity if the Board determines that the utility or activity no longer meets the standards for  
15 systemic importance. Upon rescission, the financial market utility or financial institutions  
16 conducting the activity will no longer be subject to the provisions of this title or rules or orders  
17 prescribed by the Board under this title.

18 (c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

19 (1) FINANCIAL MARKET UTILITY.—Before making any determination under  
20 subsection (a) or (b) with regard to a financial market utility, the Board shall consult with  
21 the Financial Services Oversight Council and the relevant Supervisory Agency.

22 (2) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—Before making any  
23 determination under subsection (a) or (b) with regard to a payment, clearing, or

1 settlement activity, the Board shall consult with the Financial Services Oversight  
2 Council.

3 (3) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

4 (A) IN GENERAL.—Before making any determination under subsection (a)  
5 or (b) with regard to a financial market utility or a payment, clearing, or  
6 settlement activity, the Board shall provide the financial market utility or, in the  
7 case of a payment, clearing, or settlement activity, financial institutions with  
8 advance notice of the Board’s proposed determination.

9 (B) NOTICE IN FEDERAL REGISTER.—The Board shall provide such advance  
10 notice to financial institutions by publishing a notice in the Federal Register.

11 (C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice  
12 of the Board’s proposed determination, the financial market utility or, in the case  
13 of a payment, clearing, or settlement activity, a financial institution engaged in the  
14 designated activity may request in writing an opportunity for a written or oral  
15 hearing before the Board to demonstrate that the proposed designation or  
16 rescission of designation is not supported by substantial evidence.

17 (D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Board  
18 shall fix a time, not more than 30 days after receipt of the request, unless extended  
19 at the request of the financial market utility or financial institution, and place at  
20 which the financial market utility or financial institution may appear, personally  
21 or through counsel, to submit written materials, or, at the sole discretion of the  
22 Board, oral testimony or oral argument.

23 (4) EMERGENCY EXCEPTION.—



1 (A) WAIVER OR MODIFICATION BY BOARD VOTE.—The Board may waive  
2 or modify the requirements of paragraph (3) if the Board determines, by an  
3 affirmative vote of not less than 5 members or, if there are fewer than five  
4 members then serving and available, by the unanimous vote of all available  
5 members then serving, that the waiver or modification is necessary to prevent or  
6 mitigate an immediate threat to the financial system posed by the financial market  
7 utility or the payment, clearing, or settlement activity.

8 (B) NOTICE OF WAIVER OR MODIFICATION.—The Board shall provide  
9 notice of the waiver or modification to the financial market utility concerned or,  
10 in the case of a payment, clearing, or settlement activity, to financial institutions,  
11 as soon as practicable, which shall be no later than 24 hours after the waiver or  
12 modification in the case of a financial market utility and three business days in the  
13 case of financial institutions. The Board shall provide the notice to financial  
14 institutions by posting a notice on the Board website and by publishing a notice in  
15 the Federal Register.

16 (d) NOTIFICATION OF FINAL DETERMINATION.—

17 (1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(3), the  
18 Board shall notify the financial market utility or financial institutions of its final  
19 determination in writing, which shall include findings of fact upon which the Board’s  
20 determination is based.

21 (2) WHEN NO HEARING REQUESTED.—If the Board does not receive a timely  
22 request for a hearing under subsection (c)(3), the Board shall notify the financial market  
23 utility or financial institutions of its final determination in writing not later than 30 days

1 after the expiration of the date by which a financial market utility or a financial institution  
2 could have requested a hearing. All notices to financial institutions under this subsection  
3 shall be published in the Federal Register.

4 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET**  
5 **UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT**  
6 **ACTIVITIES.**

7 (a) **AUTHORITY TO PRESCRIBE STANDARDS.**—The Board shall, by rule or order and in  
8 consultation with the Financial Services Oversight Council, the Commodity Futures Trading  
9 Commission, and the Securities and Exchange Commission, prescribe risk management  
10 standards governing the operations of designated financial market utilities and the conduct of  
11 designated activities by financial institutions, taking into consideration relevant international  
12 standards.

13 (b) **OBJECTIVES AND PRINCIPLES.**—The objectives and principles for the risk management  
14 standards prescribed under subsection (a) shall be to—

- 15 (1) promote robust risk management;
- 16 (2) promote safety and soundness;
- 17 (3) reduce systemic risks; and
- 18 (4) support the stability of the broader financial system.

19 (c) **SCOPE.**—The standards prescribed under subsection (a) may address areas such as risk  
20 management policies and procedures, margin, collateral, capital, and default policies and  
21 procedures, the ability to complete timely clearing and settlement of financial transactions, and  
22 other areas that the Board determines are necessary to achieve the objectives and principles in  
23 subsection (b).

1 (d) COMPLIANCE REQUIRED.—Designated financial market utilities and financial  
2 institutions engaged in designated activities shall conduct their operations in compliance with the  
3 applicable risk management standards prescribed by the Board.

4 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.**

5 (a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board may authorize a Federal  
6 Reserve Bank to establish and maintain an account for a designated financial market utility and  
7 provide services to the designated financial market utility that the Federal Reserve Bank is  
8 authorized under the Federal Reserve Act to provide to a depository institution, subject to any  
9 applicable rules, orders, standards, or guidelines prescribed by the Board.

10 (b) ADVANCES.—The Board may authorize a Federal Reserve Bank to provide to a  
11 designated financial market utility the same discount and borrowing privileges as the Federal  
12 Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to  
13 any applicable rules, orders, standards, or guidelines prescribed by the Board.

14 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay  
15 earnings on balances maintained by or on behalf of a designated financial market utility in the  
16 same manner and to the same extent as the Federal Reserve Bank may pay earnings to a  
17 depository institution under the Federal Reserve Act, subject to any applicable rules, orders,  
18 standards, or guidelines prescribed by the Board.

19 (d) RESERVE REQUIREMENTS.—The Board may exempt a designated financial market  
20 utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act  
21 (12 U.S.C. § 461) applicable to a designated financial market utility.

22 (e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

23 (1) REFERENCE.—For purposes of paragraphs (2) and (3), all references to the

1 phrase “Supervisory Agency or the Board” mean “Supervisory Agency or, in the absence  
2 of a Supervisory Agency, the Board”.

3 (2) ADVANCE NOTICE.—

4 (A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated  
5 financial market utility shall provide 60-days’ advance notice to its Supervisory  
6 Agency or the Board of any proposed change to its rules, procedures, or  
7 operations that could, as defined by the Board, materially affect the nature or level  
8 of risks presented by the designated financial market utility.

9 (B) CONTENTS OF NOTICE.—The notice of a proposed change shall  
10 describe the nature of the change and expected effects on risks to the designated  
11 financial market utility, its participants, or the market, and how the designated  
12 financial market utility plans to manage any identified risks.

13 (C) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board  
14 may require a designated financial market utility to provide any information  
15 necessary to assess the effect the proposed change would have on the nature or  
16 level of risks associated with the designated financial market utility's payment,  
17 clearing, or settlement activities and the sufficiency of any proposed risk  
18 management techniques.

19 (D) NOTICE OF OBJECTION.—The Supervisory Agency or the Board will  
20 notify the designated financial market utility of any objection regarding the  
21 proposed change within 60 days from the later of—

22 (i) the date that the notice of the proposed change is received; or

23 (ii) the date any further information requested for consideration of

1 the notice is received.

2 (E) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market  
3 utility shall not implement a change to which the Board or the Supervisory  
4 Agency has an objection.

5 (F) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS. —A designated  
6 financial market utility may implement a change if it has not received an  
7 objection to the proposed change within 60 days of the later of—

8 (i) the date that the Supervisory Agency or the Board receives the  
9 notice of proposed change; or

10 (ii) the date the Supervisory Agency or the Board receives any  
11 further information it requests for consideration of the notice.

12 (G) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The  
13 Supervisory Agency or the Board may, during the 60-day review period, extend  
14 the review period for an additional 60 days for proposed changes that raise novel  
15 or complex issues, subject to the Supervisory Agency or the Board providing the  
16 designated financial market utility with prompt written notice of the extension.

17 Any extension under this subparagraph will extend the time periods under  
18 subparagraphs (D) and (F).

19 (H) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A  
20 designated financial market utility may implement a change in less than 60 days  
21 from the date of receipt of the notice of proposed change by the Supervisory  
22 Agency or the Board, or the date the Supervisory Agency or the Board receives  
23 any further information it requested, if the Supervisory Agency or the Board

1 notifies the designated financial market utility in writing that it does not object to  
2 the proposed change and authorizes the designated financial market utility to  
3 implement the change on an earlier date, subject to any conditions imposed by the  
4 Supervisory Agency or the Board.

5 (3) EMERGENCY CHANGES.—

6 (A) IN GENERAL.—A designated financial market utility may implement a  
7 change that would otherwise require advance notice under this subsection if it  
8 determines that—

9 (i) an emergency exists; and

10 (ii) immediate implementation of the change is necessary for the  
11 designated financial market utility to continue to provide its services in a  
12 safe and sound manner.

13 (B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial  
14 market utility must provide notice of any such emergency change to its  
15 Supervisory Agency or the Board, as soon as practicable, which shall be no later  
16 than 24 hours after implementation of the change.

17 (C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information  
18 required for changes requiring advance notice, the notice of an emergency change  
19 must describe—

20 (i) the nature of the emergency; and

21 (ii) the reason the change was necessary for the designated  
22 financial market utility to continue to provide its services in a safe and  
23 sound manner.

1 (D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The  
2 Supervisory Agency or the Board may require modification or rescission of the  
3 change if it finds that the change is not consistent with the purposes of this Act or  
4 any rules, orders, or standards prescribed by the Board hereunder.

5 (4) COPYING THE BOARD.—In the case of a designated financial market utility that  
6 has a Supervisory Agency, the Supervisory Agency shall provide the Board concurrently  
7 with a complete copy of any notice, request, or other information it issues, submits, or  
8 receives under this subsection.

9 (5) CONSULTATION WITH BOARD.—Before taking any action on or completing its  
10 review of a change proposed by a designated financial market utility, the Supervisory  
11 Agency shall consult with the Board.

12 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**  
13 **DESIGNATED FINANCIAL MARKET UTILITIES.**

14 (a) EXAMINATION.—Notwithstanding any other provision of law and subject to  
15 subsection (d), the Supervisory Agency shall conduct examinations of a designated financial  
16 market utility at least annually in order to inform itself of the following:

17 (1) the nature of the operations of, and the risks borne by, the designated financial  
18 market utility;

19 (2) the financial and operational risks presented by the designated financial  
20 market utility to financial institutions, critical markets, or the broader financial system;

21 (3) the resources and capabilities of the designated financial market utility to  
22 monitor and control such risks;

23 (4) the safety and soundness of the designated financial market utility; and

1 (5) the designated financial market utility's compliance with this title and the  
2 rules and orders prescribed by the Board under this title.

3 (b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated  
4 financial market utility is performed for the designated financial market utility by another entity,  
5 whether an affiliate or non-affiliate and whether on or off the premises of the designated  
6 financial market utility, the Supervisory Agency may examine whether the provision of that  
7 service is in compliance with applicable law, rules, orders, and standards to the same extent as if  
8 the designated financial market utility were performing the service on its own premises.

9 (c) ENFORCEMENT.—Except as provided in subsections (e) and (f), a designated financial  
10 market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the  
11 Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the same extent as  
12 if the designated financial market utility were an insured depository institution for which the  
13 Supervisory Agency is the appropriate Federal banking agency as defined in section 3 of the  
14 Federal Deposit Insurance Act (12 U.S.C. § 1813).

15 (d) BOARD INVOLVEMENT IN EXAMINATIONS.—

16 (1) BOARD CONSULTATION ON EXAMINATION PLANNING.—The Supervisory  
17 Agency shall consult with the Board regarding the scope and methodology of any  
18 examination conducted under subsections (a) and (b).

19 (2) BOARD PARTICIPATION IN EXAMINATION.—The Board may, in its discretion,  
20 participate in any examination led by a Supervisory Agency and conducted under  
21 subsections (a) and (b).

22 (e) BOARD ENFORCEMENT RECOMMENDATIONS.—

23 (1) RECOMMENDATION.—The Board may at any time recommend to the



1 Supervisory Agency that it take enforcement action against a designated financial market  
2 utility. The recommendation shall provide a detailed analysis supporting the Board's  
3 recommendation.

4 (2) CONSIDERATION.—The Supervisory Agency shall consider the Board's  
5 recommendation and submit a response to the Board within 30 days.

6 (3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the  
7 Board's recommendation, the Board may dispute the matter by referring it to the  
8 Financial Services Oversight Council, which shall attempt to resolve the dispute.

9 (4) ENFORCEMENT ACTION.—If the Financial Services Oversight Council is  
10 unable to resolve the dispute under paragraph (3) within 30 days from the date of referral,  
11 the Board may exercise the enforcement authority referenced in subsection (c) as if it  
12 were the Supervisory Agency and take enforcement action against the designated  
13 financial market utility.

14 (f) DESIGNATED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In  
15 the case of a designated financial market utility that is not under the primary jurisdiction of a  
16 Supervisory Agency, the Board shall have examination and enforcement authority under  
17 subsections (a) through (c) with respect to the designated financial market utility and any service  
18 providers in the same manner and to the same extent as if the Board were the Supervisory  
19 Agency.

20 (g) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD.—

21 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board may, after consulting with  
22 the Supervisory Agency, take enforcement action against a designated financial market  
23 utility if the Board has reasonable cause to believe that—

1 (A) either:

2 (i) an action engaged in, or contemplated by, a designated financial market  
3 utility (including any change proposed by the designated financial market utility  
4 to its rules, procedures, or operations that would otherwise be subject to section  
5 806(e)); or

6 “(ii) the condition of a designated financial market utility,  
7 poses an imminent risk of substantial harm to financial institutions, critical markets,  
8 or the broader financial system; and

9 (B) the imminent risk of substantial harm precludes the Board’s use of the  
10 procedures in subsection (e).

11 (2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under  
12 paragraph (1) against a designated financial market utility as if the designated financial  
13 market utility were an insured depository institution for which the Board is the  
14 appropriate Federal banking agency as defined in section 3 of the Federal Deposit  
15 Insurance Act (12 U.S.C. 1813).

16 (3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24  
17 hours of taking an enforcement action under this subsection, the Board shall provide  
18 written notice to the designated financial market utility’s Supervisory Agency containing  
19 a detailed analysis of the Board’s action, with supporting documentation included.

20 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**  
21 **FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED**  
22 **ACTIVITIES.**

23 (a) EXAMINATION.—The appropriate financial regulator is authorized to examine a

1 financial institution engaged in designated activities in order to inform the appropriate financial  
2 regulator of the following:

3 (1) the nature and scope of the designated activities engaged in by the financial  
4 institution;

5 (2) the financial and operational risks the designated activities engaged in by the  
6 financial institution may pose to the safety and soundness of the financial institution;

7 (3) the financial and operational risks the designated activities engaged in by the  
8 financial institution may pose to other financial institutions, critical markets, or the  
9 broader financial system;

10 (4) the resources available to and the capabilities of the financial institution to  
11 monitor and control the risks described in paragraphs (2) and (3); and

12 (5) the financial institution's compliance with this title and the rules and orders  
13 prescribed by the Board under this title.

14 (b) ENFORCEMENT.—The appropriate financial regulator shall take such actions that it  
15 deems necessary to ensure that a financial institution engaged in designated activities complies  
16 with this title and the rules and orders prescribed by the Board under this title.

17 (c) TECHNICAL ASSISTANCE.—The Board shall consult with and provide such technical  
18 assistance as may be required by the appropriate financial regulators to ensure that the Board's  
19 rules and orders prescribed under this title are interpreted and applied in as consistent and  
20 uniform a manner as practicable.

21 (d) DELEGATION.—

22 (1) EXAMINATION.—

23 (A) REQUEST TO BOARD.—The appropriate financial regulator may request

1 the Board to conduct or participate in an examination of a financial institution  
2 engaged in designated activities in order to assess the financial institution's  
3 compliance with this title or the Board's rules or orders prescribed under this title.

4 (B) EXAMINATION BY BOARD.—Upon receipt of an appropriate written  
5 request, the Board will conduct the examination under such terms and conditions  
6 to which the Board and the appropriate financial regulator mutually agree.

7 (2) ENFORCEMENT.—

8 (A) REQUEST TO BOARD.—The appropriate financial regulator may request  
9 the Board to enforce this title or the rules or orders prescribed by the Board under  
10 this title against a financial institution engaged in designated activities.

11 (B) ENFORCEMENT BY BOARD.—Upon receipt of an appropriate written  
12 request, the Board shall determine whether an enforcement action is warranted,  
13 and, if so, it shall enforce compliance with this title or the rules or orders  
14 prescribed by the Board under this title utilizing the authorities referenced in  
15 section 807(c), in which case the financial institution will be treated as if it is an  
16 insured depository institution for which the Board is the appropriate Federal  
17 banking agency as defined in section 3 of the Federal Deposit Insurance Act (12  
18 U.S.C. § 1813).

19 (e) BACK-UP AUTHORITY OF THE BOARD.—

20 (1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of  
21 law, the Board may—

22 (A) conduct an examination of any financial institution engaged in a  
23 designated activity; and

1 (B) enforce the provisions of this title or any rules or orders prescribed by  
2 the Board under this title against any financial institution engaged in a designated  
3 activity.

4 (2) LIMITATIONS.—

5 (A) EXAMINATION.—The Board may exercise the authority described in  
6 paragraph (1)(A) only if the Board has—

7 (i) reasonable cause to believe that a financial institution is not in  
8 compliance with this title or the rules or orders prescribed by the Board  
9 under this title with respect to a designated activity;

10 (ii) notified, in writing, the appropriate financial regulator of its  
11 belief under clause (i) with supporting documentation included;

12 (iii) requested the appropriate financial regulator to conduct a  
13 prompt examination of the financial institution; and

14 (iv) either—

15 (I) not been afforded a reasonable opportunity to participate  
16 in an examination of the financial institution by the appropriate  
17 financial regulator within 30 days after the date of the Board's  
18 notification under clause (ii); or

19 (II) reasonable cause to believe that the financial  
20 institution's noncompliance with this title or the rules or orders  
21 prescribed by the Board under this title poses a substantial risk to  
22 other financial institutions, critical markets, or the broader  
23 financial system, subject to the Board affording the appropriate

1 financial regulator a reasonable opportunity to participate in the  
2 examination.

3 (B) ENFORCEMENT.—The Board may exercise the authority described in  
4 paragraph (1)(B) only if the Board has—

5 (i) reasonable cause to believe that a financial institution is not in  
6 compliance with this title or the rules or orders prescribed by the Board  
7 under this title with respect to a designated activity;

8 (ii) notified, in writing, the appropriate financial regulator of its  
9 belief under clause (i) with supporting documentation included and with a  
10 recommendation that the appropriate financial regulator take one or more  
11 specific enforcement actions against the financial institution; and

12 (iii) either—

13 (I) not been notified, in writing, by the appropriate financial  
14 regulator of the commencement of an enforcement action  
15 recommended by the Board against the financial institution within  
16 30 days from the date of the notification under clause (ii); or

17 (II) reasonable cause to believe that the financial  
18 institution’s noncompliance with this title or the rules or orders  
19 prescribed by the Board under this title poses a substantial risk to  
20 other financial institutions, critical markets, or the broader  
21 financial system, subject to the Board notifying the appropriate  
22 financial regulator of the Board’s enforcement action.

23 (3) ENFORCEMENT PROVISIONS.—A financial institution engaged in designated

1 activities shall be subject to the provisions of subsections (b) through (n) of section 8 of  
2 the Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the  
3 same extent as if the financial institution were an insured depository institution for which  
4 the Board is the appropriate Federal banking agency as defined in section 3 of the Federal  
5 Deposit Insurance Act (12 U.S.C. § 1813).

6 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.**

7 (a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

8 (1) FINANCIAL MARKET UTILITIES.—The Board is authorized to require any  
9 financial market utility to submit such information as the Board may require for the sole  
10 purpose of assessing whether that financial market utility is systemically important, but  
11 only if the Board has reasonable cause to believe that the financial market utility meets  
12 the standards for systemic importance set out in section 804 of this title.

13 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT  
14 ACTIVITIES.—The Board is authorized to require any financial institution to submit such  
15 information as the Board may require for the sole purpose of assessing whether any  
16 payment, clearing, or settlement activity engaged in or supported by a financial institution  
17 is systemically important, but only if the Board has reasonable cause to believe that the  
18 activity meets the standards for systemic importance set out in section 804 of this title.

19 (b) REPORTING AFTER DESIGNATION.—

20 (1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board may require a  
21 designated financial market utility to submit reports or data to the Board in such  
22 frequency and form as deemed necessary by the Board in order to assess the safety and  
23 soundness of the utility and the systemic risk that the utility's operations pose to the

1 financial system.

2 (2) FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED ACTIVITIES—The Board  
3 may require 1 or more financial institutions engaged in a designated activity to submit, in  
4 such frequency and form as deemed necessary by the Board, reports and data to the  
5 Board solely with respect to the conduct of the designated activity and solely to assess  
6 whether—

7 (A) the rules, orders, or standards prescribed by the Board with respect to  
8 the designated activity appropriately address the risks to the financial system  
9 presented by such activity; and

10 (B) the financial institutions are in compliance with this title and the rules  
11 and orders prescribed by the Board under this title with respect to the designated  
12 activity.

13 (c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

14 (1) ADVANCE COORDINATION.—Before directly requesting any material  
15 information from, or imposing reporting or recordkeeping requirements on, any financial  
16 market utility or any financial institution engaged in a payment, clearing, or settlement  
17 activity, the Board shall coordinate with the Supervisory Agency for a financial market  
18 utility or the appropriate financial regulator for a financial institution to determine if the  
19 information is available from or may be obtained by the agency in the form, format, or  
20 detail required by the Board.

21 (2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the  
22 Supervisory Agency, the appropriate financial regulator, and the Board are authorized to  
23 disclose to each other a copy of any examination report or similar report regarding any



1 financial market utility or any financial institution engaged in payment, clearing, or  
2 settlement activities.

3 (d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the  
4 information, report, records, or data requested by the Board under subsection (c)(1) are not  
5 provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15  
6 days after the date on which the material is requested, the Board may request the information or  
7 impose recordkeeping or reporting requirements directly on such persons as provided in  
8 subsections (a) and (b) with notice to the agency.

9 (e) SHARING OF INFORMATION.—

10 (1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the  
11 Board, the appropriate financial regulator, and any Supervisory Agency are authorized to  
12 promptly notify each other of material concerns about a designated financial market  
13 utility or any financial institution engaged in designated activities, and share appropriate  
14 reports, information or data relating to such concerns.

15 (2) OTHER.—Notwithstanding any other provision of law, the Board may, under  
16 such terms and conditions it deems appropriate, provide confidential supervisory  
17 information and other information obtained under this title to other persons it deems  
18 appropriate, including the Secretary, State financial institution supervisory agencies,  
19 foreign financial supervisors, foreign central banks, and foreign finance ministries,  
20 subject to reasonable assurances of confidentiality.

21 (f) PRIVILEGE MAINTAINED.—The Board, the appropriate financial regulator, and any  
22 Supervisory Agency providing reports or data under this section shall not be deemed to have  
23 waived any privilege applicable to those reports or data, or any portion thereof, by providing the

1 reports or data to the other party or by permitting the reports or data, or any copies thereof, to be  
2 used by the other party.

3 (g) DISCLOSURE EXEMPTION.—Information obtained by the Board under this section and  
4 any materials prepared by the Board regarding its assessment of the systemic importance of  
5 financial market utilities or any payment, clearing, or settlement activities engaged in by  
6 financial institutions, and in connection with its supervision of designated financial market  
7 utilities and designated activities, shall be confidential supervisory information exempt from  
8 disclosure under section 552 of title 5, United States Code. For purposes of section 552 of title  
9 5, this subsection shall be considered a statute described in subsection (b)(3) of section 552.

10 **SEC. 810. RULEMAKING.**

11 The Board is authorized to prescribe such rules and issue such orders as may be  
12 necessary to administer and carry out the purposes of this title and prevent evasions thereof.

13 **SEC. 811. OTHER AUTHORITY.**

14 Unless otherwise provided by its terms, this title does not divest any appropriate financial  
15 regulator, any Supervisory Agency, or other Federal or State agency, of any authority derived  
16 from any other applicable law.

17 **SEC. 812. EFFECTIVE DATE.**

18 This title is effective as of the date of enactment.

1                   **TITLE IX—ADDITIONAL IMPROVEMENTS TO**  
2                   **FINANCIAL MARKETS REGULATION**

3   **SEC. 901. SHORT TITLE.**

4           This title may be cited as the “Investor Protection Act of 2009.”

5                                   **Subtitle A—Disclosure**

6   **SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

7           The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) is amended by adding at the  
8   end the following new section:

9   **“SEC. 38. INVESTOR ADVISORY COMMITTEE.**

10           “(a) ESTABLISHMENT AND PURPOSE.—There is established an Investor Advisory  
11   Committee to advise and consult with the Commission on—

12                   “(1) regulatory priorities and issues regarding new products, trading strategies, fee  
13   structures and the effectiveness of disclosures;

14                   “(2) initiatives to protect investor interest; and

15                   “(3) initiatives to promote investor confidence in the integrity of the market place.

16           “(b) MEMBERSHIP.—

17                   “(1) APPOINTMENT.—The Chairman of the Commission shall appoint the  
18   members of the Investor Advisory Committee, which members shall—

19                           “(A) represent the interests of individual investors;

20                           “(B) represent the interests of institutional investors; and

21                           “(C) use a wide range of investment and approaches.

22                   “(2) MEMBERS NOT COMMISSION EMPLOYEES.—Members shall not be deemed

1 employees or agents of the Commission solely because of membership on the Investor  
2 Advisory Commission.

3 “(c) MEETINGS.—The Investor Advisory Committee shall meet from time to time at the  
4 call of the Commission, but, at a minimum, shall meet at least twice in each year.

5 “(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Investor Advisory  
6 Committee who are not full-time employees of the United States shall—

7 “(1) be entitled to receive compensation at a rate fixed by the Commission while  
8 attending meetings of the Investor Advisory Committee, including travel time; and

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

11 “(e) COMMITTEE FINDINGS.—Nothing in this section requires the Commission to accept,  
12 agree, or act upon the findings or recommendations of the Investor Advisory Committee.

13 “(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the  
14 Commission such sums as are necessary to cover the costs of the Investor Advisory  
15 Committee.”.

16 **SEC. 912. CLARIFICATION OF THE COMMISSION’S AUTHORITY TO ENGAGE IN**  
17 **CONSUMER TESTING.**

18 (a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933  
19 (15 U.S.C. 77s) is amended by adding at the end the following new subsection:

20 “(e) For the purposes of evaluating its rules and programs and for considering, proposing,  
21 adopting, or engaging in rules or programs, the Commission is authorized to gather information,  
22 communicate with investors or other members of the public, and engage in such temporary or  
23 experimental programs as it in its discretion determines is in the public interest or for the

1 protection of investors. The Commission may delegate to its staff some or all of the authority  
2 conferred by this subsection.”.

3 (b) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 23 of the Securities  
4 Exchange Act of 1934 (15 U.S.C. 78w) is amended by adding the following new subsection (b)  
5 after subsection (a) and redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e):

6 “(c) GATHERING INFORMATION.—For the purposes of evaluating its rules and programs  
7 and for considering proposing, adopting, or engaging in rules or programs, the Commission is  
8 authorized to gather information, communicate with investors or other members of the public,  
9 and engage in such temporary or experimental programs as it in its discretion determines is in the  
10 public interest or for the protection of investors. The Commission may delegate to its staff some  
11 or all of the authority conferred by this subsection.”.

12 (d) AMENDMENT TO INVESTMENT COMPANY ACT OF 1940.—Section 38 of the Investment  
13 Company Act of 1940 (15 U.S.C. 80a-38) is amended by adding at the end the following new  
14 subsection:

15 “(e) GATHERING INFORMATION.—For the purposes of evaluating its rules and programs  
16 and for considering proposing, adopting, or engaging in rules or programs, the Commission is  
17 authorized to gather information, communicate with investors or other members of the public,  
18 and engage in such temporary or experimental programs as it in its discretion determines is in the  
19 public interest or for the protection of investors. The Commission may delegate to its staff some  
20 or all of the authority conferred by this subsection.”.

21 (f) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the  
22 Investment Advisers Act of 1940 (15 U.S.C. 80b-11) is amended by adding at the end the  
23 following new subsection:



1           “(2) examine and, where appropriate, promulgate rules prohibiting sales practices,  
2           conflicts of interest, and compensation schemes for financial intermediaries (including  
3           brokers, dealers, and investment advisers) that it deems contrary to the public interest and  
4           the interests of investors.”.

5           (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment  
6           Advisers Act of 1940 (15 U.S.C. 80b-11) is amended by adding at the end the following new  
7           subsections:

8           “(f) STANDARDS OF CONDUCT.—Notwithstanding any other provision of this Act or the  
9           Securities Exchange Act of 1934, the Securities and Exchange Commission may promulgate  
10          rules to provide, in substance, that the standards of conduct for all brokers, dealers, and  
11          investment advisers, in providing investment advice about securities to retail customers or clients  
12          (and such other customers or clients as the Commission may by rule provide), shall be to act  
13          solely in the interest of the customer or client without regard to the financial or other interest of  
14          the broker, dealer, or investment adviser providing the advice.

15          “(g) OTHER MATTERS.—The Commission shall—

16                 “(1) take steps to facilitate the provision of simple and clear disclosures to  
17                 investors regarding the terms of their relationships with investment professionals,  
18                 including consultation with other financial regulators on best practices for consumer  
19                 disclosures, as appropriate; and

20                 “(2) examine and, where appropriate, promulgate rules prohibiting sales practices,  
21                 conflicts of interest, and compensation schemes for financial intermediaries (including  
22                 brokers, dealers, and investment advisers) that it deems contrary to the public interest and  
23                 the interests of investors.”.

1 **SEC. 914. CLARIFICATION OF COMMISSION AUTHORITY TO REQUIRE**  
2 **INVESTOR DISCLOSURES BEFORE PURCHASE OF**  
3 **INVESTMENT COMPANY SHARES.**

4 Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a-24) is amended by  
5 adding at the end the following new subsection:

6 “(h) TIMING OF DISCLOSURE.—Notwithstanding any other provision of this Act or the  
7 Securities Act of 1933, the Commission is authorized to promulgate rules designating documents  
8 or information that must precede a sale to a purchaser of securities issued by a registered  
9 investment company.”.

10 **Subtitle B—Enforcement and Remedies**

11 **SEC. 921. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE**  
12 **ARBITRATION.**

13 (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities  
14 Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new  
15 subsection:

16 “(m) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The  
17 Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements  
18 that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate  
19 any future dispute between them arising under the federal securities laws or the rules of a self-  
20 regulatory organization if it finds that such prohibition, imposition of conditions, or limitations  
21 are in the public interest and for the protection of investors.”.

22 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment  
23 Advisers Act of 1940 (15 U.S.C. 80b-5) is amended by adding at the end the following new



1 subsection:

2 “(f) AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.—The  
3 Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements  
4 that require customers or clients of any investment adviser to arbitrate any future dispute  
5 between them arising under the federal securities laws or the rules of a self-regulatory  
6 organization if it finds that such prohibition, imposition of conditions, or limitations are in the  
7 public interest and for the protection of investors.”.

8 **SEC. 922 WHISTLEBLOWER PROTECTION.**

9 The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) is amended by adding after  
10 section 21E the following new section:

11 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.**

12 “(a) IN GENERAL.—In any judicial or administrative action brought by the Commission  
13 under the securities laws that results in monetary sanctions exceeding \$1,000,000, the  
14 Commission, under regulations prescribed by the Commission and subject to subsection (b), may  
15 pay an award or awards not exceeding an amount equal to 30 percent, in total, of the monetary  
16 sanctions imposed in the action or related actions to one or more whistleblowers who voluntarily  
17 provided original information to the Commission that led to the successful enforcement of the  
18 action. Any amount payable under the preceding sentence shall be paid from the fund described  
19 in subsection (f).

20 “(b) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

21 “(1) DETERMINATION OF AMOUNT OF AWARD.—The determination of the amount  
22 of an award, within the limit specified in subsection (a), shall be in the sole discretion of  
23 the Commission. The Commission may take into account the significance of the

1 whistleblower’s information to the success of the judicial or administrative action  
2 described in subsection (a), the degree of assistance provided by the whistleblower and  
3 any legal representative of the whistleblower in such action, the Commission’s  
4 programmatic interest in deterring violations of the securities laws by making awards to  
5 whistleblowers who provide information that leads to the successful enforcement of such  
6 laws, and such additional factors as the Commission may establish by rules or  
7 regulations.

8 “(2) DENIAL OF AWARD.—No award under subsection (a) shall be made—

9 “(A) to any individual who is, or was at the time he or she acquired the  
10 original information submitted to the Commission, a member, officer, or  
11 employee of any appropriate regulatory agency, the Department of Justice, or a  
12 self-regulatory organization;

13 “(B) to any individual who is convicted of a criminal violation related to  
14 the judicial or administrative action for which the individual otherwise could  
15 receive an award under this section; or

16 “(C) to any individual who fails to submit information to the Commission  
17 in such form as the Commission may, by rule, require.

18 “(c) REPRESENTATION.—

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

21 “(2) REQUIRED REPRESENTATION.—Any whistleblower who makes a claim for an  
22 award under subsection (a) must be represented by counsel if the whistleblower submits the  
23 information upon which the claim is based anonymously. Prior to the payment of an award, a

1 whistleblower must disclose his or her identity and provide such other information as the  
2 Commission may require.

3 “(d) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any  
4 whistleblower to receive an award under subsection (a), unless the Commission, by rule or  
5 regulation, so requires.

6 “(e) APPEALS.—Any determinations under this section, including whether, to whom, or in  
7 what amounts to make awards, shall be in the sole discretion of the Commission, and any such  
8 determinations shall be final and not subject to judicial review.

9 “(f) INVESTOR PROTECTION FUND.—

10 “(1) FUND ESTABLISHED.—There is established in the Treasury of the United  
11 States a fund to be known as the “Securities and Exchange Commission Investor  
12 Protection Fund” (referred to in this section as the “Fund”).

13 “(2) USE OF FUND.—The Fund shall be available to the Commission, without  
14 further appropriation or fiscal year limitation, for the following purposes:

15 “(A) paying awards to whistleblowers as provided in subsection (a); and.

16 “(B) funding investor education initiatives designed to help investors  
17 protect themselves against securities fraud or other violations of the securities  
18 laws, or the rules and regulations thereunder.

19 “(2) DEPOSITS AND CREDITS.—There shall be deposited into or credited to the  
20 Fund—

21 “(A) any monetary sanction collected by the Commission in any judicial  
22 or administrative action brought by the Commission under the securities laws that  
23 is not added to a disgorgement fund pursuant to Section 308 of the Sarbanes-

1 Oxley Act of 2002 or other fund or otherwise distributed to victims of a violation  
2 of the securities laws, or the rules and regulations thereunder, underlying such  
3 action, unless the balance of the Fund at the time the monetary sanction is  
4 collected exceeds \$100,000,000;

5 “(B) any monetary sanction added to a disgorgement fund pursuant to  
6 Section 308 of the Sarbanes-Oxley Act of 2002 or other fund that is not  
7 distributed to the victims for whom the disgorgement fund was established, unless  
8 the balance of the Fund at the time the determination is made not to distribute the  
9 monetary sanction to such victims exceeds \$100,000,000; and

10 “(C) all income from investments made under paragraph (3).

11 “(3) INVESTMENTS.—

12 “(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may  
13 request the Secretary of the Treasury to invest the portion of the Fund that is not,  
14 in the Commission’s judgment, required to meet the current needs of the Fund.

15 “(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary  
16 of the Treasury in obligations of the United States or obligations that are  
17 guaranteed as to principal and interest by the United States, with maturities  
18 suitable to the needs of the Fund as determined by the Commission.

19 “(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the  
20 proceeds from the sale or redemption of, any obligations held in the Fund shall be  
21 credited to, and form a part of, the Fund.

22 “(4) REPORTS TO CONGRESS.—Not later than October 30 of each year, the  
23 Commission shall transmit to the Committee on Banking, Housing, and Urban Affairs of

1 the Senate, and the Committee on Financial Services of the House of Representatives a  
2 report on—

3 “(A) the Commission’s whistleblower award program under this section,  
4 including a description of the number of awards granted and the types of cases in  
5 which awards were granted during the preceding fiscal year;

6 “(B) investor education initiatives described in paragraph (1)(B) that were  
7 funded by the Fund during the preceding fiscal year;

8 “(C) the balance of the Fund at the beginning of the preceding fiscal year;

9 “(D) the amounts deposited into or credited to the Fund during the  
10 preceding fiscal year;

11 “(E) the amount of earnings on investments of amounts in the Fund during  
12 the preceding fiscal year;

13 “(F) the amount paid from the Fund during the preceding fiscal year to  
14 whistleblowers pursuant to subsection (a);

15 “(G) the amount paid from the Fund during the preceding fiscal year for  
16 investor education initiatives described in paragraph (1)(B);

17 “(H) the balance of the Fund at the end of the preceding fiscal year; and

18 “(I) a complete set of audited financial statements, including a balance  
19 sheet, income statement, and cash flow analysis.

20 “(g) PROTECTION OF WHISTLEBLOWERS.—

21 “(1) PROHIBITION AGAINST RETALIATION.—

22 “(A) IN GENERAL.—Any employee, contractor, or agent shall be entitled  
23 to all relief necessary to make that employee, contractor, or agent whole, if that

1 employee, contractor, or agent is discharged, demoted, suspended, threatened,  
2 harassed, or in any other manner discriminated against in the terms and conditions  
3 of employment because of any lawful act done by the employee, contractor, or  
4 agent or associated others in providing information to the Commission in  
5 accordance with subsection (a), or in assisting in any investigation or judicial or  
6 administrative action of the Commission based upon or related to such  
7 information.

8 “(B) RELIEF.—Relief under subparagraph (A) shall include reinstatement  
9 with the same seniority status that the employee, contractor, or agent would have  
10 had, but for the discrimination, 2 times the amount of back pay, with interest; and  
11 compensation for any special damages sustained as a result of the discrimination,  
12 including litigation costs, expert witness fees, and reasonable attorneys’ fees. An  
13 action under this subsection may be brought in the appropriate district court of the  
14 United States for the relief provided in this subsection.

15 “(C) PROCEDURE.—

16 “(i) SUBPOENAS.—A subpoena requiring the attendance of a  
17 witness at a trial or hearing conducted under this section may be served at  
18 any place in the United States.

19 “(ii) STATUTE OF LIMITATIONS.—An action under this subsection  
20 may not be brought more than 6 years after the date on which the violation  
21 reported in section (a) is committed, or more than 3 years after the date  
22 when facts material to the right of action are known or reasonably should  
23 have been known by the whistleblower, but in no event after 10 years after

1 the date on which the violation is committed.

2 “(2) CONFIDENTIALITY.—

3 “(A) IN GENERAL.—Except as provided in subparagraph (B), all  
4 information provided to the Commission by a whistleblower shall be confidential  
5 and privileged as an evidentiary matter (and shall not be subject to civil discovery  
6 or other legal process) in any proceeding in any Federal or State court or  
7 administrative agency, and shall be exempt from disclosure, in the hands of an  
8 agency or establishment of the Federal Government, under the Freedom of  
9 Information Act (5 U.S.C. 552), or otherwise, unless and until required to be  
10 disclosed to a defendant or respondent in connection with a public proceeding  
11 instituted by the Commission or any entity described in subparagraph (B). For  
12 purposes of section 552 of title 5, United States Code, this paragraph shall be  
13 considered a statute described in subsection (b)(3)(B) of such section 552.  
14 Nothing herein is intended to limit the Attorney General’s ability to present such  
15 evidence to a grand jury or to share such evidence with potential witnesses or  
16 defendants in the course of an ongoing criminal investigation.

17 “(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its  
18 status as confidential and privileged in the hands of the Commission, all  
19 information referred to in subparagraph (A) may, in the discretion of the  
20 Commission, when determined by the Commission to be necessary to accomplish  
21 the purposes of this Act and protect investors, be made available to—

22 “(i) the Attorney General of the United States;

23 “(ii) an appropriate regulatory authority;

1                                   “(iii) a self-regulatory organization;  
2                                   “(iv) State attorneys general in connection with any criminal  
3                                   investigation; and  
4                                   “(v) any appropriate State regulatory authority,  
5                                   each of which shall maintain such information as confidential and  
6                                   privileged, in accordance with the requirements in subparagraph (A).

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

10                                  “(h) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such  
11                                  rules and regulations as may be necessary or appropriate to implement the provisions of this  
12                                  section consistent with the purposes of this section.

13                                  “(i) DEFINITIONS.—For purposes of this section, the following terms have the following  
14                                  meanings:

15                                  “(1) ORIGINAL INFORMATION.—The term ‘original information’ means  
16                                  information that—  
17   “(A) is based on the direct and independent knowledge or analysis of a  
18   whistleblower;  
19   “(B) is not known to the Commission from any other source; and  
20   “(C) is not based on allegations in a judicial or administrative hearing, in a  
21   governmental report, hearing, audit, or investigation, or from the news media,  
22   unless the whistleblower is the initial source of the information that resulted in the  
23   judicial or administrative hearing, governmental report, hearing, audit, or



1 investigation, or the news media’s report on the allegations.

2 “(2) MONETARY SANCTIONS.—The term ‘monetary sanctions,’ when used with  
3 respect to any judicial or administrative action, means any monies, including but not  
4 limited to penalties, disgorgement, and interest, ordered to be paid, and any monies  
5 deposited into a disgorgement fund pursuant to Section 308(b) of the Sarbanes-Oxley Act  
6 of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

7 “(3) RELATED ACTION.—The term ‘related action,’ when used with respect to any  
8 judicial or administrative action brought by the Commission under the securities laws,  
9 means any judicial or administrative action brought by an entity described in subsection  
10 (g)(2)(B) that is based upon the same original information provided by a whistleblower  
11 pursuant to subsection (a) that led to the successful enforcement of the Commission  
12 action.

13 “(4) WHISTLEBLOWER.—The term ‘whistleblower’ means an individual, or two or  
14 more individuals acting jointly, who submit information to the Commission as provided  
15 in this section.”.

16 **SEC. 923. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.**

17 (a) IN GENERAL.—Each of the following provisions is amended by inserting “and section  
18 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”:

19 (1) Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)).

20 (2) Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–  
21 41(e)(3)(A)).

22 (3) Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–  
23 9(e)(3)(A)).

1 (b) SECURITIES EXCHANGE ACT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a  
2 *et seq.*) is amended—

3 (1) in section 21(d)(3)(C)(i) (15 U.S.C. 78u(d)(3)(C)(i)), by inserting “and section  
4 21F of this title” after “the Sarbanes-Oxley Act of 2002”;

5 (2) in section 21A(d)(1) (15 U.S.C. 78u-1(d)(1)), by

6 (A) striking “(subject to subsection (e))”; and

7 (B) inserting “and section 21F of this title” after “the Sarbanes-Oxley Act  
8 of 2002”; and

9 (C) by striking section 21A(e) (15 U.S.C. 78u-1(e)) and renumbering  
10 sections 21A(f) and (g) (15 U.S.C. 78u-1(f) and (g)) as sections 21A(e) and (f).

11 **SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS FOR**

12 **WHISTLEBLOWER PROTECTIONS.**

13 (a) IMPLEMENTING RULES.—The Securities and Exchange Commission shall issue final  
14 regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934,  
15 as added by this subtitle, no later than 270 days after the date of enactment of this Act.

16 (b) ORIGINAL INFORMATION.—Information submitted to the Commission by a  
17 whistleblower in accordance with regulations implementing the provisions of section 21F of the  
18 Securities Exchange Act of 1934, as added by this subtitle, shall not lose its status as original  
19 information, as defined in section 21F(i)(1) of the Securities Exchange Act of 1934, as added by  
20 this subtitle, solely because the whistleblower submitted such information prior to the effective  
21 date of such regulations, provided such information was submitted after the date of enactment of  
22 this subtitle, or related to insider trading violations for which a bounty could have been paid at  
23 the time such information was submitted.

1 (c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the  
2 Securities Exchange Act of 1934, as added by this subtitle, regardless of whether any violation of  
3 a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or  
4 administrative action upon which the award is based occurred prior to the date of enactment of  
5 this subtitle.

6 **SEC. 925. COLLATERAL BARS.**

7 (a) SECTION 15 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15(b)(6)(A) of the  
8 Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking “12 months,  
9 or bar such person from being associated with a broker or dealer, ” and inserting “12 months, or  
10 bar any such person from being associated with a broker, dealer, investment adviser, municipal  
11 securities dealer, transfer agent, or nationally recognized statistical rating organization, ”.

12 (b) SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15B(c)(4) of the  
13 Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(4)) is amended by striking “twelve months  
14 or bar any such person from being associated with a municipal securities dealer, ” and inserting  
15 “twelve months or bar any such person from being associated with a broker, dealer, investment  
16 adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating  
17 organization,”.

18 (c) SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 17A(c)(4)(C) of  
19 the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(c)(4)(C)) is amended by striking “twelve  
20 months or bar any such person from being associated with the transfer agent, ” and inserting  
21 “twelve months or bar any such person from being associated with any transfer agent, broker,  
22 dealer, investment adviser, municipal securities dealer, or nationally recognized statistical rating  
23 organization,”.

1 (d) SECTION 203 OF THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the  
2 Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking “twelve months or  
3 bar any such person from being associated with an investment adviser, ” and inserting “twelve  
4 months or bar any such person from being associated with an investment adviser, broker, dealer,  
5 municipal securities dealer, transfer agent, or nationally recognized statistical rating  
6 organization,”.

7 **SEC. 926. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT**  
8 **AND THE INVESTMENT COMPANY ACT.**

9 (a) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15  
10 U.S.C. 77o) is amended to read as follows:

11 **“SEC. 15. LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND**  
12 **ABET VIOLATIONS.**

13 “(a) CONTROLLING PERSONS.—Every person who, by or through stock ownership,  
14 agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding  
15 with one or more other persons by or through stock ownership, agency, or otherwise, controls  
16 any person liable under section 11, or 12, shall also be liable jointly and severally with and to the  
17 same extent as such controlled person to any person to which such controlled person is liable,  
18 unless the controlling person had no knowledge of or reasonable ground to believe in the  
19 existence of the facts by reason of which the liability of the controlled person is alleged to exist.

20 “(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any  
21 action brought by the Commission under subparagraph (b) or (d) of section 20, any person that  
22 knowingly or recklessly provides substantial assistance to another person in violation of a  
23 provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in

1 violation of such provision to the same extent as the person to whom such assistance is  
2 provided.”.

3 (b) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment  
4 Company Act of 1940 (15 U.S.C. 80a-48) is amended to read as follows:

5 **“SEC. 48. LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND**  
6 **ABET VIOLATIONS; PREVENTING COMPLIANCE WITH ACT.**

7 “(a) CONTROLLING PERSONS.—It shall be unlawful for any person, directly or indirectly,  
8 to cause to be done any act or thing through or by means of any other person which it would be  
9 unlawful for such person to do under the provisions of this Act or any rule, regulation, or order  
10 thereunder.

11 “(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any  
12 action brought by the Commission under subsection (d) or (e) of section 42, any person that  
13 knowingly or recklessly provides substantial assistance to another person in violation of a  
14 provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in  
15 violation of such provision to the same extent as the person to whom such assistance is provided.

16 “(c) PREVENTING COMPLIANCE WITH ACT.—It shall be unlawful for any person without  
17 just cause to hinder, delay, or obstruct the making, filing, or keeping of any information,  
18 document, report, record, or account required to be made, filed, or kept under any provision of  
19 this Act or any rule, regulation, or order thereunder.”.

20 **SEC. 927. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING**  
21 **VIOLATIONS OF THE INVESTMENT ADVISERS ACT.**

22 Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9) is amended by  
23 inserting at the end the following new subsection:

1           “(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission  
2 under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled,  
3 commanded, induced, or procured a violation of any provision of this Act, or of any rule,  
4 regulation, or order hereunder, shall be deemed to be in violation of such provision, rule,  
5 regulation, or order to the same extent as the person that committed such violation.”.

1           **TITLE IX—ADDITIONAL IMPROVEMENTS TO**  
2                           **FINANCIAL MARKETS REGULATION**

3   **SEC. 901. SHORT TITLE.**

4           This title may be cited as the “Investor Protection Act of 2009”.

5   . . .

6                           **Subtitle C—Improvements to the Regulation of**  
7   **Credit Rating Agencies**

8   **SEC. 931. MANDATORY REGISTRATION OF CREDIT RATING AGENCIES.**

9           (a) Section 15E(a)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-  
10 7(a)(1)(A)) is amended to read as follows:

11                   “(A) IN GENERAL.—Each credit rating agency shall register as a nationally  
12 recognized statistical rating organization for the purposes of this title (in this section  
13 referred to as the ‘applicant’), and shall furnish to the Commission an application for  
14 registration, in such form as the Commission shall require, by rule or regulation issued in  
15 accordance with subsection (n), and containing the information described in  
16 subparagraph (B).”.

17           (b) Section 15E(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(e)) is  
18 amended by—

- 19                   (1) striking paragraph (1);  
20                   (2) striking “(2)” from the existing paragraph (2); and  
21                   (3) moving the text of that paragraph to follow the caption for subsection (e).

1    **SEC. 932. ENHANCED REGULATION OF NATIONALLY RECOGNIZED**  
2                   **STATISTICAL RATING ORGANIZATIONS.**

3           Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7) is amended—

4                   (1) in subsection (c)—

5                           (A) in the second sentence of paragraph (2), by inserting “including the  
6                   requirements of this section,” after “Notwithstanding any other provision of law,”;  
7                   and

8                           (B) by adding at the end the following new paragraph:

9                   “(3) REVIEW OF INTERNAL PROCESSES FOR DETERMINING CREDIT RATINGS.—

10                           “(A) IN GENERAL.—Credit ratings by, and the policies, procedures, and  
11                   methodologies employed by, each nationally recognized statistical rating  
12                   organization shall be reviewed by the Commission to ensure that—

13                                   “(i) the nationally recognized statistical rating organization has  
14                                   established and documented a system of internal controls, due diligence,  
15                                   and implementation of methodologies for determining credit ratings,  
16                                   taking into consideration such factors as the Commission may prescribe by  
17                                   rule;

18                                   “(ii) the nationally recognized statistical rating organization  
19                                   adheres to such system; and

20                                   “(iii) the public disclosures of the nationally recognized statistical  
21                                   rating organization required under this section about its ratings,  
22                                   methodologies, and procedures are consistent with such system.

23                           “(B) PURPOSE OF REVIEWS.—The purpose of the reviews shall be to ensure



1 that the nationally recognized statistical rating organization is conducting its  
2 business in accordance with its stated practices, including those practices that are  
3 certified as part of issuing a rating.

4 “(C) SCOPE OF REVIEWS.—The Commission shall conduct the reviews  
5 required by this paragraph—

6 “(i) for all types of credit ratings; and

7 “(ii) for new credit ratings, in a timely manner.

8 “(D) MANNER, FREQUENCY, AND PUBLIC DISCLOSURE.—The Commission  
9 shall conduct reviews required by this paragraph no less frequently than annually  
10 in a manner to be determined by the Commission. A report summarizing the key  
11 findings of the reviews shall be made available to the public in a widely  
12 discernable format, as deemed appropriate by the Commission.

13 “(E) DELEGATION OF REVIEWS.—The Commission may, as it deems  
14 necessary, delegate any review of a nationally recognized statistical rating  
15 organization under this paragraph to the Public Company Accounting Oversight  
16 Board.

17 “(4) PROVISION OF INFORMATION TO THE COMMISSION.—Each nationally  
18 recognized statistical rating organization shall make available and maintain such records  
19 and information, for such a period of time, as the Commission may prescribe, by rule, as  
20 necessary for the Commission to conduct the reviews under this subsection.”

21 (2) in subsection (d)—

22 (A) in the heading, by inserting “Fine,” after “Censure,”;

23 (B) by inserting “fine,” after “censure,” each place it appears;

1 (C) in paragraph (4), by striking “or” at the end;

2 (D) in paragraph (5), by striking the period at the end and inserting “; or”;

3 and

4 (E) by adding at the end the following new paragraph:

5 “(6) fails to conduct sufficient surveillance to ensure that credit ratings remain  
6 current, accurate, and reliable, as applicable.”;

7 (3) by amending subsection (h) to read as follows:

8 “(h) MANAGEMENT OF CONFLICTS OF INTEREST.—

9 “(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized  
10 statistical rating organization shall establish, maintain, and enforce written policies and  
11 procedures reasonably designed, taking into consideration the nature of the business of  
12 the nationally recognized statistical rating organization and affiliated persons and  
13 affiliated companies thereof, to address, manage, and disclose any conflicts of interest  
14 that can arise from such business.

15 “(2) GOVERNANCE IMPROVEMENTS AT NATIONALLY RECOGNIZED STATISTICAL  
16 RATING ORGANIZATION.—Each nationally recognized statistical rating organization shall  
17 establish governance procedures to manage conflicts of interest, consistent with the  
18 protection of users of credit ratings, in accordance with rules issued by the Commission  
19 pursuant to paragraph (3).

20 “(3) COMMISSION AUTHORITY.—The Commission shall issue rules to prohibit, or  
21 require the management and disclosure of, any conflicts of interest relating to the  
22 issuance of credit ratings by a nationally recognized statistical rating organization,  
23 including—

1                   “(A) conflicts of interest relating to the manner in which a nationally  
2 recognized statistical rating organization is compensated by the obligor, or any  
3 affiliate of the obligor, for issuing credit ratings or providing related services;

4                   “(B) disclosure of business relationships, ownership interests, affiliations  
5 of nationally recognized statistical rating organization board members with  
6 obligors, or any other financial or personal interests between a nationally  
7 recognized statistical rating organization, or any person associated with the  
8 nationally recognized statistical rating organization, and the obligor, or any  
9 affiliate of the obligor;

10                   “(C) disclosure of any affiliation of a nationally recognized statistical  
11 rating organization, or any person associated with the nationally recognized  
12 statistical rating organization, with any person that underwrites securities, entities,  
13 or other instruments that are the subject of a credit rating; and

14                   “(D) any other potential conflict of interest, as the Commission deems  
15 necessary or appropriate in the public interest or for the protection of users of  
16 credit ratings.

17                   “(4) COMMISSION RULES.—The rules issued by the Commission under paragraph  
18 (3) shall include—

19                   “(A) the establishment of a system of payment for each nationally  
20 recognized statistical rating organization that requires that payments are  
21 structured to ensure that the nationally recognized statistical rating organization  
22 conducts accurate and reliable surveillance of ratings over time, as applicable, and  
23 that incentives for accurate ratings are in place;

1                   “(B) requirements that a nationally recognized statistical rating  
2 organization disclose any relationship or affiliation described in subparagraphs  
3 (B) and (C) of paragraph (3);

4                   “(C) a requirement that, in each credit rating report issued to the public, a  
5 nationally recognized statistical rating organization disclose the type and number  
6 of ratings it has provided to the obligor or affiliates of the obligor, including the  
7 fees it has billed for the credit rating and aggregate amount of fees in the  
8 preceding 2 years that it has billed to the particular obligor or its affiliates; and

9                   “(D) any other requirement as the Commission deems necessary or  
10 appropriate in the public interest, or for the protection of users of credit ratings.

11                   “(5) LOOK-BACK REQUIREMENT.—

12                   “(A) REVIEW BY NATIONALLY RECOGNIZED STATISTICAL RATING  
13 ORGANIZATION.—In any case in which an employee of an obligor or an issuer or  
14 underwriter of a security or money market instrument was employed by a  
15 nationally recognized statistical rating organization and participated in any  
16 capacity in determining credit ratings for the obligor or the securities or money  
17 market instruments of the issuer during the 1-year period preceding the date of the  
18 issuance of the credit rating, the nationally recognized statistical rating  
19 organization shall—

20                   “(i) conduct a review to determine whether any conflicts of interest  
21 of the employee influenced the credit rating; and

22                   “(ii) take action to revise the rating if appropriate, in accordance  
23 with such rules as the Commission shall prescribe.

1                   “(B) REVIEW BY COMMISSION.—The Commission shall conduct periodic  
2 reviews of the look-back policies described in subparagraph (A) and the  
3 implementation of the policies at each nationally recognized statistical rating  
4 organization to ensure they are appropriately designed and implemented to most  
5 effectively eliminate conflicts of interest in this area.

6                   “(6) PERIODIC REVIEWS.—

7                   “(A) REVIEWS REQUIRED.—The Commission shall conduct periodic  
8 reviews of governance and conflict of interest procedures established under this  
9 subsection to determine the effectiveness of such procedures.

10                  “(B) TIMING OF REVIEWS.—The Commission shall review and make  
11 available to the public the code of ethics and conflict of interest policy of each  
12 nationally recognized statistical rating organization—

13                                 “(i) not less frequently than annually; and

14                                 “(ii) whenever such policies are materially modified or amended.”;

15                  (4) by amending subsection (j) to read as follows:

16                  “(j) DESIGNATION OF COMPLIANCE OFFICER.—

17                                 “(1) IN GENERAL.—Each nationally recognized statistical rating organization  
18 shall designate an individual to serve as a compliance officer.

19                                 “(2) DUTIES.—The compliance officer shall—

20   “(A) report directly to the board of the nationally recognized statistical  
21 rating organization (or the equivalent thereof) or to the senior officer of the  
22 nationally recognized statistical rating organization; and

23   “(B) shall—

1                   “(i) review compliance with policies and procedures to manage  
2 conflicts of interest and assess the risk that the compliance (or lack of  
3 compliance) may compromise the integrity of the credit rating process;

4                   “(ii) review compliance with internal controls with respect to the  
5 procedures and methodologies for determining credit ratings, including  
6 quantitative and qualitative models used in the rating process, and assess  
7 the risk that such compliance with the internal controls (or lack of such  
8 compliance) may compromise the integrity and quality of the credit rating  
9 process;

10                   “(iii) in consultation with the board of the nationally recognized  
11 statistical rating organization, a body performing a function similar to that  
12 of a board, or the senior officer of the nationally recognized statistical  
13 rating organization, resolve any conflicts of interest that may arise;

14                   “(C) be responsible for administering the policies and procedures required  
15 to be established pursuant to this section; and

16                   “(D) ensure compliance with securities laws and the rules and regulations  
17 issued thereunder, including rules prescribed by the Commission pursuant to this  
18 section.

19                   “(E) The compliance officer shall establish procedures for remediation of  
20 non-compliance issues found during compliance office reviews, lookbacks,  
21 internal or external audit findings, self-reported errors, or through validated  
22 complaints. Procedures will establish the handling, management response,  
23 remediation, re-testing, and closing of non-compliant issues.

1           “(3) LIMITATIONS.—The compliance officer shall not, while serving in that  
2 capacity—

3           “(A) perform credit ratings;

4           “(B) participate in the development of rating methodologies or models;

5           “(C) perform marketing or sales functions; or

6           “(D) participate in establishing compensation levels, other than for  
7 employees working for the compliance officer.

8           “(4) OTHER DUTIES.—The compliance officer shall establish procedures for the  
9 receipt, retention, and treatment of—

10           “(A) complaints regarding credit ratings, models, methodologies, and  
11 compliance with the securities laws and the policies and procedures required  
12 under this section; and

13           “(B) confidential, anonymous complaints by employees or users of credit  
14 ratings.

15           “(5) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare  
16 and sign a report on the compliance of the nationally recognized statistical rating  
17 organization with the securities laws and its policies and procedures, including its code of  
18 ethics and conflict of interest policies, in accordance with rules prescribed by the  
19 Commission. Such compliance report shall accompany the financial reports of the  
20 nationally recognized statistical rating organization that are required to be furnished to  
21 the Commission pursuant to this section and shall include a certification that, under  
22 penalty of law, the report is accurate and complete.”;

23           (5) in subsection (k)—

1 (A) by striking “, on a confidential basis,”;

2 (B) by striking “Each nationally” and inserting the following:

3 “(1) IN GENERAL.—Each nationally”; and

4 (C) by adding at the end the following new paragraph:

5 “(2) EXCEPTION.—The Commission may treat as confidential any item furnished  
6 to the Commission under paragraph (1), the publication of which the Commission  
7 determines may have a harmful effect on a nationally recognized statistical rating  
8 organization.”;

9 (6) by amending subsection (p) to read as follows:

10 “(p) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION REGULATION.—

11 “(1) IN GENERAL.—The Commission shall establish an office that administers the  
12 rules of the Commission with respect to the practices of nationally recognized statistical  
13 rating organizations in determining ratings, for the protection of users of credit ratings  
14 and in the public interest, and to ensure that credit ratings issued by such registrants are  
15 accurate and not unduly influenced by conflicts of interest.

16 “(2) STAFFING.—The office of the Commission established under this subsection  
17 shall be staffed sufficiently to carry out fully the requirements of this section.

18 “(3) RULEMAKING AUTHORITY.—The Commission shall—

19 “(A) establish, by rule, fines and other penalties for any nationally  
20 recognized statistical rating organization that violates the applicable requirements  
21 of this title; and

22 “(B) issue such rules as may be necessary to carry out this section with  
23 respect to nationally recognized statistical rating organizations.”; and



1 (7) by adding after subsection (p) the following new subsections:

2 “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

3 “(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each  
4 nationally recognized statistical rating organization shall disclose publicly information on  
5 initial ratings and subsequent changes to such ratings for the purpose of providing a  
6 gauge of the accuracy of ratings and allowing users of credit ratings to compare  
7 performance of ratings by different nationally recognized statistical rating organizations.

8 “(2) CONTENT.—The rules of the Commission under this subsection shall require,  
9 at a minimum, disclosures that—

10 “(A) are comparable among nationally recognized statistical rating  
11 organizations, so that users can compare rating performance across rating  
12 organizations;

13 “(B) are clear and informative for a wide range of investor sophistication;

14 “(C) include performance information over a range of years and for a  
15 variety of classes of credit ratings, as determined by the Commission; and

16 “(D) are published and made freely available by the nationally recognized  
17 statistical rating organization, on an easily accessible portion of its website and in  
18 written form when requested by users.

19 “(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall prescribe rules, for the  
20 protection of users of credit ratings and in the public interest, with respect to the procedures and  
21 methodologies, including qualitative and quantitative models, used by nationally recognized  
22 statistical rating organizations that require each nationally recognized statistical rating  
23 organization to—

1           “(1) ensure that credit ratings are determined using procedures and  
2 methodologies, including qualitative and quantitative models, that are approved by the  
3 board of the nationally recognized statistical rating organization, a body performing a  
4 function similar to that of a board, or the senior officer of the nationally recognized  
5 statistical rating organization, and in accordance with the policies and procedures of the  
6 nationally recognized statistical rating organization for developing and modifying credit  
7 rating procedures and methodologies;

8           “(2) ensure that when major changes to credit rating procedures and  
9 methodologies, including to qualitative and quantitative models, are made, that the  
10 changes are applied consistently to all credit ratings to which the changed procedures and  
11 methodologies apply and, to the extent the changes are made to credit rating surveillance  
12 procedures and methodologies, they are applied to current credit ratings within a time  
13 period to be determined by the Commission by rule, and that the reason for the change is  
14 disclosed publicly;

15           “(3) notify users of credit ratings of the version of a procedure or methodology,  
16 including a qualitative or quantitative model, used with respect to a particular credit  
17 rating;

18           “(4) notify users of credit ratings when a change is made to a procedure or  
19 methodology, including to a qualitative or quantitative model, or an error is identified in a  
20 procedure or methodology that may result in credit rating actions, and the likelihood of  
21 the change resulting in current credit ratings being subject to rating actions; and

22           “(5) not later than 2 years after the date of enactment of the Investor Protection  
23 Act of 2009, adopt and use rating symbols that distinguish between structured and non-

1 structured products, and such other rating symbols for products that the Commission  
2 deems appropriate or necessary in the public interest and for the protection of users of  
3 credit ratings.

4 “(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION  
5 REVIEWED.—

6 “(1) IN GENERAL.—The Commission shall establish a form, to accompany each  
7 rating issued by a nationally recognized statistical rating organization—

8 “(A) to disclose information about assumptions underlying credit rating  
9 procedures and methodologies, the data that was relied on to determine the credit  
10 rating and, where applicable, how the nationally recognized statistical rating  
11 organization used servicer or remittance reports, and with what frequency, to  
12 conduct surveillance of the credit rating; and

13 “(B) that can be made public and used by investors and other users to  
14 better understand credit ratings issued in each class of credit rating issued by the  
15 nationally recognized statistical rating organization.

16 “(2) FORMAT.—The Commission shall ensure that the form established under  
17 paragraph (1)—

18 “(A) is designed in a user-friendly and helpful manner for users of credit  
19 ratings to understand the information contained in the report; and

20 “(B) requires the nationally recognized statistical rating organization to  
21 provide the appropriate content, as required by paragraph (4) in a manner that is  
22 directly comparable across securities, for example, number, rating, or index, as  
23 appropriate, and in distinct forms for structured and traditional corporate issues.

1           “(3) QUALITATIVE CONTENT.—Each nationally recognized statistical rating  
2 organization shall include on the form established under this subsection, along with its  
3 ratings—

4                   “(A) the main assumptions included in constructing procedures and  
5 methodologies, including qualitative and quantitative models and assumptions  
6 about the correlation of defaults across obligors used in rating certain structured  
7 products;

8                   “(B) the potential shortcomings of the credit ratings, and the types of risks  
9 excluded from the credit ratings that the registrant is not commenting on, such as  
10 liquidity, market, and other risks;

11                   “(C) information on the certainty of the rating, including information on  
12 the reliability, accuracy, and quality of the data relied on in determining the  
13 ultimate credit rating and a statement on the extent to which key data inputs for  
14 the credit rating were reliable or limited, including any limits on the reach of  
15 historical data, limits in accessibility to certain documents or other forms of  
16 information that would have better informed the credit rating, and the  
17 completeness of certain information considered;

18                   “(D) whether and to what extent third party due diligence services have  
19 been utilized, and a description of the information that such third party reviewed  
20 in conducting due diligence services;

21                   “(E) a description of relevant data about any obligor, issuer, security, or  
22 money market instrument that was used and relied on for the purpose of  
23 determining the credit rating;

1                   “(F) a statement containing an overall assessment of the quality of  
2 information available and considered in producing a rating for a security in  
3 relation to the quality of information available to the nationally recognized  
4 statistical rating organization in rating similar issuances; and

5                   “(G) additional information, including conflict of interest information, as  
6 may be required by the Commission.

7                   “(4) QUANTITATIVE CONTENT.—Each nationally recognized statistical rating  
8 organization shall include on the form established under this subsection, along with its  
9 ratings—

10                   “(A) an explanation or measure of the potential volatility for the rating,  
11 including any factors that might lead to a change in the rating, and the extent of  
12 the change that might be anticipated under different conditions;

13                   “(B) information on the content of the rating, including:

14                                   “(i) the expected default probability; and

15                                   “(ii) the loss given default;

16                   “(C) information on the sensitivity of the rating to assumptions made by  
17 the nationally recognized statistical rating organization; and

18                   “(D) additional information as may be required by the Commission.

19                   “(5) DUE DILIGENCE SERVICES.—

20                   “(A) CERTIFICATION REQUIRED.—In any case in which third-party due  
21 diligence services are employed by a nationally recognized statistical rating  
22 organization or an issuer or underwriter, the firm providing the due diligence  
23 services shall provide to the nationally recognized statistical rating organization

1 written certification of the due diligence, which shall be subject to review by the  
2 Commission.

3 “(B) FORMAT AND CONTENT.—The nationally recognized statistical rating  
4 organizations shall establish the appropriate format and content for written  
5 certifications required under subparagraph (A) to ensure that providers of due  
6 diligence services have conducted a thorough review of data, documentation, and  
7 other relevant information necessary for the nationally recognized statistical  
8 rating organization to provide an accurate rating.

9 “(C) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules  
10 requiring a nationally recognized statistical rating organization at the time it  
11 produces a rating to disclose the certification described in subparagraph (A) to the  
12 public in a manner that may permit the public to determine the adequacy and level  
13 of due diligence services provided by a third party.”

14 **SEC. 933. STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.**

15 Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7) is amended by  
16 adding at the end the following new subsections:

17 “(t) PROHIBITED ACTIVITIES.— Except as provided in subsection (u), beginning 180 days  
18 from the date of enactment of the Investor Protection Act of 2009, it shall be unlawful for a  
19 nationally recognized statistical rating organization, an affiliate of a nationally recognized  
20 statistical rating organization, or any person associated with a nationally recognized statistical  
21 rating organization, to the extent determined appropriate by the Commission, that provides a  
22 rating for an issuer, underwriter, or placement agent of a security to provide to that issuer,  
23 underwriter, or placement agent, any non-rating service that preceded the retention of the

1 nationally recognized statistical rating organization by the issuer, underwriter, or placement  
2 agent to provide a rating for the security in question or any assistance provided after such point  
3 for which additional compensation is paid directly or indirectly, including:

4 “(1) risk management advisory services;

5 “(2) ancillary assistance, advice, or consulting services unrelated to any specific  
6 credit rating issuance; and

7 “(3) such further activities or services as the Commission may determine as  
8 necessary or appropriate in the public interest or for the protection of users of credit  
9 ratings.

10 “(u) EXEMPTION AUTHORITY.—The Commission may, on a case by case basis, exempt  
11 any person, issuer, underwriter, placement agent or nationally recognized statistical rating  
12 organization from the prohibition in subsection (t), to the extent that such exemption is necessary  
13 or appropriate in the public interest and is consistent with the protection of users of credit ratings,  
14 and subject to review by the Commission.”.

15 **SEC. 934. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.**

16 The Securities and Exchange Commission shall adopt rules under authority of the  
17 Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) to require issuers to disclose preliminary credit  
18 ratings received from nationally recognized statistical rating agencies on structured products and  
19 all forms of corporate debt.

20 **SEC. 935. REGULATIONS.**

21 The Securities and Exchange Commission shall adopt rules and regulations, as  
22 required by the amendments made by the Investor Protection Act of 2009, not later than 365  
23 days after the date of enactment of this Act.

1    **SEC. 936. STUDY AND REPORT.**

2           (a) **STUDY.**—The Comptroller General of the United States shall undertake a study of—

3                   (1) the extent to which the rulemaking of the Securities and Exchange

4           Commission has carried out the provisions of this Act;

5                   (2) the appropriateness of relying on ratings for use in Federal, State, and local  
6           securities and banking regulations, including for determining capital requirements; and

7                   (3) alternative means for compensating credit rating agencies that would create  
8           incentives for accurate credit ratings and what, if any, statutory changes would be  
9           required to permit or facilitate the use of such alternative means of compensation.

10          (b) **REPORT.**—Not later than 30 months after the date of enactment of this the Investor  
11   Protection Act of 2009, the Comptroller General shall submit to Congress and the Securities  
12   Exchange Commission, a report containing the findings under the study required by subsection

13   (a).



1           **TITLE IX—ADDITIONAL IMPROVEMENTS TO**  
2                           **FINANCIAL MARKETS REGULATION**

3   **SEC. 901. SHORT TITLE.**

4           This title may be cited as the “Investor Protection Act of 2009”.

5   . . .

6                           **Subtitle D—Executive Compensation**

7   **SEC. 941. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION**

8                           **DISCLOSURES.**

9           (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 14 of the Securities  
10 Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new  
11 subsection:

12           “(i) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

13                   “(1) ANNUAL VOTE.—Any proxy or consent or authorization for an annual  
14 meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring  
15 on or after December 15, 2009, shall provide for a separate shareholder vote to approve  
16 the compensation of executives as disclosed pursuant to the Commission’s compensation  
17 disclosure rules (which disclosure shall include the compensation committee report, the  
18 compensation discussion and analysis, the compensation tables, and any related  
19 materials). The shareholder vote shall not be binding on the corporation or the board of  
20 directors and shall not be construed as overruling a decision by such board, nor to create  
21 or imply any additional fiduciary duty by such board, nor shall such vote be construed to  
22 restrict or limit the ability of shareholders to make proposals for inclusion in such proxy

1 materials related to executive compensation.

2 “(2) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

3 “(A) DISCLOSURE.—In any proxy or consent solicitation material for a  
4 meeting of the shareholders (or a special meeting in lieu of the annual meeting)  
5 occurring on or after December 15, 2009, that concerns an acquisition, merger,  
6 consolidation, or proposed sale or other disposition of all or substantially all the  
7 assets of an issuer, the person making such solicitation shall disclose in the proxy  
8 or consent solicitation material, in a clear and simple tabular form in accordance  
9 with regulations to be promulgated by the Commission, any agreements or  
10 understandings that such person has with the executive officers of such issuer (or  
11 of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any  
12 type of compensation (whether present, deferred, or contingent) that is based on  
13 or otherwise relates to the acquisition, merger, consolidation, sale, or other  
14 disposition of all or substantially all of the assets of the issuer, and the aggregate  
15 total of all such compensation that may (and the conditions upon which it may) be  
16 paid or become payable to or on behalf of such executive officer.

17 “(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization  
18 relating to the proxy or consent solicitation material containing the disclosure  
19 required by subparagraph (A) shall provide for a separate shareholder vote to  
20 approve such agreements or understandings and compensation as disclosed. A  
21 vote by the shareholders shall not be binding on the corporation or the board of  
22 directors of the issuer or the person making the solicitation and shall not be  
23 construed as overruling a decision by such board, nor to create or imply any

1 additional fiduciary duty by such board, nor shall such vote be construed to  
2 restrict or limit the ability of shareholders to make proposals for inclusion in such  
3 proxy materials related to executive compensation.”.

4 (b) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of the enactment of  
5 this Act, the Securities and Exchange Commission shall issue any rules and regulations required  
6 by the amendments made by subsection (a).

7 **SEC. 942. COMPENSATION COMMITTEE INDEPENDENCE.**

8 The Securities Exchange Act of 1934 is amended by inserting after section 10A (15  
9 U.S.C. 78k-1) the following new section:

10 **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.**

11 “(a) COMMISSION RULES.—

12 “(1) IN GENERAL.—Effective not later than 270 days after the date of enactment of  
13 the Investor Protection Act of 2009, the Commission shall, by rule, direct the national  
14 securities exchanges and national securities associations to prohibit the listing of any  
15 security of an issuer that is not in compliance with the requirements of any portion of  
16 subsections (b) through (f).

17 “(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under  
18 paragraph (1) shall provide for appropriate procedures for an issuer to have an  
19 opportunity to cure any defects that would be the basis for a prohibition under paragraph  
20 (1), before the imposition of such prohibition.

21 “(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories  
22 of issuers from the requirements of subsections (b) through (f), where appropriate. In  
23 determining appropriate exemptions, the Commission shall take into account the potential

1 impact on smaller reporting issuers.

2 “(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

3 “(1) IN GENERAL.—Each member of the compensation committee of the board of  
4 directors of the issuer shall be a member of the board of directors of the issuer, and shall  
5 otherwise be independent.

6 “(2) CRITERIA.—In order to be considered to be independent for purposes of this  
7 subsection, a member of a compensation committee of an issuer may not, other than in  
8 his or her capacity as a member of the compensation committee, the board of directors, or  
9 any other board committee—

10 “(A) accept any consulting, advisory, or other compensatory fee from the  
11 issuer, or fee from the issuer; or

12 “(B) be an affiliated person of the issuer or any subsidiary thereof.

13 “(3) EXEMPTION AUTHORITY.—The Commission may exempt from the  
14 requirements of paragraph (2) a particular relationship with respect to compensation  
15 committee members, where appropriate.

16 “(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER  
17 COMPENSATION COMMITTEE ADVISERS.—Any compensation consultant, legal counsel, or other  
18 adviser to the compensation committee of any issuer shall meet standards for independence to be  
19 promulgated by the Commission.

20 “(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION  
21 CONSULTANTS.—

22 “(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as  
23 a committee of the board of directors, shall have the authority, in its sole discretion, to

1 retain and obtain the advice of a compensation consultant meeting the standards for  
2 independence promulgated pursuant to subsection (c), and the compensation committee  
3 shall be directly responsible for the appointment, compensation, and oversight of the  
4 work of such independent compensation consultant. This provision shall not be  
5 construed to require the compensation committee to implement or act consistently with  
6 the advice or recommendations of the compensation consultant, and shall not otherwise  
7 affect the compensation committee’s ability or obligation to exercise its own judgment in  
8 fulfillment of its duties.

9 “(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual  
10 meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring  
11 on or after the date that is 1 year after the date of enactment of the Investor Protection Act  
12 of 2009, each issuer shall disclose in the proxy or consent material, in accordance with  
13 regulations to be promulgated by the Commission—

14 “(A) whether the compensation committee of the issuer retained and  
15 obtained the advice of a compensation consultant meeting the standards for  
16 independence promulgated pursuant to subsection (c); and

17 “(B) if the compensation committee of the issuer has not retained and  
18 obtained the advice of a compensation consultant meeting the standards for  
19 independence promulgated pursuant to subsection (c), an explanation of the basis  
20 for the compensation committee’s determination not to retain such an independent  
21 consultant.

22 “(3) STUDY AND REVIEW REQUIRED.—

23 “(A) IN GENERAL.—The Commission shall conduct a study and review of

1 the use of compensation consultants meeting the standards for independence  
2 promulgated pursuant to subsection (c), and the effects of such use.

3 “(B) REPORT TO CONGRESS.—Not later than 2 years after the date of  
4 enactment of the Investor Protection Act of 2009, the Commission shall submit a  
5 report to the Congress on the results of the study and review required by this  
6 paragraph.

7 “(e) AUTHORITY TO ENGAGE INDEPENDENT LEGAL COUNSEL AND OTHER ADVISERS.—The  
8 compensation committee of each issuer, in its capacity as a committee of the board of directors,  
9 shall have the authority, in its sole discretion, to retain and obtain the advice of independent legal  
10 counsel and other advisers meeting the standards for independence promulgated pursuant to  
11 subsection (c), and the compensation committee shall be directly responsible for the  
12 appointment, compensation, and oversight of the work of such independent legal counsel and  
13 other advisers. This provision shall not be construed to require the compensation committee to  
14 implement or act consistently with the advice or recommendations of such independent legal  
15 counsel and other advisers, and shall not otherwise affect the compensation committee’s ability  
16 or obligation to exercise its own judgment in fulfillment of its duties.

17 “(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the  
18 compensation committee, in its capacity as a committee of the board of directors, for payment of  
19 compensation—

20 “(1) to any compensation consultant to the compensation committee that meets  
21 the standards for independence promulgated pursuant to subsection (c), and

22 “(2) to any independent legal counsel or other adviser to the compensation  
23 committee that meets the standards for independence promulgated pursuant to subsection

1

(c).”.

1 **TITLE IX**

2 **ADDITIONAL IMPROVEMENTS TO FINANCIAL**  
3 **MARKETS REGULATION**

4  
5 **SEC. 901. SHORT TITLE.**

6 This title may be cited as the “Investor Protection Act of 2009”.

7 . . .

8 **Subtitle E—Improvements to the Asset-Backed**  
9 **Securitization Process**

10 **SEC. 951. REGULATION OF CREDIT RISK RETENTION.**

11 The Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) is amended by inserting  
12 after section 15E (15 U.S.C. 78o-7) the following new section—

13 **“SEC. 15F. CREDIT RISK RETENTION.**

14 “(a) IN GENERAL.—Within 180 days of the enactment of this Act, the Federal  
15 banking agencies and the Commission shall jointly prescribe regulations to require any  
16 securitizer of an asset-backed security (as defined in section 229.1101(c) of title 17, Code  
17 of Federal Regulations, or any successor thereto), to retain an economic interest in a  
18 material portion of the credit risk for any asset that the securitizer, through the issuance of  
19 an asset-backed security, transfers, sells or conveys to a third party.

20 “(b) STANDARDS FOR REGULATIONS.—Regulations prescribed under subsection  
21 (a) shall—



1           “(1) prohibit a securitizer directly or indirectly from hedging or otherwise  
2 transferring the credit risk that such securitizer is required to retain with respect to  
3 any asset;

4           “(2) require a securitizer to retain at least 5 percent of the credit risk on  
5 any asset that is transferred, sold, or conveyed through the issuance of an asset-  
6 backed security by such securitizer;

7           “(3) specify the permissible forms of the risk retention that are required  
8 under this section (*e.g.*, first loss position or *pro rata* vertical slice) and the  
9 minimum duration of the required risk retention;

10           “(4) apply regardless of whether the securitizer is an insured depository  
11 institution, as defined in section 3(c) of the Federal Deposit Insurance Act (12  
12 U.S.C. 1813(c));

13           “(5) provide for a total or partial exemption for securitizations of assets  
14 issued or guaranteed by the United States, an agency of the United States, or a  
15 United States Government-sponsored enterprise, as may be appropriate;

16           “(6) provide for a total or partial exemption of other securitizations as may  
17 be appropriate in the public interest or for the protection of investors; and

18           “(7) provide for the allocation of risk retention obligations between a  
19 securitizer and an originator in cases where a securitizer purchases assets from an  
20 originator, as may be appropriate.

21           “(c) EXEMPTIONS, EXCEPTIONS, AND ADJUSTMENTS.—

22           “(1) IN GENERAL.—The Federal banking agencies shall have authority to  
23 jointly adopt or issue exemptions, exceptions, or adjustments to the requirements

1 of this section, including exemptions, exceptions, or adjustments for classes of  
2 institutions or assets relating to the 5 percent risk retention threshold and the  
3 hedging prohibition of subsection (b).

4 “(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment  
5 adopted or issued by the Federal banking agencies shall—

6 “(A) help ensure high quality underwriting standards for  
7 securitizers and originators of assets; and

8 “(B) facilitate appropriate risk management practices by such  
9 securitizers and originators, improve access of consumers to credit on  
10 reasonable terms or otherwise serve the public interest.

11 “(d) ENFORCEMENT.—

12 “(1) The Federal banking agencies shall enforce the regulations prescribed  
13 under subsections (a) and (b) with respect to any securitizer that is an insured  
14 depository institution, as defined in section 3(c) of the Federal Deposit Insurance  
15 Act (12 U.S.C. 1813(c)).

16 “(2) The Commission shall enforce the regulations prescribed by the  
17 Federal banking agencies under subsections (a) and (b) with respect to any  
18 securitizer, except those specified in paragraph (1).

19 “(3) The authority of the Commission under this section shall be in  
20 addition to its existing authority to enforce the Federal securities laws.

21 “(e) DEFINITIONS.—For the purposes of this section—

1                   “(1) The term ‘Federal banking agencies’ means the Board of Governors  
2                   of the Federal Reserve System, the National Bank Supervisor, and the Federal  
3                   Deposit Insurance Corporation.

4                   “(2) The term ‘securitizer’ means an issuer or an underwriter of an asset-  
5                   backed security (as defined in section 229.1101(c) of title 17, Code of Federal  
6                   Regulations, or any successor thereto).

7                   “(3) The term ‘originator’ means a person who sells an asset to a  
8                   securitizer.”.

9     **SEC. 952. PERIODIC AND OTHER REPORTING UNDER THE SECURITIES**  
10    **EXCHANGE ACT OF 1934 FOR ASSET-BACKED SECURITIES.**

11   Section 15 of Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

12           (a) in paragraph (d), by inserting “, other than securities of any class of asset-backed  
13           security (as defined in section 229.1101(c) of title 17, Code of Federal Regulations, or any  
14           successor thereto),” after “securities of each class”;

15           (b) by inserting at the end of subparagraph (d) the following—

16                   “The Commission may by rules and regulations provide for the suspension or  
17                   termination of the duty to file under this subsection for any class of issuer of asset-backed  
18                   security (as defined in section 229.1101(c) of title 17, Code of Federal Regulations, or  
19                   any successor thereto) upon such terms and conditions and for such period or periods as it  
20                   deems necessary or appropriate in the public interest or for the protection of investors.

21                   The Commission may, for the purposes of this subsection, classify issuers and prescribe  
22                   requirements appropriate for each class of issuer of asset-backed security (as defined in  
23                   section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto).”;

24                   and

1 (c) in paragraph (d), by inserting after the fifth sentence the following—  
2 “The Commission shall adopt regulations under this subsection requiring each issuer of an asset-  
3 backed security to disclose, for each tranche or class of security, information regarding the assets  
4 backing that security. In adopting regulations under this subsection, the Commission shall set  
5 standards for the format of the data provided by issuers of an asset-backed security, which shall,  
6 to the extent feasible, facilitate comparison of such data across securities in similar types of asset  
7 classes. The Commission shall require issuers of asset-backed securities at a minimum to  
8 disclose asset-level or loan-level data necessary for investors to independently perform due  
9 diligence. Asset-level or loan-level data shall include data with unique identifiers relating to  
10 loan brokers or originators, the nature and extent of the compensation of the broker or originator  
11 of the assets backing the security, and the amount of risk retention of the originator or the  
12 securitizer of such assets.”.

13 **SEC. 953. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED**  
14 **OFFERINGS.**

15  
16 The Commission shall prescribe regulations on the use of representations and warranties  
17 in the asset-backed securities market that:

18 (1) require credit rating agencies to include in reports accompanying credit ratings  
19 a description of the representations, warranties, and enforcement mechanisms available to  
20 investors and how they differ from representations, warranties, and enforcement  
21 mechanisms in similar issuances; and

22 (2) require disclosure on fulfilled repurchase requests across all trusts aggregated  
23 by originator, so that investors may identify asset originators with clear underwriting  
24 deficiencies.

1 **SEC. 954. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.**

2 (a) Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

3 (1) by striking paragraph (5); and

4 (2) by renumbering paragraph (6) as paragraph (5).

5 (b) Section 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934 (15 U.S.C.  
6 78c(a)(4)(B)(vii)(I)) is amended by striking “4(6)” and inserting “4(5)”.

1                   **TITLE X—CONSUMER FINANCIAL PROTECTION**

2                                   **AGENCY ACT OF 2009**

3   **SEC. 1001. SHORT TITLE.**

4                   This title may be cited as the “Consumer Financial Protection Agency Act of 2009.”

5   **SEC. 1002. DEFINITIONS.**

6                   For the purposes of subtitles A through F of this title, the following definitions shall  
7   apply:

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

10                              (2) **AGENCY.**—The term “Agency” means the Consumer Financial Protection  
11   Agency.

12                              (3) **ALTERNATIVE CONSUMER FINANCIAL PRODUCT OR SERVICE.**—The term  
13   “alternative consumer financial product or service” means a consumer financial product  
14   or service that is of the same type or class as a standard consumer financial product or  
15   service, but that contains different or additional terms, fees, or features.

16                              (4) **APPOINTED BOARD MEMBER.**—The term “appointed Board member” or  
17   “appointed Board members” means a member or members of the Board appointed by the  
18   President under section 1012(a)(1).

19                              (5) **BOARD.**—The term “Board” means the Board of the Agency as provided for  
20   in section 1012.

21                              (6) **BOARD OF GOVERNORS.**—The term “Board of Governors” means the Board of  
22   Governors of the Federal Reserve System.

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

3 (8) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term “consumer financial  
4 product or service” means any financial product or service to be used by a consumer  
5 primarily for personal, family, or household purposes.

6 (9) COVERED PERSON.—The term “covered person” means—

7 (A) any person who engages directly or indirectly in a financial activity, in  
8 connection with the provision of a consumer financial product or service; or

9 (B) any person who, in connection with the provision of a consumer  
10 financial product or service, provides a material service to, or processes a  
11 transaction on behalf of, a person described in paragraph (A).

12 (10) CREDIT.—The term “credit” means the right granted by a person to a  
13 consumer to defer payment of a debt, incur debt and defer its payment, or purchase  
14 property or services and defer payment therefor.

15 (11) CREDIT UNION.— The term “credit union” means a Federal credit union or  
16 State credit union or State-chartered credit union as defined in section 101 of the Federal  
17 Credit Union Act (12 U.S.C. 1752).

18 (12) DEPOSIT.—The term “deposit” has the same meaning as in section 3(*l*) of the  
19 Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)).

20 (13) DEPOSIT-TAKING ACTIVITY.—The term “deposit-taking activity” means—

21 (A) the acceptance of deposits, the provision of other services related to  
22 the acceptance of deposits, or the maintenance of deposit accounts;

23 (B) the acceptance of money, the provision of other services related to the

1 acceptance of money, or the maintenance of members' share accounts by a credit  
2 union; or

3 (C) the receipt of money or its equivalent, as the Agency may determine  
4 by rule or order, received or held by the covered person (or an agent for the  
5 person) for the purpose of facilitating a payment or transferring funds or value of  
6 funds by a consumer to a third party.

7 For the purposes of this title, the Agency may determine that the term “deposit-taking  
8 activity” includes the receipt of money or its equivalent in connection with the sale or  
9 issuance of any payment instrument or stored value product or service.

10 (14) DESIGNATED TRANSFER DATE.—The term “designated transfer date” has the  
11 meaning provided in section 1062.

12 (15) DIRECTOR.—The term “Director” means the Director of the Agency.

13 (16) ENUMERATED CONSUMER LAWS.—The term “enumerated consumer laws”  
14 means—

15 (A) the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 *et*  
16 *seq.*);

17 (B) the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*);

18 (C) the Consumer Leasing Act (15 U.S.C. 1667 *et seq.*);

19 (D) the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*);

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

21 (F) the Fair Credit Billing Act (15 U.S.C. 1666-1666j);

22 (G) the Fair Credit Reporting Act except with respect to sections 615(e),  
23 624, and 628 (15 U.S.C. 1681m(e), 1681s-3, 1681w);



- 1 (15 U.S.C. 1681 *et seq.*);
- 2 (H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*);
- 3 (I) the Federal Deposit Insurance Act, subsections 43(c) through (f) (12
- 4 U.S.C. 1831t(c)-(f));
- 5 (J) the Gramm-Leach-Bliley Act, sections 502 through 509
- 6 (15 U.S.C. 6802-6809);
- 7 (K) the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*);
- 8 (L) the Home Ownership and Equity Protection Act (15 U.S.C. 1639);
- 9 (M) the Real Estate Settlement Procedures Act (12 U.S.C. 2601-2610);
- 10 (N) the S.A.F.E. Mortgage Licensing Act (12 U.S.C. 5101-5116);
- 11 (O) the Truth in Lending Act (15 U.S.C. 1601 *et seq.*); and
- 12 (P) the Truth in Savings Act (12 U.S.C. 4301 *et seq.*).

13 (17) FEDERAL BANKING AGENCY.—The term “Federal banking agency” means  
14 the Board of Governors, the National Bank Supervisor, the Federal Deposit Insurance  
15 Corporation, or the National Credit Union Administration; and the term “Federal banking  
16 agencies” means all of those agencies.

17 (18) FINANCIAL ACTIVITY.—The term “financial activity” means—

- 18 (A) deposit-taking activities;
- 19 (B) extending credit and servicing loans, including—
  - 20 (i) acquiring, brokering, or servicing loans or other extensions of
  - 21 credit;
  - 22 (ii) engaging in any other activity usual in connection with
  - 23 extending credit or servicing loans, including performing appraisals of real

1 estate and personal property and selling or servicing credit insurance or  
2 mortgage insurance;

3 (C) check-guaranty services, including—

4 (i) authorizing a subscribing merchant to accept personal checks  
5 tendered by the merchant's customers in payment for goods and services;  
6 and

7 (ii) purchasing from a subscribing merchant validly authorized  
8 checks that are subsequently dishonored;

9 (D) collecting, analyzing, maintaining, and providing consumer report  
10 information or other account information by covered persons, including  
11 information relating to the credit history of consumers and providing the  
12 information to a credit grantor who is considering a consumer application for  
13 credit or who has extended credit to the borrower;

14 (E) collection of debt related to any consumer financial product or  
15 service;

16 (F) providing real estate settlement services, including providing title  
17 insurance;

18 (G) leasing personal or real property or acting as agent, broker, or adviser  
19 in leasing such property if—

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

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

22 (iii) in the case of leases involving real property, at the inception  
23 of the initial lease, the transaction is intended to result in ownership of the

1 leased property to be transferred to the lessee, subject to standards  
2 prescribed by the Agency;

3 (H) acting as an investment adviser to any person (not subject to  
4 regulation by or required to register with the Commodity Futures Trading  
5 Commission or the Securities and Exchange Commission);

6 (I) acting as financial adviser to any person, including—

7 (i) providing financial and other related advisory services;

8 (ii) providing educational courses, and instructional materials to  
9 consumers on individual financial management matters; or

10 (iii) providing credit counseling, tax-planning or tax-preparation  
11 services to any person;

12 (J) financial data processing, including providing data processing and data  
13 transmission services, facilities (including data processing and data transmission  
14 hardware, software, documentation, or operating personnel), databases, advice,  
15 and access to such services, facilities, or databases by any technological means, if:

16 (i) the data to be processed or furnished are financial, banking, or  
17 economic; and

18 (ii) the hardware provided in connection therewith is offered only  
19 in conjunction with software designed and marketed for the processing  
20 and transmission of financial, banking, or economic data, and where the  
21 general purpose hardware does not constitute more than 30 percent of the  
22 cost of any packaged offering.

23 (K) money transmitting;

1 (L) sale or issuance of stored value;  
2 (M) acting as a money services business;  
3 (N) acting as a custodian of money or any financial instrument; or  
4 (O) any other activity that the Agency defines, by rule, as a financial  
5 activity for the purposes of this title, except that the Agency shall not define  
6 engaging in the business of insurance as a financial activity (other than with  
7 respect to credit insurance, mortgage insurance, or title insurance, as described in  
8 this section).

9 (19) FINANCIAL PRODUCT OR SERVICE.—The term “financial product or service”  
10 means any product or service that, directly or indirectly, results from or is related to  
11 engaging in 1 or more financial activities.

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

15 (21) INSURED DEPOSITORY INSTITUTION.—The term “insured depository  
16 institution” means an insured bank, as defined by section 3(h) of the Federal Deposit  
17 Insurance Act (12 U.S.C. 1813(h)).

18 (22) MONEY SERVICES BUSINESS.—The term “money services business” means a  
19 covered person that—

20 (A) receives currency, monetary value, or payment instruments for the  
21 purpose of exchanging or transmitting the same by any means, including  
22 transmission by wire, facsimile, electronic transfer, courier, the Internet, or  
23 through bill payment services, or other businesses that facilitate third-party

1 transfers within the United States or to or from the United States; or

2 (B) issues payment instruments or stored value.

3 (23) MONEY TRANSMITTING.—The term “money transmitting” means the receipt  
4 by a covered person of currency, monetary value, or payment instruments for the purpose  
5 of transmitting the same to any third-party by any means, including transmission by wire,  
6 facsimile, electronic transfer, courier, the Internet, or through bill payment services.

7 [(24) NATIONAL BANK SUPERVISOR.—The term “National Bank Supervisor”  
8 means the agency named the National Bank Supervisor established by the XXXXX Act  
9 of 2009.]

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

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

16 (27) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—  
17 The term “person regulated by the Commodity Futures Trading Commission” means any  
18 futures commission merchant, commodity trading adviser, commodity pool operator, or  
19 introducing broker that is subject to the jurisdiction of the Commodity Futures Trading  
20 Commission under the Commodity Exchange Act, but only to the extent that the person  
21 acts in such capacity.

22 (28) PERSON REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—The  
23 term “person regulated by the Securities and Exchange Commission” means—

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

3 (B) an investment adviser that is required to be registered under the  
4 Investment Advisers Act of 1940; or

5 (C) an investment company that is required to be registered under the  
6 Investment Company Act of 1940—

7 but only to the extent that the person acts in a registered capacity.

8 (29) PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term  
9 “provision of (or providing) a consumer financial product or service” means the  
10 advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance  
11 or servicing of a consumer financial product or service.

12 (30) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

13 (31) STANDARD CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term  
14 “standard consumer financial product or service” means a consumer financial product or  
15 service containing terms, conditions, and features defined by the Agency.

16 (32) STATE.—The term “State” means any State, territory, or possession of the  
17 United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth  
18 of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin  
19 Islands.

20 (33) STORED VALUE.—The term “stored value” means funds or monetary value  
21 represented in any electronic format, whether or not specially encrypted, and stored or  
22 capable of storage on electronic media in such a way as to be retrievable and transferred  
23 electronically, and includes a prepaid debit card or product, or any other similar product,

1                                   **TITLE VIII—PAYMENT, CLEARING AND**  
2                                   **SETTLEMENT SUPERVISION**

3   **SEC. 801. SHORT TITLE.**

4                   This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of  
5 2009”.

6   **SEC. 802. FINDINGS AND PURPOSES.**

7                   (a) FINDINGS.—The Congress finds that—

8                               (1) The proper functioning of the financial markets is dependent upon safe and  
9 efficient arrangements for the clearing and settlement of payment, securities and other  
10 financial transactions.

11                              (2) Financial market utilities that conduct or support multilateral payment,  
12 clearing, or settlement activities may reduce risks for their participants and the broader  
13 financial system, but such utilities may also concentrate and create new risks and thus  
14 must be well designed and operated in a safe and sound manner.

15                              (3) Payment, clearing and settlement activities conducted by financial institutions  
16 also present important risks to the participating financial institutions and to the financial  
17 system.

18                              (4) Enhancements to the regulation and supervision of systemically important  
19 financial market utilities and the conduct of systemically important payment, clearing,  
20 and settlement activities by financial institutions are necessary to provide consistency, to  
21 promote robust risk management and safety and soundness, to reduce systemic risks, and  
22 to support the stability of the broader financial system.

1 (b) PURPOSES.—The purposes of this title are to mitigate systemic risk in the financial  
2 system and promote financial stability by—

3 (1) authorizing the Board of Governors of the Federal Reserve System to  
4 prescribe uniform standards for the management of risks by systemically important  
5 financial market utilities and for the conduct of systemically important payment, clearing  
6 and settlement activities by financial institutions;

7 (2) providing the Board of Governors of the Federal Reserve System an enhanced  
8 role in the supervision of risk management standards for systemically important financial  
9 market utilities;

10 (3) strengthening the liquidity of systemically important financial market utilities;  
11 and

12 (4) providing the Board of Governors of the Federal Reserve System an enhanced  
13 role in the supervision of risk management standards for systemically important payment,  
14 clearing, and settlement activities by financial institutions.

15 **SEC. 803. DEFINITIONS.**

16 For purposes of this title, the following definitions shall apply:

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

19 (2) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial  
20 regulator” means—

21 (A) the Comptroller of the Currency, with respect to national banks and  
22 any Federal branch or Federal agency of a foreign bank, until the functions of the  
23 Comptroller of the Currency are transferred to the Director of the National Bank



1 Supervisor, after which time the term means the Director of the National Bank  
2 Supervisor with respect to those entities;

3 (B) the Board of Directors of the Corporation, with respect to state-  
4 chartered banks insured by the Corporation (other than member banks of the  
5 Federal Reserve System) and insured State branches of foreign banks;

6 (C) the Director of the Office of Thrift Supervision, with respect to any  
7 savings association and any savings and loan holding company, until the functions  
8 of the Director of the Office of Thrift Supervision are transferred to the Director  
9 of the National Bank Supervisor, after which time the term means the Director of  
10 the National Bank Supervisor with respect to those entities;

11 (D) the Board, with respect to member banks of the Federal Reserve  
12 System (other than national banks), branches and agencies of foreign banks (other  
13 than Federal branches, Federal agencies, and insured State branches of foreign  
14 banks), commercial lending companies owned or controlled by foreign banks,  
15 organizations operating under section 25 or 25A of the Federal Reserve Act (12  
16 U.S.C. § 601 *et seq.* or § 611 *et seq.*), and bank holding companies and their  
17 nonbank subsidiaries (except brokers, dealers, investment companies, and  
18 investment advisers registered with the Securities and Exchange Commission, and  
19 futures commission merchants, commodity trading advisors, and commodity pool  
20 operators registered with the Commodity Futures Trading Commission);

21 (E) the National Credit Union Administration Board, with respect to any  
22 insured credit union under the Federal Credit Union Act (12 U.S.C. § 1751 *et*  
23 *seq.*);

1 (F) the Securities and Exchange Commission, with respect to—

2 (i) any broker or dealer registered with the Securities and  
3 Exchange Commission under the Securities Exchange Act of 1934 (15  
4 U.S.C. § 78a *et seq.*);

5 (ii) any investment company registered with the Securities and  
6 Exchange Commission under the Investment Company Act of 1940 (15  
7 U.S.C. § 80a-1 *et seq.*); and

8 (iii) any investment adviser registered with the Securities and  
9 Exchange Commission under the Investment Advisers Act of 1940 (15  
10 U.S.C. § 80b-1 *et seq.*);

11 (G) the Commodity Futures Trading Commission, with respect to futures  
12 commission merchants, commodity trading advisors, and commodity pool  
13 operators registered with the Commodity Futures Trading Commission under the  
14 Commodity Exchange Act (7 U.S.C. § 1 *et seq.*);

15 (H) the applicable State insurance authority, with respect to any financial  
16 institution engaged in providing insurance under State insurance law; and

17 (I) the Board, with respect to any other financial institution engaged in a  
18 designated activity.

19 (3) BOARD.—The term “Board” means the Board of Governors of the Federal  
20 Reserve System.

21 (4) CORPORATION.—The term “Corporation” means the Federal Deposit  
22 Insurance Corporation.

23 (5) DESIGNATED ACTIVITY.—The term “designated activity” means a payment,

1 clearing, or settlement activity that the Board has designated as systemically important  
2 under section 804.

3 (6) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial  
4 market utility” means a financial market utility that the Board has designated as  
5 systemically important under section 804.

6 (7) FINANCIAL INSTITUTION.—The term “financial institution” means—

7 (A) a depository institution as defined in section 3 of the Federal Deposit  
8 Insurance Act (12 U.S.C. § 1813);

9 (B) a branch or agency of a foreign bank (as defined in section 1(b) of the  
10 International Banking Act of 1978) (12 U.S.C. § 3101);

11 (C) an organization operating under section 25 or 25A of the Federal  
12 Reserve Act (12 U.S.C. § 601 *et seq.* and § 611 *et seq.*);

13 (D) a credit union (as defined in section 101 of the Federal Credit Union  
14 Act) (12 U.S.C. § 1752);

15 (E) a broker or dealer (as defined in section 3 of the Securities Exchange  
16 Act of 1934) (15 U.S.C. § 78c);

17 (F) an investment company (as defined in section 3 of the Investment  
18 Company Act of 1940) (15 U.S.C. § 80a-3);

19 (G) an insurance company (as defined in section 2 of the Investment  
20 Company Act of 1940) (15 U.S.C. § 80a-2);

21 (H) an investment adviser (as defined in section 202 of the Investment  
22 Advisers Act of 1940) (15 U.S.C. § 80b-2);

23 (I) a futures commission merchant, commodity trading advisor, or

1 commodity pool operator (as defined in section 1a of the Commodity Exchange  
2 Act) (7 U.S.C. § 1a); and

3 (J) any company engaged in activities that are financial in nature or  
4 incidental to a financial activity, as described in section 4 of the Bank Holding  
5 Company Act of 1956 (12 U.S.C. § 1843(k)).

6 (8) FINANCIAL MARKET UTILITY.—The term “financial market utility” means any  
7 person that manages or operates a multilateral system for the purpose of transferring,  
8 clearing, or settling payments, securities, or other financial transactions among financial  
9 institutions or between financial institutions and the person.

10 (9) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—The term “payment,  
11 clearing, or settlement activity” means an activity carried out by one or more financial  
12 institutions to facilitate the completion of financial transactions. Financial transactions  
13 include funds transfers, securities contracts, contracts of sale of a commodity for future  
14 delivery, forward contracts, repurchase agreements, swap agreements, foreign exchange  
15 contracts, financial derivatives contracts, and any similar transaction that the Board  
16 determines, by rule or order, to be a financial transaction for purposes of this title. When  
17 conducted with respect to financial transactions, payment, clearing, and settlement  
18 activities may include the calculation and communication of unsettled obligations  
19 between counterparties; the netting of transactions; provision and maintenance of trade,  
20 contract, or instrument information; the management of risks and activities associated  
21 with continuing obligations; transmittal and storage of payment instructions; the  
22 movement of funds; the final settlement of obligations; and other similar functions.

23 (10) PERSON.—The term “person” means any corporation, company, association,

1 firm, partnership, society, joint stock company, or other legal entity other than a natural  
2 person.

3 (11) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

4 (12) STATE.—The term “State” means any State, commonwealth, territory, or  
5 possession of the United States, the District of Columbia, the Commonwealth of Puerto  
6 Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or  
7 the United States Virgin Islands.

8 (13) SUPERVISORY AGENCY.—The term “Supervisory Agency” means the Federal  
9 agency that has primary jurisdiction over a designated financial market utility under  
10 Federal banking, securities, or commodity futures laws, including—

11 (A) the Securities and Exchange Commission, with respect to a designated  
12 financial market utility that is a clearing agency registered with the Securities and  
13 Exchange Commission;

14 (B) the Commodity Futures Trading Commission, with respect to a  
15 designated financial market utility that is a derivatives clearing organization  
16 registered with the Commodity Futures Trading Commission;

17 (C) the Board of Directors of the Corporation, with respect to a designated  
18 financial market utility that is an insured State nonmember bank or an insured  
19 branch of a foreign bank;

20 (D) the Comptroller of the Currency, with respect to a designated financial  
21 market utility that is a national bank or a Federal branch (other than an insured  
22 branch) or a Federal agency of a foreign bank, until the functions of the  
23 Comptroller of the Currency are transferred to the Director of the National Bank

1 Supervisor, after which time the term means the Director of the National Bank  
2 Supervisor with respect to those entities; and

3 (E) the Director of the Office of Thrift Supervision, with respect to a  
4 designated financial market utility that is a savings association or a savings and  
5 loan holding company, until the functions of the Director of the Office of Thrift  
6 Supervision are transferred to the Director of the National Bank Supervisor, after  
7 which time the term means the Director of the National Bank Supervisor with  
8 respect to those entities.

9 (14) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms  
10 “systemically important” and “systemic importance” mean a situation where the failure  
11 of or a disruption to the functioning of a financial market utility or the conduct of a  
12 payment, clearing, or settlement activity could create, or increase, the risk of significant  
13 liquidity or credit problems spreading among financial institutions or markets and thereby  
14 threaten the stability of the financial system.

15 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

16 (a) DESIGNATION.—

17 (1) BOARD.—The Board, on a nondelegable basis, shall designate a financial  
18 market utility or a payment, clearing, or settlement activity that it determines is, or is  
19 likely to become, systemically important.

20 (2) CONSIDERATIONS.—In determining whether a financial market utility or  
21 payment, clearing, or settlement activity is, or is likely to become, systemically  
22 important, the Board shall take into consideration the following:

23 (A) the aggregate monetary value of transactions processed by the

1 financial market utility or carried out through the payment, clearing, or settlement  
2 activity;

3 (B) the relationship, interdependencies, or other interactions of the  
4 financial market utility or payment, clearing, or settlement activity with other  
5 financial market utilities or payment, clearing, or settlement activities;

6 (C) the effect that the failure of or a disruption to the financial market  
7 utility or payment, clearing, or settlement activity would have on critical markets,  
8 financial institutions, or the broader financial system;

9 (D) the recommendation, if any, of the Financial Services Oversight  
10 Council; and

11 (E) any other factors that the Board deems appropriate.

12 (b) RESCISSION OF DESIGNATION.—The Board, on a nondelegable basis, shall rescind a  
13 designation of systemic importance for a designated financial market utility or designated  
14 activity if the Board determines that the utility or activity no longer meets the standards for  
15 systemic importance. Upon rescission, the financial market utility or financial institutions  
16 conducting the activity will no longer be subject to the provisions of this title or rules or orders  
17 prescribed by the Board under this title.

18 (c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

19 (1) FINANCIAL MARKET UTILITY.—Before making any determination under  
20 subsection (a) or (b) with regard to a financial market utility, the Board shall consult with  
21 the Financial Services Oversight Council and the relevant Supervisory Agency.

22 (2) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—Before making any  
23 determination under subsection (a) or (b) with regard to a payment, clearing, or

1 settlement activity, the Board shall consult with the Financial Services Oversight  
2 Council.

3 (3) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

4 (A) IN GENERAL.—Before making any determination under subsection (a)  
5 or (b) with regard to a financial market utility or a payment, clearing, or  
6 settlement activity, the Board shall provide the financial market utility or, in the  
7 case of a payment, clearing, or settlement activity, financial institutions with  
8 advance notice of the Board’s proposed determination.

9 (B) NOTICE IN FEDERAL REGISTER.—The Board shall provide such advance  
10 notice to financial institutions by publishing a notice in the Federal Register.

11 (C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice  
12 of the Board’s proposed determination, the financial market utility or, in the case  
13 of a payment, clearing, or settlement activity, a financial institution engaged in the  
14 designated activity may request in writing an opportunity for a written or oral  
15 hearing before the Board to demonstrate that the proposed designation or  
16 rescission of designation is not supported by substantial evidence.

17 (D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Board  
18 shall fix a time, not more than 30 days after receipt of the request, unless extended  
19 at the request of the financial market utility or financial institution, and place at  
20 which the financial market utility or financial institution may appear, personally  
21 or through counsel, to submit written materials, or, at the sole discretion of the  
22 Board, oral testimony or oral argument.

23 (4) EMERGENCY EXCEPTION.—



1 (A) WAIVER OR MODIFICATION BY BOARD VOTE.—The Board may waive  
2 or modify the requirements of paragraph (3) if the Board determines, by an  
3 affirmative vote of not less than 5 members or, if there are fewer than five  
4 members then serving and available, by the unanimous vote of all available  
5 members then serving, that the waiver or modification is necessary to prevent or  
6 mitigate an immediate threat to the financial system posed by the financial market  
7 utility or the payment, clearing, or settlement activity.

8 (B) NOTICE OF WAIVER OR MODIFICATION.—The Board shall provide  
9 notice of the waiver or modification to the financial market utility concerned or,  
10 in the case of a payment, clearing, or settlement activity, to financial institutions,  
11 as soon as practicable, which shall be no later than 24 hours after the waiver or  
12 modification in the case of a financial market utility and three business days in the  
13 case of financial institutions. The Board shall provide the notice to financial  
14 institutions by posting a notice on the Board website and by publishing a notice in  
15 the Federal Register.

16 (d) NOTIFICATION OF FINAL DETERMINATION.—

17 (1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(3), the  
18 Board shall notify the financial market utility or financial institutions of its final  
19 determination in writing, which shall include findings of fact upon which the Board’s  
20 determination is based.

21 (2) WHEN NO HEARING REQUESTED.—If the Board does not receive a timely  
22 request for a hearing under subsection (c)(3), the Board shall notify the financial market  
23 utility or financial institutions of its final determination in writing not later than 30 days

1 after the expiration of the date by which a financial market utility or a financial institution  
2 could have requested a hearing. All notices to financial institutions under this subsection  
3 shall be published in the Federal Register.

4 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET**  
5 **UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT**  
6 **ACTIVITIES.**

7 (a) **AUTHORITY TO PRESCRIBE STANDARDS.**—The Board shall, by rule or order and in  
8 consultation with the Financial Services Oversight Council, the Commodity Futures Trading  
9 Commission, and the Securities and Exchange Commission, prescribe risk management  
10 standards governing the operations of designated financial market utilities and the conduct of  
11 designated activities by financial institutions, taking into consideration relevant international  
12 standards.

13 (b) **OBJECTIVES AND PRINCIPLES.**—The objectives and principles for the risk management  
14 standards prescribed under subsection (a) shall be to—

- 15 (1) promote robust risk management;
- 16 (2) promote safety and soundness;
- 17 (3) reduce systemic risks; and
- 18 (4) support the stability of the broader financial system.

19 (c) **SCOPE.**—The standards prescribed under subsection (a) may address areas such as risk  
20 management policies and procedures, margin, collateral, capital, and default policies and  
21 procedures, the ability to complete timely clearing and settlement of financial transactions, and  
22 other areas that the Board determines are necessary to achieve the objectives and principles in  
23 subsection (b).

1 (d) COMPLIANCE REQUIRED.—Designated financial market utilities and financial  
2 institutions engaged in designated activities shall conduct their operations in compliance with the  
3 applicable risk management standards prescribed by the Board.

4 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.**

5 (a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board may authorize a Federal  
6 Reserve Bank to establish and maintain an account for a designated financial market utility and  
7 provide services to the designated financial market utility that the Federal Reserve Bank is  
8 authorized under the Federal Reserve Act to provide to a depository institution, subject to any  
9 applicable rules, orders, standards, or guidelines prescribed by the Board.

10 (b) ADVANCES.—The Board may authorize a Federal Reserve Bank to provide to a  
11 designated financial market utility the same discount and borrowing privileges as the Federal  
12 Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to  
13 any applicable rules, orders, standards, or guidelines prescribed by the Board.

14 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay  
15 earnings on balances maintained by or on behalf of a designated financial market utility in the  
16 same manner and to the same extent as the Federal Reserve Bank may pay earnings to a  
17 depository institution under the Federal Reserve Act, subject to any applicable rules, orders,  
18 standards, or guidelines prescribed by the Board.

19 (d) RESERVE REQUIREMENTS.—The Board may exempt a designated financial market  
20 utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act  
21 (12 U.S.C. § 461) applicable to a designated financial market utility.

22 (e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

23 (1) REFERENCE.—For purposes of paragraphs (2) and (3), all references to the

1 phrase “Supervisory Agency or the Board” mean “Supervisory Agency or, in the absence  
2 of a Supervisory Agency, the Board”.

3 (2) ADVANCE NOTICE.—

4 (A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated  
5 financial market utility shall provide 60-days’ advance notice to its Supervisory  
6 Agency or the Board of any proposed change to its rules, procedures, or  
7 operations that could, as defined by the Board, materially affect the nature or level  
8 of risks presented by the designated financial market utility.

9 (B) CONTENTS OF NOTICE.—The notice of a proposed change shall  
10 describe the nature of the change and expected effects on risks to the designated  
11 financial market utility, its participants, or the market, and how the designated  
12 financial market utility plans to manage any identified risks.

13 (C) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board  
14 may require a designated financial market utility to provide any information  
15 necessary to assess the effect the proposed change would have on the nature or  
16 level of risks associated with the designated financial market utility's payment,  
17 clearing, or settlement activities and the sufficiency of any proposed risk  
18 management techniques.

19 (D) NOTICE OF OBJECTION.—The Supervisory Agency or the Board will  
20 notify the designated financial market utility of any objection regarding the  
21 proposed change within 60 days from the later of—

22 (i) the date that the notice of the proposed change is received; or

23 (ii) the date any further information requested for consideration of

1 the notice is received.

2 (E) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market  
3 utility shall not implement a change to which the Board or the Supervisory  
4 Agency has an objection.

5 (F) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS. —A designated  
6 financial market utility may implement a change if it has not received an  
7 objection to the proposed change within 60 days of the later of—

8 (i) the date that the Supervisory Agency or the Board receives the  
9 notice of proposed change; or

10 (ii) the date the Supervisory Agency or the Board receives any  
11 further information it requests for consideration of the notice.

12 (G) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The  
13 Supervisory Agency or the Board may, during the 60-day review period, extend  
14 the review period for an additional 60 days for proposed changes that raise novel  
15 or complex issues, subject to the Supervisory Agency or the Board providing the  
16 designated financial market utility with prompt written notice of the extension.  
17 Any extension under this subparagraph will extend the time periods under  
18 subparagraphs (D) and (F).

19 (H) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A  
20 designated financial market utility may implement a change in less than 60 days  
21 from the date of receipt of the notice of proposed change by the Supervisory  
22 Agency or the Board, or the date the Supervisory Agency or the Board receives  
23 any further information it requested, if the Supervisory Agency or the Board

1 notifies the designated financial market utility in writing that it does not object to  
2 the proposed change and authorizes the designated financial market utility to  
3 implement the change on an earlier date, subject to any conditions imposed by the  
4 Supervisory Agency or the Board.

5 (3) EMERGENCY CHANGES.—

6 (A) IN GENERAL.—A designated financial market utility may implement a  
7 change that would otherwise require advance notice under this subsection if it  
8 determines that—

9 (i) an emergency exists; and

10 (ii) immediate implementation of the change is necessary for the  
11 designated financial market utility to continue to provide its services in a  
12 safe and sound manner.

13 (B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial  
14 market utility must provide notice of any such emergency change to its  
15 Supervisory Agency or the Board, as soon as practicable, which shall be no later  
16 than 24 hours after implementation of the change.

17 (C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information  
18 required for changes requiring advance notice, the notice of an emergency change  
19 must describe—

20 (i) the nature of the emergency; and

21 (ii) the reason the change was necessary for the designated  
22 financial market utility to continue to provide its services in a safe and  
23 sound manner.

1 (D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The  
2 Supervisory Agency or the Board may require modification or rescission of the  
3 change if it finds that the change is not consistent with the purposes of this Act or  
4 any rules, orders, or standards prescribed by the Board hereunder.

5 (4) COPYING THE BOARD.—In the case of a designated financial market utility that  
6 has a Supervisory Agency, the Supervisory Agency shall provide the Board concurrently  
7 with a complete copy of any notice, request, or other information it issues, submits, or  
8 receives under this subsection.

9 (5) CONSULTATION WITH BOARD.—Before taking any action on or completing its  
10 review of a change proposed by a designated financial market utility, the Supervisory  
11 Agency shall consult with the Board.

12 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**  
13 **DESIGNATED FINANCIAL MARKET UTILITIES.**

14 (a) EXAMINATION.—Notwithstanding any other provision of law and subject to  
15 subsection (d), the Supervisory Agency shall conduct examinations of a designated financial  
16 market utility at least annually in order to inform itself of the following:

17 (1) the nature of the operations of, and the risks borne by, the designated financial  
18 market utility;

19 (2) the financial and operational risks presented by the designated financial  
20 market utility to financial institutions, critical markets, or the broader financial system;

21 (3) the resources and capabilities of the designated financial market utility to  
22 monitor and control such risks;

23 (4) the safety and soundness of the designated financial market utility; and

1 (5) the designated financial market utility's compliance with this title and the  
2 rules and orders prescribed by the Board under this title.

3 (b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated  
4 financial market utility is performed for the designated financial market utility by another entity,  
5 whether an affiliate or non-affiliate and whether on or off the premises of the designated  
6 financial market utility, the Supervisory Agency may examine whether the provision of that  
7 service is in compliance with applicable law, rules, orders, and standards to the same extent as if  
8 the designated financial market utility were performing the service on its own premises.

9 (c) ENFORCEMENT.—Except as provided in subsections (e) and (f), a designated financial  
10 market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the  
11 Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the same extent as  
12 if the designated financial market utility were an insured depository institution for which the  
13 Supervisory Agency is the appropriate Federal banking agency as defined in section 3 of the  
14 Federal Deposit Insurance Act (12 U.S.C. § 1813).

15 (d) BOARD INVOLVEMENT IN EXAMINATIONS.—

16 (1) BOARD CONSULTATION ON EXAMINATION PLANNING.—The Supervisory  
17 Agency shall consult with the Board regarding the scope and methodology of any  
18 examination conducted under subsections (a) and (b).

19 (2) BOARD PARTICIPATION IN EXAMINATION.—The Board may, in its discretion,  
20 participate in any examination led by a Supervisory Agency and conducted under  
21 subsections (a) and (b).

22 (e) BOARD ENFORCEMENT RECOMMENDATIONS.—

23 (1) RECOMMENDATION.—The Board may at any time recommend to the



1 Supervisory Agency that it take enforcement action against a designated financial market  
2 utility. The recommendation shall provide a detailed analysis supporting the Board's  
3 recommendation.

4 (2) CONSIDERATION.—The Supervisory Agency shall consider the Board's  
5 recommendation and submit a response to the Board within 30 days.

6 (3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the  
7 Board's recommendation, the Board may dispute the matter by referring it to the  
8 Financial Services Oversight Council, which shall attempt to resolve the dispute.

9 (4) ENFORCEMENT ACTION.—If the Financial Services Oversight Council is  
10 unable to resolve the dispute under paragraph (3) within 30 days from the date of referral,  
11 the Board may exercise the enforcement authority referenced in subsection (c) as if it  
12 were the Supervisory Agency and take enforcement action against the designated  
13 financial market utility.

14 (f) DESIGNATED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In  
15 the case of a designated financial market utility that is not under the primary jurisdiction of a  
16 Supervisory Agency, the Board shall have examination and enforcement authority under  
17 subsections (a) through (c) with respect to the designated financial market utility and any service  
18 providers in the same manner and to the same extent as if the Board were the Supervisory  
19 Agency.

20 (g) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD.—

21 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board may, after consulting with  
22 the Supervisory Agency, take enforcement action against a designated financial market  
23 utility if the Board has reasonable cause to believe that—

1 (A) either:

2 (i) an action engaged in, or contemplated by, a designated financial market  
3 utility (including any change proposed by the designated financial market utility  
4 to its rules, procedures, or operations that would otherwise be subject to section  
5 806(e)); or

6 “(ii) the condition of a designated financial market utility,  
7 poses an imminent risk of substantial harm to financial institutions, critical markets,  
8 or the broader financial system; and

9 (B) the imminent risk of substantial harm precludes the Board’s use of the  
10 procedures in subsection (e).

11 (2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under  
12 paragraph (1) against a designated financial market utility as if the designated financial  
13 market utility were an insured depository institution for which the Board is the  
14 appropriate Federal banking agency as defined in section 3 of the Federal Deposit  
15 Insurance Act (12 U.S.C. 1813).

16 (3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24  
17 hours of taking an enforcement action under this subsection, the Board shall provide  
18 written notice to the designated financial market utility’s Supervisory Agency containing  
19 a detailed analysis of the Board’s action, with supporting documentation included.

20 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**  
21 **FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED**  
22 **ACTIVITIES.**

23 (a) EXAMINATION.—The appropriate financial regulator is authorized to examine a

1 financial institution engaged in designated activities in order to inform the appropriate financial  
2 regulator of the following:

3 (1) the nature and scope of the designated activities engaged in by the financial  
4 institution;

5 (2) the financial and operational risks the designated activities engaged in by the  
6 financial institution may pose to the safety and soundness of the financial institution;

7 (3) the financial and operational risks the designated activities engaged in by the  
8 financial institution may pose to other financial institutions, critical markets, or the  
9 broader financial system;

10 (4) the resources available to and the capabilities of the financial institution to  
11 monitor and control the risks described in paragraphs (2) and (3); and

12 (5) the financial institution's compliance with this title and the rules and orders  
13 prescribed by the Board under this title.

14 (b) ENFORCEMENT.—The appropriate financial regulator shall take such actions that it  
15 deems necessary to ensure that a financial institution engaged in designated activities complies  
16 with this title and the rules and orders prescribed by the Board under this title.

17 (c) TECHNICAL ASSISTANCE.—The Board shall consult with and provide such technical  
18 assistance as may be required by the appropriate financial regulators to ensure that the Board's  
19 rules and orders prescribed under this title are interpreted and applied in as consistent and  
20 uniform a manner as practicable.

21 (d) DELEGATION.—

22 (1) EXAMINATION.—

23 (A) REQUEST TO BOARD.—The appropriate financial regulator may request

1 the Board to conduct or participate in an examination of a financial institution  
2 engaged in designated activities in order to assess the financial institution's  
3 compliance with this title or the Board's rules or orders prescribed under this title.

4 (B) EXAMINATION BY BOARD.—Upon receipt of an appropriate written  
5 request, the Board will conduct the examination under such terms and conditions  
6 to which the Board and the appropriate financial regulator mutually agree.

7 (2) ENFORCEMENT.—

8 (A) REQUEST TO BOARD.—The appropriate financial regulator may request  
9 the Board to enforce this title or the rules or orders prescribed by the Board under  
10 this title against a financial institution engaged in designated activities.

11 (B) ENFORCEMENT BY BOARD.—Upon receipt of an appropriate written  
12 request, the Board shall determine whether an enforcement action is warranted,  
13 and, if so, it shall enforce compliance with this title or the rules or orders  
14 prescribed by the Board under this title utilizing the authorities referenced in  
15 section 807(c), in which case the financial institution will be treated as if it is an  
16 insured depository institution for which the Board is the appropriate Federal  
17 banking agency as defined in section 3 of the Federal Deposit Insurance Act (12  
18 U.S.C. § 1813).

19 (e) BACK-UP AUTHORITY OF THE BOARD.—

20 (1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of  
21 law, the Board may—

22 (A) conduct an examination of any financial institution engaged in a  
23 designated activity; and

1 (B) enforce the provisions of this title or any rules or orders prescribed by  
2 the Board under this title against any financial institution engaged in a designated  
3 activity.

4 (2) LIMITATIONS.—

5 (A) EXAMINATION.—The Board may exercise the authority described in  
6 paragraph (1)(A) only if the Board has—

7 (i) reasonable cause to believe that a financial institution is not in  
8 compliance with this title or the rules or orders prescribed by the Board  
9 under this title with respect to a designated activity;

10 (ii) notified, in writing, the appropriate financial regulator of its  
11 belief under clause (i) with supporting documentation included;

12 (iii) requested the appropriate financial regulator to conduct a  
13 prompt examination of the financial institution; and

14 (iv) either—

15 (I) not been afforded a reasonable opportunity to participate  
16 in an examination of the financial institution by the appropriate  
17 financial regulator within 30 days after the date of the Board's  
18 notification under clause (ii); or

19 (II) reasonable cause to believe that the financial  
20 institution's noncompliance with this title or the rules or orders  
21 prescribed by the Board under this title poses a substantial risk to  
22 other financial institutions, critical markets, or the broader  
23 financial system, subject to the Board affording the appropriate

1 financial regulator a reasonable opportunity to participate in the  
2 examination.

3 (B) ENFORCEMENT.—The Board may exercise the authority described in  
4 paragraph (1)(B) only if the Board has—

5 (i) reasonable cause to believe that a financial institution is not in  
6 compliance with this title or the rules or orders prescribed by the Board  
7 under this title with respect to a designated activity;

8 (ii) notified, in writing, the appropriate financial regulator of its  
9 belief under clause (i) with supporting documentation included and with a  
10 recommendation that the appropriate financial regulator take one or more  
11 specific enforcement actions against the financial institution; and

12 (iii) either—

13 (I) not been notified, in writing, by the appropriate financial  
14 regulator of the commencement of an enforcement action  
15 recommended by the Board against the financial institution within  
16 30 days from the date of the notification under clause (ii); or

17 (II) reasonable cause to believe that the financial  
18 institution’s noncompliance with this title or the rules or orders  
19 prescribed by the Board under this title poses a substantial risk to  
20 other financial institutions, critical markets, or the broader  
21 financial system, subject to the Board notifying the appropriate  
22 financial regulator of the Board’s enforcement action.

23 (3) ENFORCEMENT PROVISIONS.—A financial institution engaged in designated

1 activities shall be subject to the provisions of subsections (b) through (n) of section 8 of  
2 the Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the  
3 same extent as if the financial institution were an insured depository institution for which  
4 the Board is the appropriate Federal banking agency as defined in section 3 of the Federal  
5 Deposit Insurance Act (12 U.S.C. § 1813).

6 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.**

7 (a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

8 (1) FINANCIAL MARKET UTILITIES.—The Board is authorized to require any  
9 financial market utility to submit such information as the Board may require for the sole  
10 purpose of assessing whether that financial market utility is systemically important, but  
11 only if the Board has reasonable cause to believe that the financial market utility meets  
12 the standards for systemic importance set out in section 804 of this title.

13 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT  
14 ACTIVITIES.—The Board is authorized to require any financial institution to submit such  
15 information as the Board may require for the sole purpose of assessing whether any  
16 payment, clearing, or settlement activity engaged in or supported by a financial institution  
17 is systemically important, but only if the Board has reasonable cause to believe that the  
18 activity meets the standards for systemic importance set out in section 804 of this title.

19 (b) REPORTING AFTER DESIGNATION.—

20 (1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board may require a  
21 designated financial market utility to submit reports or data to the Board in such  
22 frequency and form as deemed necessary by the Board in order to assess the safety and  
23 soundness of the utility and the systemic risk that the utility's operations pose to the

1 financial system.

2 (2) FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED ACTIVITIES—The Board  
3 may require 1 or more financial institutions engaged in a designated activity to submit, in  
4 such frequency and form as deemed necessary by the Board, reports and data to the  
5 Board solely with respect to the conduct of the designated activity and solely to assess  
6 whether—

7 (A) the rules, orders, or standards prescribed by the Board with respect to  
8 the designated activity appropriately address the risks to the financial system  
9 presented by such activity; and

10 (B) the financial institutions are in compliance with this title and the rules  
11 and orders prescribed by the Board under this title with respect to the designated  
12 activity.

13 (c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

14 (1) ADVANCE COORDINATION.—Before directly requesting any material  
15 information from, or imposing reporting or recordkeeping requirements on, any financial  
16 market utility or any financial institution engaged in a payment, clearing, or settlement  
17 activity, the Board shall coordinate with the Supervisory Agency for a financial market  
18 utility or the appropriate financial regulator for a financial institution to determine if the  
19 information is available from or may be obtained by the agency in the form, format, or  
20 detail required by the Board.

21 (2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the  
22 Supervisory Agency, the appropriate financial regulator, and the Board are authorized to  
23 disclose to each other a copy of any examination report or similar report regarding any



1 financial market utility or any financial institution engaged in payment, clearing, or  
2 settlement activities.

3 (d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the  
4 information, report, records, or data requested by the Board under subsection (c)(1) are not  
5 provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15  
6 days after the date on which the material is requested, the Board may request the information or  
7 impose recordkeeping or reporting requirements directly on such persons as provided in  
8 subsections (a) and (b) with notice to the agency.

9 (e) SHARING OF INFORMATION.—

10 (1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the  
11 Board, the appropriate financial regulator, and any Supervisory Agency are authorized to  
12 promptly notify each other of material concerns about a designated financial market  
13 utility or any financial institution engaged in designated activities, and share appropriate  
14 reports, information or data relating to such concerns.

15 (2) OTHER.—Notwithstanding any other provision of law, the Board may, under  
16 such terms and conditions it deems appropriate, provide confidential supervisory  
17 information and other information obtained under this title to other persons it deems  
18 appropriate, including the Secretary, State financial institution supervisory agencies,  
19 foreign financial supervisors, foreign central banks, and foreign finance ministries,  
20 subject to reasonable assurances of confidentiality.

21 (f) PRIVILEGE MAINTAINED.—The Board, the appropriate financial regulator, and any  
22 Supervisory Agency providing reports or data under this section shall not be deemed to have  
23 waived any privilege applicable to those reports or data, or any portion thereof, by providing the

1 reports or data to the other party or by permitting the reports or data, or any copies thereof, to be  
2 used by the other party.

3 (g) DISCLOSURE EXEMPTION.—Information obtained by the Board under this section and  
4 any materials prepared by the Board regarding its assessment of the systemic importance of  
5 financial market utilities or any payment, clearing, or settlement activities engaged in by  
6 financial institutions, and in connection with its supervision of designated financial market  
7 utilities and designated activities, shall be confidential supervisory information exempt from  
8 disclosure under section 552 of title 5, United States Code. For purposes of section 552 of title  
9 5, this subsection shall be considered a statute described in subsection (b)(3) of section 552.

10 **SEC. 810. RULEMAKING.**

11 The Board is authorized to prescribe such rules and issue such orders as may be  
12 necessary to administer and carry out the purposes of this title and prevent evasions thereof.

13 **SEC. 811. OTHER AUTHORITY.**

14 Unless otherwise provided by its terms, this title does not divest any appropriate financial  
15 regulator, any Supervisory Agency, or other Federal or State agency, of any authority derived  
16 from any other applicable law.

17 **SEC. 812. EFFECTIVE DATE.**

18 This title is effective as of the date of enactment.

1 regardless of whether the amount of the funds or monetary value may be increased or  
2 reloaded.

## 3 **Subtitle A—The Consumer Financial Protection**

### 4 **Agency**

#### 5 **SEC. 1011. ESTABLISHMENT OF THE AGENCY.**

6 (a) AGENCY ESTABLISHED.—There is established the Consumer Financial Protection  
7 Agency as an independent agency in the executive branch to regulate the provision of consumer  
8 financial products or services under this title, the enumerated consumer laws, and the authorities  
9 transferred under subtitles F and H .

10 (b) PRINCIPAL OFFICE.—The principal office of the Agency shall be located in the city of  
11 Washington, District of Columbia, at 1 or more sites.

#### 12 **SEC. 1012. BOARD.**

13 (a) COMPOSITION OF THE BOARD.—The Agency shall have a Board that is composed of 5  
14 members as follows:

15 (1) 4 members of the Board who shall be appointed by the President, by and with  
16 the advice and consent of the Senate—

17 (A) from among individuals who are citizens of the United States; and

18 (B) who have a strong competencies and experiences related to consumer  
19 financial products or services; and

20 (2) the Director of the National Bank Supervisor.

21 (b) DIRECTOR OF THE AGENCY.—From among the appointed Board members, the  
22 President shall designate 1 member of the Board to serve as the Director. The Director shall be

1 the chief executive of the Agency.

2 (c) TERMS OF APPOINTED BOARD MEMBERS.—

3 (1) IN GENERAL.—An appointed Board member, including the Director of the  
4 Agency, shall serve for a term of 5 years.

5 (2) REMOVAL FOR CAUSE.—The President may remove any appointed Board  
6 member for inefficiency, neglect of duty, or malfeasance in office.

7 (3) VACANCIES.—Any member of the Board appointed to fill a vacancy occurring  
8 before the expiration of the term to which that member’s predecessor was appointed  
9 (including the Director of the Agency) shall be appointed only for the remainder of the  
10 term.

11 (4) CONTINUATION OF SERVICE.—Each appointed Board member may continue to  
12 serve after the expiration of the term of office to which that member was appointed until  
13 a successor has been appointed by the President and confirmed by the Senate.

14 (5) INITIAL APPOINTMENTS STAGGERED.—The appointed Board members  
15 (including the Director of the Agency) shall serve staggered terms, which initially shall  
16 be established by the President for terms of 2, 3, 4, and 5 years, respectively.

17 (d) COMPENSATION.—

18 (1) DIRECTOR.—The Director shall receive compensation at the rate prescribed  
19 for Level I of the Executive Schedule under section 5313 of title 5, United States Code.

20 (2) OTHER APPOINTED BOARD MEMBERS.—The 3 other appointed Board members  
21 shall each receive compensation at the rate prescribed for Level II of the Executive  
22 Schedule under section 5314 of title 5, United States Code.

23 **SEC. 1013. EXECUTIVE AND ADMINISTRATIVE POWERS.**

1 (a) POWERS.—The Board may exercise all executive and administrative functions of the  
2 Agency, including to—

3 (1) establish rules for conducting the Agency’s general business in a manner not  
4 inconsistent with this title;

5 (2) bind the Agency and enter into contracts;

6 (3) direct the establishment of and maintain divisions or other offices within the  
7 Agency in order to fulfill the responsibilities of this title, the enumerated consumer laws,  
8 and the authorities transferred under subtitles F and H, and to satisfy the requirements of  
9 other applicable law;

10 (4) coordinate and oversee the operation of all administrative, enforcement, and  
11 research activities of the Agency;

12 (5) adopt and use a seal;

13 (6) determine the character of and the necessity for the Agency’s obligations and  
14 expenditures, and the manner in which they shall be incurred, allowed, and paid;

15 (7) delegate authority, at the Agency’s lawful discretion, to the Director or to a  
16 member of the Board or to any officer or employee of the Agency to take action under  
17 any provision of this title or under other applicable law;

18 (8) to implement this title and the Agency’s authorities under the enumerated  
19 consumer laws and under subtitles F and H through rules, orders, guidance,  
20 interpretations, statements of policy, examinations, and enforcement actions; and

21 (9) perform such other functions as may be authorized or required by law.

22 (b) TRANACTING BUSINESS.—

23 (1) QUORUM.—Three members of the Board shall constitute a quorum for the

1 transaction of business, except that if only 3 members of the Board are serving because of  
2 vacancies, 2 members of the Board shall constitute a quorum for the transaction of  
3 business.

4 (2) VOTING.—Other than acts performed under delegated authority, the Board  
5 shall act through a majority vote of its members assembled.

6 **SEC. 1014. ADMINISTRATION.**

7 (a) OFFICERS.—The Agency shall appoint the following officials:

8 (1) a secretary, who shall be charged with maintaining the records of the Agency  
9 and performing such other activities as the Board directs;

10 (2) a general counsel, who shall be charged with overseeing the legal affairs of the  
11 Agency and performing such other activities as the Board directs; and

12 (3) an inspector general, who shall have the authority and functions of an  
13 inspector general of a designated Federal entity under the Inspector General Act of 1978  
14 (5 U.S.C. App. 3).

15 (b) PERSONNEL.—

16 (1) APPOINTMENT.—

17 (A) IN GENERAL.—The Agency may fix the number of, and appoint and  
18 direct, all employees of the Agency.

19 (B) EXPEDITED HIRING.—During the 2-year period beginning on the date  
20 of enactment of this Act, the Agency may appoint, without regard to the  
21 provisions of sections 3309 through 3318, of title 5, United States Code,  
22 candidates directly to positions for which public notice has been given.

23 (2) COMPENSATION.—

1 (A) PAY.—The Agency shall fix, adjust, and administer the pay for all  
2 employees of the Agency without regard to the provisions of chapter 51 or  
3 subchapter III of chapter 53 of title 5, United States Code.

4 (B) BENEFITS.—The Agency may provide additional benefits to Agency  
5 employees if the same type of benefits are then being provided by the Board of  
6 Governors or, if not then being provided, could be provided by the Board of  
7 Governors under applicable provisions of law, rule, or regulation.

8 (C) MINIMUM STANDARD.—The Agency shall at all times provide  
9 compensation and benefits to classes of employees that, at a minimum, are  
10 equivalent to the compensation and benefits provided by the Board of Governors  
11 for the corresponding class of employees in any fiscal year.

12 (c) SPECIFIC FUNCTIONAL UNITS.—

13 (1) RESEARCH.—The Agency shall establish a unit whose functions shall include  
14 researching, analyzing, and reporting on—

15 (A) current and prospective developments in markets for consumer  
16 financial products or services, including market areas of alternative consumer  
17 financial products or services with high growth rates;

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

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

22 (D) consumer behavior with respect to consumer financial products or  
23 services.

1 (2) COMMUNITY AFFAIRS.—The Agency shall establish a unit whose functions  
2 shall include providing information, guidance, and technical assistance regarding the  
3 provision of consumer financial products or services to traditionally underserved  
4 consumers and communities.

5 (3) CONSUMER COMPLAINTS.—The Agency shall establish a unit whose functions  
6 shall include—

7 (A) establishing a central database for collecting and tracking information  
8 on consumer complaints about consumer financial products or services and  
9 resolution of complaints; and

10 (B) sharing data and coordinating consumer complaints with Federal  
11 banking agencies, other Federal agencies, and State regulators.

12 **SEC. 1015. CONSUMER ADVISORY BOARD.**

13 (a) ESTABLISHMENT REQUIRED.—The Agency shall establish a Consumer Advisory  
14 Board to advise and consult with the Agency in the exercise of its functions under this title, the  
15 enumerated consumer laws, and to provide information on emerging practices in the consumer  
16 financial products or services industry.

17 (b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the  
18 Agency shall seek to assemble experts in financial services, community development, and  
19 consumer financial products or services and seek representation of the interests of covered  
20 persons and consumers.

21 (c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call  
22 of the Agency, but, at a minimum, shall meet at least twice in each year.



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

3 (1) be entitled to receive compensation at a rate fixed by the Agency while  
4 attending meetings of the Consumer Advisory Board, including travel time; and

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

7 **SEC. 1016. COORDINATION.**

8 (a) COORDINATION WITH OTHER FEDERAL AGENCIES AND STATE REGULATORS.—The  
9 Agency shall coordinate with the Securities and Exchange Commission, the Commodity Futures  
10 Trading Commission, and other Federal agencies and State regulators, as appropriate, to promote  
11 consistent regulatory treatment of consumer and investment products and services.

12 (b) COORDINATION OF CONSUMER EDUCATION INITIATIVES.—

13 (1) IN GENERAL.—The Agency shall coordinate with each agency that is a  
14 member of the Financial Literacy and Education Commission established by the  
15 Financial Literacy and Education Improvement Act (20 U.S.C. 9701 *et seq.*) to assist  
16 each agency in enhancing its existing financial literacy and education initiatives to better  
17 achieve the goals in paragraph (2) and to ensure the consistency of such initiatives across  
18 Federal agencies.

19 (2) GOALS OF COORDINATION.—In coordinating with the agencies described in  
20 paragraph (1), the Agency shall seek to improve efforts to educate consumers about  
21 financial matters generally, the management of their own financial affairs, and their  
22 judgments about the appropriateness of certain financial products.

23 **SEC. 1017. REPORTS TO CONGRESS.**

1 (a) REPORTS REQUIRED.—The Agency shall prepare and submit to the President and the  
2 appropriate committees of Congress a report at the beginning of each regular session of  
3 Congress, beginning with the session following the designated transfer date.

4 (b) CONTENTS.—The reports required by subsection (a) shall include—

5 (1) a list of the significant rules and orders adopted by the Agency, as well as  
6 other significant initiatives conducted by the Agency, during the preceding year and the  
7 Agency’s plan for rules, orders, or other initiatives to be undertaken during the upcoming  
8 period;

9 (2) an analysis of complaints about consumer financial products or services that  
10 the Agency has received and collected in its central database on complaints during the  
11 preceding year;

12 (3) a list, with a brief statement of the issues, of the public supervisory and  
13 enforcement actions to which the Agency is a party (including adjudication proceedings  
14 conducted under subtitle E) during the preceding year; and

15 (4) an appraisal of significant actions, including actions under Federal or State  
16 law, by State attorneys general or State regulators relating to this title, the authorities  
17 transferred under subtitles F and H, and the enumerated consumer laws.

18 **SEC. 1018. FUNDING; FEES AND ASSESSMENTS; PENALTIES AND FINES.**

19 (a) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out the  
20 authorities granted in this title and the enumerated consumer laws and transferred under subtitles  
21 F and H, there are appropriated to the Agency such sums as are necessary. Notwithstanding any  
22 other provision of law, such amounts shall be subject to apportionment under section 1517 of  
23 title 31, United States Code, and restrictions that generally apply to the use of appropriated funds

1 in title 31, United States Code, and other laws.

2 (b) FEES AND ASSESSMENTS ON COVERED PERSONS.—

3 (1) RECOVERY OF EXPENDED FUNDS.—The Agency shall recover the amount of  
4 funds expended by the Agency under this title, through the collection of annual fees or  
5 assessments on covered persons.

6 (2) RULEMAKING.—The Agency shall prescribe regulations to govern the  
7 collection of fees and assessments. Such regulations shall specify and define the basis of  
8 fees or assessments (such as the outstanding volume of consumer credit accounts, total  
9 assets under management, or consumer financial transactions), the amount and frequency  
10 of fees or assessments, and such other factors that the Agency deems appropriate.

11 (3) FEES AND ASSESSMENTS AS MISCELLANEOUS RECEIPTS.—All fees and  
12 assessments collected under this title, the authorities transferred under subtitles F and H,  
13 or any enumerated consumer law shall be deposited into the Treasury as miscellaneous  
14 receipts.

15 (c) PENALTIES AND FINES.—

16 (1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the  
17 Treasury of the United States a fund to be known as the “Consumer Financial Protection  
18 Agency Civil Penalty Fund” (referred to in this section as the “Fund”). If the Agency  
19 obtains a civil penalty against any person in any judicial or administrative action under  
20 this title, the authorities transferred under subtitles F and H, or any enumerated consumer  
21 law, the Agency shall deposit into the Fund the amount of the penalty collected.

22 (2) PAYMENT TO VICTIMS.—Amounts in the Fund shall be available to the  
23 Agency, without fiscal year limitation, for payments to the victims of activities for which

1 civil penalties have been imposed under this title, the authorities transferred under  
2 subtitles F and H, or any enumerated consumer law.

3 **SEC. 1019. EFFECTIVE DATE.**

4 This subtitle shall become effective on the date of enactment of this Act.

5 **Subtitle B—General Powers of the Agency**

6 **SEC. 1021. MANDATE AND OBJECTIVES.**

7 (a) MANDATE.—The Agency shall seek to promote transparency, simplicity, fairness,  
8 accountability, and access in the market for consumer financial products or services.

9 (b) OBJECTIVES.—The Agency is authorized to exercise its authorities granted in this  
10 title, in the enumerated consumer laws, and transferred under subtitles F and H for the purposes  
11 of ensuring that—

12 (1) consumers have, understand, and can use the information they need to make  
13 responsible decisions about consumer financial products or services;

14 (2) consumers are protected from abuse, unfairness, deception, and  
15 discrimination;

16 (3) markets for consumer financial products or services operate fairly and  
17 efficiently with ample room for sustainable growth and innovation; and

18 (4) traditionally underserved consumers and communities have access to financial  
19 services.

20 **SEC. 1022. AUTHORITIES.**

21 (a) IN GENERAL.—The Agency is authorized to exercise its authorities granted in this  
22 title, in the enumerated consumer laws, and transferred under subtitles F and H, to administer,

1 enforce, and otherwise implement the provisions of this title, the authorities transferred in  
2 subtitles F and H, and the enumerated consumer laws.

3 (b) RULEMAKING, ORDERS, AND GUIDANCE.—

4 (1) IN GENERAL.—The Agency may prescribe rules and issue orders and guidance  
5 as may be necessary or appropriate to enable it to administer and carry out the purposes  
6 and objectives of this title, the authorities transferred under subtitles F and H, and the  
7 enumerated consumer laws, and to prevent evasions thereof.

8 (2) STANDARDS FOR RULEMAKING.—In prescribing a rule under this title or  
9 pursuant to the authorities transferred under subtitles F and H or the enumerated  
10 consumer laws, the Agency shall—

11 (A) consider the potential benefits and costs to consumers and covered  
12 persons, including the potential reduction of consumers’ access to consumer  
13 financial products or services, resulting from such rule; and

14 (B) consult with the Federal banking agencies, or other Federal agencies,  
15 as appropriate, regarding the consistency of a proposed rule with prudential,  
16 market, or systemic objectives administered by such agencies.

17 (3) EXEMPTIONS.—

18 (A) IN GENERAL. —The Agency, by rule or order, may conditionally or  
19 unconditionally exempt any covered person or any consumer financial product or  
20 service or any class of covered persons or consumer financial products or  
21 services, from any provision of this title, any enumerated consumer law, or from  
22 any rule thereunder, as the Agency deems necessary or appropriate to carry out  
23 the purposes and objectives of this title taking into consideration the factors in

1           subparagraph (B).

2                   (B) FACTORS.—In issuing an exemption by rule or order as permitted in  
3           subparagraph (A), the Agency shall as appropriate take into consideration the  
4           following—

5                           (i) total assets of the covered person;

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

8                           (iii) the extent to which the covered person engages in one or more  
9           financial activities; and

10                          (iv) existing laws or regulations which are applicable to the  
11           consumer financial product or service and the extent to which such laws or  
12           regulations provide consumers with adequate protections.

13           (c) EXAMINATIONS AND REPORTS.—

14                   (1) IN GENERAL.—The Agency may on a periodic basis examine, or require  
15           reports from, a covered person for purposes of ensuring compliance with the  
16           requirements of this title, the enumerated consumer laws, and any rules prescribed by the  
17           Agency thereunder or under the authorities transferred under subtitles F and H, and  
18           enforcing compliance with such requirements.

19                   (2) CONTENT OF REPORTS.—The reports authorized in paragraph (1) may include  
20           such information as necessary to keep the Agency informed as to—

21                           (A) the compliance systems or procedures of the covered person or any  
22           affiliate thereof, with applicable provisions of this title or any other law that the  
23           Agency has jurisdiction to enforce; and

1 (B) matters related to the provision of consumer financial products or  
2 services including the servicing or maintenance of accounts or extensions of  
3 credit.

4 (3) USE OF EXISTING REPORTS.—In general, the Agency shall, to the fullest extent  
5 possible, use—

6 (A) reports that a covered person, or any affiliate thereof, has provided or  
7 been required to provide to a Federal or State agency; and

8 (B) information that has been reported publicly.

9 (4) REPORTS FROM NONDEPOSITORY COVERED PERSONS.—The Agency may  
10 require reports regarding financial condition from covered persons which are not subject  
11 to the jurisdiction of a Federal banking agency or a comparable State regulator for the  
12 purpose of assessing the ability of such person to perform its obligations to consumers.

13 (5) ACCESS BY THE AGENCY TO REPORTS OF OTHER REGULATORS.—

14 (A) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing  
15 reasonable assurances of confidentiality, the Agency shall have access to any  
16 report of examination or financial condition made by a Federal banking agency or  
17 other Federal agency having supervision of a covered person, and to all revisions  
18 made to any such report.

19 (B) PROVISION OF OTHER REPORTS TO AGENCY.—In addition to the reports  
20 described in paragraph (a), a Federal banking agency may, in its discretion,  
21 furnish to the Agency any other report or other confidential supervisory  
22 information concerning any insured depository institution, any credit union, or  
23 other entity examined by such agency under authority of any Federal law.

1 (6) ACCESS BY OTHER REGULATORS TO REPORTS OF THE AGENCY.—Upon  
2 providing reasonable assurances of confidentiality, a Federal banking agency, a State  
3 regulator, or any other Federal agency having supervision of a covered person shall have  
4 access to any report of examination made by the Agency with respect to the covered  
5 person, and to all revisions made to any such report.

6 (7) PRESERVATION OF AUTHORITY.—Nothing in paragraph (3) shall be construed  
7 to prevent the Agency from conducting an examination authorized by this title or under  
8 the authorities transferred under subtitles F and H or pursuant to any enumerated  
9 consumer law.

10 (d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any  
11 other provision of Federal law other than subsection (f), to the extent that a Federal law  
12 authorizes the Agency and another Federal agency to issue regulations or guidance, conduct  
13 examinations, or require reports under that law for purposes of assuring compliance with this  
14 title, any enumerated consumer law, the laws for which authorities were transferred under  
15 subtitles F and H, and any regulations thereunder, the Agency shall have the exclusive authority  
16 to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions  
17 with regard to any person subject to that law.

18 (e) PRIMARY ENFORCEMENT AUTHORITY.—

19 (1) THE AGENCY TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent  
20 that a Federal law authorizes the Agency and another Federal agency to enforce that law,  
21 the Agency shall have primary authority to enforce that Federal law with respect to any  
22 person in accordance with this subsection.

23 (2) REFERRAL.—Any Federal agency authorized to enforce a Federal law



1 described in paragraph (1) may recommend in writing to the Agency that the Agency  
2 initiate an enforcement proceeding as the Agency is authorized by that Federal law or by  
3 this title. The recommendation shall be accompanied by a written explanation of the  
4 concerns giving rise to the recommendation.

5 (3) BACKSTOP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the  
6 Agency does not, before the end of the 120-day period beginning on the date on which  
7 the Agency receives a recommendation under paragraph (2), initiate an enforcement  
8 proceeding, the other agency may initiate an enforcement proceeding as permitted by that  
9 Federal law.

10 (f) EXCEPTIONS.—

11 (1) DEPARTMENT OF JUSTICE.—Nothing in this title shall affect the authorities of  
12 the Department of Justice.

13 (2) PERSONS REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—

14 (A) IN GENERAL.—Nothing in this title shall be construed as altering,  
15 amending, or affecting the authority of the Securities and Exchange Commission  
16 to adopt rules, initiate enforcement proceedings, or take any other action with  
17 respect to a person regulated by the Securities and Exchange Commission. The  
18 Agency shall have no authority to exercise any power to enforce this title with  
19 respect to a person regulated by the Securities and Exchange Commission.

20 (B) CONSULTATION AND COORDINATION.—Notwithstanding subparagraph  
21 (A), the Securities and Exchange Commission shall consult and coordinate with  
22 the Agency with respect to any rule (including any advance notice of proposed  
23 rulemaking) regarding an investment product or service that is the same type of

1 product as, or that competes directly with, a consumer financial product or service  
2 that is subject to the jurisdiction of the Agency under this title or under any other  
3 law.

4 (3) PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

5 (A) IN GENERAL.—Nothing in this title shall be construed as altering,  
6 amending, or affecting the authority of the Commodity Futures Trading  
7 Commission to adopt rules, initiate enforcement proceedings, or take any other  
8 action with respect to a person regulated by the Commodity Futures Trading  
9 Commission. The Agency shall have no authority to exercise any power to  
10 enforce this title with respect to a person regulated by the Commodity Futures  
11 Trading Commission.

12 (B) CONSULTATION AND COORDINATION.—Notwithstanding  
13 subparagraph (A), the Commodity Futures Trading Commission shall consult and  
14 coordinate with the Agency with respect to any rule (including any advance notice  
15 of proposed rulemaking) regarding a product or service that is the same type of  
16 product as, or that competes directly with, a consumer financial product or service  
17 that is subject to the jurisdiction of the Agency under this title or under any other  
18 law.

19 (g) NO AUTHORITY TO IMPOSE USURY LIMIT.—Nothing in this title shall be construed as  
20 conferring authority on the Agency to establish a usury limit applicable to an extension of credit  
21 offered or made by a covered person to a consumer, unless explicitly authorized by law.

22 **SEC. 1023. COLLECTION OF INFORMATION; CONFIDENTIALITY RULES.**

23 (a) COLLECTION OF INFORMATION.—In conducting research on the provision of

1 consumer financial products or services, the Agency shall have the power to gather information  
2 from time to time regarding the organization, business conduct, and practices of covered persons.

3 In order to gather such information, the Agency shall have the power—

4 (1) to gather and compile information; and

5 (2) to require persons to file with the Agency, in such form and within such  
6 reasonable period of time as the Agency may prescribe, by rule or order, annual or  
7 special reports, or answers in writing to specific questions, furnishing information the  
8 Agency may require; and

9 (3) to make public such information obtained by it under this section as is in the  
10 public interest in reports or otherwise in the manner best suited for public information  
11 and use.

12 (b) CONFIDENTIALITY RULES.— The Agency shall prescribe rules regarding the  
13 confidential treatment of information obtained from persons in connection with the exercise of  
14 its authorities under this title and the enumerated consumer laws and the authorities transferred  
15 under subtitles F and H.

16 **SEC. 1024. MONITORING; ASSESSMENTS OF SIGNIFICANT RULES; REPORTS.**

17 (a) MONITORING.—

18 (1) IN GENERAL.—The Agency shall monitor for risks to consumers in the  
19 provision of consumer financial products or services, including developments in markets  
20 for such products or services.

21 (2) MEANS OF MONITORING.—Such monitoring may be conducted by  
22 examinations of covered persons, analysis of reports obtained from covered persons,  
23 assessment of consumer complaints, surveys and interviews of covered persons and

1 consumers, and review of available databases.

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

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

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

8 (C) the state of the law that applies to the provision of a consumer  
9 financial product or service, including the extent to which the law is likely to  
10 adequately protect consumers;

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

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

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

18 (4) REPORTS.—The Agency shall publish at least 1 report of significant findings  
19 of its monitoring required by paragraph (1) in each calendar year, beginning in the  
20 calendar year that is 1-year after the designated transfer date.

21 (b) ASSESSMENT OF SIGNIFICANT RULES.—

22 (1) IN GENERAL.—The Agency shall conduct an assessment of each significant  
23 rule or order adopted by the Agency under this title, under the authorities transferred

1 under subtitles F and H or pursuant to any enumerated consumer law that addresses,  
2 among other relevant factors, the effectiveness of the rule in meeting the purposes and  
3 objectives of this Act and the specific goals stated by the Agency. The assessment shall  
4 reflect available evidence and any data that the Agency reasonably may collect.

5 (2) REPORTS.—The Agency shall publish a report of its assessment not later than  
6 3 years after the effective date of the rule or order, unless the Agency determines that 3  
7 years is not sufficient time to study or review the impact of the rule, but in no event shall  
8 the Agency publish a report thereof more than 5 years after the effective date of the rule  
9 or order.

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

13 (c) INFORMATION GATHERING.—In conducting any monitoring or assessment required by  
14 this section, the Agency may gather information through a variety of methods, including by  
15 conducting surveys or interviews of consumers.

16 **SEC. 1025. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE**  
17 **ARBITRATION.**

18 The Agency, by rule, may prohibit or impose conditions or limitations on the use of  
19 agreements between a covered person and a consumer that require the consumer to arbitrate any  
20 future dispute between the parties arising under this title or any enumerated consumer law if the  
21 Agency finds that such prohibition, imposition of conditions, or limitations are in the public  
22 interest and for the protection of consumers.

23 **SEC. 1026. EFFECTIVE DATE.**

1 This subtitle shall become effective on the designated transfer date.

## 2 **Subtitle C—Specific Authorities**

### 3 **SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR** 4 **PRACTICES.**

5 (a) IN GENERAL.—The Agency may take any action authorized under subtitle E to  
6 prevent a person from committing or engaging in an unfair, deceptive, or abusive act or practice  
7 under Federal law in connection with any transaction with a consumer for a consumer financial  
8 product or service.

9 (b) RULEMAKING REQUIRED.—The Agency may prescribe rules identifying as unlawful  
10 unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer  
11 for a consumer financial product or service. Rules under this section may include requirements  
12 for the purpose of preventing such acts or practices.

13 (c) UNFAIRNESS.—The Agency shall have no authority under this section to declare an  
14 act or practice in connection with a transaction with a consumer for a consumer financial product  
15 or service to be unlawful on the grounds that such act or practice is unfair unless the Agency has  
16 a reasonable basis to conclude that the act or practice causes or is likely to cause substantial  
17 injury to consumers which is not reasonably avoidable by consumers and such substantial injury  
18 is not outweighed by countervailing benefits to consumers or to competition. In determining  
19 whether an act or practice is unfair, the Agency may consider established public policies as  
20 evidence to be considered with all other evidence.

21 (d) CONSULTATION.—In prescribing a rule under this section, the Agency shall consult  
22 with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the

1 consistency of the proposed rule with prudential, market, or systemic objectives administered by  
2 such agencies.

3 **SEC. 1032. DISCLOSURES AND COMMUNICATIONS.**

4 (a) IN GENERAL.—The Agency may prescribe rules to ensure the appropriate and  
5 effective disclosure or communication to consumers of the costs, benefits, and risks associated  
6 with any consumer financial product or service.

7 (b) REASONABLE DISCLOSURES AND COMMUNICATIONS.—Subject to rules prescribed by  
8 the Agency, a covered person shall, with respect to disclosures or communications regarding any  
9 consumer financial product or service, make or provide to a consumer disclosures and  
10 communications that—

11 (1) balance communication of the benefits of the product or service with  
12 communication of significant risks and costs;

13 (2) prominently disclose the significant risks and costs, in reasonable proportion  
14 to the disclosure of the benefits;

15 (3) communicate significant risks and costs in a clear, concise, and timely manner  
16 designed to promote a consumer’s awareness and understanding of the risks and costs, as  
17 well as to use the information to make financial decisions; and

18 (4) comply with standards prescribed by the Agency.

19 (c) BASIS FOR RULEMAKING.—In prescribing rules under this section, the Agency shall  
20 consider available evidence about consumer awareness, understanding of, and responses to  
21 disclosures or communications about the risks, costs, and benefits of consumer financial products  
22 or services.

23 (d) COMBINED MORTGAGE LOAN DISCLOSURE.—Within 1 year after the designated

1 transfer date, the Agency shall propose for public comment rules and model disclosures that  
2 combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement  
3 Procedures Act into a single, integrated disclosure for mortgage loan transactions covered by  
4 those laws, unless the Agency determines that any proposal issued by the Board of Governors  
5 and the Department of Housing and Urban Development carries out the same purpose.

6 **SEC. 1033. SALES PRACTICES.**

7 The Agency may prescribe rules and issue orders and guidance regarding the manner,  
8 settings, and circumstances for the provision of any consumer financial products or services to  
9 ensure that the risks, costs, and benefits of the products or services, both initially and over the  
10 term of the products or services, are fully and accurately represented to consumers.

11 **SEC. 1034. PILOT DISCLOSURES.**

12 (a) PILOT DISCLOSURES.—The Agency shall establish standards and procedures for  
13 approval of pilot disclosures to be provided or made available by a covered person to consumers  
14 in connection with the provision of a consumer financial product or service.

15 (b) STANDARDS.—The procedures shall provide that a pilot disclosure must be limited in  
16 time and scope and reasonably designed to contribute materially to the understanding of  
17 consumer awareness and understanding of, and responses to, disclosures or communications  
18 about the risks, costs, and benefits of consumer financial products or services.

19 (c) TRANSPARENCY.—The procedures shall provide for public disclosure of pilots, but the  
20 Agency may limit disclosure to the extent necessary to encourage covered persons to conduct  
21 effective pilots.

22 **SEC. 1035. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR,**  
23 **DECEPTIVE, OR ABUSIVE PRACTICES.**



1 (a) AUTHORITY TO PRESCRIBE STANDARDS.—The States are encouraged to prescribe  
2 standards applicable to covered persons who are not insured depository institutions or credit  
3 unions to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the  
4 provision of consumer financial products or services, including standards for—

5 (1) background checks for principals, officers, directors, or key personnel of the  
6 covered person;

7 (2) registration, licensing, or certification;

8 (3) bond or other appropriate financial requirements to provide reasonable  
9 assurance of the ability of the covered person to perform its obligations to consumers;

10 (4) creating and maintaining records of transactions or accounts; or

11 (5) procedures and operations of the covered person relating to the provision of,  
12 or maintenance of accounts for, consumer financial products or services.

13 (b) AGENCY AUTHORITY TO PRESCRIBE STANDARDS.—The Agency may prescribe rules  
14 establishing minimum standards under this section for any class of covered persons other than  
15 covered persons which are subject to the jurisdiction of a Federal banking agency or a  
16 comparable State regulator. The Agency may enforce under subtitle E compliance with  
17 standards adopted by the Agency or a State pursuant to this section for covered persons operating  
18 in that State.

19 (c) CONSULTATION.—In prescribing minimum standards under this section, the Agency  
20 shall consult with the State authorities, the Federal banking agencies, or other Federal agencies,  
21 as appropriate, concerning the consistency of the proposed rule with prudential, market, or  
22 systemic objectives administered by such State authorities or such agencies.

23 **SEC. 1036. STANDARD CONSUMER FINANCIAL PRODUCTS OR SERVICES.**

1 (a) CHARACTERISTICS OF STANDARD CONSUMER FINANCIAL PRODUCTS OR SERVICES.—

2 Subject to rules adopted by the Agency under this section, a standard consumer financial product  
3 or service is one that—

4 (1) is or can be readily offered by covered persons that offer or seek to offer  
5 alternative consumer financial products or services;

6 (2) is transparent to consumers in its terms and features;

7 (3) poses lower risks to consumers;

8 (4) facilitates comparisons with and assessment of the benefits and costs of  
9 alternative consumer financial products or services; and

10 (5) contains the features or terms defined by the Agency for the product or  
11 service.

12 (b) OFFERING STANDARD CONSUMER FINANCIAL PRODUCTS OR SERVICES.—

13 (1) IN GENERAL.—The Agency may adopt rules or issue guidance regarding the  
14 offer of a standard consumer financial product or service at or before the time an  
15 alternative consumer financial product or service is offered to a consumer, including:

16 (A) warnings to consumers about the heightened risks of alternative  
17 consumer financial products or services; or

18 (B) providing the consumer a meaningful opportunity to decline to obtain  
19 the standard consumer financial product or service.

20 (2) RULEMAKING REGARDING THE OFFERING OF STANDARD CONSUMER FINANCIAL  
21 PRODUCTS OR SERVICES.—The Agency may not require a covered person to offer a  
22 standard consumer financial product or service at or before the time an alternative  
23 consumer financial product or service is offered to a consumer unless the Agency adopts

1 rules, after notice and comment, regarding the features or terms of the product or service.

2 (3) GENERAL APPLICABILITY.—Rules adopted by the Agency under this section  
3 shall apply only to any covered person who —

4 (A) voluntarily offers or provides a consumer financial product or service  
5 that is of the same type, or in the same class, as a standard consumer financial  
6 product or service; or

7 (B) maintains an account or has a relationship with a consumer involving a  
8 product or service that is substantively similar to the standard product or service.

9 **SEC. 1037. DUTIES.**

10 (a) IN GENERAL.—

11 (1) The Agency shall prescribe rules imposing duties on a covered person, or an  
12 employee of a covered person, or an agent or independent contractor for a covered  
13 person, who deals or communicates directly with consumers in the provision of a  
14 consumer financial product or service, as the Agency deems appropriate or necessary to  
15 ensure fair dealing with consumers.

16 (2) CONSIDERATIONS FOR DUTIES.—In prescribing such rules, the Agency shall  
17 consider whether—

18 (A) the covered person, employee, agent, or independent contractor  
19 represents implicitly or explicitly that it is acting in the interest of the consumer  
20 with respect to any aspect of the transaction;

21 (B) the covered person, employee, agent, or independent contractor  
22 provides the consumer with advice with respect to any aspect of the transaction;

1 (C) the consumer’s reliance on any advice from the covered person,  
2 employee, agent, or independent contractor would be reasonable and justifiable  
3 under the circumstances;

4 (D) the benefits to consumers of imposing a particular duty would  
5 outweigh the costs; and

6 (E) any other factors as the Agency considers appropriate.

7 (3) DUTIES RELATING TO COMPENSATION PRACTICES .— The Agency may  
8 prescribe rules establishing duties regarding compensation practices applicable to a  
9 covered person, employee, agent, or independent contractor who deals or communicates  
10 directly with a consumer in the provision of a consumer financial product or service for  
11 the purpose of promoting fair dealing with consumers. The Agency shall not prescribe a  
12 limit on the total dollar amount of compensation paid to any person.

13 (b) ADMINISTRATIVE PROCEEDINGS.—Any rule prescribed by the Agency under this  
14 section shall be enforceable only by the Agency through an adjudication proceeding under  
15 subtitle E or by a State regulator through an appropriate administrative proceeding as permitted  
16 under State law. No action may be commenced in any court to enforce any requirement of a rule  
17 prescribed under this section, and no court may exercise supplemental jurisdiction over a claim  
18 asserted under a rule prescribed under this section based on allegations or evidence of conduct  
19 that otherwise may be subject to such rule. The Agency, the Attorney General, or any State  
20 attorney general or State regulator shall not be precluded from enforcing any other Federal or  
21 State law against a person with respect to conduct that may be subject to a rule prescribed by the  
22 Agency under this section.

23 (c) EXCLUSIONS.—This section shall not authorize the Agency to prescribe rules

1 applicable to—

2 (1) an attorney licensed to practice law and in compliance with the applicable  
3 rules and standards of professional conduct, but only to the extent that the consumer  
4 financial product or service provided is within the attorney-client relationship with the  
5 consumer; or

6 (2) any trustee, custodian, or other person that holds a fiduciary duty in  
7 connection with a trust, including a fiduciary duty to a grantor or beneficiary of a trust,  
8 that is subject to and in compliance with the applicable law relating to such trust.

9 **SEC. 1038. CONSUMER RIGHTS TO ACCESS INFORMATION.**

10 (a) IN GENERAL.—Subject to rules prescribed by the Agency, a covered person shall  
11 make available to a consumer information in the control or possession of the covered person  
12 concerning the consumer financial product or service that the consumer obtained from such  
13 covered person including information relating to any transaction, series of transactions, or to the  
14 account including costs, charges and usage data. The information shall be made available in an  
15 electronic form usable by consumers.

16 (b) EXCEPTIONS.—A covered person shall not be required by this section to make  
17 available to the consumer—

18 (1) any confidential commercial information, including an algorithm used to  
19 derive credit scores or other risk scores or predictors;

20 (2) any information collected by the covered person for the purpose of preventing  
21 fraud or money laundering, or detecting, or making any report regarding other unlawful  
22 or potentially unlawful conduct;

23 (3) any information required to be kept confidential by any other law; or

1 (4) any information that the covered person cannot retrieve in the ordinary course  
2 of its business with respect to that information.

3 (c) NO DUTY TO MAINTAIN RECORDS.—Nothing in this section shall be construed to  
4 impose any duty on a covered person to maintain or keep any information about a consumer.

5 (d) STANDARDIZED FORMATS FOR DATA.—The Agency, by rule, shall prescribe standards  
6 applicable to covered persons to promote the development and use of standardized formats for  
7 information, including through the use of machine readable files, to be made available to  
8 consumers under this section.

9 (e) CONSULTATION AND COORDINATION.—The Agency shall, when prescribing any rule  
10 under this section, consult and coordinate with the Federal banking agencies and the Federal  
11 Trade Commission to ensure that the rules—

12 (1) impose substantively similar requirements on covered persons;

13 (2) take into account conditions under which covered persons do business both in  
14 the United States and in other countries; and

15 (3) do not require or promote the use of any particular technology in order to  
16 develop systems for compliance.

17 **SEC. 1039. PROHIBITED ACTS.**

18 It shall be unlawful for any person to—

19 (1) advertise, market, offer, sell, enforce, or attempt to enforce, any term,  
20 agreement, change in terms, fee or charge in connection with a consumer financial  
21 product or service that is not in conformity with this title or applicable rule or order  
22 issued by the Agency;

23 (2) fail or refuse to permit access to or copying of records, or fail or refuse to

1                                   **TITLE VIII—PAYMENT, CLEARING AND**  
2                                   **SETTLEMENT SUPERVISION**

3   **SEC. 801. SHORT TITLE.**

4                   This title may be cited as the “Payment, Clearing, and Settlement Supervision Act of  
5 2009”.

6   **SEC. 802. FINDINGS AND PURPOSES.**

7                   (a) FINDINGS.—The Congress finds that—

8                               (1) The proper functioning of the financial markets is dependent upon safe and  
9                               efficient arrangements for the clearing and settlement of payment, securities and other  
10                              financial transactions.

11                             (2) Financial market utilities that conduct or support multilateral payment,  
12                             clearing, or settlement activities may reduce risks for their participants and the broader  
13                             financial system, but such utilities may also concentrate and create new risks and thus  
14                             must be well designed and operated in a safe and sound manner.

15                             (3) Payment, clearing and settlement activities conducted by financial institutions  
16                             also present important risks to the participating financial institutions and to the financial  
17                             system.

18                             (4) Enhancements to the regulation and supervision of systemically important  
19                             financial market utilities and the conduct of systemically important payment, clearing,  
20                             and settlement activities by financial institutions are necessary to provide consistency, to  
21                             promote robust risk management and safety and soundness, to reduce systemic risks, and  
22                             to support the stability of the broader financial system.

1 (b) PURPOSES.—The purposes of this title are to mitigate systemic risk in the financial  
2 system and promote financial stability by—

3 (1) authorizing the Board of Governors of the Federal Reserve System to  
4 prescribe uniform standards for the management of risks by systemically important  
5 financial market utilities and for the conduct of systemically important payment, clearing  
6 and settlement activities by financial institutions;

7 (2) providing the Board of Governors of the Federal Reserve System an enhanced  
8 role in the supervision of risk management standards for systemically important financial  
9 market utilities;

10 (3) strengthening the liquidity of systemically important financial market utilities;  
11 and

12 (4) providing the Board of Governors of the Federal Reserve System an enhanced  
13 role in the supervision of risk management standards for systemically important payment,  
14 clearing, and settlement activities by financial institutions.

15 **SEC. 803. DEFINITIONS.**

16 For purposes of this title, the following definitions shall apply:

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

19 (2) APPROPRIATE FINANCIAL REGULATOR.—The term “appropriate financial  
20 regulator” means—

21 (A) the Comptroller of the Currency, with respect to national banks and  
22 any Federal branch or Federal agency of a foreign bank, until the functions of the  
23 Comptroller of the Currency are transferred to the Director of the National Bank



1 Supervisor, after which time the term means the Director of the National Bank  
2 Supervisor with respect to those entities;

3 (B) the Board of Directors of the Corporation, with respect to state-  
4 chartered banks insured by the Corporation (other than member banks of the  
5 Federal Reserve System) and insured State branches of foreign banks;

6 (C) the Director of the Office of Thrift Supervision, with respect to any  
7 savings association and any savings and loan holding company, until the functions  
8 of the Director of the Office of Thrift Supervision are transferred to the Director  
9 of the National Bank Supervisor, after which time the term means the Director of  
10 the National Bank Supervisor with respect to those entities;

11 (D) the Board, with respect to member banks of the Federal Reserve  
12 System (other than national banks), branches and agencies of foreign banks (other  
13 than Federal branches, Federal agencies, and insured State branches of foreign  
14 banks), commercial lending companies owned or controlled by foreign banks,  
15 organizations operating under section 25 or 25A of the Federal Reserve Act (12  
16 U.S.C. § 601 *et seq.* or § 611 *et seq.*), and bank holding companies and their  
17 nonbank subsidiaries (except brokers, dealers, investment companies, and  
18 investment advisers registered with the Securities and Exchange Commission, and  
19 futures commission merchants, commodity trading advisors, and commodity pool  
20 operators registered with the Commodity Futures Trading Commission);

21 (E) the National Credit Union Administration Board, with respect to any  
22 insured credit union under the Federal Credit Union Act (12 U.S.C. § 1751 *et*  
23 *seq.*);

1 (F) the Securities and Exchange Commission, with respect to—

2 (i) any broker or dealer registered with the Securities and  
3 Exchange Commission under the Securities Exchange Act of 1934 (15  
4 U.S.C. § 78a *et seq.*);

5 (ii) any investment company registered with the Securities and  
6 Exchange Commission under the Investment Company Act of 1940 (15  
7 U.S.C. § 80a-1 *et seq.*); and

8 (iii) any investment adviser registered with the Securities and  
9 Exchange Commission under the Investment Advisers Act of 1940 (15  
10 U.S.C. § 80b-1 *et seq.*);

11 (G) the Commodity Futures Trading Commission, with respect to futures  
12 commission merchants, commodity trading advisors, and commodity pool  
13 operators registered with the Commodity Futures Trading Commission under the  
14 Commodity Exchange Act (7 U.S.C. § 1 *et seq.*);

15 (H) the applicable State insurance authority, with respect to any financial  
16 institution engaged in providing insurance under State insurance law; and

17 (I) the Board, with respect to any other financial institution engaged in a  
18 designated activity.

19 (3) BOARD.—The term “Board” means the Board of Governors of the Federal  
20 Reserve System.

21 (4) CORPORATION.—The term “Corporation” means the Federal Deposit  
22 Insurance Corporation.

23 (5) DESIGNATED ACTIVITY.—The term “designated activity” means a payment,

1 clearing, or settlement activity that the Board has designated as systemically important  
2 under section 804.

3 (6) DESIGNATED FINANCIAL MARKET UTILITY.—The term “designated financial  
4 market utility” means a financial market utility that the Board has designated as  
5 systemically important under section 804.

6 (7) FINANCIAL INSTITUTION.—The term “financial institution” means—

7 (A) a depository institution as defined in section 3 of the Federal Deposit  
8 Insurance Act (12 U.S.C. § 1813);

9 (B) a branch or agency of a foreign bank (as defined in section 1(b) of the  
10 International Banking Act of 1978) (12 U.S.C. § 3101);

11 (C) an organization operating under section 25 or 25A of the Federal  
12 Reserve Act (12 U.S.C. § 601 *et seq.* and § 611 *et seq.*);

13 (D) a credit union (as defined in section 101 of the Federal Credit Union  
14 Act) (12 U.S.C. § 1752);

15 (E) a broker or dealer (as defined in section 3 of the Securities Exchange  
16 Act of 1934) (15 U.S.C. § 78c);

17 (F) an investment company (as defined in section 3 of the Investment  
18 Company Act of 1940) (15 U.S.C. § 80a-3);

19 (G) an insurance company (as defined in section 2 of the Investment  
20 Company Act of 1940) (15 U.S.C. § 80a-2);

21 (H) an investment adviser (as defined in section 202 of the Investment  
22 Advisers Act of 1940) (15 U.S.C. § 80b-2);

23 (I) a futures commission merchant, commodity trading advisor, or

1 commodity pool operator (as defined in section 1a of the Commodity Exchange  
2 Act) (7 U.S.C. § 1a); and

3 (J) any company engaged in activities that are financial in nature or  
4 incidental to a financial activity, as described in section 4 of the Bank Holding  
5 Company Act of 1956 (12 U.S.C. § 1843(k)).

6 (8) FINANCIAL MARKET UTILITY.—The term “financial market utility” means any  
7 person that manages or operates a multilateral system for the purpose of transferring,  
8 clearing, or settling payments, securities, or other financial transactions among financial  
9 institutions or between financial institutions and the person.

10 (9) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—The term “payment,  
11 clearing, or settlement activity” means an activity carried out by one or more financial  
12 institutions to facilitate the completion of financial transactions. Financial transactions  
13 include funds transfers, securities contracts, contracts of sale of a commodity for future  
14 delivery, forward contracts, repurchase agreements, swap agreements, foreign exchange  
15 contracts, financial derivatives contracts, and any similar transaction that the Board  
16 determines, by rule or order, to be a financial transaction for purposes of this title. When  
17 conducted with respect to financial transactions, payment, clearing, and settlement  
18 activities may include the calculation and communication of unsettled obligations  
19 between counterparties; the netting of transactions; provision and maintenance of trade,  
20 contract, or instrument information; the management of risks and activities associated  
21 with continuing obligations; transmittal and storage of payment instructions; the  
22 movement of funds; the final settlement of obligations; and other similar functions.

23 (10) PERSON.—The term “person” means any corporation, company, association,

1 firm, partnership, society, joint stock company, or other legal entity other than a natural  
2 person.

3 (11) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

4 (12) STATE.—The term “State” means any State, commonwealth, territory, or  
5 possession of the United States, the District of Columbia, the Commonwealth of Puerto  
6 Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or  
7 the United States Virgin Islands.

8 (13) SUPERVISORY AGENCY.—The term “Supervisory Agency” means the Federal  
9 agency that has primary jurisdiction over a designated financial market utility under  
10 Federal banking, securities, or commodity futures laws, including—

11 (A) the Securities and Exchange Commission, with respect to a designated  
12 financial market utility that is a clearing agency registered with the Securities and  
13 Exchange Commission;

14 (B) the Commodity Futures Trading Commission, with respect to a  
15 designated financial market utility that is a derivatives clearing organization  
16 registered with the Commodity Futures Trading Commission;

17 (C) the Board of Directors of the Corporation, with respect to a designated  
18 financial market utility that is an insured State nonmember bank or an insured  
19 branch of a foreign bank;

20 (D) the Comptroller of the Currency, with respect to a designated financial  
21 market utility that is a national bank or a Federal branch (other than an insured  
22 branch) or a Federal agency of a foreign bank, until the functions of the  
23 Comptroller of the Currency are transferred to the Director of the National Bank

1 Supervisor, after which time the term means the Director of the National Bank  
2 Supervisor with respect to those entities; and

3 (E) the Director of the Office of Thrift Supervision, with respect to a  
4 designated financial market utility that is a savings association or a savings and  
5 loan holding company, until the functions of the Director of the Office of Thrift  
6 Supervision are transferred to the Director of the National Bank Supervisor, after  
7 which time the term means the Director of the National Bank Supervisor with  
8 respect to those entities.

9 (14) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms  
10 “systemically important” and “systemic importance” mean a situation where the failure  
11 of or a disruption to the functioning of a financial market utility or the conduct of a  
12 payment, clearing, or settlement activity could create, or increase, the risk of significant  
13 liquidity or credit problems spreading among financial institutions or markets and thereby  
14 threaten the stability of the financial system.

15 **SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.**

16 (a) DESIGNATION.—

17 (1) BOARD.—The Board, on a nondelegable basis, shall designate a financial  
18 market utility or a payment, clearing, or settlement activity that it determines is, or is  
19 likely to become, systemically important.

20 (2) CONSIDERATIONS.—In determining whether a financial market utility or  
21 payment, clearing, or settlement activity is, or is likely to become, systemically  
22 important, the Board shall take into consideration the following:

23 (A) the aggregate monetary value of transactions processed by the

1 financial market utility or carried out through the payment, clearing, or settlement  
2 activity;

3 (B) the relationship, interdependencies, or other interactions of the  
4 financial market utility or payment, clearing, or settlement activity with other  
5 financial market utilities or payment, clearing, or settlement activities;

6 (C) the effect that the failure of or a disruption to the financial market  
7 utility or payment, clearing, or settlement activity would have on critical markets,  
8 financial institutions, or the broader financial system;

9 (D) the recommendation, if any, of the Financial Services Oversight  
10 Council; and

11 (E) any other factors that the Board deems appropriate.

12 (b) RESCISSION OF DESIGNATION.—The Board, on a nondelegable basis, shall rescind a  
13 designation of systemic importance for a designated financial market utility or designated  
14 activity if the Board determines that the utility or activity no longer meets the standards for  
15 systemic importance. Upon rescission, the financial market utility or financial institutions  
16 conducting the activity will no longer be subject to the provisions of this title or rules or orders  
17 prescribed by the Board under this title.

18 (c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

19 (1) FINANCIAL MARKET UTILITY.—Before making any determination under  
20 subsection (a) or (b) with regard to a financial market utility, the Board shall consult with  
21 the Financial Services Oversight Council and the relevant Supervisory Agency.

22 (2) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—Before making any  
23 determination under subsection (a) or (b) with regard to a payment, clearing, or

1 settlement activity, the Board shall consult with the Financial Services Oversight  
2 Council.

3 (3) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

4 (A) IN GENERAL.—Before making any determination under subsection (a)  
5 or (b) with regard to a financial market utility or a payment, clearing, or  
6 settlement activity, the Board shall provide the financial market utility or, in the  
7 case of a payment, clearing, or settlement activity, financial institutions with  
8 advance notice of the Board’s proposed determination.

9 (B) NOTICE IN FEDERAL REGISTER.—The Board shall provide such advance  
10 notice to financial institutions by publishing a notice in the Federal Register.

11 (C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice  
12 of the Board’s proposed determination, the financial market utility or, in the case  
13 of a payment, clearing, or settlement activity, a financial institution engaged in the  
14 designated activity may request in writing an opportunity for a written or oral  
15 hearing before the Board to demonstrate that the proposed designation or  
16 rescission of designation is not supported by substantial evidence.

17 (D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Board  
18 shall fix a time, not more than 30 days after receipt of the request, unless extended  
19 at the request of the financial market utility or financial institution, and place at  
20 which the financial market utility or financial institution may appear, personally  
21 or through counsel, to submit written materials, or, at the sole discretion of the  
22 Board, oral testimony or oral argument.

23 (4) EMERGENCY EXCEPTION.—



1 (A) WAIVER OR MODIFICATION BY BOARD VOTE.—The Board may waive  
2 or modify the requirements of paragraph (3) if the Board determines, by an  
3 affirmative vote of not less than 5 members or, if there are fewer than five  
4 members then serving and available, by the unanimous vote of all available  
5 members then serving, that the waiver or modification is necessary to prevent or  
6 mitigate an immediate threat to the financial system posed by the financial market  
7 utility or the payment, clearing, or settlement activity.

8 (B) NOTICE OF WAIVER OR MODIFICATION.—The Board shall provide  
9 notice of the waiver or modification to the financial market utility concerned or,  
10 in the case of a payment, clearing, or settlement activity, to financial institutions,  
11 as soon as practicable, which shall be no later than 24 hours after the waiver or  
12 modification in the case of a financial market utility and three business days in the  
13 case of financial institutions. The Board shall provide the notice to financial  
14 institutions by posting a notice on the Board website and by publishing a notice in  
15 the Federal Register.

16 (d) NOTIFICATION OF FINAL DETERMINATION.—

17 (1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(3), the  
18 Board shall notify the financial market utility or financial institutions of its final  
19 determination in writing, which shall include findings of fact upon which the Board’s  
20 determination is based.

21 (2) WHEN NO HEARING REQUESTED.—If the Board does not receive a timely  
22 request for a hearing under subsection (c)(3), the Board shall notify the financial market  
23 utility or financial institutions of its final determination in writing not later than 30 days

1 after the expiration of the date by which a financial market utility or a financial institution  
2 could have requested a hearing. All notices to financial institutions under this subsection  
3 shall be published in the Federal Register.

4 **SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET**  
5 **UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT**  
6 **ACTIVITIES.**

7 (a) **AUTHORITY TO PRESCRIBE STANDARDS.**—The Board shall, by rule or order and in  
8 consultation with the Financial Services Oversight Council, the Commodity Futures Trading  
9 Commission, and the Securities and Exchange Commission, prescribe risk management  
10 standards governing the operations of designated financial market utilities and the conduct of  
11 designated activities by financial institutions, taking into consideration relevant international  
12 standards.

13 (b) **OBJECTIVES AND PRINCIPLES.**—The objectives and principles for the risk management  
14 standards prescribed under subsection (a) shall be to—

- 15 (1) promote robust risk management;
- 16 (2) promote safety and soundness;
- 17 (3) reduce systemic risks; and
- 18 (4) support the stability of the broader financial system.

19 (c) **SCOPE.**—The standards prescribed under subsection (a) may address areas such as risk  
20 management policies and procedures, margin, collateral, capital, and default policies and  
21 procedures, the ability to complete timely clearing and settlement of financial transactions, and  
22 other areas that the Board determines are necessary to achieve the objectives and principles in  
23 subsection (b).

1 (d) COMPLIANCE REQUIRED.—Designated financial market utilities and financial  
2 institutions engaged in designated activities shall conduct their operations in compliance with the  
3 applicable risk management standards prescribed by the Board.

4 **SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.**

5 (a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board may authorize a Federal  
6 Reserve Bank to establish and maintain an account for a designated financial market utility and  
7 provide services to the designated financial market utility that the Federal Reserve Bank is  
8 authorized under the Federal Reserve Act to provide to a depository institution, subject to any  
9 applicable rules, orders, standards, or guidelines prescribed by the Board.

10 (b) ADVANCES.—The Board may authorize a Federal Reserve Bank to provide to a  
11 designated financial market utility the same discount and borrowing privileges as the Federal  
12 Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to  
13 any applicable rules, orders, standards, or guidelines prescribed by the Board.

14 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay  
15 earnings on balances maintained by or on behalf of a designated financial market utility in the  
16 same manner and to the same extent as the Federal Reserve Bank may pay earnings to a  
17 depository institution under the Federal Reserve Act, subject to any applicable rules, orders,  
18 standards, or guidelines prescribed by the Board.

19 (d) RESERVE REQUIREMENTS.—The Board may exempt a designated financial market  
20 utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act  
21 (12 U.S.C. § 461) applicable to a designated financial market utility.

22 (e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

23 (1) REFERENCE.—For purposes of paragraphs (2) and (3), all references to the

1 phrase “Supervisory Agency or the Board” mean “Supervisory Agency or, in the absence  
2 of a Supervisory Agency, the Board”.

3 (2) ADVANCE NOTICE.—

4 (A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated  
5 financial market utility shall provide 60-days’ advance notice to its Supervisory  
6 Agency or the Board of any proposed change to its rules, procedures, or  
7 operations that could, as defined by the Board, materially affect the nature or level  
8 of risks presented by the designated financial market utility.

9 (B) CONTENTS OF NOTICE.—The notice of a proposed change shall  
10 describe the nature of the change and expected effects on risks to the designated  
11 financial market utility, its participants, or the market, and how the designated  
12 financial market utility plans to manage any identified risks.

13 (C) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board  
14 may require a designated financial market utility to provide any information  
15 necessary to assess the effect the proposed change would have on the nature or  
16 level of risks associated with the designated financial market utility's payment,  
17 clearing, or settlement activities and the sufficiency of any proposed risk  
18 management techniques.

19 (D) NOTICE OF OBJECTION.—The Supervisory Agency or the Board will  
20 notify the designated financial market utility of any objection regarding the  
21 proposed change within 60 days from the later of—

22 (i) the date that the notice of the proposed change is received; or

23 (ii) the date any further information requested for consideration of

1 the notice is received.

2 (E) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market  
3 utility shall not implement a change to which the Board or the Supervisory  
4 Agency has an objection.

5 (F) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS. —A designated  
6 financial market utility may implement a change if it has not received an  
7 objection to the proposed change within 60 days of the later of—

8 (i) the date that the Supervisory Agency or the Board receives the  
9 notice of proposed change; or

10 (ii) the date the Supervisory Agency or the Board receives any  
11 further information it requests for consideration of the notice.

12 (G) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The  
13 Supervisory Agency or the Board may, during the 60-day review period, extend  
14 the review period for an additional 60 days for proposed changes that raise novel  
15 or complex issues, subject to the Supervisory Agency or the Board providing the  
16 designated financial market utility with prompt written notice of the extension.

17 Any extension under this subparagraph will extend the time periods under  
18 subparagraphs (D) and (F).

19 (H) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A  
20 designated financial market utility may implement a change in less than 60 days  
21 from the date of receipt of the notice of proposed change by the Supervisory  
22 Agency or the Board, or the date the Supervisory Agency or the Board receives  
23 any further information it requested, if the Supervisory Agency or the Board

1 notifies the designated financial market utility in writing that it does not object to  
2 the proposed change and authorizes the designated financial market utility to  
3 implement the change on an earlier date, subject to any conditions imposed by the  
4 Supervisory Agency or the Board.

5 (3) EMERGENCY CHANGES.—

6 (A) IN GENERAL.—A designated financial market utility may implement a  
7 change that would otherwise require advance notice under this subsection if it  
8 determines that—

9 (i) an emergency exists; and

10 (ii) immediate implementation of the change is necessary for the  
11 designated financial market utility to continue to provide its services in a  
12 safe and sound manner.

13 (B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial  
14 market utility must provide notice of any such emergency change to its  
15 Supervisory Agency or the Board, as soon as practicable, which shall be no later  
16 than 24 hours after implementation of the change.

17 (C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information  
18 required for changes requiring advance notice, the notice of an emergency change  
19 must describe—

20 (i) the nature of the emergency; and

21 (ii) the reason the change was necessary for the designated  
22 financial market utility to continue to provide its services in a safe and  
23 sound manner.

1 (D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The  
2 Supervisory Agency or the Board may require modification or rescission of the  
3 change if it finds that the change is not consistent with the purposes of this Act or  
4 any rules, orders, or standards prescribed by the Board hereunder.

5 (4) COPYING THE BOARD.—In the case of a designated financial market utility that  
6 has a Supervisory Agency, the Supervisory Agency shall provide the Board concurrently  
7 with a complete copy of any notice, request, or other information it issues, submits, or  
8 receives under this subsection.

9 (5) CONSULTATION WITH BOARD.—Before taking any action on or completing its  
10 review of a change proposed by a designated financial market utility, the Supervisory  
11 Agency shall consult with the Board.

12 **SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**  
13 **DESIGNATED FINANCIAL MARKET UTILITIES.**

14 (a) EXAMINATION.—Notwithstanding any other provision of law and subject to  
15 subsection (d), the Supervisory Agency shall conduct examinations of a designated financial  
16 market utility at least annually in order to inform itself of the following:

17 (1) the nature of the operations of, and the risks borne by, the designated financial  
18 market utility;

19 (2) the financial and operational risks presented by the designated financial  
20 market utility to financial institutions, critical markets, or the broader financial system;

21 (3) the resources and capabilities of the designated financial market utility to  
22 monitor and control such risks;

23 (4) the safety and soundness of the designated financial market utility; and

1 (5) the designated financial market utility's compliance with this title and the  
2 rules and orders prescribed by the Board under this title.

3 (b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated  
4 financial market utility is performed for the designated financial market utility by another entity,  
5 whether an affiliate or non-affiliate and whether on or off the premises of the designated  
6 financial market utility, the Supervisory Agency may examine whether the provision of that  
7 service is in compliance with applicable law, rules, orders, and standards to the same extent as if  
8 the designated financial market utility were performing the service on its own premises.

9 (c) ENFORCEMENT.—Except as provided in subsections (e) and (f), a designated financial  
10 market utility shall be subject to the provisions of subsections (b) through (n) of section 8 of the  
11 Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the same extent as  
12 if the designated financial market utility were an insured depository institution for which the  
13 Supervisory Agency is the appropriate Federal banking agency as defined in section 3 of the  
14 Federal Deposit Insurance Act (12 U.S.C. § 1813).

15 (d) BOARD INVOLVEMENT IN EXAMINATIONS.—

16 (1) BOARD CONSULTATION ON EXAMINATION PLANNING.—The Supervisory  
17 Agency shall consult with the Board regarding the scope and methodology of any  
18 examination conducted under subsections (a) and (b).

19 (2) BOARD PARTICIPATION IN EXAMINATION.—The Board may, in its discretion,  
20 participate in any examination led by a Supervisory Agency and conducted under  
21 subsections (a) and (b).

22 (e) BOARD ENFORCEMENT RECOMMENDATIONS.—

23 (1) RECOMMENDATION.—The Board may at any time recommend to the



1 Supervisory Agency that it take enforcement action against a designated financial market  
2 utility. The recommendation shall provide a detailed analysis supporting the Board's  
3 recommendation.

4 (2) CONSIDERATION.—The Supervisory Agency shall consider the Board's  
5 recommendation and submit a response to the Board within 30 days.

6 (3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the  
7 Board's recommendation, the Board may dispute the matter by referring it to the  
8 Financial Services Oversight Council, which shall attempt to resolve the dispute.

9 (4) ENFORCEMENT ACTION.—If the Financial Services Oversight Council is  
10 unable to resolve the dispute under paragraph (3) within 30 days from the date of referral,  
11 the Board may exercise the enforcement authority referenced in subsection (c) as if it  
12 were the Supervisory Agency and take enforcement action against the designated  
13 financial market utility.

14 (f) DESIGNATED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In  
15 the case of a designated financial market utility that is not under the primary jurisdiction of a  
16 Supervisory Agency, the Board shall have examination and enforcement authority under  
17 subsections (a) through (c) with respect to the designated financial market utility and any service  
18 providers in the same manner and to the same extent as if the Board were the Supervisory  
19 Agency.

20 (g) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD.—

21 (1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board may, after consulting with  
22 the Supervisory Agency, take enforcement action against a designated financial market  
23 utility if the Board has reasonable cause to believe that—

1 (A) either:

2 (i) an action engaged in, or contemplated by, a designated financial market  
3 utility (including any change proposed by the designated financial market utility  
4 to its rules, procedures, or operations that would otherwise be subject to section  
5 806(e)); or

6 “(ii) the condition of a designated financial market utility,  
7 poses an imminent risk of substantial harm to financial institutions, critical markets,  
8 or the broader financial system; and

9 (B) the imminent risk of substantial harm precludes the Board’s use of the  
10 procedures in subsection (e).

11 (2) ENFORCEMENT AUTHORITY.—The Board is authorized to take action under  
12 paragraph (1) against a designated financial market utility as if the designated financial  
13 market utility were an insured depository institution for which the Board is the  
14 appropriate Federal banking agency as defined in section 3 of the Federal Deposit  
15 Insurance Act (12 U.S.C. 1813).

16 (3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24  
17 hours of taking an enforcement action under this subsection, the Board shall provide  
18 written notice to the designated financial market utility’s Supervisory Agency containing  
19 a detailed analysis of the Board’s action, with supporting documentation included.

20 **SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST**  
21 **FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED**  
22 **ACTIVITIES.**

23 (a) EXAMINATION.—The appropriate financial regulator is authorized to examine a

1 financial institution engaged in designated activities in order to inform the appropriate financial  
2 regulator of the following:

3 (1) the nature and scope of the designated activities engaged in by the financial  
4 institution;

5 (2) the financial and operational risks the designated activities engaged in by the  
6 financial institution may pose to the safety and soundness of the financial institution;

7 (3) the financial and operational risks the designated activities engaged in by the  
8 financial institution may pose to other financial institutions, critical markets, or the  
9 broader financial system;

10 (4) the resources available to and the capabilities of the financial institution to  
11 monitor and control the risks described in paragraphs (2) and (3); and

12 (5) the financial institution's compliance with this title and the rules and orders  
13 prescribed by the Board under this title.

14 (b) ENFORCEMENT.—The appropriate financial regulator shall take such actions that it  
15 deems necessary to ensure that a financial institution engaged in designated activities complies  
16 with this title and the rules and orders prescribed by the Board under this title.

17 (c) TECHNICAL ASSISTANCE.—The Board shall consult with and provide such technical  
18 assistance as may be required by the appropriate financial regulators to ensure that the Board's  
19 rules and orders prescribed under this title are interpreted and applied in as consistent and  
20 uniform a manner as practicable.

21 (d) DELEGATION.—

22 (1) EXAMINATION.—

23 (A) REQUEST TO BOARD.—The appropriate financial regulator may request

1 the Board to conduct or participate in an examination of a financial institution  
2 engaged in designated activities in order to assess the financial institution's  
3 compliance with this title or the Board's rules or orders prescribed under this title.

4 (B) EXAMINATION BY BOARD.—Upon receipt of an appropriate written  
5 request, the Board will conduct the examination under such terms and conditions  
6 to which the Board and the appropriate financial regulator mutually agree.

7 (2) ENFORCEMENT.—

8 (A) REQUEST TO BOARD.—The appropriate financial regulator may request  
9 the Board to enforce this title or the rules or orders prescribed by the Board under  
10 this title against a financial institution engaged in designated activities.

11 (B) ENFORCEMENT BY BOARD.—Upon receipt of an appropriate written  
12 request, the Board shall determine whether an enforcement action is warranted,  
13 and, if so, it shall enforce compliance with this title or the rules or orders  
14 prescribed by the Board under this title utilizing the authorities referenced in  
15 section 807(c), in which case the financial institution will be treated as if it is an  
16 insured depository institution for which the Board is the appropriate Federal  
17 banking agency as defined in section 3 of the Federal Deposit Insurance Act (12  
18 U.S.C. § 1813).

19 (e) BACK-UP AUTHORITY OF THE BOARD.—

20 (1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of  
21 law, the Board may—

22 (A) conduct an examination of any financial institution engaged in a  
23 designated activity; and

1 (B) enforce the provisions of this title or any rules or orders prescribed by  
2 the Board under this title against any financial institution engaged in a designated  
3 activity.

4 (2) LIMITATIONS.—

5 (A) EXAMINATION.—The Board may exercise the authority described in  
6 paragraph (1)(A) only if the Board has—

7 (i) reasonable cause to believe that a financial institution is not in  
8 compliance with this title or the rules or orders prescribed by the Board  
9 under this title with respect to a designated activity;

10 (ii) notified, in writing, the appropriate financial regulator of its  
11 belief under clause (i) with supporting documentation included;

12 (iii) requested the appropriate financial regulator to conduct a  
13 prompt examination of the financial institution; and

14 (iv) either—

15 (I) not been afforded a reasonable opportunity to participate  
16 in an examination of the financial institution by the appropriate  
17 financial regulator within 30 days after the date of the Board's  
18 notification under clause (ii); or

19 (II) reasonable cause to believe that the financial  
20 institution's noncompliance with this title or the rules or orders  
21 prescribed by the Board under this title poses a substantial risk to  
22 other financial institutions, critical markets, or the broader  
23 financial system, subject to the Board affording the appropriate

1 financial regulator a reasonable opportunity to participate in the  
2 examination.

3 (B) ENFORCEMENT.—The Board may exercise the authority described in  
4 paragraph (1)(B) only if the Board has—

5 (i) reasonable cause to believe that a financial institution is not in  
6 compliance with this title or the rules or orders prescribed by the Board  
7 under this title with respect to a designated activity;

8 (ii) notified, in writing, the appropriate financial regulator of its  
9 belief under clause (i) with supporting documentation included and with a  
10 recommendation that the appropriate financial regulator take one or more  
11 specific enforcement actions against the financial institution; and

12 (iii) either—

13 (I) not been notified, in writing, by the appropriate financial  
14 regulator of the commencement of an enforcement action  
15 recommended by the Board against the financial institution within  
16 30 days from the date of the notification under clause (ii); or

17 (II) reasonable cause to believe that the financial  
18 institution’s noncompliance with this title or the rules or orders  
19 prescribed by the Board under this title poses a substantial risk to  
20 other financial institutions, critical markets, or the broader  
21 financial system, subject to the Board notifying the appropriate  
22 financial regulator of the Board’s enforcement action.

23 (3) ENFORCEMENT PROVISIONS.—A financial institution engaged in designated

1 activities shall be subject to the provisions of subsections (b) through (n) of section 8 of  
2 the Federal Deposit Insurance Act (12 U.S.C. § 1818) in the same manner and to the  
3 same extent as if the financial institution were an insured depository institution for which  
4 the Board is the appropriate Federal banking agency as defined in section 3 of the Federal  
5 Deposit Insurance Act (12 U.S.C. § 1813).

6 **SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.**

7 (a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

8 (1) FINANCIAL MARKET UTILITIES.—The Board is authorized to require any  
9 financial market utility to submit such information as the Board may require for the sole  
10 purpose of assessing whether that financial market utility is systemically important, but  
11 only if the Board has reasonable cause to believe that the financial market utility meets  
12 the standards for systemic importance set out in section 804 of this title.

13 (2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT  
14 ACTIVITIES.—The Board is authorized to require any financial institution to submit such  
15 information as the Board may require for the sole purpose of assessing whether any  
16 payment, clearing, or settlement activity engaged in or supported by a financial institution  
17 is systemically important, but only if the Board has reasonable cause to believe that the  
18 activity meets the standards for systemic importance set out in section 804 of this title.

19 (b) REPORTING AFTER DESIGNATION.—

20 (1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board may require a  
21 designated financial market utility to submit reports or data to the Board in such  
22 frequency and form as deemed necessary by the Board in order to assess the safety and  
23 soundness of the utility and the systemic risk that the utility's operations pose to the

1 financial system.

2 (2) FINANCIAL INSTITUTIONS ENGAGED IN DESIGNATED ACTIVITIES—The Board  
3 may require 1 or more financial institutions engaged in a designated activity to submit, in  
4 such frequency and form as deemed necessary by the Board, reports and data to the  
5 Board solely with respect to the conduct of the designated activity and solely to assess  
6 whether—

7 (A) the rules, orders, or standards prescribed by the Board with respect to  
8 the designated activity appropriately address the risks to the financial system  
9 presented by such activity; and

10 (B) the financial institutions are in compliance with this title and the rules  
11 and orders prescribed by the Board under this title with respect to the designated  
12 activity.

13 (c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

14 (1) ADVANCE COORDINATION.—Before directly requesting any material  
15 information from, or imposing reporting or recordkeeping requirements on, any financial  
16 market utility or any financial institution engaged in a payment, clearing, or settlement  
17 activity, the Board shall coordinate with the Supervisory Agency for a financial market  
18 utility or the appropriate financial regulator for a financial institution to determine if the  
19 information is available from or may be obtained by the agency in the form, format, or  
20 detail required by the Board.

21 (2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the  
22 Supervisory Agency, the appropriate financial regulator, and the Board are authorized to  
23 disclose to each other a copy of any examination report or similar report regarding any



1 financial market utility or any financial institution engaged in payment, clearing, or  
2 settlement activities.

3 (d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the  
4 information, report, records, or data requested by the Board under subsection (c)(1) are not  
5 provided in full by the Supervisory Agency or the appropriate financial regulator in less than 15  
6 days after the date on which the material is requested, the Board may request the information or  
7 impose recordkeeping or reporting requirements directly on such persons as provided in  
8 subsections (a) and (b) with notice to the agency.

9 (e) SHARING OF INFORMATION.—

10 (1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the  
11 Board, the appropriate financial regulator, and any Supervisory Agency are authorized to  
12 promptly notify each other of material concerns about a designated financial market  
13 utility or any financial institution engaged in designated activities, and share appropriate  
14 reports, information or data relating to such concerns.

15 (2) OTHER.—Notwithstanding any other provision of law, the Board may, under  
16 such terms and conditions it deems appropriate, provide confidential supervisory  
17 information and other information obtained under this title to other persons it deems  
18 appropriate, including the Secretary, State financial institution supervisory agencies,  
19 foreign financial supervisors, foreign central banks, and foreign finance ministries,  
20 subject to reasonable assurances of confidentiality.

21 (f) PRIVILEGE MAINTAINED.—The Board, the appropriate financial regulator, and any  
22 Supervisory Agency providing reports or data under this section shall not be deemed to have  
23 waived any privilege applicable to those reports or data, or any portion thereof, by providing the

1 reports or data to the other party or by permitting the reports or data, or any copies thereof, to be  
2 used by the other party.

3 (g) DISCLOSURE EXEMPTION.—Information obtained by the Board under this section and  
4 any materials prepared by the Board regarding its assessment of the systemic importance of  
5 financial market utilities or any payment, clearing, or settlement activities engaged in by  
6 financial institutions, and in connection with its supervision of designated financial market  
7 utilities and designated activities, shall be confidential supervisory information exempt from  
8 disclosure under section 552 of title 5, United States Code. For purposes of section 552 of title  
9 5, this subsection shall be considered a statute described in subsection (b)(3) of section 552.

10 **SEC. 810. RULEMAKING.**

11 The Board is authorized to prescribe such rules and issue such orders as may be  
12 necessary to administer and carry out the purposes of this title and prevent evasions thereof.

13 **SEC. 811. OTHER AUTHORITY.**

14 Unless otherwise provided by its terms, this title does not divest any appropriate financial  
15 regulator, any Supervisory Agency, or other Federal or State agency, of any authority derived  
16 from any other applicable law.

17 **SEC. 812. EFFECTIVE DATE.**

18 This title is effective as of the date of enactment.

1 establish or maintain records, or fail or refuse to make reports or provide information to  
2 the Agency, as required by this title, an enumerated consumer law, or pursuant to the  
3 authorities transferred by subtitles F and H, or any rule or order issued by the Agency  
4 thereunder; or

5 (3) knowingly or recklessly provide substantial assistance to another person in  
6 violation of the provisions of section 1031, or any rule or order issued under thereunder,  
7 and any such person shall be deemed to be in violation of that section to the same extent  
8 as the person to whom such assistance is provided.

9 **SEC. 1040. EFFECTIVE DATE.**

10 This subtitle shall become effective on the designated transfer date.

11 **Subtitle D—Preservation of State Law**

12 **SEC. 1041. RELATION TO STATE LAW.**

13 (a) IN GENERAL.—

14 (1) This title does not annul, alter, or affect, or exempt any person subject to the  
15 provisions of this title from complying with, the laws, regulations, orders, or  
16 interpretations, in effect in any State, except to the extent that such statute, regulation,  
17 order, or interpretation is inconsistent with the provisions of this title and then only to the  
18 extent of the inconsistency.

19 (2) GREATER PROTECTION UNDER STATE LAW.—For the purposes of this  
20 subsection, a State statute, regulation, order, or interpretation is not inconsistent with the  
21 provisions of this title if the protection such statute, regulation, order, or interpretation  
22 affords consumers is greater than the protection provided under this title, as determined

1 by the Agency. A determination regarding whether a State statute, regulation, order, or  
2 interpretation is inconsistent with the provisions of this title may be made by rule, order  
3 or guidance adopted by the Agency on its own motion or in response to a non-frivolous  
4 petition initiated by any interested person.

5 (b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO  
6 STATE LAW.—Nothing in this title, except as provided in section 1075, shall be construed to  
7 modify, limit, or supersede the operation of any provision of an enumerated consumer law that  
8 relates to the application of State law with respect to such Federal law.

9 **SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.**

10 (a) IN GENERAL.—

11 (1) Any State attorney general may bring a civil action in the name of such State,  
12 as *parens patriae* on behalf of natural persons residing in such State, in any district court  
13 of the United States or State court having jurisdiction of the defendant, to secure  
14 monetary or equitable relief for violation of any provisions of this title or regulations  
15 issued thereunder.

16 (2) Nothing in this title shall be construed to modify, limit or supersede the  
17 operation of any provision of an enumerated consumer law that relates to the authority of  
18 a State attorney general or State regulator to enforce such Federal law.

19 (b) CONSULTATION REQUIRED.—

20 (1) Before initiating any action in a court or other administrative or regulatory  
21 proceeding against any covered person to enforce any provision of this title, including  
22 any rule prescribed by the Agency thereunder, a State attorney general or State regulator  
23 shall timely provide a copy of the complete complaint to be filed and written notice

1 describing such action or proceeding to the Agency, or the Agency’s designee. If prior  
2 notice is not practicable, the State attorney general or State regulator shall provide a copy  
3 of the complete complaint and the notice to the Agency immediately upon instituting the  
4 action or proceeding. The notification required under this section shall, at a minimum,  
5 describe:

6 (A) the identity of the parties;

7 (B) the alleged facts underlying the proceeding; and

8 (C) whether there may be a need to coordinate the prosecution of the  
9 proceeding so as not to interfere with any action, including any rule making,  
10 undertaken by the Agency or another Federal agency.

11 (2) In any action described in paragraph (1), the Agency may—

12 (A) intervene in the action as a party;

13 (B) upon intervening—

14 (i) remove the action to the appropriate United States district court,  
15 if the action was not originally brought there; and

16 (ii) be heard on all matters arising in the action; and

17 (C) appeal any order or judgment to the same extent as any other party in  
18 the proceeding may.

19 (c) The Agency shall adopt rules to implement the requirements of this section and, from  
20 time to time, provide guidance in order to further coordinate actions with the State attorneys  
21 general and other regulators.

22 (d) PRESERVATION OF STATE CLAIMS.—Nothing in this section shall be construed as  
23 limiting the authority of a State attorney general or State regulator to bring an action or other

1 regulatory proceeding arising solely under the law of that State.

2 **SEC. 1043. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND**  
3 **SUBSIDIARIES CLARIFIED.**

4 (a) IN GENERAL.—Chapter One of title LXII of the Revised Statutes of the United States  
5 (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

6 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS**  
7 **AND SUBSIDIARIES CLARIFIED.**

8 “(a) DEFINITIONS.—For purposes of this section, the term

9 “(1) ‘national bank’ includes:

10 “(A) any bank organized under the laws of the United States;

11 “(B) any affiliate of a national bank;

12 “(C) any subsidiary of a national bank; and

13 “(D) any Federal branch established in accordance with the International  
14 Banking Act of 1978.

15 “(2) ‘affiliate’, ‘subsidiary’, ‘includes’, and ‘including’ have the same meaning as  
16 in section 3 of the Federal Deposit Insurance Act.

17 “(3) ‘State consumer law’ means any law of a State that:

18 “(A) accords rights to or protects the rights of its citizens in financial  
19 transactions concerning negotiation, sales, solicitation, disclosure, terms and  
20 conditions, advice, and remedies; or

21 “(B) prevents counterparties, successors, and assigns of financial contracts  
22 from engaging in unfair or deceptive acts and practices.

23 “(b) STATE CONSUMER LAWS OF GENERAL APPLICATION.—Notwithstanding any other

1 provision of Federal law and except as provided in subsection (c), any consumer protection  
2 provision in State consumer laws of general application, including any law relating to unfair or  
3 deceptive acts or practices, any consumer fraud law and repossession, foreclosure, and collection  
4 law, shall apply to any national bank.

5 “(c) EXCEPTIONS.—Subsection (b) shall not apply with respect to any State consumer law  
6 if—

7 “(1) the State consumer law discriminates against national banks; or

8 “(2) the State consumer law is inconsistent with provisions of Federal law other  
9 than this title LXII, but only to the extent of the inconsistency (as determined in  
10 accordance with the provision of the other Federal law). For this purpose, a State  
11 consumer law is not inconsistent with Federal law if the protection the State consumer  
12 law affords consumers is greater than the protection provided under Federal law as  
13 determined by the Agency.

14 “(d) STATE BANKING LAWS ENACTED PURSUANT TO FEDERAL LAW.—

15 “(1) IN GENERAL.—Notwithstanding any other provision of Federal law and  
16 except as provided in paragraph (2), any State consumer law that—

17 “(A) is applicable to State banks; and

18 “(B) was enacted pursuant to or in accordance with, and is not inconsistent  
19 with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer  
20 Credit Protection Act, and the Real Estate Settlement Procedures Act, that  
21 explicitly or by implication, permits States to exceed or supplement the  
22 requirements of any comparable Federal law,  
23 shall apply to any national bank.

1           “(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to any State law  
2           if—

3                   “(A) the State consumer law discriminates against national banks; or

4                   “(B) the State consumer law is inconsistent with provisions of Federal law  
5           other than this title LXII, but only to the extent of the inconsistency (as  
6           determined in accordance with the provision of the other Federal law). For this  
7           purpose, a State consumer law is not inconsistent with Federal law if the  
8           protection the State consumer law affords consumers is greater than the protection  
9           provided under Federal law as determined by the Agency.

10           “(e) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No  
11           provision of this section shall be construed as altering or affecting the applicability, to national  
12           banks, of any State law which is not described in this section.

13           “(f) EFFECT OF TRANSFER OF TRANSACTION.—State consumer law applicable to a  
14           transaction at the inception of the transaction may not be preempted under Federal law solely  
15           because a national bank subsequently acquires the asset or instrument that is the subject of the  
16           transaction.

17           “(g) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of  
18           any provision of the law of any State with respect to any national bank shall not be treated as a  
19           right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of the United  
20           States (42 U.S.C. 1983).”.

21           (b) CLERICAL AMENDMENT.—The table of sections for chapter One of title LXII of the  
22           Revised Statutes of the United States is amended by inserting after the item relating to section  
23           5136B the following new item:



1 “5136C. State law preemption standards for national banks and subsidiaries clarified.”.

2 **SEC. 1044. VISITORIAL STANDARDS.**

3 Section 5136C of the Revised Statutes of the United States (as added by section 1043 of  
4 this Act) is amended by adding at the end the following new subsections:

5 “(h) VISITORIAL POWERS.—

6 “(1) No provision of this title which relates to visitorial powers or otherwise limits  
7 or restricts the supervisory, examination, or regulatory authority to which any national  
8 bank is subject shall be construed as limiting or restricting the authority of any attorney  
9 general (or other chief law enforcement officer) of any State to bring any action in any  
10 court of appropriate jurisdiction—

11 “(A) to require a national bank to produce records relative to the  
12 investigation of violations of State consumer law, or Federal consumer laws;

13 “(B) to enforce any applicable Federal or State law, as authorized by such  
14 law; or

15 “(C) on behalf of residents of such State, to enforce any applicable  
16 provision of any Federal or State law against a national bank, as authorized by  
17 such law, or to seek relief and recover damages for such residents from any  
18 violation of any such law by any national bank.

19 “(2) The attorney general (or other chief law enforcement officer) of any State  
20 shall consult with the National Bank Supervisor before acting under paragraph (1).

21 “(i) ENFORCEMENT ACTIONS.—The ability of the National Bank Supervisor to bring an  
22 enforcement action under this title or section 5 of the Federal Trade Commission Act does not  
23 preclude private parties from enforcing rights granted under Federal or State law in the courts.”.

1 **SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY**  
2 **INSTITUTION SUBSIDIARIES.**

3 Section 5136C of the Revised Statutes of the United States (as added by section 1043 of  
4 this Act) is amended by inserting after subsection (i) (as added by section 1044) the following  
5 new subsection:

6 “(j) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES  
7 AND AFFILIATES OF NATIONAL BANKS.—

8 “(1) DEFINITIONS.—For purposes of this section, the following definitions shall  
9 apply:

10 “(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms  
11 ‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in  
12 section 3 of the Federal Deposit Insurance Act.

13 “(B) NONDEPOSITORY INSTITUTION.—The term ‘nondepository institution’  
14 means any entity that is not a depository institution.

15 “(2) IN GENERAL.— No provision of this title shall be construed as annulling,  
16 altering, or affecting the applicability of State law to any nondepository institution,  
17 subsidiary, other affiliate, or agent of a national bank.”.

18 **SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS**  
19 **ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.**

20 (a) IN GENERAL.—The Home Owners’ Loan Act (12 U.S.C. 1461 et seq.) is amended by  
21 inserting after section 5 the following new section:

22 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS**  
23 **ASSOCIATIONS CLARIFIED.**

1 “(a) DEFINITION.—For purposes of this section—

2 “(1) the terms ‘includes’ and ‘including’ have the same meaning as in section 3(t)  
3 of the Federal Deposit Insurance Act.

4 “(2) the term ‘State consumer law’ means any law of a State that:

5 “(A) accords rights to or protects the rights of its citizens in financial  
6 transactions concerning negotiation, sales, solicitation, disclosure, terms and  
7 conditions, advice, and remedies; or

8 “(B) prevents counterparties, successors, and assigns of financial contracts  
9 from engaging in unfair or deceptive acts and practices.

10 “(b) STATE CONSUMER LAWS OF GENERAL APPLICATION.— Notwithstanding any other  
11 provision of Federal law and except as provided in subsection (c), any consumer protection  
12 provision in State consumer laws of general application, including any law relating to unfair or  
13 deceptive acts or practices, any consumer fraud law and repossession, foreclosure, and collection  
14 law, shall apply to any Federal savings association.

15 “(c) EXCEPTIONS.—Subsection (b) shall not apply with respect to any State law if—

16 “(1) the State law discriminates against Federal savings associations; or

17 “(2) the State consumer law is inconsistent with provisions of Federal law other  
18 than this title LXII, but only to the extent of the inconsistency (as determined in  
19 accordance with the provision of the other Federal law). For this purpose, a State  
20 consumer law is not inconsistent with Federal law if the protection the State consumer  
21 law affords consumers is greater than the protection provided under Federal law as  
22 determined by the Agency.

23 “(d) STATE BANKING OR THRIFT LAWS ENACTED PURSUANT TO FEDERAL LAW.—

1           “(1) IN GENERAL.—Notwithstanding any other provision of Federal law and  
2           except as provided in paragraph (2), any State law that—

3                   “(A) is applicable to State savings associations (as defined in section 3 of  
4                   the Federal Deposit Insurance Act); and

5                   “(B) was enacted pursuant to or in accordance with, and is not inconsistent  
6                   with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer  
7                   Credit Protection Act, and the Real Estate Settlement Procedures Act, that  
8                   explicitly or by implication, permits States to exceed or supplement the  
9                   requirements of any comparable Federal law,

10           shall apply to any Federal savings association.

11           “(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to any State law  
12           if—

13                   “(A) the State law discriminates against Federal savings associations; or

14                   “(B) the State consumer law is inconsistent with provisions of Federal law other  
15           than this title LXII, but only to the extent of the inconsistency (as determined in  
16           accordance with the provision of the other Federal law). For this purpose, a State  
17           consumer law is not inconsistent with Federal law if the protection the State consumer  
18           law affords consumers is greater than the protection provided under Federal law as  
19           determined by the Agency.

20           “(e) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No  
21           provision of this section shall be construed as altering or affecting the applicability, to Federal  
22           savings associations, of any State law which is not described in this section.

23           “(f) EFFECT OF TRANSFER OF TRANSACTION.—State consumer law applicable to a

1 transaction at the inception of the transaction may not be preempted under Federal law solely  
2 because a Federal savings association subsequently acquires the asset or instrument that is the  
3 subject of the transaction.

4 “(g) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of  
5 any provision of the law of any State with respect to any Federal savings association shall not be  
6 treated as a right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of  
7 the United States (42 U.S.C. 1983).”.

8 (b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12  
9 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the  
10 following new item:

11 “6. State law preemption standards for Federal savings associations and  
12 subsidiaries clarified.”.

13 **SEC. 1047. VISITORIAL STANDARDS.**

14 Section 6 of the Home Owners' Loan Act (as added by section 1046 of this title) is  
15 amended by adding at the end the following new subsections:

16 “(h) VISITORIAL POWERS.—

17 “(1) No provision of this Act shall be construed as limiting or restricting the  
18 authority of any attorney general (or other chief law enforcement officer) of any State to  
19 bring any action in any court of appropriate jurisdiction—

20 “(A) to require a Federal savings association to produce records relative to  
21 the investigation of violations of State consumer law, or Federal consumer laws;

22 “(B) to enforce any applicable Federal or State law, as authorized by such  
23 law; or

1                   “(C) on behalf of residents of such State, to enforce any applicable  
2                   provision of any Federal or State law against a Federal savings association, as  
3                   authorized by such law, or to seek relief and recover damages for such residents  
4                   from any violation of any such law by any Federal savings association.

5                   “(2) The attorney general (or other chief law enforcement officer) of any State  
6                   shall consult with the National Bank Supervisor before acting under paragraph (1).

7                   “(i) ENFORCEMENT ACTIONS.—The ability of the National Bank Supervisor to bring an  
8                   enforcement action under this Act or section 5 of the Federal Trade Commission Act does not  
9                   preclude private parties from enforcing rights granted under Federal or State law in the courts.”.

10                   **SEC. 1048. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY**  
11                   **INSTITUTION SUBSIDIARIES.**

12                   Section 6 of the Home Owners' Loan Act (as added by section 1046 of this title) is  
13                   amended by adding after subsection (i) (as added by section 1047) the following new subsection:

14                   “(j) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES  
15                   AND AFFILIATES OF FEDERAL SAVINGS ASSOCIATIONS.—

16                   “(1) DEFINITIONS.—For purposes of this section, the following definitions shall  
17                   apply:

18                   “(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms  
19                   ‘depository institution’, ‘subsidiary’, and ‘affiliate’ have the same meanings as in  
20                   section 3 of the Federal Deposit Insurance Act.

21                   “(B) NONDEPOSITORY INSTITUTION.—The term ‘nondepository institution’  
22                   means any entity that is not a depository institution.

23                   “(2) IN GENERAL.—No provision of this title shall be construed as preempting the

1 applicability of State law to any nondepository institution, subsidiary, other affiliate, or  
2 agent of a Federal savings association.”.

3 **SEC. 1049. EFFECTIVE DATE.**

4 This subtitle shall become effective on the designated transfer date.

5 **Subtitle E—Enforcement Powers**

6 **SEC. 1051. DEFINITIONS.**

7 For purposes of this subtitle—

8 (1) CIVIL INVESTIGATIVE DEMAND and DEMAND.—The terms “civil investigative  
9 demand” and “demand” mean any demand issued by the Agency.

10 (2) AGENCY INVESTIGATION.—The term “Agency investigation” means any  
11 inquiry conducted by an Agency investigator for the purpose of ascertaining whether any  
12 person is or has been engaged in any conduct that violates this title, any enumerated  
13 consumer law, or any rule or order promulgated by the Agency thereunder or under the  
14 authorities transferred under subtitles F and H.

15 (3) AGENCY INVESTIGATOR.—The term “Agency investigator” means any attorney  
16 or investigator employed by the Agency who is charged with the duty of enforcing or  
17 carrying into effect any provisions of this title, any enumerated consumer law, the  
18 authorities transferred under subtitles F and H, or any rule or order promulgated  
19 thereunder by the Agency.

20 (4) CUSTODIAN.—The term “custodian” means the custodian or any deputy  
21 custodian designated by the Agency.

22 (5) DOCUMENTARY MATERIAL.—The term “documentary material” includes the

1 original or any copy of any book, record, report, memorandum, paper, communication,  
2 tabulation, chart, or other document.

3 (6) VIOLATION.—The term “violation” means any act or omission that, if proved,  
4 would constitute a violation of any provision of this title, any enumerated consumer law,  
5 any law for which authorities were transferred under subtitles F and H, or of any rule or  
6 order prescribed by the Agency thereunder.

7 **SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.**

8 (a) SUBPOENAS.—

9 (1) IN GENERAL.—The Agency or an Agency investigator may issue subpoenas  
10 for the attendance and testimony of witnesses and the production of relevant papers,  
11 books, documents, or other material in connection with hearings under this title.

12 (2) FAILURE TO OBEY.—In case of contumacy or refusal to obey a subpoena  
13 issued pursuant to this paragraph and served upon any person, the district court of the  
14 United States for any district in which such person is found, resides, or transacts business,  
15 upon application by the Agency or an Agency investigator and after notice to such  
16 person, shall have jurisdiction to issue an order requiring such person to appear and give  
17 testimony or to appear and produce documents or other material, or both.

18 (3) CONTEMPT.—Any failure to obey an order of the court under this subsection  
19 may be punished by the court as a contempt thereof.

20 (b) DEMANDS.—

21 (1) IN GENERAL.—Whenever the Agency has reason to believe that any person  
22 may be in possession, custody, or control of any documentary material or tangible things,  
23 or may have any information, relevant to a violation, the Agency may, before the



1 institution of any proceedings under this title or under any enumerated consumer law or  
2 pursuant to the authorities transferred under subtitles F and H, issue in writing, and cause  
3 to be served upon such person, a civil investigative demand requiring such person to—

4 (A) produce such documentary material for inspection and copying or  
5 reproduction;

6 (B) submit such tangible things;

7 (C) file written reports or answers to questions;

8 (D) give oral testimony concerning documentary material or other  
9 information; or

10 (E) furnish any combination of such material, answers, or testimony.

11 (2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the  
12 conduct constituting the alleged violation which is under investigation and the provision  
13 of law applicable to such violation.

14 (3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the  
15 production of documentary material shall—

16 (A) describe each class of documentary material to be produced under the  
17 demand with such definiteness and certainty as to permit such material to be fairly  
18 identified;

19 (B) prescribe a return date or dates which will provide a reasonable period  
20 of time within which the material so demanded may be assembled and made  
21 available for inspection and copying or reproduction; and

22 (C) identify the custodian to whom such material shall be made available.

23 (4) PRODUCTION OF THINGS.—Each civil investigative demand for the

1 submission of tangible things shall—

2 (A) describe each class of tangible things to be submitted under the  
3 demand with such definiteness and certainty as to permit such things to be fairly  
4 identified;

5 (B) prescribe a return date or dates which will provide a reasonable period  
6 of time within which the things so demanded may be assembled and submitted;  
7 and

8 (C) identify the custodian to whom such things shall be submitted.

9 (5) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative  
10 demand for written reports or answers to questions shall—

11 (A) propound with definiteness and certainty the reports to be produced or  
12 the questions to be answered;

13 (B) prescribe a date or dates at which time written reports or answers to  
14 questions shall be submitted; and

15 (C) identify the custodian to whom such reports or answers shall be  
16 submitted.

17 (6) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral  
18 testimony shall—

19 (A) prescribe a date, time, and place at which oral testimony shall be  
20 commenced; and

21 (B) identify a Agency investigator who shall conduct the investigation and  
22 the custodian to whom the transcript of such investigation shall be submitted.

23 (7) SERVICE.—

1 (A) Any civil investigative demand may be served by any Agency  
2 investigator at any place within the territorial jurisdiction of any court of the  
3 United States.

4 (B) Any such demand or any enforcement petition filed under this section  
5 may be served upon any person who is not found within the territorial jurisdiction  
6 of any court of the United States, in such manner as the Federal Rules of Civil  
7 Procedure prescribe for service in a foreign nation.

8 (C) To the extent that the courts of the United States have authority to  
9 assert jurisdiction over such person consistent with due process, the United States  
10 District Court for the District of Columbia shall have the same jurisdiction to take  
11 any action respecting compliance with this section by such person that such  
12 district court would have if such person were personally within the jurisdiction of  
13 such district court.

14 (8) METHOD OF SERVICE.—Service of any civil investigative demand or any  
15 enforcement petition filed under this section may be made upon a person, including any  
16 legal entity, by—

17 (A) delivering a duly executed copy of such demand or petition to the  
18 individual or to any partner, executive officer, managing agent, or general agent  
19 of such person, or to any agent of such person authorized by appointment or by  
20 law to receive service of process on behalf of such person;

21 (B) delivering a duly executed copy of such demand or petition to the  
22 principal office or place of business of the person to be served; or

23 (C) depositing a duly executed copy in the United States mails, by

1 registered or certified mail, return receipt requested, duly addressed to such  
2 person at its principal office or place of business.

3 (9) PROOF OF SERVICE.—

4 (A) A verified return by the individual serving any civil investigative  
5 demand or any enforcement petition filed under this section setting forth the  
6 manner of such service shall be proof of such service.

7 (B) In the case of service by registered or certified mail, such return shall  
8 be accompanied by the return post office receipt of delivery of such demand or  
9 enforcement petition.

10 (10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of  
11 documentary material in response to a civil investigative demand shall be made under a  
12 sworn certificate, in such form as the demand designates, by the person, if a natural  
13 person, to whom the demand is directed or, if not a natural person, by any person having  
14 knowledge of the facts and circumstances relating to such production, to the effect that all  
15 of the documentary material required by the demand and in the possession, custody, or  
16 control of the person to whom the demand is directed has been produced and made  
17 available to the custodian.

18 (11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in  
19 response to a civil investigative demand shall be made under a sworn certificate, in such  
20 form as the demand designates, by the person to whom the demand is directed or, if not a  
21 natural person, by any person having knowledge of the facts and circumstances relating  
22 to such production, to the effect that all of the tangible things required by the demand and  
23 in the possession, custody, or control of the person to whom the demand is directed have

1           been submitted to the custodian.

2                   (12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil  
3           investigative demand shall be answered separately and fully in writing under oath, unless  
4           it is objected to, in which event the reasons for the objection shall be stated in lieu of an  
5           answer, and it shall be submitted under a sworn certificate, in such form as the demand  
6           designates, by the person, if a natural person, to whom the demand is directed or, if not a  
7           natural person, by any person responsible for answering each reporting requirement or  
8           question, to the effect that all information required by the demand and in the possession,  
9           custody, control, or knowledge of the person to whom the demand is directed has been  
10          submitted.

11                   (13) TESTIMONY.—

12                           (A) IN GENERAL.—Any Agency investigator before whom oral testimony  
13           is to be taken shall put the witness on oath or affirmation and shall personally, or  
14           by any individual acting under his direction and in his presence, record the  
15           testimony of the witness.

16                                   (i) The testimony shall be taken stenographically and transcribed.

17                                   (ii) After the testimony is fully transcribed, the Agency  
18           investigator before whom the testimony is taken shall promptly transmit a  
19           copy of the transcript of the testimony to the custodian.

20                           (B) PARTIES PRESENT.—Any Agency investigator before whom oral  
21           testimony is to be taken shall exclude from the place where the testimony is to be  
22           taken all other persons except the person giving the testimony, his or her attorney,  
23           the officer before whom the testimony is to be taken, and any stenographer taking

1 such testimony.

2 (C) LOCATION.—The oral testimony of any person taken pursuant to a  
3 civil investigative demand shall be taken in the judicial district of the United  
4 States in which such person resides, is found, or transacts business, or in such  
5 other place as may be agreed upon by the Agency investigator before whom the  
6 oral testimony of such person is to be taken and such person.

7 (D) ATTORNEY REPRESENTATION.—

8 (i) Any person compelled to appear under a civil investigative  
9 demand for oral testimony pursuant to this section may be accompanied,  
10 represented, and advised by an attorney.

11 (ii) The attorney may advise such person, in confidence, either  
12 upon the request of such person or upon the initiative of the attorney, with  
13 respect to any question asked of such person.

14 (iii) Such person or attorney may object on the record to any  
15 question, in whole or in part, and shall briefly state for the record the  
16 reason for the objection.

17 (iv) An objection may properly be made, received, and entered  
18 upon the record when it is claimed that such person is entitled to refuse to  
19 answer the question on grounds of any constitutional or other legal right or  
20 privilege, including the privilege against self-incrimination, but such  
21 person shall not otherwise object to or refuse to answer any question, and  
22 shall not himself or through his attorney otherwise interrupt the oral  
23 examination.

1 (v) If such person refuses to answer any question, the Agency may  
2 petition the district court of the United States pursuant to this section for  
3 an order compelling such person to answer such question.

4 (vi) If such person refuses to answer any question on grounds of  
5 the privilege against self-incrimination, the testimony of such person may  
6 be compelled in accordance with the provisions of section 6004 of title 18,  
7 United States Code.

8 (E) TRANSCRIPTS.—

9 (i) After the testimony of any witness is fully transcribed, the  
10 Agency investigator shall afford the witness (who may be accompanied by  
11 an attorney) a reasonable opportunity to examine the transcript.

12 (ii) The transcript shall be read to or by the witness, unless such  
13 examination and reading are waived by the witness.

14 (iii) Any changes in form or substance which the witness desires to  
15 make shall be entered and identified upon the transcript by the Agency  
16 investigator with a statement of the reasons given by the witness for  
17 making such changes.

18 (iv) The transcript shall be signed by the witness, unless the  
19 witness in writing waives the signing, is ill, cannot be found, or refuses to  
20 sign.

21 (v) If the transcript is not signed by the witness during the 30-day  
22 period following the date upon which the witness is first afforded a  
23 reasonable opportunity to examine it, the Agency investigator shall sign

1                   the transcript and state on the record the fact of the waiver, illness,  
2                   absence of the witness, or the refusal to sign, together with any reasons  
3                   given for the failure to sign.

4                   (F) CERTIFICATION BY INVESTIGATOR.—The Agency investigator shall  
5                   certify on the transcript that the witness was duly sworn by him or her and that the  
6                   transcript is a true record of the testimony given by the witness, and the Agency  
7                   investigator shall promptly deliver the transcript or send it by registered or  
8                   certified mail to the custodian.

9                   (G) COPY OF TRANSCRIPT.—The Agency investigator shall furnish a copy  
10                  of the transcript (upon payment of reasonable charges for the transcript) to the  
11                  witness only, except that the Agency may for good cause limit such witness to  
12                  inspection of the official transcript of his testimony.

13                  (H) WITNESS FEES.—Any witness appearing for the taking of oral  
14                  testimony pursuant to a civil investigative demand shall be entitled to the same  
15                  fees and mileage which are paid to witnesses in the district courts of the United  
16                  States.

17                  (c) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

18                  (1) IN GENERAL.—Materials received as a result of a civil investigative demand  
19                  shall be subject to requirements and procedures regarding confidentiality, in accordance  
20                  with rules established by the Agency.

21                  (2) DISCLOSURE TO CONGRESS.—No rule established by the Agency regarding  
22                  the confidentiality of materials submitted to, or otherwise obtained by, the Agency shall  
23                  be intended to prevent disclosure to either House of Congress or to an appropriate



1 committee of the Congress, except that the Agency is permitted to adopt rules allowing  
2 prior notice to any party that owns or otherwise provided the material to the Agency and  
3 had designated such material as confidential.

4 (d) PETITION FOR ENFORCEMENT.—

5 (1) IN GENERAL.—Whenever any person fails to comply with any civil  
6 investigative demand duly served upon him under this section, or whenever satisfactory  
7 copying or reproduction of material requested pursuant to the demand cannot be  
8 accomplished and such person refuses to surrender such material, the Agency, through  
9 such officers or attorneys as it may designate, may file, in the district court of the United  
10 States for any judicial district in which such person resides, is found, or transacts  
11 business, and serve upon such person, a petition for an order of such court for the  
12 enforcement of this section.

13 (2) SERVICE OF PROCESS.—All process of any court to which application may be  
14 made as provided in this subsection may be served in any judicial district.

15 (e) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

16 (1) IN GENERAL.—Not later than 20 days after the service of any civil  
17 investigative demand upon any person under subsection (b), or at any time before the  
18 return date specified in the demand, whichever period is shorter, or within such period  
19 exceeding 20 days after service or in excess of such return date as may be prescribed in  
20 writing, subsequent to service, by any Agency investigator named in the demand, such  
21 person may file with the Agency a petition for an order by the Agency modifying or  
22 setting aside the demand.

23 (2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with

1 the demand in whole or in part, as deemed proper and ordered by the Agency, shall not  
2 run during the pendency of such petition at the Agency, except that such person shall  
3 comply with any portions of the demand not sought to be modified or set aside.

4 (3) SPECIFIC GROUNDS.—Such petition shall specify each ground upon which the  
5 petitioner relies in seeking such relief, and may be based upon any failure of the demand  
6 to comply with the provisions of this section, or upon any constitutional or other legal  
7 right or privilege of such person.

8 (f) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or  
9 control of any documentary material, tangible things, reports, answers to questions, or transcripts  
10 of oral testimony given by any person in compliance with any civil investigative demand, such  
11 person may file, in the district court of the United States for the judicial district within which the  
12 office of such custodian is situated, and serve upon such custodian, a petition for an order of such  
13 court requiring the performance by such custodian of any duty imposed upon him by this section  
14 or rule promulgated by the Agency.

15 (g) JURISDICTION OF COURT.—

16 (1) IN GENERAL.—Whenever any petition is filed in any district court of the  
17 United States under this section, such court shall have jurisdiction to hear and determine  
18 the matter so presented, and to enter such order or orders as may be required to carry into  
19 effect the provisions of this section.

20 (2) APPEAL.—Any final order so entered shall be subject to appeal pursuant to  
21 section 1291 of title 28, United States Code.

## 22 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

23 (a) IN GENERAL.—The Agency is authorized to conduct hearings and adjudication

1 proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United  
2 States Code in order to ensure or enforce compliance with—

3 (1) the provisions of this title, including any rules prescribed by the Agency under  
4 this title; and

5 (2) any other Federal law that the Agency is authorized to enforce, including an  
6 enumerated consumer law, and any regulations or order prescribed thereunder, unless  
7 such Federal law specifically limits the Agency from conducting a hearing or  
8 adjudication proceeding and only to the extent of such limitation.

9 (b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

10 (1) IN GENERAL.—If, in the opinion of the Agency, any covered person is  
11 engaging or has engaged in an activity that violates a law, rule, or any condition imposed  
12 in writing on the person by the Agency, the Agency may issue and serve upon the person  
13 a notice of charges in respect thereof. The notice shall contain a statement of the facts  
14 constituting the alleged violation or violations and shall fix a time and place at which a  
15 hearing will be held to determine whether an order to cease and desist there from should  
16 issue against the person. Such hearing shall be fixed for a date not earlier than 30 days  
17 nor later than 60 days after service of such notice unless an earlier or a later date is set by  
18 the Agency at the request of any party so served. Unless the party or parties so served  
19 shall appear at the hearing personally or by a duly authorized representative, they shall be  
20 deemed to have consented to the issuance of the cease-and-desist order. In the event of  
21 such consent, or if upon the record made at any such hearing, the Agency shall find that  
22 any violation specified in the notice of charges has been established, the Agency may  
23 issue and serve upon the person an order to cease and desist from any such violation or

1 practice. Such order may, by provisions which may be mandatory or otherwise, require  
2 the person to cease and desist from the same, and, further, to take affirmative action to  
3 correct the conditions resulting from any such violation.

4 (2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective  
5 at the expiration of 30 days after the service of such order upon the covered person  
6 concerned (except in the case of a cease-and-desist order issued upon consent, which  
7 shall become effective at the time specified therein), and shall remain effective and  
8 enforceable as provided therein, except to such extent as it is stayed, modified,  
9 terminated, or set aside by action of the Agency or a reviewing court.

10 (3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be  
11 held in the Federal judicial district or in the territory in which the residence or home  
12 office of the person is located unless the person consents to another place, and shall be  
13 conducted in accordance with the provisions of chapter 5 of title 5 of the United States  
14 Code. After such hearing, and within 90 days after the Agency has notified the parties  
15 that the case has been submitted to it for final decision, it shall render its decision (which  
16 shall include findings of fact upon which its decision is predicated) and shall issue and  
17 serve upon each party to the proceeding an order or orders consistent with the provisions  
18 of this section. Judicial review of any such order shall be exclusively as provided in this  
19 subsection. Unless a petition for review is timely filed in a court of appeals of the United  
20 States, as hereinafter provided in paragraph (4), and thereafter until the record in the  
21 proceeding has been filed as so provided, the Agency may at any time, upon such notice  
22 and in such manner as it shall deem proper, modify, terminate, or set aside any such  
23 order. Upon such filing of the record, the Agency may modify, terminate, or set aside

1 any such order with permission of the court.

2 (4) APPEAL TO COURT OF APPEALS.—Any party to any proceeding under this  
3 subsection may obtain a review of any order served pursuant to this subsection (other  
4 than an order issued with the consent of the person concerned) by the filing in the court  
5 of appeals of the United States for the circuit in which the principal office of the covered  
6 person is located, or in the United States Court of Appeals for the District of Columbia  
7 Circuit, within 30 days after the date of service of such order, a written petition praying  
8 that the order of the Agency be modified, terminated, or set aside. A copy of such  
9 petition shall be forthwith transmitted by the clerk of the court to the Agency, and  
10 thereupon the Agency shall file in the court the record in the proceeding, as provided in  
11 section 2112 of title 28 of the United States Code. Upon the filing of such petition, such  
12 court shall have jurisdiction, which upon the filing of the record shall except as provided  
13 in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set  
14 aside, in whole or in part, the order of the agency. Review of such proceedings shall be  
15 had as provided in chapter 7 of title 5 of the United States Code. The judgment and  
16 decree of the court shall be final, except that the same shall be subject to review by the  
17 Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United  
18 States Code.

19 (5) NO STAY.—The commencement of proceedings for judicial review under  
20 paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any  
21 order issued by the agency.

22 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

23 (1) IN GENERAL.—Whenever the Agency determines that the violation specified

1 in the notice of charges served upon a person pursuant to subsection (b), or the  
2 continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice  
3 the interests of consumers before the completion of the proceedings conducted pursuant  
4 to subsection (b), the Agency may issue a temporary order requiring the covered person  
5 to cease and desist from any such violation or practice and to take affirmative action to  
6 prevent or remedy such insolvency or other condition pending completion of such  
7 proceedings. Such order may include any requirement authorized under this subtitle.  
8 Such order shall become effective upon service upon the person and, unless set aside,  
9 limited, or suspended by a court in proceedings authorized by paragraph (2) of this  
10 subsection, shall remain effective and enforceable pending the completion of the  
11 administrative proceedings pursuant to such notice and until such time as the Agency  
12 shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued  
13 against the person, until the effective date of such order.

14 (2) APPEAL.—Within 10 days after the person concerned has been served with a  
15 temporary cease-and-desist order, the person may apply to the United States district court  
16 for the judicial district in which the home office of the covered person is located, or the  
17 United States District Court for the District of Columbia, for an injunction setting aside,  
18 limiting, or suspending the enforcement, operation, or effectiveness of such order  
19 pending the completion of the administrative proceedings pursuant to the notice of  
20 charges served upon the person under subsection (b), and such court shall have  
21 jurisdiction to issue such injunction.

22 (3) INCOMPLETE OR INACCURATE RECORDS.—

23 (A) TEMPORARY ORDER.—If a notice of charges served under subsection

1 (b) specifies, on the basis of particular facts and circumstances, that a person's  
2 books and records are so incomplete or inaccurate that the Agency is unable to  
3 determine the financial condition of that person or the details or purpose of any  
4 transaction or transactions that may have a material effect on the financial  
5 condition of that person, the Agency may issue a temporary order requiring—

6 (i) the cessation of any activity or practice which gave rise,  
7 whether in whole or in part, to the incomplete or inaccurate state of the  
8 books or records; or

9 (ii) affirmative action to restore such books or records to a  
10 complete and accurate state, until the completion of the proceedings under  
11 subsection (b)(1).

12 (B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph

13 (A)—

14 (i) shall become effective upon service; and

15 (ii) unless set aside, limited, or suspended by a court in  
16 proceedings under paragraph (2), shall remain in effect and enforceable  
17 until the earlier of—

18 (I) the completion of the proceeding initiated under  
19 subsection (b) in connection with the notice of charges; or

20 (II) the date the Agency determines, by examination or  
21 otherwise, that the person's books and records are accurate and  
22 reflect the financial condition of the person.

23 (d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

1 (1) IN GENERAL.—The Agency may in its discretion apply to the United States  
2 district court within the jurisdiction of which the principal office of the covered person is  
3 located, for the enforcement of any effective and outstanding notice or order issued under  
4 this section, and such court shall have jurisdiction and power to order and require  
5 compliance herewith.

6 (2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall  
7 have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any  
8 notice or order or to review, modify, suspend, terminate, or set aside any such notice or  
9 order.

10 (e) RULES.—The Agency shall prescribe rules establishing such procedures as may be  
11 necessary to carry out this section.

12 **SEC. 1054. LITIGATION AUTHORITY.**

13 (a) IN GENERAL.—If any person violates a provision of this title, any enumerated  
14 consumer law, any law for which authorities were transferred under subtitles F and H, or any rule  
15 or order prescribed by the Agency thereunder, then the Agency may commence a civil action  
16 against such person to impose a civil penalty or to seek all appropriate legal or equitable relief  
17 including a permanent or temporary injunction as permitted by law.

18 (b) REPRESENTATION.—The Agency may act in its own name and through its own  
19 attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation,  
20 or in any action, suit, or proceeding to which the Agency is a party.

21 (c) COMPROMISE OF ACTIONS.—The Agency may compromise or settle any action if such  
22 compromise is approved by the court.

23 (d) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under this



1 title, any enumerated consumer law, any law for which authorities were transferred under  
2 subtitles F and H, or any rule thereunder, the Agency shall notify the Attorney General.

3 (e) APPEARANCE BEFORE THE SUPREME COURT.—The Agency may represent itself in its  
4 own name before the Supreme Court of the United States, provided that the Agency makes a  
5 written request to the Attorney General within the 10-day period which begins on the date of  
6 entry of the judgment which would permit any party to file a petition for writ of certiorari, and  
7 the Attorney General concurs with such request or fails to take action within 60 days of the  
8 Agency’s request.

9 (f) FORUM.—Any civil action brought under this title may be brought in a United States  
10 district court or in any court of competent jurisdiction of a state in a district in which the  
11 defendant is located or resides or is doing business, and such court shall have jurisdiction to  
12 enjoin such person and to require compliance with this title, any enumerated consumer law, any  
13 law for which authorities were transferred under subtitles F and H, or rule or order of the Agency  
14 thereunder.

15 (g) TIME FOR BRINGING ACTION.—

16 (1) IN GENERAL.—Except as otherwise permitted by law, no action may be  
17 brought under this title more than 3 years after the violation to which an action relates.

18 (2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

19 (A) For purposes of this section, an action arising under this title shall not  
20 include claims arising solely under enumerated consumer laws.

21 (B) In any action arising solely under an enumerated consumer law, the  
22 Agency may commence, defend, or intervene in the action in accordance with the  
23 requirements of that law, as applicable.

1 (C) In any action arising solely under the laws for which authorities were  
2 transferred by subtitles F and H, the Agency may commence, defend, or intervene  
3 in the action in accordance with the requirements of that law, as applicable

4 **SEC. 1055. RELIEF AVAILABLE.**

5 (a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

6 (1) JURISDICTION.—The court (or Agency, as the case may be) in an action or  
7 adjudication proceeding brought under this title, any enumerated consumer law, or any  
8 law for which authorities were transferred by subtitles F and H, shall have jurisdiction to  
9 grant any appropriate legal or equitable relief with respect to a violation of this title, any  
10 enumerated consumer law, and any law for which authorities were transferred by  
11 subtitles F and H, including a violation of a rule or order prescribed under this title, any  
12 enumerated consumer law and any law for which authorities were transferred by subtitles  
13 F and H.

14 (2) RELIEF.—Such relief may include and without limitation—

15 (A) rescission or reformation of contracts;

16 (B) refund of moneys or return of real property;

17 (C) restitution;

18 (D) compensation for unjust enrichment;

19 (E) payment of damages;

20 (F) public notification regarding the violation, including the costs of  
21 notification;

22 (G) limits on the activities or functions of the person; and

23 (H) civil money penalties, as set forth more fully in subsection (d).

1 (3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be  
2 construed as authorizing the imposition of exemplary or punitive damages.

3 (b) RECOVERY OF COSTS.—In any action brought by the Agency to enforce any provision  
4 of this title, any enumerated consumer law, any law for which authorities were transferred by  
5 subtitles F and H, or any rule or order prescribed by the Agency thereunder, the Agency may  
6 recover its costs in connection with prosecuting such action if the Agency is the prevailing party  
7 in the action.

8 (c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

9 (1) Any person that violates any provision of this title, any enumerated consumer  
10 law, or any rule or order prescribed under this title shall forfeit and pay a civil penalty  
11 pursuant to this subsection.

12 (A) FIRST TIER.—For any violation of a final order or condition imposed  
13 in writing by the Agency, a civil penalty shall not exceed \$5,000 for each day  
14 during which such violation continues.

15 (B) SECOND TIER.—Notwithstanding paragraph (A), for any violation of a  
16 rule prescribed under section 1036 or for any person that recklessly engages in a  
17 violation of this title, any enumerated consumer law, or any rule or order  
18 prescribed under this title, relating to the provision of an alternative consumer  
19 financial product or service, a civil penalty shall not exceed \$25,000 for each day  
20 during which such violation continues.

21 (C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any  
22 person that knowingly violates this title, any enumerated consumer law, or a rule  
23 or order prescribed under this title, a civil penalty shall not exceed \$1,000,000 for

1 each day during which such violation continues.

2 (2) MITIGATING FACTORS.—In determining the amount of any penalty assessed  
3 under paragraph (1), the Agency or the court shall take into account the appropriateness  
4 of the penalty with respect to—

5 (A) the size of financial resources and good faith of the person charged;

6 (B) the gravity of the violation;

7 (C) the severity of the risks to or losses of the consumer, which may take  
8 into account the number of products or services sold or provided;

9 (D) the history of previous violations; and

10 (E) such other matters as justice may require.

11 (3) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Agency may compromise,  
12 modify, or remit any penalty which may be assessed or had already been assessed under  
13 paragraph (1). The amount of such penalty, when finally determined, shall be exclusive  
14 of any sums owed by the person to the United States in connection with the costs of the  
15 proceeding, and may be deducted from any sums owing by the United States to the  
16 person charged.

17 (4) NOTICE AND HEARING.—No civil penalty may be assessed with respect to a  
18 violation of this title, any enumerated consumer law, or any rule or order prescribed by  
19 the Agency, unless—

20 (A) the Agency gives notice and an opportunity for a hearing to the person  
21 accused of the violation; or

22 (B) the appropriate court has ordered such assessment and entered  
23 judgment in favor of the Agency.

1 **SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.**

2 Whenever the Agency obtains evidence that any person, either domestic or foreign, has  
3 engaged in conduct that may constitute a violation of Federal criminal law, the Agency shall  
4 have the power to transmit such evidence to the Attorney General, who may institute criminal  
5 proceedings under appropriate law. Nothing in this section affects any other authority of the  
6 Agency to disclose information.

7 **SEC. 1057. EMPLOYEE PROTECTION.**

8 (a) IN GENERAL.—No person shall terminate or in any other way discriminate against, or  
9 cause to be terminated or discriminated against, any employee or any authorized representative  
10 of employees by reason of the fact that such employee or representative has provided  
11 information to the Agency, filed, instituted or caused to be filed or instituted any proceeding  
12 under this title, any enumerated consumer law, or any law for which authorities were transferred  
13 by subtitles F and H, or has testified or is about to testify in any proceeding resulting from the  
14 administration or enforcement of the provisions of this title.

15 (b) AGENCY REVIEW OF TERMINATION.—Any employee or representative of employees  
16 who believes that he has been terminated or otherwise discriminated against by any person in  
17 violation of subsection (a) may, within 45 days after such alleged violation occurs, apply to the  
18 Agency for review of such termination or alleged discrimination. A copy of the application shall  
19 be sent to such person, who shall be the respondent. Upon receipt of such application, the  
20 Agency shall cause such investigation to be made as the Agency deems appropriate. Such  
21 investigation shall provide an opportunity for a public hearing at the request of any party to such  
22 review to enable the parties to present information relating to such alleged violation. The parties  
23 shall be given written notice of the time and place of the hearing at least five days prior to the

1 hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5, United  
2 States Code. Upon receiving the report of such investigation, the Agency shall make findings of  
3 fact. If the Agency finds that there is sufficient evidence in the record to conclude that such a  
4 violation did occur, the Agency shall issue a decision, incorporating an order therein and the  
5 Agency's findings, requiring the party committing such violation to take such affirmative action  
6 to abate the violation as the Agency deems appropriate, including reinstating or rehiring the  
7 employee or representative of employees to the former position with compensation. If the  
8 Agency finds insufficient evidence to support the allegations made in the application, the Agency  
9 shall deny the application. An order issued by the Agency under this subsection (b) shall be  
10 subject to judicial review in the same manner as orders and decisions are subject to judicial  
11 review under this title or any enumerated consumer law.

12 (c) COSTS AND EXPENSES.—Whenever an order is issued under this section to abate such  
13 violation, at the request of the applicant a sum equal to the aggregate amount of all costs and  
14 expenses (including attorney's fees) determined by the Agency to have been reasonably incurred  
15 by the applicant for, or in connection with, the application and prosecution of such proceedings  
16 shall be assessed against the person committing such violation.

17 (d) EXCEPTION.—This section shall not apply to any employee who acting without  
18 discretion from his or her employer (or the employer's agent) deliberately violates any  
19 requirement of this title or any enumerated consumer law.

20 **SEC. 1058. EFFECTIVE DATE.**

21 This subtitle shall become effective on the designated transfer date.

22 **Subtitle F—Transfer of Functions and Personnel;**

# Transitional Provisions

## SEC. 1061. TRANSFER OF CERTAIN FUNCTIONS.

(a) IN GENERAL.—Except as provided in subsection (b), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Agency.

(B) BOARD OF GOVERNORS' AUTHORITY.—The Agency shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Agency.

(B) COMPTROLLER'S AUTHORITY.—The Agency shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Agency.

(B) DIRECTOR'S AUTHORITY.—The Agency shall have all powers and

1 duties that were vested in the Director of the Office of Thrift Supervision, relating  
2 to consumer financial protection functions, on the day before the designated  
3 transfer date.

4 (4) FEDERAL DEPOSIT INSURANCE CORPORATION

5 (A) TRANSFER OF FUNCTIONS.—All consumer financial protection  
6 functions of the Federal Deposit Insurance Corporation are transferred to the  
7 Agency.

8 (B) CORPORATION’S AUTHORITY.—The Agency shall have all powers and  
9 duties that were vested in the Federal Deposit Insurance Corporation, relating to  
10 consumer financial protection functions, on the day before the designated transfer  
11 date.

12 (5) FEDERAL TRADE COMMISSION.—

13 (A) TRANSFER OF FUNCTIONS.—All consumer financial protection  
14 functions of the Federal Trade Commission are transferred to the Agency.

15 (B) COMMISSION’S AUTHORITY.—The Agency shall have all powers and  
16 duties that were vested in the Federal Trade Commission, relating to consumer  
17 financial protection functions, on the day before the designated transfer date.

18 (6) NATIONAL CREDIT UNION ADMINISTRATION.—

19 (A) TRANSFER OF FUNCTIONS.—All consumer financial protection  
20 functions of the National Credit Union Administration are transferred to the  
21 Agency.

22 (B) NATIONAL CREDIT UNION ADMINISTRATION’S AUTHORITY.—The  
23 Agency shall have all powers and duties that were vested in the National Credit



1 Union Administration, relating to consumer financial protection functions, on the  
2 day before the designated transfer date.

3 (b) TRANSFERS OF FUNCTIONS SUBJECT TO BACKSTOP ENFORCEMENT AUTHORITY

4 REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (a) shall not  
5 affect the authority of the agencies identified in subsection (a) from initiating enforcement  
6 proceedings under the circumstances described in section 1022(e)(3).

7 (c) TERMINATION OF AUTHORITY OF TRANSFEROR AGENCIES TO COLLECT FEES FOR  
8 CONSUMER FINANCIAL PROTECTION PURPOSES.—Authorities of the agencies identified in  
9 subsection (a) to assess and collect fees to cover the cost of conducting consumer financial  
10 protection functions shall terminate on the day before the designated transfer date.

11 (d) “CONSUMER FINANCIAL PROTECTION FUNCTIONS” DEFINED—For purposes of this  
12 subtitle, the term “consumer financial protection functions” means research, rulemaking,  
13 issuance of orders or guidance, supervision, examination, and enforcement activities, powers,  
14 and duties relating to the provision of consumer financial products or services, including the  
15 authority to assess and collect fees for those purposes.

16 (e) EFFECTIVE DATE.—Subsections (a) and (b) shall become effective on the designated  
17 transfer date.

18 **SEC. 1062. DESIGNATED TRANSFER DATE.**

19 (a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the  
20 Secretary—

21 (1) shall, in consultation with the Chairman of the Board of Governors, the  
22 Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal  
23 Trade Commission, the Chairman of the National Credit Union Administration Board,

1 the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the  
2 Director of the Office of Management and Budget, designate a single calendar date for  
3 the transfer of functions to the Agency under section 1061; and

4 (2) shall publish notice of that designation in the Federal Register.

5 (b) CHANGING DESIGNATION.—The Secretary—

6 (1) may, in consultation with the Chairman of the Board of Governors, the  
7 Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal  
8 Trade Commission, the Chairman of the National Credit Union Administration Board,  
9 the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the  
10 Director of the Office of Management and Budget, change the date designated under  
11 subsection (a); and

12 (2) shall publish notice of any changed designation in the Federal Register.

13 (c) PERMISSIBLE DATES.—

14 (1) IN GENERAL.—Except as provided in paragraph (2), any date designated under  
15 this section shall be not earlier than 180 days nor later than 18 months after the date of  
16 enactment of this Act.

17 (2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18  
18 months after the date of enactment of this Act if the Secretary transmits to appropriate  
19 committees of Congress—

20 (A) a written determination that orderly implementation of this title is not  
21 feasible on the date that is 18 months after the date of enactment of this Act;

22 (B) an explanation of why an extension is necessary for the orderly  
23 implementation of this title; and

1 (C) a description of the steps that will be taken to effect an orderly and  
2 timely implementation of this title within the extended time period.

3 (3) EXTENSION LIMITED.—In no case shall any date designated under this section  
4 be later than 24 months after the date of enactment of this Act.

5 **SEC. 1063. SAVINGS PROVISIONS.**

6 (a) BOARD OF GOVERNORS.—

7 (1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section  
8 1061(a)(1) shall not affect the validity of any right, duty, or obligation of the United  
9 States, the Board of Governors (or any Federal reserve bank), or any other person that—

10 (A) arises under any provision of law relating to any consumer financial  
11 protection function of the Board of Governors transferred to the Agency by this  
12 title; and

13 (B) existed on the day before the designated transfer date.

14 (2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding  
15 commenced by or against the Board of Governors (or any Federal reserve bank) before  
16 the designated transfer date with respect to any consumer financial protection function of  
17 the Board of Governors (or any Federal reserve bank) transferred to the Agency by this  
18 title, except that the Agency shall be substituted for the Board of Governors (or Federal  
19 reserve bank) as a party to any such proceeding as of the designated transfer date.

20 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

21 (1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section  
22 1061(a)(4) shall not affect the validity of any right, duty, or obligation of the United  
23 States, the Federal Deposit Insurance Corporation, the Board of Directors of that

1 Corporation, or any other person, that—

2 (A) arises under any provision of law relating to any consumer financial  
3 protection function of the Federal Deposit Insurance Corporation transferred to  
4 the Agency by this title; and

5 (B) existed on the day before the designated transfer date.

6 (2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding  
7 commenced by or against the Federal Deposit Insurance Corporation (or the Board of  
8 Directors of that Corporation) before the designated transfer date with respect to any  
9 consumer financial protection function of the Federal Deposit Insurance Corporation  
10 transferred to the Agency by this title, except that the Agency shall be substituted for the  
11 Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such  
12 proceeding as of the designated transfer date.

13 (c) FEDERAL TRADE COMMISSION.—

14 (1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section  
15 1061(a)(5) shall not affect the validity of any right, duty, or obligation of the United  
16 States, the Federal Trade Commission, or any other person, that—

17 (A) arises under any provision of law relating to any consumer financial  
18 protection function of the Federal Trade Commission transferred to the Agency  
19 by this title; and

20 (B) existed on the day before the designated transfer date.

21 (2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding  
22 commenced by or against the Federal Trade Commission before the designated transfer  
23 date with respect to any consumer financial protection function of the Federal Trade

1 Commission transferred to the Agency by this title, except that the Agency shall be  
2 substituted for the Federal Trade Commission as a party to any such proceeding as of the  
3 designated transfer date.

4 (d) NATIONAL CREDIT UNION ADMINISTRATION.—

5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section  
6 1061(a)(6) shall not affect the validity of any right, duty, or obligation of the United  
7 States, the National Credit Union Administration, the National Credit Union  
8 Administration Board, or any other person, that—

9 (A) arises under any provision of law relating to any consumer financial  
10 protection function of the National Credit Union Administration transferred to the  
11 Agency by this title; and

12 (B) existed on the day before the designated transfer date.

13 (2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding  
14 commenced by or against the National Credit Union Administration (or the National  
15 Credit Union Administration Board) before the designated transfer date with respect to  
16 any consumer financial protection function of the National Credit Union Administration  
17 transferred to the Agency by this title, except that the Agency shall be substituted for the  
18 National Credit Union Administration (or National Credit Union Administration Board)  
19 as a party to any such proceeding as of the designated transfer date.

20 (e) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

21 (1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section  
22 1061(a)(2) shall not affect the validity of any right, duty, or obligation of the United  
23 States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or

1 any other person, that—

2 (A) arises under any provision of law relating to any consumer financial  
3 protection function of the Comptroller of the Currency transferred to the Agency  
4 by this title; and

5 (B) existed on the day before the designated transfer date.

6 (2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding  
7 commenced by or against the Comptroller of the Currency (or the Office of the  
8 Comptroller of the Currency) with respect to any consumer financial protection function  
9 of the Comptroller of the Currency transferred to the Agency by this title before the  
10 designated transfer date, except that the Agency shall be substituted for the Comptroller  
11 of the Currency (or the Office of the Comptroller of the Currency) as a party to any such  
12 proceeding as of the designated transfer date.

13 (f) OFFICE OF THRIFT SUPERVISION.—

14 (1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section  
15 1061(a)(3) shall not affect the validity of any right, duty, or obligation of the United  
16 States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision,  
17 or any other person, that—

18 (A) arises under any provision of law relating to any consumer financial  
19 protection function of the Director of the Office of Thrift Supervision transferred  
20 to the Agency by this title; and

21 (B) that existed on the day before the designated transfer date.

22 (2) CONTINUATION OF SUITS.—This Act shall not abate any proceeding  
23 commenced by or against the Director of the Office of Thrift Supervision (or the Office

1 of Thrift Supervision) with respect to any consumer financial protection function of the  
2 Director of the Office of Thrift Supervision transferred to the Agency by this title before  
3 the designated transfer date, except that the Agency shall be substituted for the Director  
4 (or the Office of Thrift Supervision) as a party to any such proceeding as of the  
5 designated transfer date.

6 (g) CONTINUATION OF EXISTING ORDERS, RULES, DETERMINATIONS, AGREEMENTS, AND  
7 RESOLUTIONS.—All orders, resolutions, determinations, agreements, and rules that have been  
8 issued, made, prescribed, or allowed to become effective by the Board of Governors (or any  
9 Federal reserve bank), the Federal Deposit Insurance Corporation, the Federal Trade  
10 Commission, the National Credit Union Administration, the Office of the Comptroller of the  
11 Currency, or the Office of Thrift Supervision, or by a court of competent jurisdiction, in the  
12 performance of consumer financial protection functions that are transferred by this title and that  
13 are in effect on the day before the designated transfer date, shall continue in effect according to  
14 the terms of those orders, resolutions, determinations, agreements, and rules, and shall be  
15 enforceable by or against the Agency until modified, terminated, set aside, or superseded in  
16 accordance with applicable law by the Agency, by any court of competent jurisdiction, or by  
17 operation of law.

18 (h) IDENTIFICATION OF RULES CONTINUED.—Not later than the designated transfer date,  
19 the Agency—

20 (1) shall, after consultation with the Chairman of the Board of Governors, the  
21 Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal  
22 Trade Commission, the Chairman of the National Credit Union Administration Board,  
23 the Comptroller of the Currency, and the Director of the Office of Thrift Supervision,

1 identify the rules continued under subsection (g) that will be enforced by the Agency; and

2 (2) shall publish a list of such rules in the Federal Register.

3 (i) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

4 (1) PROPOSED RULES.—Any proposed rule of the Board of Governors, the Federal  
5 Deposit Insurance Corporation, the Federal Trade Commission, the National Credit  
6 Union Administration, the Office of the Comptroller of the Currency, or the Office of  
7 Thrift Supervision, which that agency, in performing consumer financial protection  
8 functions transferred by this title, has proposed before the designated transfer date but has  
9 not published as a final rule before that date, shall be deemed to be a proposed rule of the  
10 Agency.

11 (2) RULES NOT YET EFFECTIVE.—Any interim or final rule of Board of Governors,  
12 the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National  
13 Credit Union Administration, the Office of the Comptroller of the Currency, or the Office  
14 of Thrift Supervision, which that agency, in performing consumer financial protection  
15 functions transferred by this title, has published before the designated transfer date but  
16 which has not become effective before that date, shall become effective as a rule of the  
17 Agency according to its terms.

18 **SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.**

19 (a) IN GENERAL.—

20 (1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

21 (A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Agency and the Board  
22 of Governors shall—

23 (i) jointly determine the number of employees of the Board



1 necessary to perform or support the consumer financial protection  
2 functions of the Board of Governors that are transferred to the Agency by  
3 this title; and

4 (ii) consistent with the number determined under clause (i), jointly  
5 identify employees of the Board of Governors for transfer to the Agency  
6 in a manner that the Agency and the Board of Governors, in their sole  
7 discretion, deem equitable.

8 (B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board  
9 of Governors identified under subparagraph (A)(ii) shall be transferred to the  
10 Agency for employment.

11 (C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal  
12 reserve bank who, on the day before the designated transfer date, are performing  
13 consumer financial protection functions on behalf of the Board of Governors shall  
14 be treated as employees of the Board of Governors for purposes of subparagraphs  
15 (A) and (B).

16 (2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

17 (A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Agency and the Board  
18 of Directors of the Federal Deposit Insurance Corporation shall—

19 (i) jointly determine the number of employees of that Corporation  
20 necessary to perform or support the consumer financial protection  
21 functions of the Corporation that are transferred to the Agency by this  
22 title; and

23 (ii) consistent with the number determined under clause (i), jointly

1 identify employees of the Corporation for transfer to the Agency in a  
2 manner that the Agency and the Board of Directors of the Corporation, in  
3 their sole discretion, deem equitable.

4 (B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation  
5 identified under subparagraph (A)(ii) shall be transferred to the Agency for employment.

6 (3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

7 (A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Agency and the  
8 National Credit Union Administration Board shall—

9 (i) jointly determine the number of employees of the National  
10 Credit Union Administration necessary to perform or support the  
11 consumer financial protection functions of the National Credit Union  
12 Administration that are transferred to the Agency by this title; and

13 (ii) consistent with the number determined under clause (i), jointly  
14 identify employees of the National Credit Union Administration for  
15 transfer to the Agency in a manner that the Agency and the National  
16 Credit Union Administration Board, in their sole discretion, deem  
17 equitable.

18 (B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the  
19 National Credit Union Administration identified under subparagraph (A)(ii) shall  
20 be transferred to the Agency for employment.

21 (3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE  
22 SERVICE TRANSFERRED.—

23 (A) IN GENERAL.—In the case of employees occupying positions in the

1           excepted service or the Senior Executive Service, any appointment authority  
2           established pursuant to law or regulations of the Office of Personnel Management  
3           for filling such positions shall be transferred, subject to subparagraph (B).

4                   (B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline  
5           to make a transfer of authority under subparagraph (A) (and the employees  
6           appointed pursuant thereto) to the extent that such authority relates to positions  
7           excepted from the competitive service because of their confidential, policy-  
8           making, policy-determining, or policy-advocating character, and non-career  
9           positions in the Senior Executive Service (within the meaning of section  
10          3132(a)(7) of title 5, United States Code).

11          (b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be  
12 transferred under this section shall—

13           (1) be transferred not later than 90 days after the designated transfer date; and

14           (2) receive notice of his or her position assignment not later than 120 days after  
15 the effective date of his or her transfer.

16          (c) TRANSFER OF FUNCTION.—

17           (1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of  
18 employees shall be deemed a transfer of functions for the purpose of section 3503 of  
19 title 5, United States Code.

20           (2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any  
21 protection provided to transferred employees under section 3503 of title 5, United States  
22 Code, the provisions of this title shall control.

23          (d) EQUAL STATUS AND TENURE POSITIONS.—

1 (1) EMPLOYEES TRANSFERRED FROM FDIC, FTC, NCUA, OCC, AND OTS.—Each  
2 employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade  
3 Commission, the National Credit Union Administration, the Office of the Comptroller of  
4 the Currency, or the Office of Thrift Supervision shall be placed in a position at the  
5 Agency with the same status and tenure as he or she held on the day before the  
6 designated transfer date.

7 (2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—

8 (A) COMPARABILITY.—Each employee transferred from the Board of  
9 Governors or from a Federal reserve bank shall be placed in a position with the  
10 same status and tenure as that of employees transferring to the Agency from the  
11 Office of the Comptroller of the Currency who perform similar functions and  
12 have similar periods of service.

13 (B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods  
14 of service with the Board of Governors or a Federal reserve bank shall be credited  
15 as periods of service with a Federal agency.

16 (e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the  
17 Agency shall not be subject to any additional certification requirements before being placed in a  
18 comparable examiner's position at the Agency examining the same types of institutions as they  
19 examined before they were transferred.

20 (f) PERSONNEL ACTIONS LIMITED.—

21 (1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred  
22 employee holding a permanent position on the day before the designated transfer date  
23 shall not, during the 1-year period beginning on the designated transfer date, be

1 involuntarily separated, or involuntarily reassigned outside his or her local locality pay  
2 area as defined by the Office of Personnel Management.

3 (2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Agency to—

4 (A) separate an employee for cause or for unacceptable performance;

5 (B) terminate an appointment to a position excepted from the competitive  
6 service because of its confidential policy-making, policy-determining, or policy-  
7 advocating character; or

8 (C) reassign a supervisory employee outside his or her locality pay area as  
9 defined by the Office of Personnel Management when the Agency determines that  
10 the reassignment is necessary for the efficient operation of the Agency.

11 (g) PAY.—

12 (1) 1-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred  
13 employee shall, during the 1-year period beginning on the designated transfer date,  
14 receive pay at a rate not less than the basic rate of pay (including any geographic  
15 differential) that the employee received during the 1-year period immediately before the  
16 transfer.

17 (2) EXCEPTIONS.—Paragraph (1) does not limit the Agency’s right to reduce a  
18 transferred employee’s rate of basic pay—

19 (A) for cause;

20 (B) for unacceptable performance; or

21 (C) with the employee’s consent.

22 (3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred  
23 employee only while that employee remains employed by the Agency.

1 (4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the  
2 Agency to increase a transferred employee’s pay.

3 (h) REORGANIZATION.—

4 (1) BETWEEN 1ST AND 3RD YEAR.—

5 (A) IN GENERAL.—If the Agency determines, during the period beginning  
6 1 year after the designated transfer date and ending 3 years after the designated  
7 transfer date, that a reorganization of the staff of the Agency is required—

8 (i) that reorganization shall be deemed a “major reorganization”  
9 for purposes of affording affected employees retirement under section  
10 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

11 (ii) before the reorganization occurs, all employees in the same  
12 locality pay area as defined by the Office of Personnel Management shall  
13 be placed in a uniform position classification system; and

14 (iii) any resulting reduction in force shall be governed by the  
15 provisions of chapter 35 of title 5, United States Code, except that the  
16 Agency shall—

17 (I) establish competitive areas (as that term is defined in  
18 regulations issued by the Office of Personnel Management) to  
19 include at a minimum all employees in the same locality pay area  
20 as defined by the Office of Personnel Management;

21 (II) establish competitive levels (as that term is defined in  
22 regulations issued by the Office of Personnel Management)  
23 without regard to whether the particular employees have been

1 appointed to positions in the competitive service or the excepted  
2 service; and

3 (III) afford employees appointed to positions in the  
4 excepted service (other than to a position excepted from the  
5 competitive service because of its confidential policy-making,  
6 policy-determining, or policy-advocating character) the same  
7 assignment rights to positions within the Agency as employees  
8 appointed to positions in the competitive service.

9 (B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this  
10 paragraph, periods of service with a Federal home loan bank, a joint office of the  
11 Federal home loan banks, the Board of Governors, a Federal reserve bank, the  
12 Federal Deposit Insurance Corporation, or the National Credit Union  
13 Administration shall be credited as periods of service with a Federal agency.

14 (2) AFTER 3RD YEAR.—

15 (A) IN GENERAL.—If the Agency determines, at any time after the 3-year  
16 period beginning on the designated transfer date, that a reorganization of the staff  
17 of the Agency is required, any resulting reduction in force shall be governed by  
18 the provisions of chapter 35 of title 5, United States Code, except that the Agency  
19 shall establish competitive levels (as that term is defined in regulations issued by  
20 the Office of Personnel Management) without regard to types of appointment held  
21 by particular employees transferred under this section.

22 (B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this  
23 paragraph, periods of service with a Federal home loan bank, a joint office of the

1 Federal home loan banks, the Board of Governors, a Federal reserve bank, the  
2 Federal Deposit Insurance Corporation, or the National Credit Union  
3 Administration shall be credited as periods of service with a Federal agency.

4 (i) BENEFITS.—

5 (1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

6 (A) IN GENERAL.—

7 (i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as  
8 provided in subparagraph (B), each transferred employee shall remain  
9 enrolled in his or her existing retirement plan as long as he or she remains  
10 employed by the Agency.

11 (ii) EMPLOYER'S CONTRIBUTION.—The Agency shall pay any  
12 employer contributions to the existing retirement plan of each transferred  
13 employee as required under that plan.

14 (B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE  
15 SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

16 (i) ELECTION.—Any transferred employee who was enrolled in a  
17 Federal Reserve System retirement plan on the day before his or her  
18 transfer to the Agency may, during the period beginning 6 months after  
19 the designated transfer date and ending 1 year after the designated transfer  
20 date, elect to be subject to the Federal employee retirement program.

21 (ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an  
22 election under clause (i), coverage by the Federal employee retirement  
23 program shall begin 1 year after the designated transfer date.



1 (C) AGENCY PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT  
2 PLAN.

3 (i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT  
4 PLAN ESTABLISHED.—A separate account in the Federal Reserve System  
5 retirement plan shall be established for Agency employees who do not  
6 make the election under subparagraph (B).

7 (ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES  
8 REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN  
9 TRANSFERRED.—The proportionate share of funds in the Federal Reserve  
10 System retirement plan, including the proportionate share of any funding  
11 surplus in that plan, attributable to a transferred employee who does not  
12 make the election under subparagraph (B), shall be transferred to the  
13 account established under clause (i).

14 (iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Agency shall  
15 deposit into the account established under clause (i) the employer  
16 contributions that the Agency makes on behalf of employees who do not  
17 make the election under subparagraph (B).

18 (iv) ACCOUNT ADMINISTRATION.—The Agency shall administer the  
19 account established under clause (i) as a participating employer in the  
20 Federal Reserve System retirement plan.

21 (D) DEFINITIONS.—For purposes of this paragraph, the following  
22 definitions shall apply:

23 (i) the term “existing retirement plan” means, with respect to any

1 employee transferred under this section, the particular retirement plan  
2 (including the Financial Institutions Retirement Fund) and any associated  
3 thrift savings plan of the agency or Federal reserve bank from which the  
4 employee was transferred, which the employee was enrolled in on the day  
5 before the designated transfer date.

6 (ii) The term "Federal employee retirement program" means the  
7 retirement program for Federal employees established by chapters 83 and  
8 84 of title 5, United States Code.

9 (2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED

10 EMPLOYEES.—

11 (A) DURING 1ST YEAR.—

12 (i) EXISTING PLANS CONTINUE.—Each transferred employee may,  
13 for 1 year after the designated transfer date, retain membership in any  
14 other employee benefit program of the agency or bank from which the  
15 employee transferred, including a dental, vision, long term care, or life  
16 insurance program, to which the employee belonged on the day before the  
17 designated transfer date.

18 (ii) EMPLOYER'S CONTRIBUTION.—The Agency shall reimburse the  
19 agency or bank from which an employee was transferred for any cost  
20 incurred by that agency or bank in continuing to extend coverage in the  
21 benefit program to the employee as required under that program or  
22 negotiated agreements.

23 (B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-

1 year period beginning on the designated transfer date, the Agency decides not to  
2 continue participation in any dental, vision, or life insurance program of an  
3 agency or bank from which employees transferred, a transferred employee who is  
4 a member of such a program may, before the Agency's decision takes effect, elect  
5 to enroll, without regard to any regularly scheduled open season, in—

6 (i) the enhanced dental benefits established by chapter 89A of title  
7 5, United States Code;

8 (ii) the enhanced vision benefits established by chapter 89B of title  
9 5, United States Code; and

10 (iii) the Federal Employees Group Life Insurance Program  
11 established by chapter 87 of title 5, United States Code, without regard to  
12 any requirement of insurability.

13 (C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year  
14 period beginning on the designated transfer date, the Agency decides not to  
15 continue participation in any long term care insurance program of an agency or  
16 bank from which employees transferred, a transferred employee who is a member  
17 of such a program may, before the Agency's decision takes effect, elect to apply  
18 for coverage under the Federal Long Term Care Insurance Program established by  
19 chapter 90 of title 5, United States Code, under the underwriting requirements  
20 applicable to a new active workforce member (as defined in Part 875, title 5, Code  
21 of Federal Regulations).

22 (D) EMPLOYEE'S CONTRIBUTION.— An individual enrolled in the Federal  
23 Employees Health Benefits program shall pay any employee contribution required

1 by the plan.

2 (E) ADDITIONAL FUNDING.—The Agency shall transfer to the Federal  
3 Employees Health Benefits Fund established under section 8909 of title 5, United  
4 States Code, an amount determined by the Director of the Office of Personnel  
5 Management, after consultation with the Agency and the Office of Management  
6 and Budget, to be necessary to reimburse the Fund for the cost to the Fund of  
7 providing benefits under this subparagraph.

8 (F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees  
9 transferred under this section, enrollment in a health benefits plan administered by  
10 the Office of the Comptroller of the Currency, the Office of Thrift Supervision,  
11 the Federal Deposit Insurance Corporation, the National Credit Union  
12 Administration, the Board of Governors, or a Federal reserve bank, immediately  
13 before enrollment in a health benefits plan under chapter 89 of title 5, United  
14 States Code, shall be considered as enrollment in a health benefits plan under that  
15 chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

16 (E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE  
17 BENEFITS.—

18 (i) IN GENERAL.—An annuitant (as defined in section 8901(3) of  
19 title 5, United States Code) who is enrolled in a life insurance plan  
20 administered by the Board of Governors of the Federal Reserve System,  
21 the Federal Deposit Insurance Corporation, the Federal Trade  
22 Commission, the National Credit Union Administration, the Office of the  
23 Comptroller of the Currency, or the Office of Thrift Supervision on the

1 day before the designated transfer date shall be eligible for coverage by a  
2 life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of  
3 title 5, United States Code, or in a life insurance plan established by the  
4 Agency, without regard to any regularly scheduled open season and  
5 requirement of insurability.

6 (ii) EMPLOYEE'S CONTRIBUTION.—An individual enrolled in a life  
7 insurance plan under this clause shall pay any employee contribution  
8 required by the plan.

9 (iii) ADDITIONAL FUNDING.—The Agency shall transfer to the  
10 Employees' Life Insurance Fund established under section 8714 of title 5,  
11 United States Code, an amount determined by the Director of the Office of  
12 Personnel Management, after consultation with the Agency and the Office  
13 of Management and Budget, to be necessary to reimburse the Fund for the  
14 cost to the Fund of providing benefits under this subparagraph not  
15 otherwise paid for by the employee under clause (ii).

16 (iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees  
17 transferred under this section, enrollment in a life insurance plan  
18 administered by the Board of Governors, the Federal Deposit Insurance  
19 Corporation, the Federal Trade Commission, the National Credit Union  
20 Administration, the Office of the Comptroller of the Currency, the Office  
21 of Thrift Supervision, or a Federal reserve bank immediately before  
22 enrollment in a life insurance plan under chapter 87 of title 5, United  
23 States Code, shall be considered as enrollment in a life insurance plan

1 under that chapter for purposes of section 8706(b)(1)(A) of title 5, United  
2 States Code.

3 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2  
4 years after the designated transfer date, the Agency shall implement a uniform pay and  
5 classification system for all transferred employees.

6 (k) EQUITABLE TREATMENT.—In administering the provisions of this section, the  
7 Agency—

8 (1) shall take no action that would unfairly disadvantage transferred employees  
9 relative to each other based on their prior employment by the Board of Governors, the  
10 Federal Deposit Insurance Corporation, the Federal Trade Commission, the National  
11 Credit Union Administration, the Office of the Comptroller of the Currency, the Office of  
12 Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of  
13 the Federal home loan banks; and

14 (2) may take such action as is appropriate in individual cases so that employees  
15 transferred under this section receive equitable treatment, with respect to those  
16 employees' status, tenure, pay, benefits (other than benefits under programs administered  
17 by the Office of Personnel Management), and accrued leave or vacation time, for prior  
18 periods of service with any Federal agency, including the Board of Governors of the  
19 Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade  
20 Commission, the National Credit Union Administration, the Office of the Comptroller of  
21 the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home  
22 loan bank, or a joint office of the Federal home loan banks.

23 (l) NO PRIVATE RIGHT OF ACTION.—This section does not provide any transferred

1 employee with any right of action to require the Agency or any officer or employee of the  
2 Agency to take any action under this section.

3 (m) IMPLEMENTATION.—In implementing the provisions of this section, the Agency will  
4 work with the Office of Personnel Management and other entities with expertise in matters  
5 related to employment to ensure a fair and orderly transition for affected employees.

6 **SEC. 1065. INCIDENTAL TRANSFERS.**

7 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management  
8 and Budget, in consultation with the Secretary, shall make such additional incidental transfers  
9 and dispositions of assets and liabilities held, used, arising from, available, or to be made  
10 available, in connection with the functions transferred by this title, as the Director may determine  
11 necessary to accomplish the purposes of this title.

12 (b) SUNSET.—The authority provided in this section shall terminate 5 years after the date  
13 of enactment of this Act.

14 **SEC. 1066 INTERIM AUTHORITY OF THE SECRETARY.**

15 (a) IN GENERAL.—The Secretary is authorized to perform the functions of the Agency  
16 under this subtitle until 3 of the appointed Board members are confirmed by the Senate in  
17 accordance with section 1012.

18 (b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The  
19 Department of the Treasury may provide administrative services necessary to support the  
20 Agency before the designated transfer date.

21 (c) INTERIM FUNDING FOR THE DEPARTMENT OF THE TREASURY.—For the purposes of  
22 carrying out the authorities granted in this section, there are appropriated to the Department of  
23 the Treasury such sums as are necessary. Notwithstanding any other provision of law, such

1 amounts shall be subject to apportionment under section 1517 of title 31, United States Code,  
2 and restrictions that generally apply to the use of appropriated funds in title 31, United States  
3 Code, and other laws.

## 4 **Subtitle G—Regulatory Improvements**

### 5 **SEC. 1071. COLLECTION OF DEPOSIT ACCOUNT DATA.**

6 (a) PURPOSE.—The purpose of this section is to promote awareness and understanding of  
7 the access of individuals and communities to financial services, and to identify business and  
8 community development needs and opportunities.

9 (b) IN GENERAL.—

10 (1) RECORDS REQUIRED.—For each branch, automated teller machine at which  
11 deposits are accepted, and other deposit taking service facility with respect to any  
12 financial institution, the financial institution shall maintain records of the number and  
13 dollar amounts of deposit accounts of customers.

14 (2) GEO-CODED ADDRESSES OF DEPOSITORS.—The customers' addresses shall be  
15 geo-coded so that data shall be collected regarding the census tracts of the residence or  
16 business location of the customers.

17 (3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit  
18 account under this section, the financial institution shall also record whether the deposit  
19 account is for a residential or commercial customer.

20 (4) PUBLIC AVAILABILITY.—

21 (A) IN GENERAL.—The following information shall be publicly available  
22 on an annual basis—



1 (i) the address and census tracts of each branch, automated teller  
2 machine at which deposits are accepted, and other deposit taking service  
3 facility with respect to any financial institution;

4 (ii) the type of deposit account including whether the account was  
5 a checking or savings account; and

6 (iii) data on the number and dollar amounts of the accounts,  
7 presented by census tract location of the residential and commercial  
8 customers.

9 (B) PROTECTION OF IDENTITY.—In the publicly available data, any  
10 personally identifiable data element shall be removed so as to protect the  
11 identities of the commercial and residential customers.

12 (c) AVAILABILITY OF INFORMATION.—

13 (1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained  
14 under this section by any financial institution shall be submitted annually to the Agency,  
15 or to a Federal banking agency, in accordance with rules prescribed by the Agency.

16 (2) AVAILABILITY OF INFORMATION.—Information compiled and maintained  
17 under this section shall be retained for not less than 3 years after the date of preparation  
18 and shall be made available to the public, upon request, in the form required under rules  
19 prescribed by the Agency.

20 (d) AGENCY USE.—The Agency—

21 (1) shall use the data on branches and deposit accounts acquired under this section  
22 as part of the examination of a financial institution under the Community Reinvestment  
23 Act of 1977;

1 (2) shall assess the distribution of residential and commercial accounts at such  
2 financial institution across income and minority level of census tracts; and

3 (3) may use the data for any other purpose as permitted by law.

4 (e) RULES AND GUIDANCE.—The Agency shall prescribe such rules and issue guidance as  
5 may be necessary to carry out, enforce, and compile data pursuant to this section. The Agency  
6 shall prescribe rules regarding the provision of data compiled under this section to the Federal  
7 banking agencies to carry out the purposes of this section and shall issue guidance to financial  
8 institutions regarding measures to facilitate compliance with the this section and the  
9 requirements of rules prescribed thereunder.

10 (f) DEFINITIONS.—For purposes of this section, the following definitions shall apply—

11 (1) AGENCY.—The term “Agency” means the Consumer Financial Protection  
12 Agency.

13 (2) CREDIT UNION.— The term “credit union” means a Federal credit union or  
14 State credit union or State-chartered credit union as defined in section 101 of the Federal  
15 Credit Union Act (12 U.S.C. 1752).

16 (3) DEPOSIT ACCOUNT.—The term “deposit account” includes any checking  
17 account, savings account, credit union share account, and other type of account as defined  
18 by the Agency.

19 (4) FEDERAL BANKING AGENCY.—The term “Federal banking agency” means the  
20 Board of Governors, the National Bank Supervisor, the Federal Deposit Insurance  
21 Corporation, or the National Credit Union Administration; and the term “Federal banking  
22 agencies” means all of those agencies.

23 (5) FINANCIAL INSTITUTION.—The term “financial institution”—

1 (A) has the meaning given to the term “insured depository institution” in  
2 section 3(c)(2) of the Federal Deposit Insurance Act; and

3 (B) includes any credit union.

4 (g) EFFECTIVE DATE.—This section shall become effective on the designated transfer  
5 date.

6 **SEC. 1072. SMALL BUSINESS DATA COLLECTION (FURTHER AMENDMENTS TO**  
7 **THE EQUAL CREDIT OPPORTUNITY ACT).**

8 (a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) is amended  
9 by inserting after section 704A the following new section—

10 **“SEC. 704B. SMALL BUSINESS LOAN DATA COLLECTION.**

11 “(a) PURPOSE.—The purpose of this provision is to facilitate enforcement of fair lending  
12 laws and enable communities, governmental entities, and creditors to identify business and  
13 community development needs and opportunities of women- and minority-owned small  
14 businesses.

15 “(b) IN GENERAL.—Subject to the requirements of this section, in the case of any  
16 application to a financial institution for credit for a small business, the financial institution  
17 shall—

18 “(1) inquire whether the business is a women- or minority-owned business,  
19 without regard to whether such application is received in person, by mail, by telephone,  
20 by electronic mail or other form of electronic transmission, or by any other means and  
21 whether or not such application is in response to a solicitation by the financial institution;  
22 and

23 “(2) maintain a record of the responses to such inquiry separate from the

1 application and accompanying information.

2 “(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information  
3 requested pursuant to subsection (b) in connection with any application for credit.

4 “(d) NO ACCESS BY UNDERWRITERS.—

5 “(1) Where feasible, no loan underwriter or other officer or employee of a  
6 financial institution, or any affiliate of a financial institution, involved in making any  
7 determination concerning an application for credit shall have access to any information  
8 provided by the applicant pursuant to a request under subsection (b) in connection with  
9 such application.

10 “(2) If a financial institution determines that loan underwriter or other officer or  
11 employee of a financial institution, or any affiliate of a financial institution, involved in  
12 making any determination concerning an application for credit should have access to any  
13 information provided by the applicant pursuant to a request under subsection (b), the  
14 financial institution will provide notice to the applicant of the access of the underwriter to  
15 this information, along with notice that the financial institution may not discriminate on  
16 this basis of this information.

17 “(e) FORM AND MANNER OF INFORMATION.—

18 “(1) IN GENERAL.—Each financial institution shall compile and maintain, in  
19 accordance with regulations of the Agency, a record of the information provided by any  
20 loan applicant pursuant to a request under subsection (b).

21 “(2) ITEMIZED.—Information compiled and maintained under paragraph (1) shall  
22 also be itemized in order to clearly and conspicuously disclose the following—

1                   “(A) The number of the application and the date the application was  
2 received;

3                   “(B) The type and purpose of the loan or other credit being applied for;

4                   “(C) The amount of the credit or credit limit applied for and the amount of  
5 the credit transaction or the credit limit approved for such applicant;

6                   “(D) The type of action taken with respect to such application and the date  
7 of such action;

8                   “(E) The census tract in which is located the principal place of business of  
9 the small business loan applicant;

10                  “(F) The gross annual revenue of the business in the last fiscal year of the  
11 small business loan applicant preceding the date of the application;

12                  “(G) The race and ethnicity of the principal owners of the business; and

13                  “(H) Any additional data the Agency determines would aid in fulfilling the  
14 purposes of this section.

15                  “(3) NO PERSONALLY IDENTIFIABLE INFORMATION.—In compiling and maintaining  
16 any record of information under this section, a financial institution may not include in  
17 such record the name, specific address (other than the census tract required under  
18 paragraph (1)(E)), telephone number, electronic mail address, and any other personally  
19 identifiable information concerning any individual who is, or is connected with, the small  
20 business loan applicant.

21                  “(4) DISCRETION TO DELETE OR MODIFY PUBLICLY-AVAILABLE DATA.—The  
22 Agency may, at its discretion, delete or modify data collected under this section which is  
23 or will be available to the public if the Agency determines that the deletion or

1 modification of the data would advance a compelling privacy interest.

2 “(f) AVAILABILITY OF INFORMATION.—

3 “(1) SUBMISSION TO AGENCY.—The data required to be compiled and maintained  
4 under this section by any financial institution shall be submitted annually to the Agency.

5 “(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained  
6 under this section shall be retained for not less than 3 years after the date of preparation  
7 and shall be made available to the public, upon request, in the form required under  
8 regulations prescribed by the Agency. In addition, the Agency shall annually provide this  
9 data to the public. The procedures for disclosing this information to the public will be  
10 determined by the Agency.

11 “(3) COMPILATION OF AGGREGATE DATA.—The Agency may, at its discretion,  
12 compile for its own use compilations of aggregate data. The Agency may also, at its  
13 discretion, make public such compilations of aggregate data.

14 “(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

15 “(1) FINANCIAL INSTITUTION.—The term ‘financial institution’ means any  
16 partnership, company, corporation, association (incorporated or unincorporated), trust,  
17 estate, cooperative organization, or other entity that engages in any financial activity.

18 “(2) MINORITY-OWNED BUSINESS.—The term ‘minority-owned business’ means a  
19 business—

20 “(A) more than 50 percent of the ownership or control of which is held by  
21 1 or more minority individuals; and

22 “(B) more than 50 percent of the net profit or loss of which accrues to 1 or  
23 more minority individuals.

1           “(3) WOMEN-OWNED BUSINESS.—The term ‘women-owned business’ means a  
2 business—

3                   “(A) more than 50 percent of the ownership or control of which is held by  
4 1 or more women; and

5                   “(B) more than 50 percent of the net profit or loss of which accrues to 1 or  
6 more women.

7           “(4) MINORITY.—The term ‘minority’ has the meaning given to such term by  
8 section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act  
9 of 1989.

10           “(5) SMALL BUSINESS LOAN.—The term ‘small business loan’ shall be defined by  
11 the Agency, which may take into account—

12                   “(A) the gross revenues of the borrower;

13                   “(B) the total number of employees of the borrower;

14                   “(C) the industry in which the borrower has its primary operations; and

15                   “(D) the size of the loan.

16           “(h) AGENCY ACTION.—

17                   “(1) IN GENERAL.—The Agency shall prescribe such rules and issue guidance as  
18 may be necessary to carry out, enforce, and compile data pursuant to this section.

19                   “(2) EXCEPTIONS.—The Agency, by rule or order, may adopt exceptions to any  
20 requirement of this section and may, conditionally or unconditionally, exempt any  
21 financial institution or class of institutions from the requirements of this section as the  
22 Agency deems necessary or appropriate to carry out the purposes and objectives of this  
23 section.

1           “(3) GUIDANCE.—The Agency shall issue guidance designed to facilitate  
2 compliance with the requirements of this section, including assisting financial institutions  
3 in working with applicants to determine whether the applicants are women- or minority-  
4 owned for the purposes of this section.”

5 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

6           (1) Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is  
7 amended—

8                   (A) by striking “or” after the semicolon at the end of paragraph (3);

9                   (B) in paragraph (4), by striking the period at the end and inserting “; or”;

10                   and

11                   (C) by inserting after paragraph (4), the following new paragraph:

12                   “(5) to make an inquiry under section 704B in accordance with the  
13 requirements of such section.”; and

14           (2) Section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is  
15 amended as described in section 1079(b) of this title.

16 (c) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit  
17 Protection Act is amended by inserting after the item relating to section 704A the following new  
18 item:

19           “704B. Small business loan data collection.”.

20 (d) EFFECTIVE DATE.—This section shall become effective on the designated transfer  
21 date.

## 22                   **Subtitle H—Conforming Amendments**



1 **SEC. 1073. AMENDMENTS TO THE INSPECTOR GENERAL ACT**

2 (a) ESTABLISHMENT.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C.  
3 App. 3, § 8G(a)(2)) is amended by inserting “the Consumer Financial Protection Agency,”  
4 before “the Consumer Product Safety Commission.”

5 (b) EFFECTIVE DATE.—This section shall become effective on the date of enactment of  
6 this Act.

7 **SEC. 1074. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

8 (a) Section 552a of title 5, United States Code, is amended by adding at the end the  
9 following new subsection:

10 “(w) APPLICABILITY TO CONSUMER FINANCIAL PROTECTION AGENCY.—Except as  
11 provided in the Consumer Financial Protection Agency Act of 2009, this section shall apply with  
12 respect to the Consumer Financial Protection Agency.”

13 (b) EFFECTIVE DATE.—This section shall become effective on the date of enactment of  
14 this Act.

15 **SEC. 1075. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION**  
16 **PARITY ACT OF 1982.**

17 (a) Section 803(1) of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C.  
18 3802(1)) is amended by striking paragraphs (B) and (C) in their entirety.

19 (b) Section 804 of the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C.  
20 3803) is amended—

21 (1) in subsection (a)—

22 (A) in paragraphs (1), (2), and (3), by inserting after the words

23 “transactions made” each place those words appear the words “on or before the

1 designated transfer date, as determined in section 1062 of the Consumer Financial  
2 Protection Agency Act of 2009, ;

3 (B) in paragraph (2), by striking “and” at the end;

4 (C) in paragraph (3), by striking the period at the end and inserting “;  
5 and”; and

6 (D) by adding at the end the following new paragraph:

7 “(4) with respect to transactions made after the designated transfer date, as  
8 determined in section 1062 of the Consumer Financial Protection Agency Act of 2009,  
9 only in accordance with regulations governing alternative mortgage transactions as issued  
10 by the Consumer Financial Protection Agency for federally chartered housing creditors,  
11 in accordance with the rulemaking authority granted to the Consumer Financial  
12 Protection Agency with regard to federally chartered housing creditors under laws other  
13 than this section.”

14 (2) by amending subsection (c) to read as follows:

15 “(c) An alternative mortgage transaction may be made by a housing creditor in  
16 accordance with this section, notwithstanding any State Constitution, law, or regulation that  
17 prohibits an alternative mortgage transaction. For purposes of this subsection, a State  
18 Constitution, law, or regulation that prohibits an alternative mortgage transaction does not  
19 include any State Constitution, law, or regulation that regulates mortgage transactions generally,  
20 including any restriction on prepayment penalties or late charges.

21 (3) by adding at the end the following new subsection:

22 “(d) The Consumer Financial Protection Agency shall—

23 “(1) review the regulations identified by the Comptroller of the Currency,

1 National Credit Union Administration, and the Director of the Office of Thrift  
2 Supervision (as those rules exist on the designated transfer date, as determined in section  
3 1062 of the Consumer Financial Protection Agency Act of 2009) as applicable under  
4 subsection (a)(1) – (3);

5 “(2) determine whether such regulations are fair and not deceptive and otherwise  
6 meet the objectives of Title X of the Consumer Financial Protection Agency Act of 2009;  
7 and

8 “(3) promulgate regulations under subsection (a)(4) after the designated transfer  
9 date, as determined in section 1062 of the Consumer Financial Protection Agency Act of  
10 2009.”.

11 (b) This section shall become effective on the designated transfer date.

12 (c) The amendments made by subsection (a) shall not affect any transaction covered by  
13 the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 *et seq.*) and entered  
14 into on or before the designated transfer date.

15 **SEC. 1076. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.**

16 (a) AMENDMENT TO SECTION 802.—Section 802(b) (12 U.S.C. 2901(b)) is amended by  
17 striking “each appropriate Federal financial supervisory agency” and inserting “the Consumer  
18 Financial Protection Agency”.

19 (b) AMENDMENT TO SECTION 803.—Section 803 (12 U.S.C. 2902) is amended by adding  
20 a new paragraph at the end as follows—

21 “(5) the term ‘Agency’ means the Consumer Financial Protection Agency.”.

22 (c) AMENDMENT TO SECTION 804.—Section 804 (12 U.S.C. 2903) is amended—

23 (1) by amending subsection (a) to read as follows:

1 “(a) IN GENERAL.—In connection with its examination of a financial institution—

2 “(1) the Agency shall assess the institution’s record of meeting the credit card  
3 needs of its entire community, including low- and moderate income neighborhoods,  
4 consistent with the safe and sound operation of such institution; and

5 “(2) the appropriate Federal financial supervisory agency shall take such  
6 assessment into account in its evaluation of an application for a deposit facility by such  
7 institution.”;

8 (2) in subsection (b), by striking “appropriate Federal financial supervisory  
9 agency” and inserting “Agency”;

10 (3) in subsection (c)(2)—

11 (A) in subparagraph (A), by striking “appropriate Federal financial  
12 supervisory agency” and inserting “Agency”; and

13 (B) in subparagraph (B), by striking “such agency.” and inserting “the  
14 Agency.”.

15 (d) AMENDMENTS TO SECTION 805.—Section 805 (12 U.S.C. § 2904) is amended by  
16 striking “Each appropriate Federal financial supervisory agency” and inserting “The Agency”.

17 (e) AMENDMENTS TO SECTION 806.—Section 806 (12 U.S.C. § 2905) is amended as  
18 follows:

19 “The Agency shall prescribe rules to carry out the purposes of this chapter.”.

20 (f) AMENDMENTS TO SECTION 807.— Section 807 (12 U.S.C. § 2906) is amended by—

21 (1) in subsection (a), by striking “appropriate Federal financial supervisory  
22 agency” and inserting “Agency”;

23 (2) in subsection (b), by—

1 (A) striking “appropriate Federal financial supervisory agency’s” and  
2 inserting “Agency’s”; and

3 (B) striking “Federal financial supervisory agencies” and inserting  
4 “Agency”;

5 (3) in subsection (c)—

6 (A) in paragraph (1), by adding “or to the Agency.” after “a Federal or  
7 State financial supervisory agency”;

8 (B) in paragraphs (2) and (3), by striking “appropriate Federal financial  
9 supervisory agency” and inserting “Agency”; and

10 (4) in subsection (d), by—

11 (A) striking “appropriate Federal financial supervisory agency” and  
12 inserting “Agency”; and

13 (B) striking “Federal financial supervisory agency” and inserting  
14 “Agency”.

15 (g) AMENDMENTS TO SECTION 808.—Section 808 (12 U.S.C. § 2907) is amended by  
16 striking “appropriate Federal financial supervisory agency” and inserting “Agency”.

17 (h) AMENDMENTS TO SECTION 809.—Section 809 (12 U.S.C. § 2908) is amended by  
18 striking “appropriate Federal financial supervisory agency” and inserting “Agency”.

19 **SEC. 1077. AMENDMENTS TO THE CONSUMER LEASING ACT OF 1976.**

20 (a) All mentions of “the Board” in the Consumer Leasing Act of 1976 (15 U.S.C. 1667 *et*  
21 *seq.*) are amended by striking “the Board” and inserting “the Agency.”

22 **SEC. 1078. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.**

23 (a) AMENDMENTS TO SECTION 903.—Section 903 of the Electronic Fund Transfer Act (15

1 U.S.C. 1693a) is amended—

2 (1) by amending paragraph (3) to read as follows:

3 “(3) the term ‘Agency’ means the Consumer Financial Protection Agency;” and

4 (2) in paragraph (6), by striking “Board” and inserting “Agency”.

5 (b) AMENDMENTS TO SECTION 904.—Section 904 of the Electronic Fund Transfer Act (15  
6 U.S.C. 1693b) is amended—

7 (1) in subsection (a)—

8 (A) in the title, by striking “Board” and inserting “Agency”;

9 (B) by striking “Board” each place it appears and inserting “Agency”;

10 (1) in subsection (b) by striking “Board” each place it appears and  
11 inserting “Agency”;

12 (2) in subsection (c) by striking “Board” each place it appears and  
13 inserting “Agency”; and

14 (3) in subsection (d) by striking “Board” each place it appears and  
15 inserting “Agency”.

16 (c) AMENDMENTS TO SECTION 905.—Section 905 of the Electronic Fund Transfer Act (15  
17 U.S.C. 1693c) is amended—

18 (1) in subsection (a), by striking “Board” each place it appears and inserting  
19 “Agency”; and

20 (2) in subsection (b) by striking “Board” and inserting “Agency”.

21 (d) AMENDMENT TO SECTION 906.—Section 906(b) of the Electronic Fund Transfer Act  
22 (15 U.S.C. 1693d(b)) is amended by striking “Board” and inserting “Agency”.

23 (e) AMENDMENT TO SECTION 907.—Section 907(b) of the Electronic Fund Transfer Act

1 (15 U.S.C. 1693e(b)) is amended by striking “Board” and inserting “Agency”.

2 (f) AMENDMENT TO SECTION 908.—Section 908(f)(7) of the Electronic Fund Transfer Act

3 (15 U.S.C. 1693f(f)(7)) is amended by striking “Board” and inserting “Agency”.

4 (g) AMENDMENT TO SECTION 910.—Section 910(a)(1)(E) of the Electronic Fund Transfer

5 Act (15 U.S.C. 1693h(a)(1)(E)) is amended by striking “Board” and inserting “Agency”.

6 (h) AMENDMENTS TO SECTION 911.—Section 911(b)(3) of the Electronic Fund Transfer Act (15

7 U.S.C. 1693i(b)(3) is amended by striking “Board” and inserting “Agency”.

8 (i) AMENDMENTS TO SECTION 915.—Section 915 of the Electronic Fund Transfer Act (15

9 U.S.C. 1693m) is amended as follows—

10 (1) in subsection (d)—

11 (A) in the title—

12 (i) by striking “BOARD” and inserting “AGENCY”; and

13 (ii) by striking “FEDERAL RESERVE SYSTEM” and inserting

14 “CONSUMER FINANCIAL PROTECTION AGENCY”;

15 (B) in the matter after the title—

16 (i) by striking “Board” each place it appears and inserting

17 “Agency”; and

18 (ii) by striking “Federal Reserve System” and inserting “Consumer

19 Financial Protection Agency.”

20 (j) AMENDMENTS TO SECTION 917.—Section 917 of the Electronic Fund Transfer Act (15

21 U.S.C. 1693o) is amended—

22 (1) in subsection (a)—

23 (A) in the matter after the title, by striking “Compliance” and inserting

1           “Subject to section 1022 of the Consumer Financial Protection Agency Act of  
2           2009, compliance”;

3                   (B) in paragraph (1)(A), by striking “Office of the Comptroller of the  
4           Currency” and inserting “National Bank Supervisor”;

5                   (C) by amending paragraph (2) to read as follows:

6                   “(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the  
7           Agency in the case of a covered person under that Act.”;

8                   (2) by amending subsection (c) to read as follows:

9                   “(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except  
10          to the extent that enforcement of the requirements imposed under this title is specifically  
11          committed to some other Government agency under subsection (a) and subject to section 1022 of  
12          the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall  
13          enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of  
14          its functions and powers under the Federal Trade Commission Act, a violation of any  
15          requirement imposed under this title shall be deemed a violation of a requirement imposed under  
16          that Act. All of the functions and powers of the Federal Trade Commission under the Federal  
17          Trade Commission Act are available to the Commission to enforce compliance by any person  
18          subject to the jurisdiction of the Commission with the requirements imposed under this title,  
19          irrespective of whether that person is engaged in commerce or meets any other jurisdictional  
20          tests in the Federal Trade Commission Act.”.

21                  (k) AMENDMENTS TO SECTION 918.—Section 918 of the Electronic Fund Transfer Act (15  
22          U.S.C. 1693p) is amended—

23                   (1) in subsection (a), by striking “Board” each place it appears and inserting



1 “Agency”; and

2 (2) in subsection (b), by striking “Board” each place it appears and inserting  
3 “Agency”.

4 (l) AMENDMENTS TO SECTION 919.—Section 919 of the Electronic Fund Transfer  
5 Act (15 U.S.C. 1693q) is amended by striking “Board” each place it appears and inserting  
6 “Agency”.

7 (m) AMENDMENTS TO SECTION 920.—Section 920 of the Electronic Fund Transfer Act  
8 (15 U.S.C. 1693r) is amended by striking “Board” each place it appears and inserting “Agency”.

9 **SEC. 1079. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.**

10 (a) AMENDMENTS TO SECTION 701.—Section 701 of the Equal Credit Opportunity Act  
11 (15 U.S.C. 1691) is amended—

12 (1) in subsection (b)—

13 (A) in paragraph (2), by striking “Board” and inserting “Agency”;

14 (B) in paragraph (3), by striking “Board” and inserting “Agency”;

15 (2) in subsection (c), paragraph (3), by striking “Board” and inserting “Agency”;

16 and

17 (3) in subsection (d), by striking “Board” each place it appears and inserting

18 “Agency”.

19 (b) AMENDMENTS TO SECTION 702.—Section 702(c) of the Equal Credit Opportunity Act  
20 (15 U.S.C. 1691a) is amended to read as follows:

21 “(c) The term ‘Agency’ refers to the Consumer Financial Protection Agency.”.

22 (c) AMENDMENTS TO SECTION 703.—Section 703 of the Equal Credit Opportunity Act  
23 (15 U.S.C. 1691b) is amended—

1 (1) by striking the title and inserting the following new title:

2 “PROMULGATION OF REGULATIONS BY THE AGENCY”;

3 (2) in subsection (a)—

4 (A) by striking “(c) REGULATIONS.”;

5 (B) by striking “Board” each place it appears and inserting “Agency”; and

6 (C) by striking subsection (b) in its entirety; and

7 (D) by redesignating paragraphs (1) through (5) as subsections (a) through

8 (e).

9 (d) AMENDMENTS TO SECTION 704.—Section 704 of the Equal Credit Opportunity Act  
10 (15 U.S.C. 1691c) is amended—

11 (1) in subsection (a)—

12 (A) in the matter after the title, by striking “Compliance” and inserting  
13 “Subject to section 1022 of the Consumer Financial Protection Agency Act of  
14 2009, compliance”;

15 (B) in paragraph (1)(A), by striking “Office of the Comptroller of the  
16 Currency” and inserting “National Bank Supervisor”;

17 (C) by amending paragraph (2) to read as follows:

18 “(2) Subtitle E of the Consumer Financial Protection Agency Act of 2009, by the  
19 Agency in case of a covered person under that Act.”;

20 (2) by amending subsection (c) to read as follows—

21 “(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to  
22 the extent that enforcement of the requirements imposed under this title is specifically committed  
23 to some other Government agency under subsection (a) and subject to section 1022 of the

1 Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall  
2 enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of  
3 its functions and powers under the Federal Trade Commission Act, a violation of any  
4 requirement imposed under this title shall be deemed a violation of a requirement imposed under  
5 that Act. All of the functions and powers of the Federal Trade Commission under the Federal  
6 Trade Commission Act are available to the Commission to enforce compliance by any person  
7 with the requirements imposed under this title, irrespective of whether that person is engaged in  
8 commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including  
9 the power to enforce any rule prescribed by the Agency under this title in the same manner as if  
10 the violation had been a violation of a Federal Trade Commission trade regulation rule.”; and

11 (3) in subsection (d), by striking “Board” and inserting “Agency”.

12 (e) AMENDMENT TO SECTION 704A.—Section 704A(a)(1) of the Equal Credit  
13 Opportunity Act (15 U.S.C. 1691c-1(a)(1)) is amended in by striking “Board” and inserting  
14 “Agency”.

15 (f) AMENDMENTS TO SECTION 705.—Section 705 of the Equal Credit Opportunity Act (15  
16 U.S.C. 1691d) is amended—

17 (1) in subsection (f), by striking “Board” each place it appears and inserting  
18 “Agency”; and

19 (2) in subsection (g), by striking “Board” and inserting “Agency”.

20 (g) AMENDMENTS TO SECTION 706.—Section 706(e) of the Equal Credit Opportunity Act  
21 (15 U.S.C. 1691e(e) ) is amended—

22 (1) in the title—

23 (A) by striking “BOARD” each place it appears and inserting “AGENCY”;

1 and

2 (B) by striking “FEDERAL RESERVE SYSTEM” and inserting “CONSUMER  
3 FINANCIAL PROTECTION AGENCY”;

4 (2) in the matter after the title—

5 (A) by striking “Board” each place it appears and inserting “Agency”; and

6 (B) by striking “Federal Reserve System” and inserting “Consumer  
7 Financial Protection Agency”.

8 (f) AMENDMENTS TO SECTION 707.—Section 707 of the Equal Credit Opportunity Act (15  
9 U.S.C. 1691f) is amended by striking “Board” each place it appears and inserting “Agency”.

10 **SEC. 1080. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.**

11 (a) AMENDMENTS TO SECTION 605.—Section 605(f)(1) of the Expedited Funds  
12 Availability Act (12 U.S.C. 4004(f)(1)) is amended by inserting after “Board” the following: “in  
13 consultation with the Director of the Consumer Financial Protection Agency”.

14 (b) AMENDMENTS TO SECTION 609.—Section 609(a) of the Expedited Funds  
15 Availability Act (12 U.S.C. 4008(a)) is amended by inserting after “Board” the  
16 following “in consultation with the Director of the Consumer Financial Protection Agency”.

17 **SEC. 1081. AMENDMENTS TO THE FAIR CREDIT BILLING ACT.**

18 The Fair Credit Billing Act (15 U.S.C. § 1666-1666j) is amended by striking “Board”  
19 each place it appears and inserting “Agency”.

20 **SEC. 1082. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT AND THE  
21 FAIR AND ACCURATE CREDIT TRANSACTIONS ACT.**

22 (a) Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended—  
23 (1) by inserting after subsection (v) the following new subsection:

1 “(w) The term ‘Agency’ means the Consumer Financial Protection Agency. ”

2 (2) by redesignating the existing subsections (w) and (x) as (x) and (y).

3 (b) Except as provided in subsections (c) through (i) of this section, the Fair Credit  
4 Reporting Act (15 U.S.C. 1681a) is amended—

5 (1) by striking “Federal Trade Commission” each place it appears and inserting  
6 “Agency”;

7 (2) by striking “FTC” each place it appears and inserting “Agency”;

8 (3) by striking “the Commission” each place it appears and inserting “the  
9 Agency”;

10 (4) by striking the phrase “The Federal banking agencies, the National Credit  
11 Union Administration, and the Commission shall jointly” each place it appears and  
12 inserting “The Agency shall”.

13 (c) Section 603(k)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681a(k)(2)) is  
14 amended by striking “Board of Governors of the Federal Reserve System” and inserting  
15 “Agency”.

16 (d) Subsection 604(g) of the Fair Credit Reporting Act (15 U.S.C.1681b(g)) is  
17 amended—

18 (1) by amending paragraph (3)(C) to read as follows:

19 “(C) as otherwise determined to be necessary and appropriate, by  
20 regulation or order and subject to paragraph (6), by the Agency (with respect to  
21 any covered person subject to the jurisdiction of such agency under paragraph (2)  
22 of section 621(b)), or the applicable State insurance authority (with respect to any  
23 person engaged in providing insurance or annuities).”

1 (2) by amending paragraph (5) to read as follows:

2 “(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

3 “(A) REGULATIONS REQUIRED.—The Agency may, after notice and  
4 opportunity for comment, prescribe regulations that permit transactions under  
5 paragraph (2) that are determined to be necessary and appropriate to protect  
6 legitimate operational, transactional, risk, consumer, and other needs (and which  
7 shall include permitting actions necessary for administrative verification  
8 purposes), consistent with the intent of paragraph (2) to restrict the use of medical  
9 information for inappropriate purposes.”

10 (3) by striking paragraph (6) in its entirety.

11 (e) Subsection 611(e)(2) of the Fair Credit Reporting Act (15 U.S.C.1681i(e)(2)) is  
12 amended to read as follows:

13 “(2) EXCLUSION. Complaints received or obtained by the Agency pursuant to its  
14 investigative authority under the Consumer Financial Protection Agency Act of 2009 shall not be  
15 subject to paragraph (1).”

16 (f) Subparagraph 615(h)(6)(A) of the Fair Credit Reporting Act (15 U.S.C.  
17 1681m(h)(6)(A)) is amended to read as follows:

18 “(A) RULES REQUIRED.—The Agency shall prescribe rules.”

19 (g) Section 621 of the Fair Credit Reporting Act (15 U.S.C.1681s) is amended—

20 (1) by amending subsection (a) to read as follows:

21 “(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

22 “(1) Subject to section 1022 of the Consumer Financial Protection Agency Act of  
23 2009, compliance with the requirements imposed under this title shall be enforced under

1 the Federal Trade Commission Act [15 U.S.C. 41 *et seq.*] by the Federal Trade  
2 Commission with respect to consumer reporting agencies and all other persons subject  
3 thereto, except to the extent that enforcement of the requirements imposed under this title  
4 is specifically committed to some other government agency under subsection (b) hereof.  
5 For the purpose of the exercise by the Federal Trade Commission of its functions and  
6 powers under the Federal Trade Commission Act, a violation of any requirement or  
7 prohibition imposed under this title shall constitute an unfair or deceptive act or practice  
8 in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C.  
9 45(a)] and shall be subject to enforcement by the Federal Trade Commission under  
10 section 5(b) thereof [15 U.S.C. 45(b)] with respect to any consumer reporting agency or  
11 person subject to enforcement by the Federal Trade Commission pursuant to this  
12 subsection, irrespective of whether that person is engaged in commerce or meets any  
13 other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade  
14 Commission shall have such procedural, investigative, and enforcement powers (subject  
15 to section 1022 of the Consumer Financial Protection Agency Act of 2009), including the  
16 power to issue procedural rules in enforcing compliance with the requirements imposed  
17 under this title and to require the filing of reports, the production of documents, and the  
18 appearance of witnesses as though the applicable terms and conditions of the Federal  
19 Trade Commission Act were part of this title. Any person violating any of the provisions  
20 of this title shall be subject to the penalties and entitled to the privileges and immunities  
21 provided in the Federal Trade Commission Act as though the applicable terms and  
22 provisions thereof were part of this title.

23 “(2) (A) Subject to section 1022 of the Consumer Financial Protection Agency

1 Act of 2009, in the event of a knowing violation, which constitutes a pattern or practice  
2 of violations of this title, the Commission may commence a civil action to recover a civil  
3 penalty in a district court of the United States against any person that violates this title. In  
4 such action, such person shall be liable for a civil penalty of not more than \$2,500 per  
5 violation.

6 “(B) In determining the amount of a civil penalty under subparagraph (A),  
7 the court shall take into account the degree of culpability, any history of prior  
8 such conduct, ability to pay, effect on ability to continue to do business, and such  
9 other matters as justice may require.

10 “(3) Notwithstanding paragraph (2), a court may not impose any civil penalty on a  
11 person for a violation of section 623(a)(1) [15 U.S.C. 1681s-2] unless the person has been  
12 enjoined from committing the violation, or ordered not to commit the violation, in an  
13 action or proceeding brought by or on behalf of the Federal Trade Commission, and has  
14 violated the injunction or order, and the court may not impose any civil penalty for any  
15 violation occurring before the date of the violation of the injunction or order.”

16 (2) by amending subsection (b) to read as follows—

17 “(b) ENFORCEMENT BY OTHER AGENCIES.—Subject to Section 1022 of the Consumer  
18 Financial Protection Agency Act of 2009, compliance with the requirements imposed under this  
19 title with respect to consumer reporting agencies, persons who use consumer reports from such  
20 agencies, persons who furnish information to such agencies, and users of information that are  
21 subject to subsection (d) of section 615 [15 U.S.C. 1681m] shall be enforced under—

22 “(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case  
23 of



1                   “(A) national banks, and Federal branches and Federal agencies of foreign  
2 banks, by the National Bank Supervisor;

3                   “(B) member banks of the Federal Reserve System (other than national  
4 banks), branches and agencies of foreign banks (other than Federal branches,  
5 Federal agencies, and insured State branches of foreign banks), commercial  
6 lending companies owned or controlled by foreign banks, and organizations  
7 operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 *et*  
8 *seq.*, 611 *et seq.*], by the Board of Governors of the Federal Reserve System; and

9                   “(C) banks insured by the Federal Deposit Insurance Corporation (other  
10 than members of the Federal Reserve System) and insured State branches of  
11 foreign banks, by the Board of Directors of the Federal Deposit Insurance  
12 Corporation;

13                   “(2) Subtitle E of the Consumer Financial Protection Agency Act of 2009, by the  
14 Agency in the case of a covered person under that Act;

15                   “(3) the Federal Credit Union Act [12 U.S.C. §§ 1751 *et seq.*], by the  
16 Administrator of the National Credit Union Administration [National Credit Union  
17 Administration Board] with respect to any Federal credit union;

18                   “(4) subtitle IV of title 49 [49 U.S.C. §§ 10101 *et seq.*], by the Secretary of  
19 Transportation, with respect to all carriers subject to the jurisdiction of the Surface  
20 Transportation Board;

21                   “(5) the Federal Aviation Act of 1958 [49 U.S.C. App. §§ 1301 *et seq.*], by the  
22 Secretary of Transportation with respect to any air carrier or foreign air carrier subject to  
23 that Act [49 U.S.C. Appx §§ 1301 *et seq.*]; and

1 “(6) the Packers and Stockyards Act, 1921 [7 U.S.C. §§ 181 *et seq.*] (except as  
2 provided in section 406 of that Act [7 U.S.C. §§ 226 and 227]), by the Secretary of  
3 Agriculture with respect to any activities subject to that Act.

4 “The terms used in paragraph (1) that are not defined in this title or otherwise defined in  
5 section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. §1813(s)) shall have the  
6 meaning given to them in section 1(b) of the International Banking Act of 1978 (12  
7 U.S.C. § 3101).”.

8 (3) by amending subsection (e) to read as follows:

9 “(e) REGULATORY AUTHORITY.—The Agency shall prescribe such regulations as  
10 necessary to carry out the purposes of this Act with respect to a covered person described  
11 in subsection (b).”

12 (h) Section 623 of the Fair Credit Reporting Act (15 U.S.C.1681s-2) is amended—

13 (1) by amending subparagraph (a)(7)(D) to read as follows—

14 “(D) MODEL DISCLOSURE

15 “(i) DUTY OF AGENCY TO PREPARE.—The Agency shall prescribe a  
16 brief model disclosure a financial institution may use to comply with  
17 subparagraph (A), which shall not exceed 30 words.

18 “(ii) USE OF MODEL NOT REQUIRED.—No provision of this  
19 paragraph shall be construed as requiring a financial institution to use any  
20 such model form prescribed by the Agency.

21 “(iii) COMPLIANCE USING MODEL.—A financial institution shall be  
22 deemed to be in compliance with subparagraph (A) if the financial  
23 institution uses any such model form prescribed by the Agency, or the

1 financial institution uses any such model form and rearranges its format.”.

2 (2) by amending subsection (e) to read as follows—

3 “(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED

4 “(1) GUIDELINES. The Agency shall, with respect to the entities that are subject to  
5 its enforcement authority under section 621—

6 “(A) establish and maintain guidelines for use by each person that  
7 furnishes information to a consumer reporting agency regarding the accuracy and  
8 integrity of the information relating to consumers that such entities furnish to  
9 consumer reporting agencies, and update such guidelines as often as necessary;  
10 and

11 “(B) prescribe regulations requiring each person that furnishes information  
12 to a consumer reporting agency to establish reasonable policies and procedures or  
13 implementing the guidelines established pursuant to subparagraph (A).

14 “(2) CRITERIA. In developing the guidelines required by paragraph (1)(A), the  
15 Agency shall—

16 “(A) identify patterns, practices, and specific forms of activity that can  
17 compromise the accuracy and integrity of information furnished to consumer  
18 reporting agencies;

19 “(B) review the methods (including technological means) used to furnish  
20 information relating to consumers to consumer reporting agencies;

21 “(C) determine whether persons that furnish information to consumer  
22 reporting agencies maintain and enforce policies to ensure the accuracy and  
23 integrity of information furnished to consumer reporting agencies; and

1 “(D) examine the policies and processes that persons that furnish  
2 information to consumer reporting agencies employ to conduct reinvestigations  
3 and correct inaccurate information relating to consumers that has been furnished  
4 to consumer reporting agencies.”

5 (i) Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 is  
6 amended by striking “The Federal banking agencies, the National Credit Union Administration,  
7 and the Commission, with respect to the entities that are subject to their respective enforcement  
8 authority under section 621 of the Fair Credit Reporting Act and” and inserting “The Agency,  
9 with respect to a person subject to its enforcement authority, and”.

10 **SEC. 1083. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.**

11 (a) AMENDMENTS TO SECTION 803.—Section 803 of the Fair Debt Collection Practices  
12 Act (15 U.S.C. 1692a) is amended—

13 (1) by amending paragraph (1) to read as follows:

14 “(1) The term ‘Agency’ means the Consumer Financial Protection Agency.”; and

15 (2) renumbering the following paragraphs respectively.

16 (b) AMENDMENTS TO SECTION 813.—Section 813(e) of the Fair Debt Collection Practices  
17 Act (15 U.S.C. § 1692k(e)) is amended by striking “Commission” and inserting “Agency”.

18 (c) AMENDMENTS TO SECTION 814.—Section 814 (of the Fair Debt Collection Practices  
19 Act 15 U.S.C. 1692l) is amended—

20 (1) by amending subsection (a) to read as follows—

21 “(a) FEDERAL TRADE COMMISSION.—Subject to section 1022 of the Consumer Financial  
22 Protection Agency Act of 2009, compliance with this title shall be enforced by the Commission,  
23 except to the extent that enforcement of the requirements imposed under this title is specifically

1 committed to another agency under subsection (b). For purpose of the exercise by the  
2 Commission of its functions and powers under the Federal Trade Commission Act, a violation of  
3 this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the  
4 functions and powers of the Commission under the Federal Trade Commission Act are available  
5 to the Commission to enforce compliance by any person with this title, irrespective of whether  
6 that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade  
7 Commission Act, including the power to enforce the provisions of this title in the same manner  
8 as if the violation had been a violation of a Federal Trade Commission trade regulation rule.”;

9 (2) in subsection (b)—

10 (A) in the matter after the title, by striking “Compliance” and inserting  
11 “Subject to section 1022 of the Consumer Financial Protection Agency Act of  
12 2009, compliance”.

13 (B) in paragraph (1)(A), by striking “Office of the Comptroller of the  
14 Currency;” and inserting “National Bank Supervisor”;

15 (C) by amending paragraph (b)(2) to read as follows:

16 “(2) subtitle E of the Consumer Financial Protection Agency Act of 2009 by the  
17 Agency in the case of a covered person under the Act”; and

18 (3) in subsection (d), by striking “Commission” and inserting “Agency”.

19 (d) AMENDMENTS TO SECTION 815.—Section 815 (15 U.S.C. § 1692m) is amended by  
20 striking all references to “Commission” and inserting “Agency”.

21 (e) AMENDMENTS TO SECTION 817.—Section 817 (15 U.S.C. § 1692o) is amended by  
22 striking all references to “Commission” and inserting “Agency”.

23 **SEC. 1084. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.**

1 (a) Section 8(t) the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended to add  
2 a new paragraph (6), as follows:

3 “(6) REFERRAL TO CONSUMER FINANCIAL PROTECTION COMMISSION.—Each  
4 appropriate Federal banking agency shall make a referral to the Consumer Financial  
5 Protection Agency when the Federal banking agency has a reasonable belief that a  
6 violation of an enumerated consumer law, as defined in section 1022(e)(2) of the  
7 Consumer Financial Protection Agency Act of 2009, by any insured depository institution  
8 or institution-affiliated party within the jurisdiction of that appropriate Federal banking  
9 agency.”.

10 (b) Section 43of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

11 (1) in subsection (c), by striking “Federal Trade Commission” and inserting  
12 “Agency”;

13 (2) in subsection (d), by striking “Federal Trade Commission” and inserting  
14 “Agency”;

15 (3) in subsection (e)—

16 (A) in paragraph (1), by striking “Federal Trade Commission” and  
17 inserting “Agency”; and

18 (B) by adding at the end the following new paragraph:

19 “(5) AGENCY.—The term “Agency” means the Consumer Financial  
20 Protection Agency.”.

21 (e) Section 43(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(f)) is  
22 amended—

23 (1) by amending paragraph (1) to read as follows:

1           “(1) LIMITED ENFORCEMENT AUTHORITY.— Compliance with the requirements of  
2 subsections (b), (c) and (e), and any regulation prescribed or order issued under such  
3 subsection, shall be enforced under the Consumer Financial Protection Agency Act of  
4 2009 by the Agency.”;

5           (2) in paragraph (2), by amending subparagraph (C) to read as follows:

6                   “(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If  
7 the Agency has instituted an enforcement action for a violation of this section, no  
8 appropriate State supervisory may, during the pendency of such action, bring an  
9 action under this section against any defendant named in the complaint of the  
10 Agency for any violation of this section that is alleged in that complaint.”.

11 **SEC. 1085. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.**

12           (a) Section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) is  
13 amended—

14           (1) by striking “The Federal banking agencies, the National Credit Union  
15 Administration, the Secretary of the Treasury,” and inserting “The Consumer Financial  
16 Protection Agency and”; and

17           (2) by striking “, and the Federal Trade Commission”.

18           (b) Section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)) is amended—

19           (1) in the matter after the title of subsection, by striking “This subtitle and the  
20 regulations prescribed thereunder shall be enforced by” and inserting “Subject to section  
21 1022 of the Consumer Financial Protection Agency Act of 2009, this subtitle and the  
22 regulations prescribed thereunder shall be enforced by the Consumer Financial Protection  
23 Agency,”;

1 (2) by striking paragraph (1)(D); and

2 (3) by inserting after paragraph (7) the following new paragraph:

3 “(8) Under the Consumer Financial Protection Agency Act of 2009, by the  
4 Consumer Financial Protection Agency in the case of financial institutions and  
5 other covered persons subject to the jurisdiction of the Agency under that Act, but  
6 not with respect to the standards under section 501.”.

7 (c) Section 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(b)(1)) is amended  
8 by inserting “, other than the Consumer Financial Protection Agency, ” after “subsection (a)”.

9 **SEC. 1086. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT.**

10 (a) Section 303 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802) is  
11 amended—

12 (1) by inserting a new paragraph (1) to read as follows—

13 “(1) the term ‘Agency’ means the Consumer Financial Protection Agency.”; and

14 (2) by redesignating existing paragraphs (1) through (6) as paragraphs (2) through  
15 (7).

16 (b) Except as provided in subsections (c), (d), (e), and (f) of this section, all references to  
17 “Board” in the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801-11) are amended by  
18 striking “Board” and inserting “Agency”.

19 (c) Subsection 304(h) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h))  
20 is amended to read as follows—

21 “(h) SUBMISSION TO AGENCIES.—The data required to be disclosed under  
22 subsection (b) shall be submitted to the Agency and to the appropriate agency for each  
23 institution reporting under this title. Notwithstanding the requirement of section



1 304(a)(2)(A) for disclosure by census tract, the Agency, in cooperation with other  
2 appropriate regulators, including—

3 “(1) the National Bank Supervisor for national banks and Federal branches,  
4 Federal agencies of foreign banks, and savings associations;

5 “(2) the Federal Deposit Insurance Corporation for banks insured by the Federal  
6 Deposit Insurance Corporation (other than members of the Federal Reserve System),  
7 mutual savings banks, insured State branches of foreign banks, and any other depository  
8 institution described in section 303(2)(A) which is not otherwise referred to in this  
9 paragraph;

10 “(3) the National Credit Union Administration Board for credit unions; and

11 “(4) the Secretary of Housing and Urban Development for other lending  
12 institutions not regulated by the agencies referred to in paragraphs (1) through (4), shall  
13 develop regulations prescribing the format for such disclosures, the method for  
14 submission of the data to the appropriate regulatory agency, and the procedures for  
15 disclosing the information to the public. These regulations shall also require the  
16 collection of data required to be disclosed under subsection (b) with respect to loans sold  
17 by each institution reporting under this title, and, in addition, shall require disclosure of  
18 the class of the purchaser of such loans. Any reporting institution may submit in writing  
19 to the Agency or to the appropriate agency such additional data or explanations as it  
20 deems relevant to the decision to originate or purchase mortgage loans.”

21 (d) Section 305 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804) is  
22 amended—

23 (1) by amending subsection (b) to read as follows—

1                   “(b) POWERS OF CERTAIN OTHER AGENCIES.—Compliance with the requirements  
2 imposed under this title shall be enforced under—

3                   “(1) section 8 of the Federal Deposit Insurance Act, in the case of—

4                                 “(A) national banks, and Federal branches and Federal agencies of  
5 foreign banks, by the National Bank Supervisor;

6                                 “(B) member banks of the Federal Reserve System (other than  
7 national banks), branches and agencies of foreign banks (other than  
8 Federal branches, Federal agencies, and insured State branches of foreign  
9 banks), commercial lending companies owned or controlled by foreign  
10 banks, and organizations operating under section 25 or 25(a) of the  
11 Federal Reserve Act, by the Board; and

12                                 “(C) banks insured by the Federal Deposit Insurance Corporation  
13 (other than members of the Federal Reserve System), mutual savings  
14 banks as defined in section 3(f) of the Federal Deposit Insurance Act (12  
15 U.S.C. 1813(f)), insured State branches of foreign banks, and any other  
16 depository institution not referred to in this paragraph or paragraph (2) or  
17 (3) of this subsection, by the Board of Directors of the Federal Deposit  
18 Insurance Corporation;

19                   “(2) subtitle E of the Consumer Financial Protection Agency Act of 2009,  
20 by the Agency in the case of a covered person under that Act;

21                                 “(3) the Federal Credit Union Act, by the Administrator of the National  
22 Credit Union Administration with respect to any credit union; and

23                                 “(4) other lending institutions, by the Secretary of Housing and Urban

1 Development.

2 The terms used in paragraph (1) that are not defined in this title or otherwise  
3 defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s))  
4 shall have the meaning given to them in section 1(b) of the International Banking  
5 Act of 1978 (12 U.S.C. 3101).”

6 (2) by inserting at the end of section 305 the following new subsection:

7 “(d) OVERALL ENFORCEMENT AUTHORITY OF THE CONSUMER FINANCIAL PROTECTION  
8 AGENCY.—Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009,  
9 enforcement of the requirements imposed under this title is committed to each of the agencies  
10 under subsection (b). The Agency may exercise its authorities under the Consumer Financial  
11 Protection Agency Act of 2009 to exercise principal authority to examine and enforce  
12 compliance by any person with the requirements under this title.”

13 (e) Subsection 306(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b))  
14 is amended to read as follows—

15 “(b) The Agency may by regulation exempt from the requirements of this title any State  
16 chartered depository institution within any State or subdivision thereof if it determines that,  
17 under the law of such State or subdivision, that institution is subject to requirements substantially  
18 similar to those imposed under this title, and that such law contains adequate provisions for  
19 enforcement. Notwithstanding any other provision of this subsection, compliance with the  
20 requirements imposed under this subsection shall be enforced by the National Bank Supervisor  
21 under section 8 of the Federal Deposit Insurance Act in the case of national banks and savings  
22 association the deposits of which are insured by the Federal Deposit Insurance Corporation.”

23 (f) Section 307 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2806) is

1 amended to read as follows:

2           “(a)(1) The Director of the Consumer Financial Protection Agency, with the  
3 assistance of the Secretary, the Director of the Bureau of the Census, the Board of  
4 Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation,  
5 and such other persons as the Consumer Financial Protection Agency deems appropriate,  
6 shall develop or assist in the improvement of, methods of matching addresses and census  
7 tracts to facilitate compliance by depository institutions in as economical a manner as  
8 possible with the requirements of this title.

9           “(2) There is authorized to be appropriated such sums as may be necessary  
10 to carry out this subsection.

11           “(3) The Director of the Consumer Financial Protection Agency is  
12 authorized to utilize, contract with, act through, or compensate any person or  
13 agency in order to carry out this subsection.

14           “(b) The Director of the Consumer Financial Protection Agency shall recommend  
15 to the Committee on Financial Services of the House of Representatives and the  
16 Committee on Banking, Housing, and Urban Affairs of the Senate such additional  
17 legislation as the Director of the Consumer Financial Protection Agency deems  
18 appropriate to carry out the purpose of this title.”

19           (g) Section 304(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(b)) is  
20 amended—

21           (1) in paragraph (4), by inserting “age,” before “and gender”;

22           (2) at the end of paragraph (3), by striking “and”;

23           (3) at the end of paragraph (4), by striking the period; and

1 (4) by adding at the end of section 304(b) the following new paragraphs:

2 “(5) the number and dollar amount of mortgage loans grouped according to the  
3 following measurements:

4 “(A) the total points and fees payable at origination in connection with the  
5 mortgage as determined by the Agency, taking into account 15 U.S.C.  
6 1602(aa)(4);

7 “(B) the difference between the annual percentage rate associated with the  
8 loan and a benchmark rate or rates for all loans;

9 “(C) the term in months of any prepayment penalty or other fee or charge  
10 payable on repayment of some portion of principal or the entire principal in  
11 advance of scheduled payments; and

12 “(D) such other information as the Agency may require.

13 “(6) the number and dollar amount of mortgage loans and completed applications  
14 grouped according to the following measurements:

15 “(A) the value of the real property pledged or proposed to be pledged as  
16 collateral;

17 “(B) the actual or proposed term in months of any introductory period  
18 after which the rate of interest may change;

19 “(C) the presence of contractual terms or proposed contractual terms that  
20 would allow the mortgagor or applicant to make payments other than fully-  
21 amortizing payments during any portion of the loan term;

22 “(D) the actual or proposed term in months of the mortgage loan;

23 “(E) the channel through which application was made, including retail,

1 broker, and other relevant categories;

2 “(F) as the Agency may determine to be appropriate, a unique identifier  
3 that identifies the loan originator as set forth in Section 1503 of the S.A.F.E.  
4 Mortgage Licensing Act of 2008;

5 “(G) as the Agency may determine to be appropriate, a universal loan  
6 identifier that corresponds to the real property pledged or proposed to be pledged  
7 as collateral;

8 “(H) as the Agency may determine to be appropriate, the parcel number  
9 that corresponds to the real property pledged or proposed to be pledged as  
10 collateral;

11 “(I) the credit score of mortgage applicants and mortgagors in such form  
12 as the Agency may proscribe; and

13 “(J) such other information as the Agency may require.”;

14 (5) in subsection (j)(2)(B)(i), by inserting “credit score or similar measurement,”  
15 after “number,”;

16 (6) in subsection (h)—

17 (A) by striking “subsection (b)(4) of this section shall be submitted” and  
18 inserting “subsection (b) of this section shall be submitted”; and

19 (B) by striking “subsection (b)(4) of this section with respect” and  
20 inserting “subsections (b) of this section with respect”;

21 (7) in subsection (i), by striking “subsection (b)(4)” and inserting “subsections  
22 (b)(4), (b)(5), and (b)(6)”;

23 (8) in subsection(j)—

1 (A) in paragraph (1), by striking “(as” and inserting “(containing loan-  
2 level and application-level information relating to disclosures required under  
3 subsections (a) and (b) and as otherwise”;

4 (B) by amending paragraph (3) to read as follows:

5 “(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the  
6 disclosure requirement of paragraph (1) if the institution provides the information  
7 required under such paragraph in such formats as the Agency may require”;

8 (C) in paragraph (2)(A), by striking “in the format in which such  
9 information is maintained by the institution” and inserting “in such formats as the  
10 Agency may require”; and

11 (9) by amending subsection (m)(2) to read as follows:

12 “(m)(2) FORM OF INFORMATION.— In complying with paragraph (1), a depository  
13 institution shall provide the person requesting the information with a copy of the  
14 information requested in such formats as the Agency may require”.

15 **SEC. 1087. AMENDMENTS TO THE HOME OWNERSHIP AND EQUITY**

16 **PROTECTION ACT OF 1994.**

17 (a) Section 158(a) of the Home Ownership and Equity Protection Act of 1994 (15 U.S.C.  
18 1601 note) is amended by striking “Consumer Advisory Council of the Board” and inserting  
19 “Advisory Board to the Agency”.

20 (b) The Home Ownership and Equity Protection Act of 1994 is amended by striking  
21 “Board” each place it appears and inserting “Agency”.

22 **SEC. 1088. AMENDMENTS TO THE OMNIBUS APPROPRIATIONS ACT, 2009 (AS**

23 **AMENDED BY THE CREDIT CARD ACCOUNTABILITY**





1 Protection Agency”; and

2 (3) by striking “primary Federal regulatory” and inserting “Consumer Financial  
3 Protection Agency”.

4 **SEC. 1089. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES**  
5 **ACT.**

6 (a) Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2602) is  
7 amended by adding at the end the following new paragraph—

8 “(9) the term ‘Agency’ means the Consumer Financial Protection Agency.”

9 (b) Section 4 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2603) is  
10 amended—

11 (1) in subsection (a), by striking the first sentence and inserting the following:

12 “The Agency shall publish a single, integrated disclosure for mortgage loan transactions,  
13 including real estate settlement cost statements, which include the disclosure requirements of this  
14 title, in conjunction with the disclosure requirements of the Truth in Lending Act (15 U.S.C.  
15 1601 note *et seq.*) that, taken together, may apply to transactions subject to both or either law.  
16 The purpose of such model disclosure shall be to facilitate compliance with the disclosure  
17 requirements of those titles, and to aid the borrower or lessee in understanding the transaction by  
18 utilizing readily understandable language to simplify the technical nature of the disclosures.”;

19 (2) by striking “Secretary” each place it appears and inserting “Agency”; and

20 (3) by striking “form” each place it appears and inserting “forms”.

21 (c) Section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2604) is  
22 amended—

23 (1) by striking “Secretary” each place it appears, and inserting “Agency”; and

1 (2) by striking the first sentence of subsection (a), and inserting—  
2 “The Agency shall prepare and distribute booklets jointly complying with the requirements of  
3 the Truth in Lending Act (15 U.S.C. 1601 note *et seq.*) and the provisions of this title, in order to  
4 help persons borrowing money to finance the purchase of residential real estate better to  
5 understand the nature and costs of real estate settlement services.”.

6 (d) Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is  
7 amended by striking “Secretary” and inserting “Agency”; and by striking “by regulations that  
8 shall take effect not later than April 20, 1991,”.

9 (e) Section 7 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2606) is  
10 amended by striking “Secretary” and inserting “Agency”.

11 (f) Section 8(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.  
12 2607(d)) is amended—

13 (1) in the title, by inserting “AGENCY AND” before “SECRETARY”;

14 (2) in paragraph (4), by striking “The Secretary,” and inserting “The Agency, the  
15 Secretary,”; and

16 (3) at the end of paragraph (4), inserting the following—

17 “However, to the extent that a Federal law authorizes the Agency and other federal  
18 and state agencies to enforce or administer the law, the Agency shall have primary  
19 authority to enforce or administer that Federal law in accordance with section 1022  
20 of the Consumer Financial Protection Agency Act of 2009.”

21 (g) Section 10(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. §  
22 2609(d)) is amended by striking “Secretary” and inserting “Agency”.

23 (h) Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2614)

1 is amended by inserting “the Agency,” before “the Secretary”.

2 (i) Section 18 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2616) is  
3 amended by striking “Secretary” and inserting “Agency”.

4 (j) Section 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2617) is  
5 amended by striking “Secretary” each place where it appears and inserting “Agency”.

6 **SEC. 1090. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.**

7 (a) AMENDMENTS TO SECTION 1101.—Section 1101 of the Right to Financial  
8 Privacy Act of 1978 (12 U.S.C. 3401) is amended—

9 (1) by amending paragraph (1) to read as follows—

10 “(1) ‘financial institution’ means any national bank, card issuer as defined in  
11 section 1602(n) of Title 15, credit union or consumer finance institution located in any  
12 State or territory of the United States, the District of Columbia, Puerto Rico, Guam,  
13 American Samoa, or the Virgin Islands;”;

14 (2) in paragraph (6)—

15 (A) in subparagraph (A), by adding “and” after the semi-colon;

16 (B) in subparagraph (B) by striking “; and” and inserting a period; and

17 (C) by deleting subparagraph (C) in its entirety.

18 (3) in paragraph (7)—

19 (A) by amending subparagraph (B) to read as follows:

20 “(B) the Director of the National Bank Supervisor;”;

21 (B) by amending subparagraph (E) to read as follows—

22 “(E) the Consumer Financial Protection Agency;”.

23 (b) AMENDMENTS TO SECTION 1112.—Section 1112 of the Right to Financial

1 Privacy Act (12 U.S.C. 3412) is amended in subsection (e) by deleting “and the Commodity  
2 Futures Trading Commission is permitted.” and inserting “the Commodity Futures Trading  
3 Commission, and the Consumer Financial Protection Agency is permitted.”.

4 (c) AMENDMENTS TO SECTION 1113.—Section 1113 of the Right to Financial Privacy Act  
5 (12 U.S.C. 3413) is amended by adding at the end the following new subsection—

6 “(r) DISCLOSURE TO THE CONSUMER FINANCIAL PROTECTION AGENCY.—Nothing in this  
7 chapter shall apply to the examination by or disclosure to the Consumer Financial Protection  
8 Agency of financial records or information in the exercise of its authority with respect to a  
9 financial institution.”.

10 **SEC. 1091. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR**  
11 **MORTGAGE LICENSING ACT OF 2008.**

12 (a) Section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5102) is  
13 amended as follows—

14 (1) by striking the definition of “FEDERAL BANKING AGENCIES” and inserting the  
15 following—

16 “AGENCY.—The term ‘Agency’ means the Consumer Financial  
17 Protection Agency.”; and

18 (2) by striking the definition of “SECRETARY” and inserting the following—

19 “DIRECTOR.—The term ‘Director’ means the Director of the Consumer  
20 Financial Protection Agency.”

21 (b) The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 *et seq.*) is amended as  
22 follows—

23 (1) by striking “a Federal banking agency” each place it appears and inserting

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

“the Agency”;

(2) by striking “Federal banking agencies” each place it appears and inserting “Agency”;

(3) by striking “Secretary” each place where it appears and inserting “Director”.

(c) Section 1507 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5106) is amended—

(1) in subsection (a)—

(A) by amending paragraph(1) to read as follows:

“(1) IN GENERAL.—The Agency shall develop and maintain a system for registering employees of a subsidiary that is owned and controlled by a depository institution, and regulated by the Agency as a registered loan originator with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of a the 1-year period beginning July 30, 2009.”;

(B) in paragraph (2) by striking “appropriate Federal banking agency and the Farm Credit Administration:”, and inserting “Agency”;

(2) in subsection (b), by striking “Federal banking agencies, through the Financial Institutions Examination Council and the Farm Credit Administration”, and inserting “Agency”; and

(3) in subsection (c), by striking “Federal banking agencies”, and inserting “Agency”.

(d) Section 1508 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5107) is amended—

(1) striking the title and inserting “CONSUMER FINANCIAL PROTECTION AGENCY

1 BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING SYSTEM”; and

2 (2) adding at the end the following new subsection—

3 “(f)(1) The Agency is authorized to promulgate regulations setting minimum net worth or  
4 surety bond requirements for residential mortgage loan originators and minimum requirements  
5 for recovery funds paid into by loan originators.

6 “(2) Such regulations shall take into account the need to provide originators  
7 adequate incentives to originate affordable and sustainable mortgage loans as well as the  
8 need to ensure a competitive origination market that maximizes consumers’ access to  
9 affordable and sustainable mortgage loans.”.

10 (e) Section 1510 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5109) is  
11 amended to read as follows:

12 **“SEC. 1510. FEES.**

13 “The Agency, the Farm Credit Administration, and the Nationwide Mortgage Licensing  
14 System and Registry may charge reasonable fees to cover the costs of maintaining and providing  
15 access to information from the Nationwide Mortgage Licensing System and Registry, to the  
16 extent that such fees are not charged to consumers for access to such system and registry.”.

17 (f) Section 1513 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5112) is  
18 amended to read as follows—

19 **“SEC. 1513. LIABILITY PROVISIONS.**

20 “The Agency, any State official or agency, or any organization serving as the  
21 administrator of the Nationwide Mortgage Licensing System and Registry or a system  
22 established by the Director under section 5108 of this title, or any officer or employee of any  
23 such entity, shall not be subject to any civil action or proceeding for monetary damages by

1 reason of the good faith action or omission of any officer or employee of any such entity, while  
2 acting within the scope of office or employment, relating to the collection, furnishing, or  
3 dissemination of information concerning persons who are loan originators or are applying for  
4 licensing or registration as loan originators.”.

5 (g) Section 1514 of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5113) is  
6 amended in the title by striking “**UNDER HUD BACKUP LICENSING SYSTEM**” and  
7 inserting “**BY THE AGENCY**”.

8 **SEC. 1092. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

9 (a) Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by—

10 (1) inserting after subsection (a) a new subsection (b) as follows:

11 “(b) The term “Agency” means the Consumer Financial Protection Agency.”; and

12 (2) redesignating the existing subsections (b) through (bb) as (c) through (cc).

13 (b) The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) is amended by striking “Board”  
14 each place it appears and inserting “Agency” except—

15 (1) in section 140(d) (15 U.S.C. 1650) where “Board” is to remain unchanged in  
16 all instances;

17 (2) as provided in subsection (d).

18 (c) Section 105(b) of the Truth in Lending Act (15 U.S.C. 1604(b)) is amended by  
19 striking the first sentence and inserting the following:

20 “The Agency shall publish a single, integrated disclosure for mortgage loan transactions,  
21 including real estate settlement cost statements, which include the disclosure requirements of this  
22 title, in conjunction with the disclosure requirements of the Real Estate Settlement Procedures  
23 Act (Pub. L. 93-533, 12 U.S.C. 2601 *et seq.*) that, taken together, may apply to transactions

1 subject to both or either law. The purpose of such model disclosure shall be to facilitate  
2 compliance with the disclosure requirements of those titles, and to aid the borrower or lessee in  
3 understanding the transaction by utilizing readily understandable language to simplify the  
4 technical nature of the disclosures.”.

5 (d) Section 108 of the Truth in Lending Act (15 U.S.C. 1607) is amended—

6 (1) by amending subsection (a) to read as follows—

7 “(a) ENFORCING AGENCIES.—Subject to Section 1022 of the Consumer Financial  
8 Protection Agency Act of 2009, compliance with the requirements imposed under this title shall  
9 be enforced under—

10 “(1) section 8 of the Federal Deposit Insurance Act, in the case of—

11 “(A) national banks, and Federal branches and Federal agencies of foreign  
12 banks, by the National Bank Supervisor;

13 “(B) member banks of the Federal Reserve System (other than national  
14 banks), branches and agencies of foreign banks (other than Federal branches,  
15 Federal agencies, and insured State branches of foreign banks), commercial  
16 lending companies owned or controlled by foreign banks, and organizations  
17 operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

18 “(C) banks insured by the Federal Deposit Insurance Corporation (other  
19 than members of the Federal Reserve System) and insured State branches of  
20 foreign banks, by the Board of Directors of the Federal Deposit Insurance  
21 Corporation.

22 “(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the  
23 Agency in the case of a covered person under that Act.



1           “(3) the Federal Credit Union Act, by the Director of the Bureau of Federal Credit  
2           Unions with respect to any Federal credit union.

3           “(4) the Federal Aviation Act of 1958, by the Secretary of Transportation with  
4           respect to any air carrier or foreign air carrier subject to that Act.

5           “(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of  
6           that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

7           “(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect  
8           to any Federal land bank, Federal land bank association, Federal intermediate credit bank,  
9           or production credit association.”.

10           (2) by amending subsection (c) to read as follows—

11           “(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except  
12           to the extent that enforcement of the requirements imposed under this title is specifically  
13           committed to some other Government agency under subsection (a) and subject to Section 1022  
14           of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall  
15           enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of  
16           its functions and powers under the Federal Trade Commission Act, a violation of any  
17           requirement imposed under this title shall be deemed a violation of a requirement imposed under  
18           that Act. All of the functions and powers of the Federal Trade Commission under the Federal  
19           Trade Commission Act are available to the Commission to enforce compliance by any person  
20           with the requirements under this title, irrespective of whether that person is engaged in  
21           commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.”

22           (e) The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) is amended by striking “Federal  
23           Trade Commission” each place it appears and inserting “Agency” except—

1 (1) Section 108(c) of the Truth in Lending Act (15 U.S.C. 1607(c)), which is to be  
2 amended as specified in subsection (d);

3 (2) Section 127(b)(11)(C) of the Truth in Lending Act (15 U.S.C. 1637) is  
4 amended to read as follows—

5 “(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with  
6 respect to which compliance with this title is enforced by the Agency, the following  
7 statement, in a prominent location on the front of the billing statement, disclosed clearly  
8 and conspicuously: "Minimum Payment Warning: Making only the required minimum  
9 payment will increase the interest you pay and the time it takes to repay your balance. For  
10 example, making only the typical 5% minimum monthly payment on a balance of \$300 at  
11 an interest rate of 17% would take 24 months to repay the balance in full. For an estimate  
12 of the time it would take to repay your balance, making only minimum monthly  
13 payments, call the Consumer Financial Protection Agency at this toll-free number:

14 \_\_\_\_\_ (the blank space to be filled in by  
15 the creditor)." A creditor who is subject to this subparagraph shall not be subject to  
16 subparagraph (A) or (B).”;

17 (3) Section 129(m) of the Truth in Lending Act (15 U.S.C. 1639(m)) is amended  
18 to read as follows—

19 “(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For  
20 purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued  
21 by the Agency pursuant to subsection (d)(2) of this section shall be treated as a violation of a rule  
22 promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding  
23 unfair or deceptive acts or practices.”.

1 **SEC. 1093. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.**

2 (a) AMENDMENTS TO SECTION 263.—Section 263 of the Truth in Savings Act (12  
3 U.S.C. 4302) is amended in subsection (b) by striking “Board” each time it appears and inserting  
4 “Agency”.

5 (b) AMENDMENTS TO SECTION 265.—Section 265 of the Truth in Savings Act (12  
6 U.S.C. 4304) is amended by striking “Board” each time it appears and inserting “Agency”.

7 (c) AMENDMENTS TO SECTION 266.—Section 266 of the Truth in Savings Act is  
8 amended (12 U.S.C. 4305) in subsection (e) by striking “Board” and inserting “Agency”.

9 (d) AMENDMENTS TO SECTION 269.—Section 269 of the Truth in Savings Act  
10 (12 U.S.C. 4308) is amended—

11 (1) in subsection (a)—

12 (A) in paragraph (1), by striking “Board” and inserting “Agency”;

13 (B) in paragraph (3), by striking “Board” and inserting “Agency”;

14 (C) in paragraph (4), by striking “Board” and inserting “Agency”;

15 (2) in subsection (b)—

16 (A) in paragraph (1), by striking “Board” each time it appears and  
17 inserting “Agency”;

18 (B) in paragraph (2), by striking “Board” each time it appears and  
19 inserting “Agency”; and

20 (C) in paragraph (3) by striking “Board” and inserting “Agency”.

21 (e) AMENDMENTS TO SECTION 270.—Section 270 of the Truth in Savings Act (12  
22 U.S.C. 4309) is amended—

23 (1) in subsection (a)—

1 (A) in the matter after the title, by striking “Compliance” and inserting  
2 “Subject to section 1022 of the Consumer Financial Protection Agency Act of  
3 2009, compliance”;

4 (B) in paragraph (1)—

5 (i) by amending subparagraph (A) to read as follows:

6 “(A) by the Director of the National Bank Supervisor for national banks,  
7 and Federal branches and Federal agencies of foreign banks;”;

8 (ii) by striking subparagraph (C); and

9 (C) by adding at the end, the following new paragraph:

10 “(3) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the  
11 Agency in the case of a covered person under that Act.”

12 (2) in subsection (c), by striking “Board” and inserting “Agency”.

13 (f) AMENDMENTS TO SECTION 272.—Section 272 of the Truth in Savings Act (12  
14 U.S.C. 4311) is amended—

15 (1) in subsection (a), by striking “Board” and inserting “Agency”; and

16 (2) in subsection (b), by striking the phrase “regulation prescribed by the Board”  
17 each place it appears and inserting “regulation prescribed by the Agency”.

18 (g) AMENDMENTS TO SECTION 273.—Section 273 of the Truth in Savings Act (12  
19 U.S.C. 4312) is amended in the last sentence by striking “Board” and inserting “Agency”.

20 (h) AMENDMENTS TO SECTION 274.—Section 274 of the Truth in Savings Act (12  
21 U.S.C. 4313) is amended—

22 (1) in paragraph (2) by striking “Board” and inserting “Agency”; and

23 (2) by amending paragraph (4) to read as follows:

1                   “(4) AGENCY.—The term “Agency” means the Consumer Financial Protection  
2           Agency.”.

3   **SEC. 1094. EFFECTIVE DATE.**

4           The amendments made in sections 1075 through 1093 shall become effective on the  
5   designated transfer date.

1                   **TITLE XI—IMPROVEMENTS TO THE FEDERAL**  
2   **TRADE COMMISSION ACT**

3   **SEC. 1101. AMENDMENTS TO THE FEDERAL TRADE COMMISSION ACT.**

4                   (a) Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by  
5 adding at the end the following new paragraph:

6                                   “(5) In any investigation or proceeding in which it appears to the Commission that  
7 an unfair or deceptive act or practice is being committed in connection with the  
8 marketing, sale, provision or delivery of a consumer financial product or service, the  
9 Commission shall consult and coordinate with the Consumer Financial Protection  
10 Agency, as the agencies deem to be appropriate.”

11                   (b) Section 5(m)(1)(A) of the Federal Trade Commission Act (15 U.S.C. 45(m)(1)(A)) is  
12 amended—

13                                   (1) by inserting “this Act or” after “violates” the first place it appears;

14                                   (2) by inserting a comma after “chapter” and after “section”;

15                                   (3) by inserting “a violation of this Act or is” before “prohibited”.

16                   (c) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding  
17 at the end thereof the following new subsection:

18                                   “(o) UNLAWFUL ASSISTANCE.—It is unlawful for any person, knowingly or  
19 recklessly, to provide substantial assistance to another in violating any provision of this  
20 Act or of any other Act enforceable by the Commission that relates to unfair or deceptive  
21 acts or practices. Any such violation shall constitute an unfair or deceptive act or practice  
22 described in section 5(a)(1) of this Act.”

1 (d) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) is amended—

2 (1) in subsection (a)(1)(B), by adding after “pursuant to this section” the  
3 following: “or with regard to the marketing, sale, provision or delivery to an individual,  
4 for personal, family or household purposes, of a consumer financial product or service  
5 that is subject to the jurisdiction of the Consumer Financial Protection Agency under the  
6 Consumer Financial Protection Agency Act of 2009”;

7 (2) by amending subsection (b) to read as follows—

8 “(b) PROCEDURE APPLICABLE.— When prescribing a rule under subsection  
9 (a)(1)(B) of this section, the Commission shall proceed in accordance with  
10 section 553 of Title 5 (without regard to any reference in such section to  
11 sections 556 and 557 of such title).”;

12 (3) by striking subsections (c), (d)(1), (d)(2), (f), (i), and (j), and redesignating  
13 subsections (e), (g) and (h) as (d), (e) and (f);

14 (4) by redesignating paragraph (d)(3) as subsection (c);

15 (5) in subsection (e)—

16 (A) in paragraph (1)(B), by striking “the transcript required by subsection  
17 (c)(5) of this section,”;

18 (B) in paragraph (2), by striking everything following “error”;

19 (C) in paragraph (5), by striking subparagraph (C).  
20

1           **DIVISION D—IMPROVEMENTS FOR FINANCIAL**  
2                                   **CRISIS MANAGEMENT**

3                           **TITLE XII—ENHANCED RESOLUTION**

4                                   **AUTHORITY**

5   **SEC. 1201. SHORT TITLE.**

6           This Act may be cited as the “Resolution Authority for Large, Interconnected Financial  
7 Companies Act of 2009”.

8   **SEC. 1202. DEFINITIONS.**

9           For purposes of this title, the following definitions shall apply:

10                   (1) APPROPRIATE FEDERAL REGULATORY AGENCY. —

11                           (A) CORPORATION AND COMMISSION.—The term “Appropriate Federal  
12 Regulatory Agency” means—

13                                   (i) the Corporation; and

14                                   (ii) the Commission, if the bank holding company, or an affiliate  
15 thereof, is a broker or dealer registered with the Commission under section  
16 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) (other  
17 than an insured depository institution)).

18                           (B) RULES OF CONSTRUCTION.—More than one agency may be an  
19 Appropriate Federal Regulatory Agency with respect to any given bank holding  
20 company. In such instances, the Commission shall be the Appropriate Federal  
21 Regulatory Agency for purposes of section 1203 if the largest subsidiary of the



1 bank holding company is a broker or dealer as measured by total assets as of the  
2 end of the previous calendar quarter.

3 (2) BANK HOLDING COMPANY.—The term “bank holding company” means any  
4 company that—

5 (A) is incorporated or organized under Federal law or the laws of any  
6 State; and

7 (B) is—

8 (i) a bank holding company as defined in section 2(a) of the Bank  
9 Holding Company Act of 1956 (12 U.S.C. 1841(a));

10 (ii) any Tier 1 financial holding company designated by the  
11 Federal Reserve Board as defined in section 2(t) of the Bank Holding  
12 Company Act of 1956, as amended by this Act (12 U.S.C. 1841(r)); or

13 (iii) any subsidiary of companies described in clauses (i) through

14 (ii) (other than an insured depository institution, any broker or dealer  
15 registered with the Commission under section 15(b) of the Securities  
16 Exchange Act of 1934 (15 U.S.C. 78o(b)), which is a member of the  
17 Securities Investor Protection Corporation, or an insurance company).

18 (3) BRIDGE BANK HOLDING COMPANY.—The term “bridge bank holding  
19 company” means a new bank holding company organized by the Appropriate  
20 Federal Regulatory Agency appointed by the Secretary in accordance with section  
21 1209(h).

22 (4) COMMISSION.—The term “Commission” means the Securities and  
23 Exchange Commission.

1 (5) CORPORATION.—The term “Corporation” means the Federal Deposit  
2 Insurance Corporation.

3 (6) COVERED BANK HOLDING COMPANY.—The term “covered bank holding  
4 company” means a bank holding company for which a determination has been  
5 made pursuant to and in accordance with section 1203(b).

6 (7) COVERED SUBSIDIARY.—The term “covered subsidiary” means a  
7 subsidiary covered in paragraph (2)(B)(iii) of this section.

8 (8) CUSTOMER PROPERTY.—The term “customer property” has the  
9 meaning ascribed to it in the Securities Investor Protection Act of 1970.

10 (9) FEDERAL RESERVE BOARD.—The term “Federal Reserve Board” means  
11 the Board of Governors of the Federal Reserve System.

12 (10) FUND.—The term “Fund” means the Bank Holding Company Fund.

13 (11) INSURANCE COMPANY.—The term “insurance company” means a  
14 domestic insurance company, as that term is defined for purposes of title 11 of the  
15 United States Code.

16 (12) SECRETARY.—The term “Secretary” shall mean the Secretary of the  
17 Treasury or his designee.

18 (13) STATE.—The term “State” means any State, commonwealth, territory,  
19 or possession of the United States, the District of Columbia, the Commonwealth  
20 of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American  
21 Samoa, Guam, and the United States Virgin Islands.

22 (14) CERTAIN OTHER TERMS.—The terms “affiliate,” “company,”  
23 “control,” “deposit,” “depository institution,” “foreign bank,” “insured depository

1 institution,” and “subsidiary” have the same meanings as in section 3 of the  
2 Federal Deposit Insurance Act (12 U.S.C. 1813).

3 **SEC. 1203. SYSTEMIC RISK DETERMINATION.**

4 (a) WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE BOARD AND THE  
5 APPROPRIATE FEDERAL REGULATORY AGENCY.—

6 (1) VOTE REQUIRED.—At the request of the Secretary or the Chairman of the  
7 Federal Reserve Board or, in cases where a bank holding company has a broker or dealer  
8 as its largest subsidiary as measured by total assets as of the end of the previous calendar  
9 quarter, the Commission, the Federal Reserve Board and the Appropriate Federal  
10 Regulatory Agency shall, or on their own initiative, the Federal Reserve Board and the  
11 Appropriate Federal Regulatory Agency may, consider whether to make the written  
12 recommendation provided for in paragraph (2), which recommendation shall be made  
13 upon a vote of not less than two-thirds of the members of the Federal Reserve Board then  
14 serving and two-thirds of the members of the board or of the commission then serving of  
15 the Appropriate Federal Regulatory Agency, as applicable.

16 (2) RECOMMENDATION REQUIRED.—Any written recommendations made by the  
17 Federal Reserve Board and the Appropriate Federal Regulatory Agency under paragraph  
18 (1) shall contain the following—

19 (A) a description of the effect that the default of the bank holding  
20 company would have on economic conditions or financial stability in the United  
21 States; and

22 (B) the nature and the extent of assistance or actions that should be  
23 provided or taken regarding the bank holding company.

1 (b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of  
2 Federal law or the law of any State, if, upon the written recommendation of the Federal Reserve  
3 Board and the board of directors or commission of the Appropriate Federal Regulatory Agency  
4 as provided for in subsection (a)(1), the Secretary (in consultation with the President) determines  
5 that—

6 (1) the bank holding company is in default or is in danger of default;

7 (2) the failure of the bank holding company and its resolution under otherwise  
8 applicable Federal or State law would have serious adverse effects on financial stability  
9 or economic conditions in the United States; and

10 (3) any action or assistance under section 1204 would avoid or mitigate such  
11 adverse effects, taking into consideration the effectiveness of action or assistance in  
12 mitigating potential adverse effects on the financial system or economic conditions, the  
13 cost to the general fund of the Treasury, and the potential to increase moral hazard on the  
14 part of creditors, counterparties, and shareholders in the bank holding company,  
15 the Secretary may take action under section 1204(b) and the Corporation may take one or more  
16 actions specified in section 1204.

17 (c) DOCUMENTATION AND REVIEW.—

18 (1) IN GENERAL.—The Secretary shall—

19 (A) document any determination under subsection (b); and,

20 (B) retain the documentation for review under paragraph (2).

21 (2) GAO REVIEW.—The Comptroller General of the United States shall review  
22 and report to the Congress on any determination under subsection (b), including:

23 (A) the basis for the determination;

1 (B) the purpose for which any action was taken pursuant thereto; and

2 (C) the likely effect of the determination and such action on the incentives

3 and conduct of bank holding companies and their creditors, counterparties, and

4 shareholders.

5 (3) REPORT TO CONGRESS.—Within 30 days after a determination is made under

6 subsection (b), the Secretary shall provide written notice of the determination to the

7 Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on

8 Financial Services of the House of Representatives. The notice shall include a

9 description of the basis for the determination.

10 (d) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of subsection (b), a bank

11 holding company shall be considered to be in default or in danger of default if any of the

12 following conditions exist, as determined in accordance with that subsection:

13 (1) a case has been, or likely will promptly be, commenced with respect to the

14 bank holding company under title 11, United States Code;

15 (2) the bank holding company is critically undercapitalized, as such term has been

16 or may be defined by the Federal Reserve Board;

17 (3) the bank holding company has incurred, or is likely to incur, losses that will

18 deplete all or substantially all of its capital, and there is no reasonable prospect for the

19 company to avoid such depletion without assistance under section 1204;

20 (4) the bank holding company's assets are, or are likely to be, less than its

21 obligations to creditors and others; or

22 (5) the bank holding company is, or is likely to be, unable to pay its obligations

23 (other than those subject to a bona fide dispute) in the normal course of business.

1 **SEC. 1204. RESOLUTION; ASSISTANCE.**

2 (a) EMERGENCY ASSISTANCE.—Upon the Secretary making the determination provided  
3 for in section 1203(b), the Corporation may, with the approval of the Secretary, exercise any  
4 authority provided in this subsection including providing the assistance directly or indirectly and  
5 separately or in combination, including:

6 (1) making loans to, or purchasing any debt obligation of, the covered bank  
7 holding company or any covered subsidiary;

8 (2) purchasing assets of the covered bank holding company or any covered  
9 subsidiary directly or through an entity established by the Corporation for such purpose;

10 (3) assuming or guaranteeing the obligations of the covered bank holding  
11 company or any covered subsidiary to one or more third parties;

12 (4) acquiring any type of equity interest or security of the covered bank holding  
13 company or any covered subsidiary;

14 (5) taking a lien on any or all assets of the covered bank holding company or any  
15 covered subsidiary, including a first priority lien on all unencumbered assets of the  
16 company or any covered subsidiary to secure repayment of any financial assistance  
17 provided under this subsection; or

18 (6) selling or transferring all, or any part thereof, of such acquired assets,  
19 liabilities, obligations, equity interests or securities of the covered bank holding company  
20 or any covered subsidiary.

21 (b) APPOINTMENT OF CONSERVATOR OR RECEIVER.— Upon the Secretary making the  
22 determination provided for in section 1203(b), the Secretary may appoint one of the Appropriate  
23 Federal Regulatory Agencies as conservator or receiver for the covered bank holding company,

1 except that the Corporation shall be the Appropriate Federal Regulatory Agency appointed in the  
2 event that the predominant subsidiary of the covered bank holding company is not a broker or  
3 dealer as measured by total assets as of the end of previous calendar quarter.

4 (c) EMERGENCY ASSISTANCE AFTER APPOINTMENT OF CONSERVATOR. —Upon the  
5 Secretary appointing a conservator or receiver under subsection (b), the Corporation may take  
6 any of the actions described in subsection (a) with respect to the covered bank holding company  
7 in conservatorship or receivership.

8 **SEC. 1205. JUDICIAL REVIEW.**

9 If a conservator or receiver is appointed, the covered bank holding company may, not  
10 later than 30 days thereafter, bring an action in the United States district court for the judicial  
11 district in which the home office of such covered bank holding company is located, or in the  
12 United States District Court for the District of Columbia, for an order requiring that the  
13 conservator or receiver be removed, and the court shall, upon the merits, dismiss such action or  
14 direct the conservator or receiver to be removed. Review of such an action shall be limited to the  
15 appointment of a conservator or receiver under section 1204.

16 **SEC. 1206. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF**  
17 **CONSERVATOR OR RECEIVER.**

18 The members of the board of directors (or body performing similar functions) of a  
19 covered bank holding company shall not be liable to the covered bank holding company's  
20 shareholders or creditors for acquiescing in or consenting in good faith to—

- 21 (1) the Secretary's appointment of an Appropriate Federal Regulatory Agency as  
22 conservator or receiver for the covered bank holding company under section 1204; or  
23 (2) an acquisition, combination, or transfer of assets or liabilities under section

1           1209.

2   **SEC. 1207. TERMINATION AND EXCLUSION OF OTHER ACTIONS.**

3           The Appropriate Federal Regulatory Agency’s acting as conservator or receiver for a  
4 covered bank holding company under this title shall immediately, and by operation of law,  
5 terminate any case commenced with respect to the covered bank holding company under title 11,  
6 United States Code, or any proceeding under any State insolvency law with respect to the  
7 covered bank holding company, and no such case or proceeding may be commenced with respect  
8 to the covered bank holding company at any time while the Appropriate Federal Regulatory  
9 Agency acts as conservator or receiver for the covered bank holding company.

10 **SEC. 1208. RULEMAKING.**

11           The Appropriate Federal Regulatory Agencies and the Secretary may jointly prescribe  
12 such rules or regulations as they consider necessary or appropriate to implement the provisions  
13 of this title.

14 **SEC. 1209 POWERS AND DUTIES OF APPROPRIATE FEDERAL REGULATORY**  
15 **AGENCY.**

16           (a) POWERS AND AUTHORITIES.—

17                   (1) GENERAL POWERS.—

18                           (A) SUCCESSOR TO COVERED BANK HOLDING COMPANY.—The Appropriate  
19 Federal Regulatory Agency shall, upon appointment as conservator or receiver for  
20 a covered bank holding company under section 1204, and by operation of law,  
21 succeed to—

22                                   (i) all rights, titles, powers, and privileges of the covered bank  
23 holding company, and of any stockholder, member, officer, or director of



1 such institution with respect to the covered bank holding company and the  
2 assets of the covered bank holding company; and

3 (ii) title to the books, records, and assets of any previous receiver  
4 or other legal custodian of such covered bank holding company.

5 (B) OPERATE THE COVERED BANK HOLDING COMPANY.—The Appropriate  
6 Federal Regulatory Agency as conservator or receiver for a covered bank holding  
7 company may—

8 (i) take over the assets of and operate the covered bank holding  
9 company with all the powers of the members or shareholders, the  
10 directors, and the officers of the covered bank holding company and  
11 conduct all business of the covered bank holding company;

12 (ii) collect all obligations and money due the covered bank holding  
13 company;

14 (iii) perform all functions of the covered bank holding company in  
15 the name of the covered bank holding company;

16 (iv) preserve and conserve the assets and property of the covered  
17 bank holding company; and

18 (v) provide by contract for assistance in fulfilling any function,  
19 activity, action, or duty of the Appropriate Federal Regulatory Agency as  
20 conservator or receiver.

21 (C) FUNCTIONS OF COVERED BANK HOLDING COMPANY’S OFFICERS,  
22 DIRECTORS, AND SHAREHOLDERS.—The Appropriate Federal Regulatory Agency  
23 may provide for the exercise of any function by any member or stockholder,

1 director, or officer of any covered bank holding company for which the  
2 Appropriate Federal Regulatory Agency has been appointed as conservator or  
3 receiver under this section.

4 (D) POWERS AS CONSERVATOR.—The Appropriate Federal Regulatory  
5 Agency may, as conservator, and subject to all legally enforceable and perfected  
6 security interests in the assets of the covered bank holding company, take such  
7 action as may be—

8 (i) necessary to put the covered bank holding company in a sound  
9 and solvent condition; and

10 (ii) appropriate to carry on the business of the covered bank  
11 holding company and preserve and conserve the assets and property of the  
12 covered bank holding company.

13 (E) ADDITIONAL POWERS AS RECEIVER.—The Appropriate Federal  
14 Regulatory Agency may, as receiver, place the covered bank holding company in  
15 liquidation and proceed to realize upon the assets of the covered bank holding  
16 company in such manner as the Appropriate Federal Regulatory Agency deems  
17 appropriate, including through the sale of assets, the transfer of assets to a bridge  
18 bank holding company established under subsection (h), or the exercise of any  
19 other rights or privileges granted to the receiver under this section.

20 (F) ORGANIZATION OF NEW COMPANIES.—The Appropriate Federal  
21 Regulator Agency as receiver may organize a bridge bank holding company under  
22 subsection (h).

23 (G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

1 (i) IN GENERAL.—Subject to clause (ii), the Appropriate Federal  
2 Regulator Agency as conservator or receiver may—

3 (I) merge the covered bank holding company with another  
4 company; or

5 (II) transfer any asset or liability of the covered bank  
6 holding company (including assets and liabilities associated with  
7 any trust or custody business) without obtaining any approval,  
8 assignment, or consent with respect to such transfer.

9 (ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

10 (I) IN GENERAL.—If a transaction described in clause (i)  
11 requires approval by a Federal agency, the transaction may not be  
12 consummated before the 5th calendar day after the date of approval  
13 by the Federal agency responsible for such approval with respect  
14 thereto. If, in connection with any such approval, a report on  
15 competitive factors is required, the Federal agency responsible for  
16 such approval shall promptly notify the Attorney General of the  
17 proposed transaction and the Attorney General shall provide the  
18 required report within 10 days of the request. If a filing is required  
19 under the Hart-Scott-Rodino Antitrust Improvements Act of 1976  
20 with the Department of Justice or the Federal Trade Commission,  
21 the waiting period shall expire not later than the 30th day  
22 following such filing notwithstanding any other provision of  
23 Federal law or any attempt by any Federal agency to extend such

1                   waiting period, and no further request for information by any  
2                   Federal agency shall be permitted.

3                   (II) EMERGENCY.—If the Secretary in consultation with the  
4                   Chairman of the Federal Reserve Board has found that the  
5                   Appropriate Federal Regulatory Agency must act immediately to  
6                   prevent the probable failure of 1 or more of the covered bank  
7                   holding companies involved, the approvals and filings referred to  
8                   in subclause (I) shall not be required and the transactions may be  
9                   consummated immediately by the Appropriate Federal Regulatory  
10                  Agency.

11                  (H) PAYMENT OF VALID OBLIGATIONS.—The Appropriate Federal  
12                  Regulatory Agency, as conservator or receiver, shall, to the extent funds are  
13                  available, pay all valid obligations of the covered bank holding company that are  
14                  due and payable at the time of the appointment of the Appropriate Federal  
15                  Regulatory Agency as conservator or receiver in accordance with the  
16                  prescriptions and limitations of this title.

17                  (I) SUBPOENA AUTHORITY.—

18                  (i) IN GENERAL.—The Appropriate Federal Regulatory Agency  
19                  may, for purposes of carrying out any power, authority, or duty with  
20                  respect to a covered bank holding company (including determining any  
21                  claim against the covered bank holding company and determining and  
22                  realizing upon any asset of any person in the course of collecting money  
23                  due the covered bank holding company), exercise any power established

1 under section 8(n) of the Federal Deposit Insurance Act as if the covered  
2 bank holding company were an insured depository institution.

3 (ii) RULE OF CONSTRUCTION.—This section shall not be construed  
4 as limiting any rights that the Appropriate Federal Regulatory Agency, in  
5 any capacity, might otherwise have to exercise any powers described in  
6 clause (i) under any other provision of law.

7 (J) INCIDENTAL POWERS.—The Appropriate Federal Regulatory Agency,  
8 as conservator or receiver, may—

9 (i) exercise all powers and authorities specifically granted to  
10 conservators or receivers under this section and such incidental powers as  
11 shall be necessary to carry out such powers; and

12 (ii) take any action authorized by this section, which the  
13 Appropriate Federal Regulatory Agency determines is in the best interests  
14 of the covered bank holding company, its customers, its creditors, its  
15 counterparties, or the stability of the financial system.

16 (K) UTILIZATION OF PRIVATE SECTOR.— In carrying out its responsibilities  
17 in the management and disposition of assets from a covered bank holding  
18 company, the Appropriate Federal Regulatory Agency, as conservator or receiver,  
19 may utilize the services of private persons, including real estate and loan portfolio  
20 asset management, property management, auction marketing, legal, and brokerage  
21 services, if such services are available in the private sector and the Appropriate  
22 Federal Regulatory Agency determines utilization of such services is practicable,  
23 efficient, and cost effective.

1 (L) SHAREHOLDERS AND CREDITORS OF COVERED BANK HOLDING  
2 COMPANY.—Notwithstanding any other provision of law, the Appropriate Federal  
3 Regulatory Agency as conservator or receiver for a covered bank holding  
4 company pursuant to this section and its succession, by operation of law, to the  
5 rights, titles, powers, and privileges described in subparagraph (A) shall terminate  
6 all rights and claims that the stockholders and creditors of the covered bank  
7 holding company may have against the assets of the covered bank holding  
8 company or the Appropriate Federal Regulatory Agency arising out of their status  
9 as stockholders or creditors, except for their right to payment, resolution, or other  
10 satisfaction of their claims, as permitted under this section.

11 (M) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The  
12 Appropriate Federal Regulatory Agency as conservator or receiver for a covered  
13 bank holding company shall coordinate with the appropriate foreign financial  
14 authorities regarding the resolution of subsidiaries of the covered bank holding  
15 company that are established in a country other than the United States.

16 (2) AUTHORITY OF APPROPRIATE FEDERAL REGULATORY AGENCY TO DETERMINE  
17 CLAIMS.—

18 (A) IN GENERAL.—The Appropriate Federal Regulatory Agency may, as  
19 receiver, determine claims in accordance with the requirements of this subsection  
20 and regulations prescribed under paragraph (3).

21 (B) NOTICE REQUIREMENTS.—The receiver, in any case involving the  
22 liquidation or winding up of the affairs of a covered bank holding company,  
23 shall—

1 (i) promptly publish a notice to the covered bank holding  
2 company's creditors to present their claims, together with proof, to the  
3 receiver by a date specified in the notice which shall be not less than 90  
4 days after the publication of such notice; and

5 (ii) republish such notice approximately 1 month and 2 months,  
6 respectively, after the publication under clause (i).

7 (C) MAILING REQUIRED.—The receiver shall mail a notice similar to the  
8 notice published under subparagraph (B)(i) at the time of such publication to any  
9 creditor shown on the covered bank holding company's books—

10 (i) at the creditor's last address appearing in such books; or

11 (ii) upon discovery of the name and address of a claimant not  
12 appearing on the covered bank holding company's books, within 30 days  
13 after the discovery of such name and address.

14 (3) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

15 (A) IN GENERAL.— Subject to subsection (b), the Appropriate Federal  
16 Regulatory Agency may prescribe rules and regulations regarding the allowance  
17 or disallowance of claims by the Appropriate Federal Regulatory Agency and  
18 providing for administrative determination of claims and review of such  
19 determination.

20 (B) EXISTING RULES.— Subject to subsection (b), the Appropriate Federal  
21 Regulatory Agency may elect to use the regulations adopted pursuant to the  
22 provisions of section 11 of the Federal Deposit Insurance Act with respect to the  
23 determination of claims for a covered bank holding company as if the covered

1 bank holding company were an insured depository institution.

2 (4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

3 (A) DETERMINATION PERIOD.—

4 (i) IN GENERAL.—Before the end of the 180-day period beginning  
5 on the date any claim against a covered bank holding company is filed  
6 with the Appropriate Federal Regulatory Agency as receiver, the  
7 Appropriate Federal Regulatory Agency shall determine whether to allow  
8 or disallow the claim and shall notify the claimant of any determination  
9 with respect to such claim.

10 (ii) EXTENSION OF TIME.—The period described in clause (i) may  
11 be extended by a written agreement between the claimant and the  
12 Appropriate Federal Regulatory Agency.

13 (iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause  
14 (i) shall be deemed to be satisfied if the notice of any determination with  
15 respect to any claim is mailed to the last address of the claimant which  
16 appears—

17 (I) on the covered bank holding company's books;

18 (II) in the claim filed by the claimant; or

19 (III) in documents submitted in proof of the claim.

20 (iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed  
21 under clause (i) is disallowed, the notice to the claimant shall contain—

22 (I) a statement of each reason for the disallowance; and

23 (II) the procedures available for obtaining agency review of



1 the determination to disallow the claim or judicial determination of  
2 the claim.

3 (B) ALLOWANCE OF PROVEN CLAIM.—The Appropriate Federal  
4 Regulatory Agency shall allow any claim received on or before the date  
5 specified in the notice published under paragraph (2)(B)(i) by the  
6 Appropriate Federal Regulatory Agency from any claimant which is  
7 proved to the satisfaction of the Appropriate Federal Regulatory Agency.

8 (C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

9 (i) IN GENERAL.—Except as provided in clause (ii), claims filed  
10 after the date specified in the notice published under paragraph (2)(B)(i)  
11 shall be disallowed and such disallowance shall be final.

12 (ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect  
13 to any claim filed by any claimant after the date specified in the notice  
14 published under paragraph (2)(B)(i) and such claim may be considered by  
15 the receiver if—

16 (I) the claimant did not receive notice of the appointment of  
17 the receiver in time to file such claim before such date; and

18 (II) such claim is filed in time to permit payment of such  
19 claim.

20 (D) AUTHORITY TO DISALLOW CLAIMS.—

21 (i) IN GENERAL.—The Appropriate Federal Regulatory Agency  
22 may disallow any portion of any claim by a creditor or claim of security,  
23 preference, or priority which is not proved to the satisfaction of the

1 Appropriate Federal Regulatory Agency.

2 (ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the  
3 case of a claim of a creditor against a covered bank holding company  
4 which is secured by any property or other asset of such covered bank  
5 holding company, the receiver—

6 (I) may treat the portion of such claim which exceeds an  
7 amount equal to the fair market value of such property or other  
8 asset as an unsecured claim against the covered bank holding  
9 company; and

10 (II) may not make any payment with respect to such  
11 unsecured portion of the claim other than in connection with the  
12 disposition of all claims of unsecured creditors of the covered bank  
13 holding company.

14 (iii) EXCEPTIONS.—No provision of this paragraph shall apply with  
15 respect to—

16 (I) any extension of credit from any Federal Reserve bank,  
17 or the Secretary, to any covered bank holding company; or

18 (II) subject to clause (ii), any legally enforceable or  
19 perfected security interest in the assets of the covered bank holding  
20 company securing any such extension of credit.

21 (E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH  
22 (D).—No court may review the Appropriate Federal Regulatory Agency  
23 determination pursuant to subparagraph (D) to disallow a claim.

1 (F) LEGAL EFFECT OF FILING.—

2 (i) STATUTE OF LIMITATION TOLLED.—For purposes of any  
3 applicable statute of limitations, the filing of a claim with the Appropriate  
4 Federal Regulatory Agency shall constitute a commencement of an action.

5 (ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9),  
6 the filing of a claim with the Appropriate Federal Regulatory Agency shall  
7 not prejudice any right of the claimant to continue any action which was  
8 filed before the appointment of the Appropriate Federal Regulatory  
9 Agency as receiver for the covered bank holding company.

10 (5) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

11 (A) IN GENERAL.—Before the end of the 60-day period beginning on the  
12 earlier of—

13 (i) the end of the period described in paragraph (4)(A)(i) (or, if  
14 extended by agreement of the Appropriate Federal Regulatory Agency and  
15 the claimant, the period described in paragraph (4)(A)(ii) with respect to  
16 any claim against a covered bank holding company for which the  
17 Appropriate Federal Regulatory Agency is receiver; or

18 (ii) the date of any notice of disallowance of such claim pursuant to  
19 paragraph (4)(A)(i),

20 the claimant may file suit on a claim (or continue an action commenced before the  
21 appointment of the receiver) in the district or territorial court of the United States  
22 for the district within which the covered bank holding company's principal place  
23 of business is located or the United States District Court for the District of

1 Columbia (and such court shall have jurisdiction to hear such claim).

2 (B) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such  
3 claim (or continue an action commenced before the appointment of the receiver)  
4 before the end of the 60-day period described in subparagraph (A), the claim shall  
5 be deemed to be disallowed (other than any portion of such claim which was  
6 allowed by the receiver) as of the end of such period, such disallowance shall be  
7 final, and the claimant shall have no further rights or remedies with respect to  
8 such claim.

9 (6) EXPEDITED DETERMINATION OF CLAIMS.—

10 (A) ESTABLISHMENT REQUIRED.—The Appropriate Federal Regulatory  
11 Agency shall establish a procedure for expedited relief outside of the routine  
12 claims process established under paragraph (4) for claimants who—

13 (i) allege the existence of legally valid and enforceable or perfected  
14 security interests in assets of any covered bank holding company for  
15 which the Appropriate Federal Regulatory Agency has been appointed as  
16 receiver; and

17 (ii) allege that irreparable injury will occur if the routine claims  
18 procedure is followed.

19 (B) DETERMINATION PERIOD.—Before the end of the 90-day period  
20 beginning on the date any claim is filed in accordance with the procedures  
21 established pursuant to subparagraph (A), the Appropriate Federal Regulatory  
22 Agency shall—

23 (i) determine—

1 (I) whether to allow or disallow such claim; or

2 (II) whether such claim should be determined pursuant to  
3 the procedures established pursuant to paragraph (4); and

4 (ii) notify the claimant of the determination, and if the claim is  
5 disallowed, provide a statement of each reason for the disallowance and  
6 the procedure for obtaining judicial determination.

7 (C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a  
8 request for expedited relief shall be permitted to file a suit, or to continue such a  
9 suit filed before the appointment of the Appropriate Federal Regulatory Agency  
10 as receiver, seeking a determination of the claimant’s rights with respect to such  
11 security interest after the earlier of—

12 (i) the end of the 90-day period beginning on the date of the filing  
13 of a request for expedited relief; or

14 (ii) the date the Appropriate Federal Regulatory Agency denies the  
15 claim.

16 (D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C)  
17 is not filed, or the motion to renew a previously filed suit is not made, before the  
18 end of the 30-day period beginning on the date on which such action or motion  
19 may be filed in accordance with subparagraph (B), the claim shall be deemed to  
20 be disallowed as of the end of such period (other than any portion of such claim  
21 which was allowed by the receiver), such disallowance shall be final, and the  
22 claimant shall have no further rights or remedies with respect to such claim.

23 (E) LEGAL EFFECT OF FILING.—

1 (i) STATUTE OF LIMITATION TOLLED.—For purposes of any  
2 applicable statute of limitations, the filing of a claim with the receiver  
3 shall constitute a commencement of an action.

4 (ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9),  
5 the filing of a claim with the receiver shall not prejudice any right of the  
6 claimant to continue any action which was filed before the appointment of  
7 the Appropriate Federal Regulatory Agency as receiver for the covered  
8 bank holding company.

9 (7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends  
10 to diminish or defeat the interest of the Appropriate Federal Regulatory Agency as  
11 receiver in any asset acquired by the receiver under this section shall be valid against the  
12 receiver unless such agreement is in writing and executed by an authorized officer or  
13 representative of the covered bank holding company.

14 (8) PAYMENT OF CLAIMS.—

15 (A) IN GENERAL. —The Appropriate Federal Regulatory Agency as  
16 receiver may, in its discretion and to the extent funds are available, pay creditor  
17 claims, in such manner and amounts as are authorized under this section, which  
18 are—

19 (i) allowed by the receiver;

20 (ii) approved by the Appropriate Federal Regulatory Agency  
21 pursuant to a final determination pursuant to paragraph (6); or

22 (ii) determined by the final judgment of any court of competent  
23 jurisdiction.

1 (B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the  
2 receiver’s sole discretion and to the extent otherwise permitted by this section,  
3 pay dividends on proven claims at any time, and no liability shall attach to the  
4 Appropriate Federal Regulatory Agency (in the Appropriate Federal Regulatory  
5 Agency’s capacity as receiver), by reason of any such payment, for failure to pay  
6 dividends to a claimant whose claim is not proved at the time of any such  
7 payment.

8 (C) RULEMAKING AUTHORITY OF APPROPRIATE FEDERAL REGULATORY  
9 AGENCY.—The Appropriate Federal Regulatory Agency may prescribe such rules,  
10 including definitions of terms, as it deems appropriate to establish a single  
11 uniform interest rate for, or to make payments of post insolvency interest to  
12 creditors holding proven claims against the receivership estates of a covered bank  
13 holding company following satisfaction by the receiver of the principal amount of  
14 all creditor claims.

15 (9) SUSPENSION OF LEGAL ACTIONS.—

16 (A) IN GENERAL.—After the appointment of the Appropriate Federal  
17 Regulatory Agency as conservator or receiver for a covered bank holding  
18 company, the Appropriate Federal Regulatory Agency may request a stay for a  
19 period not to exceed—

20 (i) 45 days, in the case of any conservator; and

21 (ii) 90 days, in the case of any receiver,

22 in any non-criminal judicial action or proceeding to which such covered bank  
23 holding company is or becomes a party.

1 (B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request  
2 by the Appropriate Federal Regulatory Agency pursuant to subparagraph (A) for a  
3 stay of any non-criminal judicial action or proceeding in any court with  
4 jurisdiction of such action or proceeding, the court shall grant such stay as to all  
5 parties.

6 (10) ADDITIONAL RIGHTS AND DUTIES.—

7 (A) PRIOR FINAL ADJUDICATION.—The Appropriate Federal Regulatory  
8 Agency shall abide by any final unappealable judgment of any court of competent  
9 jurisdiction which was rendered before the appointment of the Appropriate  
10 Federal Regulatory Agency as conservator or receiver.

11 (B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event  
12 of any appealable judgment, the Appropriate Federal Regulatory Agency as  
13 conservator or receiver shall—

14 (i) have all the rights and remedies available to the covered bank  
15 holding company (before the appointment of the conservator or receiver  
16 under section 1204) and the Appropriate Federal Regulatory Agency,  
17 including but not limited to removal to Federal court and all appellate  
18 rights; and

19 (ii) not be required to post any bond in order to pursue such  
20 remedies.

21 (C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may  
22 issue by any court upon assets in the possession of the receiver.

23 (D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in



1 this subsection, no court shall have jurisdiction over—

2 (i) any claim or action for payment from, or any action seeking a  
3 determination of rights with respect to, the assets of any covered bank  
4 holding company for which the Appropriate Federal Regulatory Agency  
5 has been appointed receiver, including any assets which the Appropriate  
6 Federal Regulatory Agency may acquire from itself as such receiver; or

7 (ii) any claim relating to any act or omission of such covered bank  
8 holding company or the Appropriate Federal Regulatory Agency as  
9 receiver.

10 (E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or  
11 authority as conservator or receiver in connection with any covered bank holding  
12 company for which the Appropriate Federal Regulatory Agency is acting as  
13 conservator or receiver under this section, the Appropriate Federal Regulatory  
14 Agency shall, to the greatest extent practicable, conduct its operations in a manner  
15 which—

16 (i) maximizes the net present value return from the sale or  
17 disposition of such assets;

18 (ii) minimizes the amount of any loss realized in the resolution of  
19 cases;

20 (iii) minimizes the cost to the general fund of the Treasury;

21 (iv) mitigates the potential for serious adverse effects to the  
22 financial system and the U.S. economy;

23 (v) ensures timely and adequate competition and fair and

1 consistent treatment of offerors; and

2 (vi) prohibits discrimination on the basis of race, sex, or ethnic  
3 groups in the solicitation and consideration of offers.

4 (11) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

5 (A) IN GENERAL.—Notwithstanding any provision of any contract, the  
6 applicable statute of limitations with regard to any action brought by the  
7 Appropriate Federal Regulatory Agency as conservator or receiver shall be—

8 (i) in the case of any contract claim, the longer of—

9 (I) the 6-year period beginning on the date the claim  
10 accrues; or

11 (II) the period applicable under State law; and

12 (ii) in the case of any tort claim, the longer of—

13 (I) the 3-year period beginning on the date the claim  
14 accrues; or

15 (II) the period applicable under State law.

16 (B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For  
17 purposes of subparagraph (A), the date on which the statute of limitations begins  
18 to run on any claim described in such subparagraph shall be the later of—

19 (i) the date of the appointment of the Appropriate Federal  
20 Regulatory Agency as conservator or receiver under this title; or

21 (ii) the date on which the cause of action accrues.

22 (C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

23 (i) IN GENERAL.—In the case of any tort claim described in clause

1 (ii) for which the statute of limitation applicable under State law with  
2 respect to such claim has expired not more than 5 years before the  
3 appointment of the Appropriate Federal Regulatory Agency as conservator  
4 or receiver, the Appropriate Federal Regulatory Agency may bring an  
5 action as conservator or receiver on such claim without regard to the  
6 expiration of the statute of limitation applicable under State law.

7 (ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a  
8 claim arising from fraud, intentional misconduct resulting in unjust  
9 enrichment, or intentional misconduct resulting in substantial loss to the  
10 covered bank holding company.

11 (12) FRAUDULENT TRANSFERS.—

12 (A) IN GENERAL.—The Appropriate Federal Regulatory Agency, as  
13 conservator or receiver for any covered bank holding company, may avoid a  
14 transfer of any interest of an institution-affiliated party, or any person who the  
15 Appropriate Federal Regulatory Agency determines is a debtor of the covered  
16 bank holding company, in property, or any obligation incurred by such party or  
17 person, that was made within 5 years of the date on which the Appropriate  
18 Federal Regulatory Agency was appointed conservator or receiver if such party or  
19 person voluntarily or involuntarily made such transfer or incurred such liability  
20 with the intent to hinder, delay, or defraud the covered bank holding company or  
21 the Appropriate Federal Regulatory Agency.

22 (B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under  
23 subparagraph (A), the Appropriate Federal Regulatory Agency may recover, for

1 the benefit of the covered bank holding company, the property transferred or, if a  
2 court so orders, the value of such property (at the time of such transfer) from—

3 (i) the initial transferee of such transfer or the institution-affiliated  
4 party or person for whose benefit such transfer was made; or

5 (ii) any immediate or mediate transferee of any such initial  
6 transferee.

7 (C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Appropriate Federal  
8 Regulatory Agency may not recover under subparagraph (B)—

9 (i) any transfer that takes for value, including satisfaction or  
10 securing of a present or antecedent debt, in good faith, or

11 (ii) any immediate or mediate good faith transferee of such  
12 transferee.

13 (D) RIGHTS UNDER THIS SUBSECTION.—The rights of the Appropriate  
14 Federal Regulatory Agency as receiver of a covered bank holding company under  
15 this subsection shall be superior to any rights of a trustee or any other party (other  
16 than any party which is a Federal agency) under title 11, United States Code.

17 (E) DEFINITION.—For purposes of this subsection, the term  
18 “institution-affiliated party” means—

19 (i) any director, officer, employee, or controlling stockholder of, or  
20 agent for, a covered bank holding company;

21 (ii) any shareholder, consultant, joint venture partner, and any  
22 other person as determined by the Appropriate Federal Regulatory Agency  
23 (by regulation or otherwise) who participates in the conduct of the affairs

1 of a covered bank holding company; and

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

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

5 (II) any breach of fiduciary duty; or

6 (III) any unsafe or unsound practice,

7 which caused or is likely to cause more than a minimal financial loss to, or  
8 a significant adverse effect on, the covered bank holding company.

9 (13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to  
10 paragraph (14), any court of competent jurisdiction may, at the request of the Appropriate  
11 Federal Regulatory Agency, issue an order in accordance with Rule 65 of the Federal  
12 Rules of Civil Procedure, including an order placing the assets of any person designated  
13 by the Appropriate Federal Regulatory Agency under the control of the court and  
14 appointing a trustee to hold such assets.

15 (14) STANDARDS.—

16 (A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall  
17 apply with respect to any proceeding under paragraph (13) without regard to the  
18 requirement of such rule that the applicant show that the injury, loss, or damage is  
19 irreparable and immediate.

20 (B) STATE PROCEEDING.—If, in the case of any proceeding in a State  
21 court, the court determines that rules of civil procedure available under the laws  
22 of such State provide substantially similar protections to such party's right to due  
23 process as Rule 65 (as modified with respect to such proceeding by subparagraph

1 (A)), the relief sought by the Appropriate Federal Regulatory Agency pursuant to  
2 paragraph (14) may be requested under the laws of such State.

3 (15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY  
4 THE APPROPRIATE FEDERAL REGULATORY AGENCY AS RECEIVER OR CONSERVATOR.—

5 Notwithstanding any other provision of this subsection, any final and unappealable  
6 judgment for monetary damages entered against the Appropriate Federal Regulatory  
7 Agency as receiver or conservator for a covered bank holding company for the breach of  
8 an agreement executed or approved by the Appropriate Federal Regulatory Agency after  
9 the date of its appointment shall be paid as an administrative expense of the receiver or  
10 conservator. Nothing in this paragraph shall be construed to limit the power of a receiver  
11 or conservator to exercise any rights under contract or law, including to terminate,  
12 breach, cancel, or otherwise discontinue such agreement.

13 (16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

14 (A) IN GENERAL.—The Appropriate Federal Regulatory Agency as  
15 conservator or receiver shall, consistent with the accounting and reporting  
16 practices and procedures established by the Appropriate Federal Regulatory  
17 Agency, maintain a full accounting of each conservatorship, receivership, or other  
18 disposition of any covered bank holding company.

19 (B) ANNUAL ACCOUNTING OR REPORT.—With respect to each  
20 conservatorship or receivership to which the Appropriate Federal Regulatory  
21 Agency was appointed, the Appropriate Federal Regulatory Agency shall make an  
22 annual accounting or report, as appropriate, available to the Secretary and the  
23 Comptroller General of the United States.

1 (C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to  
2 subparagraph (B) shall be made available by the Appropriate Federal Regulatory  
3 Agency upon request to any member of the public.

4 (D) RECORDKEEPING REQUIREMENT.—

5 (i) IN GENERAL.—Except as provided in clause (ii), after the end of  
6 the 6-year period beginning on the date the Appropriate Federal  
7 Regulatory Agency is appointed as receiver of a covered bank holding  
8 company the Appropriate Federal Regulatory Agency may destroy any  
9 records of such covered bank holding company which the Appropriate  
10 Federal Regulatory Agency, in the Appropriate Federal Regulatory  
11 Agency’s discretion, determines to be unnecessary unless directed not to  
12 do so by a court of competent jurisdiction or governmental agency, or  
13 prohibited by law.

14 (ii) OLD RECORDS.—Notwithstanding clause (i), the Appropriate  
15 Federal Regulatory Agency may destroy records of a covered bank  
16 holding company which are at least 10 years old as of the date on which  
17 the Appropriate Federal Regulatory Agency is appointed as the receiver of  
18 such company in accordance with clause (i) at any time after such  
19 appointment is final, without regard to the 6-year period of limitation  
20 contained in clause (i).

21 (b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

22 (1) IN GENERAL.—Unsecured claims against a covered bank holding company, or  
23 the receiver for such covered bank holding company under this section, that are proven to

1 the satisfaction of the receiver shall have priority in the following order:

2 (A) Administrative expenses of the receiver.

3 (B) Any amounts owed to the United States.

4 (C) Any other general or senior liability of the covered bank holding  
5 company (which is not a liability described under subparagraph (D) or (E)).

6 (D) Any obligation subordinated to general creditors (which is not an  
7 obligation described under subparagraph (E)).

8 (E) Any obligation to shareholders, members, general partners, limited  
9 partners or other persons with interests in the equity of the covered bank holding  
10 company arising as a result of their status as shareholders, members, general  
11 partners, limited partners or other persons with interests in the equity of the  
12 covered bank holding company.

13 (2) CREDITORS SIMILARLY SITUATED.—All claimants of a covered bank holding  
14 company that are similarly situated under paragraph (1) shall be treated in a similar  
15 manner, except that the receiver may take any action (including making payments) that  
16 does not comply with this subsection, if—

17 (A) the Appropriate Federal Regulatory Agency determines that such  
18 action is necessary to maximize the value of the assets of the covered bank  
19 holding company, to maximize the present value return from the sale or other  
20 disposition of the assets of the covered bank holding company, to minimize the  
21 amount of any loss realized upon the sale or other disposition of the assets of the  
22 covered bank holding company, or to contain or address serious adverse effects  
23 on financial stability or the U.S. economy; and



1 (B) all claimants that are similarly situated under paragraph (1) receive not  
2 less than the amount provided in subsection (d)(2).

3 (3) SECURED CLAIMS UNAFFECTED.—This subsection shall not affect secured  
4 claims, except to the extent that the security is insufficient to satisfy the claim and then  
5 only with regard to the difference between the claim and the amount realized from the  
6 security.

7 (4) DEFINITIONS.—As used in this subsection, the term “administrative expenses  
8 of the receiver” includes—

9 (A) the actual, necessary costs and expenses incurred by the receiver in  
10 preserving the assets of a covered bank holding company or liquidating or  
11 otherwise resolving the affairs of a covered bank holding company for which the  
12 Appropriate Federal Regulatory Agency has been appointed as receiver; and

13 (B) any obligations that the receiver determines are necessary and  
14 appropriate to facilitate the smooth and orderly liquidation or other resolution of  
15 the covered bank holding company.

16 (c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF  
17 CONSERVATOR OR RECEIVER.

18 (1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a  
19 conservator or receiver may have, the Appropriate Federal Regulatory Agency as  
20 conservator or receiver for any covered bank holding company may disaffirm or  
21 repudiate any contract or lease—

22 (A) to which the covered bank holding company is a party;

23 (B) the performance of which the conservator or receiver, in the

1 conservator's or receiver's discretion, determines to be burdensome; and

2 (C) the disaffirmance or repudiation of which the conservator or receiver  
3 determines, in the conservator's or receiver's discretion, will promote the orderly  
4 administration of the covered bank holding company's affairs.

5 (2) TIMING OF REPUDIATION.—The conservator or receiver appointed for any  
6 covered bank holding company under section 1204 shall determine whether or not to  
7 exercise the rights of repudiation under this subsection within a reasonable period  
8 following such appointment.

9 (3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

10 (A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and  
11 paragraphs (4), (5), and (6), the liability of the conservator or receiver for the  
12 disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

13 (i) limited to actual direct compensatory damages; and

14 (ii) determined as of—

15 (I) the date of the appointment of the conservator or  
16 receiver; or

17 (II) in the case of any contract or agreement referred to in  
18 paragraph (8), the date of the disaffirmance or repudiation of such  
19 contract or agreement.

20 (B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph  
21 (A), the term “actual direct compensatory damages” does not include—

22 (i) punitive or exemplary damages;

23 (ii) damages for lost profits or opportunity; or

1 (iii) damages for pain and suffering.

2 (C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL  
3 CONTRACTS.—In the case of any qualified financial contract or agreement to  
4 which paragraph (8) applies, compensatory damages shall be—

5 (i) deemed to include normal and reasonable costs of cover or  
6 other reasonable measures of damages utilized in the industries for such  
7 contract and agreement claims; and

8 (ii) paid in accordance with this subsection and subsection (d)  
9 except as otherwise specifically provided in this subsection.

10 (4) LEASES UNDER WHICH THE COVERED BANK HOLDING COMPANY IS THE  
11 LESSEE.—

12 (A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a  
13 lease under which the covered bank holding company was the lessee, the  
14 conservator or receiver shall not be liable for any damages (other than damages  
15 determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of  
16 such lease.

17 (B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor  
18 under a lease to which such subparagraph applies shall—

19 (i) be entitled to the contractual rent accruing before the later of the  
20 date—

21 (I) the notice of disaffirmance or repudiation is mailed; or

22 (II) the disaffirmance or repudiation becomes effective,

23 unless the lessor is in default or breach of the terms of the lease;

1 (ii) have no claim for damages under any acceleration clause or  
2 other penalty provision in the lease; and

3 (iii) have a claim for any unpaid rent, subject to all appropriate  
4 offsets and defenses, due as of the date of the appointment which shall be  
5 paid in accordance with this subsection and subsection (d).

6 (5) LEASES UNDER WHICH THE COVERED BANK HOLDING COMPANY IS THE  
7 LESSOR.—

8 (A) IN GENERAL.—If the conservator or receiver repudiates an unexpired  
9 written lease of real property of the covered bank holding company under which  
10 the covered bank holding company is the lessor and the lessee is not, as of the  
11 date of such repudiation, in default, the lessee under such lease may either—

12 (i) treat the lease as terminated by such repudiation; or

13 (ii) remain in possession of the leasehold interest for the balance of  
14 the term of the lease unless the lessee defaults under the terms of the lease  
15 after the date of such repudiation.

16 (B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any  
17 lessee under a lease described in subparagraph (A) remains in possession of a  
18 leasehold interest pursuant to clause (ii) of such subparagraph—

19 (i) the lessee—

20 (I) shall continue to pay the contractual rent pursuant to the  
21 terms of the lease after the date of the repudiation of such lease;

22 (II) may offset against any rent payment which accrues  
23 after the date of the repudiation of the lease, any damages which

1                   accrue after such date due to the nonperformance of any obligation  
2                   of the covered bank holding company under the lease after such  
3                   date; and

4                   (ii) the conservator or receiver shall not be liable to the lessee for  
5                   any damages arising after such date as a result of the repudiation other  
6                   than the amount of any offset allowed under clause (i)(II).

7                   (6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

8                   (A) IN GENERAL.—If the conservator or receiver repudiates any contract  
9                   (which meets the requirements of subsection (a)(7)) for the sale of real property  
10                  and the purchaser of such real property under such contract is in possession and is  
11                  not, as of the date of such repudiation, in default, such purchaser may either—

- 12                               (i) treat the contract as terminated by such repudiation; or  
13                               (ii) remain in possession of such real property.

14                  (B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—

15                  If any purchaser of real property under any contract described in subparagraph  
16                  (A) remains in possession of such property pursuant to clause (ii) of such  
17                  subparagraph—

18                               (i) the purchaser—

19                                       (I) shall continue to make all payments due under the  
20                                       contract after the date of the repudiation of the contract; and

21                                       (II) may offset against any such payments any damages  
22                                       which accrue after such date due to the nonperformance (after such  
23                                       date) of any obligation of the covered bank holding company under

1 the contract; and

2 (ii) the conservator or receiver shall—

3 (I) not be liable to the purchaser for any damages arising  
4 after such date as a result of the repudiation other than the amount  
5 of any offset allowed under clause (i)(II);

6 (II) deliver title to the purchaser in accordance with the  
7 provisions of the contract; and

8 (III) have no obligation under the contract other than the  
9 performance required under subclause (II).

10 (C) ASSIGNMENT AND SALE ALLOWED.—

11 (i) IN GENERAL.—No provision of this paragraph shall be construed  
12 as limiting the right of the conservator or receiver to assign the contract  
13 described in subparagraph (A) and sell the property subject to the contract  
14 and the provisions of this paragraph.

15 (ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment  
16 and sale described in clause (i) is consummated, the conservator or  
17 receiver shall have no further liability under the contract described in  
18 subparagraph (A) or with respect to the real property which was the  
19 subject of such contract.

20 (7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

21 (A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any  
22 contract for services between any person and any covered bank holding company  
23 for which the Appropriate Federal Regulatory Agency has been appointed

1 conservator or receiver, any claim of such person for services performed before  
2 the appointment of the conservator or the receiver shall be—

3 (i) a claim to be paid in accordance with subsections (a), (b) and  
4 (d); and

5 (ii) deemed to have arisen as of the date the conservator or receiver  
6 was appointed.

7 (B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO  
8 REPUDIATION.—If, in the case of any contract for services described in  
9 subparagraph (A), the conservator or receiver accepts performance by the other  
10 person before the conservator or receiver makes any determination to exercise the  
11 right of repudiation of such contract under this section—

12 (i) the other party shall be paid under the terms of the contract for  
13 the services performed; and

14 (ii) the amount of such payment shall be treated as an  
15 administrative expense of the conservatorship or receivership.

16 (C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT  
17 REPUDIATION.—The acceptance by any conservator or receiver of services  
18 referred to in subparagraph (B) in connection with a contract described in such  
19 subparagraph shall not affect the right of the conservator or receiver to repudiate  
20 such contract under this section at any time after such performance.

21 (8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

22 (A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and  
23 (10) of this subsection and notwithstanding any other provision of this section

1 (other than subsection (a)(8)), any other Federal law, or the law of any State, no  
2 person shall be stayed or prohibited from exercising—

3 (i) any right such person has to cause the termination, liquidation,  
4 or acceleration of any qualified financial contract with a covered bank  
5 holding company which arises upon the appointment of the Appropriate  
6 Federal Regulatory Agency as receiver for such covered bank holding  
7 company at any time after such appointment;

8 (ii) any right under any security agreement or arrangement or other  
9 credit enhancement related to one or more qualified financial contracts  
10 described in clause (i).

11 (iii) any right to offset or net out any termination value, payment  
12 amount, or other transfer obligation arising under or in connection with 1  
13 or more contracts and agreements described in clause (i), including any  
14 master agreement for such contracts or agreements.

15 (B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(10) shall apply  
16 in the case of any judicial action or proceeding brought against any receiver  
17 referred to in subparagraph (A), or the covered bank holding company for which  
18 such receiver was appointed, by any party to a contract or agreement described in  
19 subparagraph (A)(i) with such company.

20 (C) CERTAIN TRANSFERS NOT AVOIDABLE.—

21 (i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of  
22 the Revised Statutes of the United States or any other provision of Federal  
23 or State law relating to the avoidance of preferential or fraudulent



1 transfers, the Appropriate Federal Regulatory Agency, whether acting as  
2 such or as conservator or receiver of a covered bank holding company,  
3 may not avoid any transfer of money or other property in connection with  
4 any qualified financial contract with a covered bank holding company.

5 (ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not  
6 apply to any transfer of money or other property in connection with any  
7 qualified financial contract with a covered bank holding company if the  
8 Appropriate Federal Regulatory Agency determines that the transferee had  
9 actual intent to hinder, delay, or defraud such company, the creditors of  
10 such company, or any conservator or receiver appointed for such  
11 company.

12 (D) CERTAIN CONTACTS AND AGREEMENTS DEFINED.—For purposes of this  
13 subsection, the following definitions shall apply:

14 (i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified  
15 financial contract” means any securities contract, commodity contract,  
16 forward contract, repurchase agreement, swap agreement, and any similar  
17 agreement that the Appropriate Federal Regulatory Agency determines by  
18 regulation, resolution, or order to be a qualified financial contract for  
19 purposes of this paragraph.

20 (ii) SECURITIES CONTRACT.—The term “securities contract”—

21 (I) means a contract for the purchase, sale, or loan of a  
22 security, a certificate of deposit, a mortgage loan, any interest in a  
23 mortgage loan, a group or index of securities, certificates of

1 deposit, or mortgage loans or interests therein (including any  
2 interest therein or based on the value thereof) or any option on any  
3 of the foregoing, including any option to purchase or sell any such  
4 security, certificate of deposit, mortgage loan, interest, group or  
5 index, or option, and including any repurchase or reverse  
6 repurchase transaction on any such security, certificate of deposit,  
7 mortgage loan, interest, group or index, or option (whether or not  
8 such repurchase or reverse repurchase transaction is a “repurchase  
9 agreement,” as defined in clause (v));

10 (II) does not include any purchase, sale, or repurchase  
11 obligation under a participation in a commercial mortgage loan  
12 unless the Appropriate Federal Regulatory Agency determines by  
13 regulation, resolution, or order to include any such agreement  
14 within the meaning of such term;

15 (III) means any option entered into on a national securities  
16 exchange relating to foreign currencies;

17 (IV) means the guarantee (including by novation) by or to  
18 any securities clearing agency of any settlement of cash, securities,  
19 certificates of deposit, mortgage loans or interests therein, group or  
20 index of securities, certificates of deposit or mortgage loans or  
21 interests therein (including any interest therein or based on the  
22 value thereof) or option on any of the foregoing, including any  
23 option to purchase or sell any such security, certificate of deposit,

1 mortgage loan, interest, group or index, or option (whether or not  
2 such settlement is in connection with any agreement or transaction  
3 referred to in subclauses (I) through (XII) (other than subclause  
4 (II));

5 (V) means any margin loan;

6 (VI) means any extension of credit for the clearance or  
7 settlement of securities transactions;

8 (VII) means any loan transaction coupled with a securities  
9 collar transaction, any prepaid securities forward transaction, or  
10 any total return swap transaction coupled with a securities sale  
11 transaction;

12 (VIII) means any other agreement or transaction that is  
13 similar to any agreement or transaction referred to in this clause;

14 (IX) means any combination of the agreements or  
15 transactions referred to in this clause;

16 (X) means any option to enter into any agreement or  
17 transaction referred to in this clause;

18 (XI) means a master agreement that provides for an  
19 agreement or transaction referred to in subclause (I), (III), (IV),  
20 (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements  
21 to any such master agreement, without regard to whether the  
22 master agreement provides for an agreement or transaction that is  
23 not a securities contract under this clause, except that the master

1 agreement shall be considered to be a securities contract under this  
2 clause only with respect to each agreement or transaction under the  
3 master agreement that is referred to in subclause (I), (III), (IV),  
4 (V), (VI), (VII), (VIII), (IX), or (X); and

5 (XII) means any security agreement or arrangement or  
6 other credit enhancement related to any agreement or transaction  
7 referred to in this clause, including any guarantee or  
8 reimbursement obligation in connection with any agreement or  
9 transaction referred to in this clause.

10 (iii) COMMODITY CONTRACT.—The term “commodity contract”

11 means—

12 (I) with respect to a futures commission merchant, a  
13 contract for the purchase or sale of a commodity for future delivery  
14 on, or subject to the rules of, a contract market or board of trade;

15 (II) with respect to a foreign futures commission merchant,  
16 a foreign future;

17 (III) with respect to a leverage transaction merchant, a  
18 leverage transaction;

19 (IV) with respect to a clearing organization, a contract for  
20 the purchase or sale of a commodity for future delivery on, or  
21 subject to the rules of, a contract market or board of trade that is  
22 cleared by such clearing organization, or commodity option traded  
23 on, or subject to the rules of, a contract market or board of trade

1 that is cleared by such clearing organization;

2 (V) with respect to a commodity options dealer, a  
3 commodity option;

4 (VI) any other agreement or transaction that is similar to  
5 any agreement or transaction referred to in this clause;

6 (VII) any combination of the agreements or transactions  
7 referred to in this clause;

8 (VIII) any option to enter into any agreement or transaction  
9 referred to in this clause;

10 (IX) a master agreement that provides for an agreement or  
11 transaction referred to in subclause (I), (II), (III), (IV), (V), (VI),  
12 (VII), or (VIII), together with all supplements to any such master  
13 agreement, without regard to whether the master agreement  
14 provides for an agreement or transaction that is not a commodity  
15 contract under this clause, except that the master agreement shall  
16 be considered to be a commodity contract under this clause only  
17 with respect to each agreement or transaction under the master  
18 agreement that is referred to in subclause (I), (II), (III), (IV), (V),  
19 (VI), (VII), or (VIII); or

20 (X) any security agreement or arrangement or other credit  
21 enhancement related to any agreement or transaction referred to in  
22 this clause, including any guarantee or reimbursement obligation in  
23 connection with any agreement or transaction referred to in this

1 clause.

2 (iv) FORWARD CONTRACT.—The term “forward contract” means—

3 (I) a contract (other than a commodity contract) for the  
4 purchase, sale, or transfer of a commodity or any similar good,  
5 article, service, right, or interest which is presently or in the future  
6 becomes the subject of dealing in the forward contract trade, or  
7 product or byproduct thereof, with a maturity date more than 2  
8 days after the date the contract is entered into, including a  
9 repurchase or reverse repurchase transaction (whether or not such  
10 repurchase or reverse repurchase transaction is a “repurchase  
11 agreement”, as defined in clause (v)), consignment, lease, swap,  
12 hedge transaction, deposit, loan, option, allocated transaction,  
13 unallocated transaction, or any other similar agreement;

14 (II) any combination of agreements or transactions referred  
15 to in subclauses (I) and (III);

16 (III) any option to enter into any agreement or transaction  
17 referred to in subclause (I) or (II);

18 (IV) a master agreement that provides for an agreement or  
19 transaction referred to in subclauses (I), (II), or (III), together with  
20 all supplements to any such master agreement, without regard to  
21 whether the master agreement provides for an agreement or  
22 transaction that is not a forward contract under this clause, except  
23 that the master agreement shall be considered to be a forward

1 contract under this clause only with respect to each agreement or  
2 transaction under the master agreement that is referred to in  
3 subclause (I), (II), or (III); or

4 (V) any security agreement or arrangement or other credit  
5 enhancement related to any agreement or transaction referred to in  
6 subclause (I), (II), (III), or (IV), including any guarantee or  
7 reimbursement obligation in connection with any agreement or  
8 transaction referred to in any such subclause.

9 (v) REPURCHASE AGREEMENT.—The term “repurchase agreement”  
10 (which definition also applies to a reverse repurchase agreement)—

11 (I) means an agreement, including related terms, which  
12 provides for the transfer of one or more certificates of deposit,  
13 mortgage-related securities (as such term is defined in the  
14 Securities Exchange Act of 1934), mortgage loans, interests in  
15 mortgage-related securities or mortgage loans, eligible bankers’  
16 acceptances, qualified foreign government securities (which for  
17 these purpose shall mean a security that is a direct obligation of, or  
18 that is fully guaranteed by, the central government of a member of  
19 the Organization for Economic Cooperation and Development as  
20 determined by regulation or order adopted by the Federal Reserve  
21 Board) or securities that are direct obligations of, or that are fully  
22 guaranteed by, the United States or any agency of the United States  
23 against the transfer of funds by the transferee of such certificates of

1 deposit, eligible bankers' acceptances, securities, mortgage loans,  
2 or interests with a simultaneous agreement by such transferee to  
3 transfer to the transferor thereof certificates of deposit, eligible  
4 bankers' acceptances, securities, mortgage loans, or interests as  
5 described above, at a date certain not later than 1 year after such  
6 transfers or on demand, against the transfer of funds, or any other  
7 similar agreement;

8 (II) does not include any repurchase obligation under a  
9 participation in a commercial mortgage loan unless the  
10 Appropriate Federal Regulatory Agency determines by regulation,  
11 resolution, or order to include any such participation within the  
12 meaning of such term;

13 (III) means any combination of agreements or transactions  
14 referred to in subclauses (I) and (IV);

15 (IV) means any option to enter into any agreement or  
16 transaction referred to in subclause (I) or (III);

17 (V) means a master agreement that provides for an  
18 agreement or transaction referred to in subclause (I), (III), or (IV),  
19 together with all supplements to any such master agreement,  
20 without regard to whether the master agreement provides for an  
21 agreement or transaction that is not a repurchase agreement under  
22 this clause, except that the master agreement shall be considered to  
23 be a repurchase agreement under this subclause only with respect



1 to each agreement or transaction under the master agreement that is  
2 referred to in subclause (I), (III), or (IV); and

3 (VI) means any security agreement or arrangement or other  
4 credit enhancement related to any agreement or transaction  
5 referred to in subclause (I), (III), (IV), or (V), including any  
6 guarantee or reimbursement obligation in connection with any  
7 agreement or transaction referred to in any such subclause.

8 (vi) SWAP AGREEMENT.—The term “swap agreement” means—

9 (I) any agreement, including the terms and conditions  
10 incorporated by reference in any such agreement, which is an  
11 interest rate swap, option, future, or forward agreement, including  
12 a rate floor, rate cap, rate collar, cross-currency rate swap, and  
13 basis swap; a spot, same day-tomorrow, tomorrow-next, forward,  
14 or other foreign exchange, precious metals, or other commodity  
15 agreement; a currency swap, option, future, or forward agreement;  
16 an equity index or equity swap, option, future, or forward  
17 agreement; a debt index or debt swap, option, future, or forward  
18 agreement; a total return, credit spread or credit swap, option,  
19 future, or forward agreement; a commodity index or commodity  
20 swap, option, future, or forward agreement; weather swap, option,  
21 future, or forward agreement; an emissions swap, option, future, or  
22 forward agreement; or an inflation swap, option, future, or forward  
23 agreement;

1 (II) any agreement or transaction that is similar to any other  
2 agreement or transaction referred to in this clause and that is of a  
3 type that has been, is presently, or in the future becomes, the  
4 subject of recurrent dealings in the swap or other derivatives  
5 markets (including terms and conditions incorporated by reference  
6 in such agreement) and that is a forward, swap, future, option or  
7 spot transaction on one or more rates, currencies, commodities,  
8 equity securities or other equity instruments, debt securities or  
9 other debt instruments, quantitative measures associated with an  
10 occurrence, extent of an occurrence, or contingency associated  
11 with a financial, commercial, or economic consequence, or  
12 economic or financial indices or measures of economic or financial  
13 risk or value;

14 (III) any combination of agreements or transactions  
15 referred to in this clause;

16 (IV) any option to enter into any agreement or transaction  
17 referred to in this clause;

18 (V) a master agreement that provides for an agreement or  
19 transaction referred to in subclause (I), (II), (III), or (IV), together  
20 with all supplements to any such master agreement, without regard  
21 to whether the master agreement contains an agreement or  
22 transaction that is not a swap agreement under this clause, except  
23 that the master agreement shall be considered to be a swap

1 agreement under this clause only with respect to each agreement or  
2 transaction under the master agreement that is referred to in  
3 subclause (I), (II), (III), or (IV); and

4 (VI) any security agreement or arrangement or other credit  
5 enhancement related to any agreements or transactions referred to  
6 in subclause (I), (II), (III), (IV), or (V), including any guarantee or  
7 reimbursement obligation in connection with any agreement or  
8 transaction referred to in any such subclause.

9 (vii) DEFINITIONS RELATING TO DEFAULT.— When used in this  
10 paragraph and paragraph (10)—

11 (I) The term “default” shall mean, with respect to a covered  
12 bank holding company, any adjudication or other official  
13 determination by any court of competent jurisdiction, or other  
14 public authority pursuant to which a conservator, receiver, or other  
15 legal custodian is appointed; and

16 (II) The term “in danger of default” shall mean a covered  
17 bank holding company with respect to which the Appropriate  
18 Federal Regulatory Agency or appropriate State authority has  
19 determined that—

20  
21 (aa) in the opinion of the Appropriate Federal  
22 Regulatory Agency or such authority—

23 (i) the covered bank holding company is not

1 likely to be able to pay its obligations in the normal  
2 course of business; and

3 (ii) there is no reasonable prospect that the  
4 covered bank holding company will be able to pay  
5 such obligations without Federal assistance; or

6 (bb) in the opinion of the Appropriate Federal  
7 Regulatory Agency or such authority—

8 (i) the covered bank holding company has  
9 incurred or is likely to incur losses that will deplete  
10 all or substantially all of its capital; and

11 (ii) there is no reasonable prospect that the  
12 capital will be replenished without Federal  
13 assistance.

14 (viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—

15 Any master agreement for any contract or agreement described in any  
16 preceding clause of this subparagraph (or any master agreement for such  
17 master agreement or agreements), together with all supplements to such  
18 master agreement, shall be treated as a single agreement and a single  
19 qualified financial contact. If a master agreement contains provisions  
20 relating to agreements or transactions that are not themselves qualified  
21 financial contracts, the master agreement shall be deemed to be a qualified  
22 financial contract only with respect to those transactions that are  
23 themselves qualified financial contracts.

1 (ix) TRANSFER.—The term “transfer” means every mode, direct or  
2 indirect, absolute or conditional, voluntary or involuntary, of disposing of  
3 or parting with property or with an interest in property, including retention  
4 of title as a security interest and foreclosure of the covered bank holding  
5 company’s equity of redemption.

6 (x) PERSON.—The term “person” includes any governmental entity  
7 in addition to any entity included in the definition of such term in section  
8 1, title 1, United States Code.

9 (E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—  
10 Notwithstanding any other provision of this section (other than paragraph (10) of  
11 this subsection and subsection (a)(7) of this section), any other Federal law, or the  
12 law of any State, no person shall be stayed or prohibited from exercising—

13 (i) any right such person has to cause the termination, liquidation,  
14 or acceleration of any qualified financial contract with a covered bank  
15 holding company in a conservatorship based upon a default under such  
16 financial contract which is enforceable under applicable noninsolvency  
17 law;

18 (ii) any right under any security agreement or arrangement or other  
19 credit enhancement related to one or more qualified financial contracts  
20 described in clause (i); or

21 (iii) any right to offset or net out any termination values, payment  
22 amounts, or other transfer obligations arising under or in connection with  
23 such qualified financial contracts.

1 (F) CLARIFICATION.—No provision of law shall be construed as limiting  
2 the right or power of the Appropriate Federal Regulatory Agency, or authorizing  
3 any court or agency to limit or delay, in any manner, the right or power of the  
4 Appropriate Federal Regulatory Agency to transfer any qualified financial  
5 contract in accordance with paragraphs (9) and (10) of this subsection or to  
6 disaffirm or repudiate any such contract in accordance with subsection (c)(1) of  
7 this section.

8 (G) WALKAWAY CLAUSES NOT EFFECTIVE.—

9 (i) IN GENERAL.—Notwithstanding the provisions of subparagraphs  
10 (A) and (E) and sections 403 and 404 of the Federal Deposit Insurance  
11 Corporation Improvement Act of 1991, no walkaway clause shall be  
12 enforceable in a qualified financial contract of a covered bank holding  
13 company in default.

14 (ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of  
15 a qualified financial contract referred to in clause (i), any payment or  
16 delivery obligations otherwise due from a party pursuant to the qualified  
17 financial contract shall be suspended from the time the receiver is  
18 appointed until the earlier of—

19 (I) the time such party receives notice that such contract has  
20 been transferred pursuant to paragraph (10)(A); or

21 (II) 5:00 p.m. (eastern time) on the business day following  
22 the date of the appointment of the receiver.

23 (iii) WALKAWAY CLAUSE DEFINED.—For purposes of this

1                   subparagraph, the term “walkaway clause” means any provision in a  
2                   qualified financial contract that suspends, conditions, or extinguishes a  
3                   payment obligation of a party, in whole or in part, or does not create a  
4                   payment obligation of a party that would otherwise exist, solely because of  
5                   such party’s status as a nondefaulting party in connection with the  
6                   insolvency of a covered bank holding company that is a party to the  
7                   contract or the appointment of or the exercise of rights or powers by a  
8                   conservator or receiver of such covered bank holding company, and not as  
9                   a result of a party’s exercise of any right to offset, setoff, or net obligations  
10                  that exist under the contract, any other contract between those parties, or  
11                  applicable law.

12                  (H) RECORDKEEPING.—The Appropriate Federal Regulatory Agency, in  
13                  consultation with the Federal Reserve Board, may prescribe regulations requiring  
14                  that the covered bank holding company maintain such records with respect to  
15                  qualified financial contracts (including market valuations) as the Appropriate  
16                  Federal Regulatory Agency determines to be necessary or appropriate in order to  
17                  assist the conservator or receiver of the covered bank holding company in being  
18                  able to exercise its rights and fulfill its obligations under this paragraph or  
19                  paragraph (9) or (10).

20                  (9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

21                  (A) IN GENERAL.—In making any transfer of assets or liabilities of a  
22                  covered bank holding company in default which includes any qualified financial  
23                  contract, the conservator or receiver for such covered bank holding company shall

1           either—

2                           (i) transfer to one financial institution, other than a financial  
3           institution for which a conservator, receiver, trustee in bankruptcy, or  
4           other legal custodian has been appointed or which is otherwise the subject  
5           of a bankruptcy or insolvency proceeding—

6                                   (I) all qualified financial contracts between any person or  
7                                   any affiliate of such person and the covered bank holding company  
8                                   in default;

9                                   (II) all claims of such person or any affiliate of such person  
10                                  against such covered bank holding company under any such  
11                                  contract (other than any claim which, under the terms of any such  
12                                  contract, is subordinated to the claims of general unsecured  
13                                  creditors of such company);

14                                  (III) all claims of such covered bank holding company  
15                                  against such person or any affiliate of such person under any such  
16                                  contract; and

17                                  (IV) all property securing or any other credit enhancement  
18                                  for any contract described in subclause (I) or any claim described  
19                                  in subclause (II) or (III) under any such contract; or

20                           (ii) transfer none of the qualified financial contracts, claims,  
21           property or other credit enhancement referred to in clause (i) (with respect  
22           to such person and any affiliate of such person).

23           (B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR



1 AGENCY THEREOF.—In transferring any qualified financial contracts and related  
2 claims and property under subparagraph (A)(i), the conservator or receiver for the  
3 covered bank holding company shall not make such transfer to a foreign bank,  
4 financial institution organized under the laws of a foreign country, or a branch or  
5 agency of a foreign bank or financial institution unless, under the law applicable  
6 to such bank, financial institution, branch or agency, to the qualified financial  
7 contracts, and to any netting contract, any security agreement or arrangement or  
8 other credit enhancement related to one or more qualified financial contracts, the  
9 contractual rights of the parties to such qualified financial contracts, netting  
10 contracts, security agreements or arrangements, or other credit enhancements are  
11 enforceable substantially to the same extent as permitted under this section.

12 (C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING  
13 ORGANIZATION.—In the event that a conservator or receiver transfers any  
14 qualified financial contract and related claims, property, and credit enhancements  
15 pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the  
16 rules of a clearing organization, the clearing organization shall not be required to  
17 accept the transferee as a member by virtue of the transfer.

18 (D) DEFINITIONS.—For purposes of this paragraph, the term “financial  
19 institution” means a broker or dealer, a depository institution, a futures  
20 commission merchant, or any other institution determined by the Appropriate  
21 Federal Regulatory Agency by regulation to be a financial institution, and the  
22 term ‘clearing organization’ has the same meaning as in section 402 of the  
23 Federal Deposit Insurance Corporation Improvement Act of 1991.

1 (10) NOTIFICATION OF TRANSFER.—

2 (A) IN GENERAL.—If—

3 (i) the conservator or receiver for a covered bank holding company  
4 in default or in danger of default transfers any assets and liabilities of the  
5 covered bank holding company; and

6 (ii) the transfer includes any qualified financial contract,  
7 the conservator or receiver shall notify any person who is a party to any  
8 such contract of such transfer by 5:00 p.m. (eastern time) on the business  
9 day following the date of the appointment of the receiver in the case of a  
10 receivership, or the business day following such transfer in the case of a  
11 conservatorship.

12 (B) CERTAIN RIGHTS NOT ENFORCEABLE.—

13 (i) RECEIVERSHIP.—A person who is a party to a qualified financial  
14 contract with a covered bank holding company may not exercise any right  
15 that such person has to terminate, liquidate, or net such contract under  
16 paragraph (8)(A) of this subsection solely by reason of or incidental to the  
17 appointment under this section of a receiver for the covered bank holding  
18 company (or the insolvency or financial condition of the covered bank  
19 holding company for which the receiver has been appointed)—

20 (I) until 5:00 p.m. (eastern time) on the business day

21 following the date of the appointment of the receiver; or

22 (II) after the person has received notice that the contract has  
23 been transferred pursuant to paragraph (9)(A).

1 (ii) CONSERVATORSHIP.—A person who is a party to a qualified  
2 financial contract with a covered bank holding company may not exercise  
3 any right such person has to terminate, liquidate, or net such contract  
4 under paragraph (8)(E) of this subsection or section 403 of Federal  
5 Deposit Insurance Corporation Improvement Act of 1991 solely by reason  
6 of or incidental to the appointment under this section of a conservator for  
7 the covered bank holding company (or the insolvency or financial  
8 condition of the covered bank holding company for which the conservator  
9 has been appointed).

10 (iii) NOTICE.—For purposes of this paragraph, the receiver or  
11 conservator for a covered bank holding company shall be deemed to have  
12 notified a person who is a party to a qualified financial contract with such  
13 covered bank holding company if the receiver or conservator has taken  
14 steps reasonably calculated to provide notice to such person by the time  
15 specified in subparagraph (A).

16 (C) TREATMENT OF BRIDGE BANK HOLDING COMPANY.— For purposes of  
17 paragraph (9), a bridge bank holding company shall not be considered to be a  
18 covered bank holding company for which a conservator, receiver, trustee in  
19 bankruptcy, or other legal custodian has been appointed or which is otherwise the  
20 subject of a bankruptcy or insolvency proceeding.

21 (D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term  
22 “business day” means any day other than any Saturday, Sunday, or any day on  
23 which either the New York Stock Exchange or the Federal Reserve Bank of New

1 York is closed.

2 (11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In  
3 exercising the rights of disaffirmance or repudiation of a conservator or receiver with  
4 respect to any qualified financial contract to which a covered bank holding company is a  
5 party, the conservator or receiver for such covered bank holding company shall either—

6 (A) disaffirm or repudiate all qualified financial contracts between—

7 (i) any person or any affiliate of such person; and

8 (ii) the covered bank holding company in default; or

9 (B) disaffirm or repudiate none of the qualified financial contracts referred  
10 to in subparagraph (A) (with respect to such person or any affiliate of such  
11 person).

12 (12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No  
13 provision of this subsection shall be construed as permitting the avoidance of any—

14 (A) legally enforceable or perfected security interest in any of the assets of  
15 any covered bank holding company except where such an interest is taken in  
16 contemplation of the company's insolvency or with the intent to hinder, delay, or  
17 defraud the company or the creditors of such company; or

18 (B) legally enforceable interest in customer property.

19 (13) AUTHORITY TO ENFORCE CONTRACTS.—

20 (A) IN GENERAL.—The conservator or receiver may enforce any contract,  
21 other than a director's or officer's liability insurance contract or a financial  
22 institution bond, entered into by the covered bank holding company  
23 notwithstanding any provision of the contract providing for termination, default,

1 acceleration, or exercise of rights upon, or solely by reason of, insolvency or the  
2 appointment of or the exercise of rights or powers by a conservator or receiver.

3 (B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may  
4 be construed as impairing or affecting any right of the conservator or receiver to  
5 enforce or recover under a director’s or officer’s liability insurance contract or  
6 financial institution bond under other applicable law.

7 (C) CONSENT REQUIREMENT.—

8 (i) IN GENERAL.—Except as otherwise provided by this section, no  
9 person may exercise any right or power to terminate, accelerate, or declare  
10 a default under any contract to which the covered bank holding company  
11 is a party, or to obtain possession of or exercise control over any property  
12 of the covered bank holding company or affect any contractual rights of  
13 the covered bank holding company, without the consent of the conservator  
14 or receiver, as appropriate, of the covered bank holding company during  
15 the 45-day period beginning on the date of the appointment of the  
16 conservator, or during the 90-day period beginning on the date of the  
17 appointment of the receiver, as applicable.

18 (ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph  
19 shall apply to a director or officer liability insurance contract or a financial  
20 institution bond, to the rights of parties to certain qualified financial  
21 contracts pursuant to paragraph (8), or to the rights of parties to netting  
22 contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance  
23 Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall

1 be construed as permitting the conservator or receiver to fail to comply  
2 with otherwise enforceable provisions of such contract.

3 (14) EXCEPTION FOR FEDERAL RESERVE BANKS, THE SECRETARY, AND THE  
4 APPROPRIATE FEDERAL REGULATORY AGENCY SECURITY INTEREST.—No provision of this  
5 subsection shall apply with respect to—

6 (A) any extension of credit from any Federal Reserve bank, the Secretary,  
7 or the Appropriate Federal Regulatory Agency to any covered bank holding  
8 company; or

9 (B) any security interest in the assets of the covered bank holding  
10 company securing any such extension of credit.

11 (15) SAVINGS CLAUSE. —The meanings of terms used in this subsection are  
12 applicable for purposes of this subsection only, and shall not be construed or applied so  
13 as to challenge or affect the characterization, definition, or treatment of any similar terms  
14 under any other statute, regulation, or rule, including, but not limited, to the  
15 Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the  
16 securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act  
17 of 1934), and the Commodity Exchange Act.

18 (d) VALUATION OF CLAIMS IN DEFAULT.—

19 (1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law  
20 of any State, and regardless of the method which the Appropriate Federal Regulatory  
21 Agency determines to utilize with respect to a covered bank holding company, including  
22 transactions authorized under subsection (h), this subsection shall govern the rights of the  
23 creditors of such covered bank holding company.

1           (2) MAXIMUM LIABILITY.—The maximum liability of the Appropriate Federal  
2           Regulatory Agency, acting as receiver or in any other capacity, to any person having a  
3           claim against the receiver or the covered bank holding company for which such receiver  
4           is appointed shall equal the amount such claimant would have received if—

5                     (A) a determination had not been made under section 1203(b) with respect  
6                     to the covered bank holding company; and

7                     (B) the covered bank holding company had been liquidated under title 11,  
8                     United States Code, or any case related to title 11, United States Code (including  
9                     but not limited to a case initiated by the Securities Investor Protection Corporation  
10                    with respect to a bank holding company subject to the Securities Investor  
11                    Protection Act of 1970), or any State insolvency law.

12           (3) ADDITIONAL PAYMENTS AUTHORIZED.—

13                    (A) IN GENERAL.—The Appropriate Federal Regulatory Agency may, as  
14                    receiver and with the approval of the Secretary, make additional payments or  
15                    credit additional amounts to or with respect to or for the account of any claimant  
16                    or category of claimants of a covered bank holding company if the Appropriate  
17                    Federal Regulatory Agency determines that such payments or credits are  
18                    necessary or appropriate to—

19                             (i) minimize losses to the receiver from the resolution of the  
20                             covered bank holding company under this section; or

21                             (ii) prevent or mitigate serious adverse effects to financial stability  
22                             or the United States economy.

23                    (B) MANNER OF PAYMENT.—The Appropriate Federal Regulatory Agency

1           may make payments or credit amounts under subparagraph (A) directly to the  
2           claimants or may make such payments or credit such amounts to a company other  
3           than a covered bank holding company or a bridge bank holding company  
4           established with respect thereto in order to induce such other company to accept  
5           liability for such claims.

6           (e) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request  
7           of the conservator or receiver appointed for a covered bank holding company under this section,  
8           no court may take any action to restrain or affect the exercise of powers or functions of the  
9           conservator or receiver hereunder.

10          (f) LIABILITY OF DIRECTORS AND OFFICERS.—

11           (1) IN GENERAL.—A director or officer of a covered bank holding company may  
12           be held personally liable for monetary damages in any civil action described in paragraph  
13           (2) by, on behalf of, or at the request or direction of the Appropriate Federal Regulatory  
14           Agency, which action is prosecuted wholly or partially for the benefit of the Appropriate  
15           Federal Regulatory Agency —

16                   (A) acting as conservator or receiver of such covered bank holding  
17           company;

18                   (B) acting based upon a suit, claim, or cause of action purchased from,  
19           assigned by, or otherwise conveyed by such receiver or conservator; or

20                   (C) acting based upon a suit, claim, or cause of action purchased from,  
21           assigned by, or otherwise conveyed in whole or in part by a covered bank holding  
22           company or its affiliate in connection with assistance provided under section  
23           1204.



1           (2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for  
2 gross negligence, including any similar conduct or conduct that demonstrates a greater  
3 disregard of a duty of care (than gross negligence) including intentional tortious conduct,  
4 as such terms are defined and determined under applicable State law.

5           (3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right  
6 of the Appropriate Federal Regulatory Agency under other applicable law.

7           (g) DAMAGES.—In any proceeding related to any claim against a covered bank holding  
8 company’s director, officer, employee, agent, attorney, accountant, appraiser, or any other party  
9 employed by or providing services to a covered bank holding company, recoverable damages  
10 determined to result from the improvident or otherwise improper use or investment of any  
11 covered bank holding company’s assets shall include principal losses and appropriate interest.

12           (h) BRIDGE BANK HOLDING COMPANIES.—

13                   (1) ORGANIZATION.—

14                           (A) PURPOSE.—The Appropriate Federal Regulatory Agency, as receiver  
15 of one or more covered bank holding companies or in anticipation of being  
16 appointed receiver of one or more bank holding companies, may organize one or  
17 more bridge bank holding companies in accordance with this subsection.

18                           (B) AUTHORITIES.—Upon the creation of a bridge bank holding company  
19 under subparagraph (A) with respect to a covered bank holding company, such  
20 bridge bank holding company may—

21                                   (i) assume such liabilities (including liabilities associated with any  
22 trust or custody business) of such covered bank holding company as the  
23 Appropriate Federal Regulatory Agency may, in its discretion, determine

1 to be appropriate;

2 (ii) purchase such assets (including assets associated with any trust  
3 or custody business) of such covered bank holding company as the  
4 Appropriate Federal Regulatory Agency may, in its discretion, determine  
5 to be appropriate; and

6 (iii) perform any other temporary function which the Appropriate  
7 Federal Regulatory Agency may, in its discretion, prescribe in accordance  
8 with this section.

9 (2) CHARTER AND ESTABLISHMENT.—

10 (A) ESTABLISHMENT.—If the Appropriate Federal Regulatory Agency is  
11 appointed as receiver for a bank holding company, the Appropriate Federal  
12 Regulatory Agency may grant a Federal charter to and approve articles of  
13 association for one or more bridge bank holding company or companies with  
14 respect to such bank holding company which shall, by operation of law and  
15 immediately upon issuance of its charter and approval of its articles of  
16 association, be established and operate in accordance with, and subject to, such  
17 charter, articles, and this section.

18 (B) MANAGEMENT.—Upon its establishment, a bridge bank holding  
19 company shall be under the management of a board of directors appointed by the  
20 Appropriate Federal Regulatory Agency.

21 (C) ARTICLES OF ASSOCIATION.—The articles of association and  
22 organization certificate of a bridge bank holding company shall have such terms  
23 as the Appropriate Federal Regulatory Agency may provide, and shall be

1           executed by such representatives as the Appropriate Federal Regulatory Agency  
2           may designate.

3                   (D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.— Subject to and in  
4           accordance with the provisions of this subsection, the Appropriate Federal  
5           Regulatory Agency shall—

6                           (i) establish the terms of the charter of a bridge bank holding  
7                           company and the rights, powers, authorities and privileges of a bridge  
8                           bank holding company granted by the charter or as an incident thereto; and

9                           (ii) provide for, and establish the terms and conditions governing,  
10                          the management (including, but not limited to, the bylaws and the number  
11                          of directors of the board of directors) and operations of the bridge bank  
12                          holding company.

13                   (E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED BANK HOLDING  
14           COMPANY.—

15                           (i) IN GENERAL.—Notwithstanding any other provision of Federal  
16                           law or the law of any State, the Appropriate Federal Regulatory Agency  
17                           may provide for a bridge bank holding company to succeed to and assume  
18                           any rights, powers, authorities or privileges of the covered bank holding  
19                           company with respect to which the bridge bank holding company was  
20                           established and, upon such determination by the Appropriate Federal  
21                           Regulatory Agency, the bridge bank holding company shall immediately  
22                           and by operation of law succeed to and assume such rights, powers,  
23                           authorities and privileges.

1 (ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or  
2 assumption by a bridge bank holding company of rights, powers,  
3 authorities or privileges of a covered bank holding company under clause  
4 (i) or otherwise shall be effective without any further approval under  
5 Federal or State law, assignment, or consent with respect thereto.

6 (F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY  
7 OF LAW.—To the extent permitted by the Appropriate Federal Regulatory Agency  
8 and consistent with this section and any rules, regulations or directives issued by  
9 the Appropriate Federal Regulatory Agency under this section, a bridge bank  
10 holding company may elect to follow the corporate governance practices and  
11 procedures as are applicable to a corporation incorporated under the general  
12 corporation law of the State of Delaware, or the State of incorporation or  
13 organization of the covered bank holding company with respect to which the  
14 bridge bank holding company was established, as such law may be amended from  
15 time to time.

16 (G) CAPITAL.—

17 (i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision  
18 of Federal or State law, a bridge bank holding company may, if permitted  
19 by the Appropriate Federal Regulatory Agency, operate without any  
20 capital or surplus, or with such capital or surplus as the Appropriate  
21 Federal Regulatory Agency may in its discretion determine to be  
22 appropriate.

23 (ii) NO CONTRIBUTION BY APPROPRIATE FEDERAL REGULATORY

1 AGENCY REQUIRED.—The Appropriate Federal Regulatory Agency is not  
2 required to pay capital into a bridge bank holding company or to issue any  
3 capital stock on behalf of a bridge bank holding company established  
4 under this subsection.

5 (iii) AUTHORITY.—If the Appropriate Federal Regulatory Agency  
6 determines that such action is advisable, the Appropriate Federal  
7 Regulatory Agency may cause capital stock or other securities of a bridge  
8 bank holding company established with respect to a covered bank holding  
9 company to be issued and offered for sale in such amounts and on such  
10 terms and conditions as the Appropriate Federal Regulatory Agency may,  
11 in its discretion, determine.

12 (3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED BANK HOLDING  
13 COMPANY.—Notwithstanding paragraphs (1) or (2) or any other provision of law—

14 (A) a bridge bank holding company shall assume, acquire, or succeed to  
15 the assets or liabilities of a covered bank holding company (including the assets or  
16 liabilities associated with any trust or custody business) only to the extent that  
17 such assets or liabilities are transferred by the Appropriate Federal Regulatory  
18 Agency to the bridge bank holding company in accordance with, and subject to  
19 the restrictions set forth in, paragraph (1)(B); and

20 (B) a bridge bank holding company shall not assume, acquire, or succeed  
21 to any obligation that a covered bank holding company for which a receiver has  
22 been appointed may have to any shareholder, member, general partner, limited  
23 partner, or other person with an interest in the equity of the covered bank holding

1 company that arises as a result of the status of that person having an equity claim  
2 in the covered bank holding company.

3 (4) BRIDGE BANK HOLDING COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN  
4 PURPOSES.—A bridge bank holding company shall be treated as a covered bank holding  
5 company in default at such times and for such purposes as the Appropriate Federal  
6 Regulatory Agency may, in its discretion, determine.

7 (5) TRANSFER OF ASSETS AND LIABILITIES.—

8 (A) TRANSFER OF ASSETS AND LIABILITIES.—The Appropriate Federal  
9 Regulatory Agency, as receiver, may transfer any assets and liabilities of a  
10 covered bank holding company (including any assets or liabilities associated with  
11 any trust or custody business) to one or more bridge bank holding companies in  
12 accordance with and subject to the restrictions of paragraph (1).

13 (B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a  
14 bridge bank holding company with respect to a covered bank holding company,  
15 the Appropriate Federal Regulatory Agency, as receiver, may transfer any assets  
16 and liabilities of such covered bank holding company as the Appropriate Federal  
17 Regulatory Agency may, in its discretion, determine to be appropriate in  
18 accordance with and subject to the restrictions of paragraph (1).

19 (C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this  
20 paragraph, the trust or custody business, including fiduciary appointments, held  
21 by any covered bank holding company is included among its assets and liabilities.

22 (D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or  
23 liabilities, including those associated with any trust or custody business of a

1 covered bank holding company to a bridge bank holding company shall be  
2 effective without any further approval under Federal or State law, assignment, or  
3 consent with respect thereto.

4 (E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The  
5 Appropriate Federal Regulatory Agency shall treat all creditors of a covered bank  
6 holding company that are similarly situated under subsection (b)(1) in a similar  
7 manner in exercising the authority of the Appropriate Federal Regulatory Agency  
8 under this subsection to transfer any assets or liabilities of the covered bank  
9 holding company to one or more bridge bank holding companies established with  
10 respect to such covered bank holding company, except that the Appropriate  
11 Federal Regulatory Agency may take actions (including making payments) that  
12 do not comply with this subparagraph, if—

13 (i) the Appropriate Federal Regulatory Agency determines that  
14 such actions are necessary to maximize the value of the assets of the  
15 covered bank holding company, to maximize the present value return from  
16 the sale or other disposition of the assets of the covered bank holding  
17 company, to minimize the amount of any loss realized upon the sale or  
18 other disposition of the assets of the covered bank holding company, or to  
19 contain or address serious adverse effects to financial stability or the U.S.  
20 economy; and

21 (ii) all creditors that are similarly situated under subsection (b)(1)  
22 receive not less than the amount provided in subsection (d)(2).

23 (F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other

1 provision of law, the aggregate amount of liabilities of a covered bank holding  
2 company that are transferred to, or assumed by, a bridge bank holding company  
3 from a covered bank holding company may not exceed the aggregate amount of  
4 the assets of the covered bank holding company that are transferred to, or  
5 purchased by, the bridge bank holding company from the covered bank holding  
6 company.

7 (6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge bank  
8 holding company becomes a party by virtue of its acquisition of any assets or assumption  
9 of any liabilities of a covered bank holding company shall be stayed from further  
10 proceedings for a period of up to 45 days (or such longer period as may be agreed to upon  
11 the consent of all parties) at the request of the bridge bank holding company.

12 (7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE BANK HOLDING COMPANY.—  
13 No agreement that tends to diminish or defeat the interest of the bridge bank holding  
14 company in any asset of a covered bank holding company acquired by the bridge bank  
15 holding company shall be valid against the bridge bank holding company unless such  
16 agreement is in writing and executed by an authorized officer or representative of the  
17 covered bank holding company.

18 (8) NO FEDERAL STATUS.—

19 (A) AGENCY STATUS.—A bridge bank holding company is not an agency,  
20 establishment, or instrumentality of the United States.

21 (B) EMPLOYEE STATUS.—Representatives for purposes of paragraph  
22 (1)(B), directors, officers, employees, or agents of a bridge bank holding company  
23 are not, solely by virtue of service in any such capacity, officers or employees of



1 the United States. Any employee of the Appropriate Federal Regulatory Agency  
2 or of any Federal instrumentality who serves at the request of the Appropriate  
3 Federal Regulatory Agency as a representative for purposes of paragraph (1)(B),  
4 director, officer, employee, or agent of a bridge bank holding company shall  
5 not—

6 (i) solely by virtue of service in any such capacity lose any existing  
7 status as an officer or employee of the United States for purposes of title 5,  
8 United States Code, or any other provision of law; or

9 (ii) receive any salary or benefits for service in any such capacity  
10 with respect to a bridge bank holding company in addition to such salary  
11 or benefits as are obtained through employment with the Appropriate  
12 Federal Regulatory Agency or such Federal instrumentality.

13 (9) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or  
14 State law, a bridge bank holding company, its franchise, property, and income shall be  
15 exempt from all taxation now or hereafter imposed by the United States, by any territory,  
16 dependency, or possession thereof, or by any State, county, municipality, or local taxing  
17 authority.

18 (10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

19 (A) IN GENERAL.—If a transaction involving the merger or sale of a bridge  
20 bank holding company requires approval by a Federal agency, the transaction may  
21 not be consummated before the 5th calendar day after the date of approval by the  
22 Federal agency responsible for such approval with respect thereto. If, in  
23 connection with any such approval a report on competitive factors from the

1 Attorney General is required, the Federal agency responsible for such approval  
2 shall promptly notify the Attorney General of the proposed transaction and the  
3 Attorney General shall provide the required report within 10 days of the request.  
4 If a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of  
5 1976 with the Department of Justice or the Federal Trade Commission, the  
6 waiting period shall expire not later than the 30th day following such filing  
7 notwithstanding any other provision of Federal law or any attempt by any Federal  
8 agency to extend such waiting period, and no further request for information by  
9 any Federal agency shall be permitted.

10 (B) EMERGENCY.—If the Secretary, in consultation with the Chairman of  
11 the Federal Reserve Board, has found that the Appropriate Federal Regulatory  
12 Agency must act immediately to prevent the probable failure of the covered bank  
13 holding company involved, the approvals and filings referred to in subparagraph  
14 (A) shall not be required and the transaction may be consummated immediately  
15 by the Appropriate Federal Regulatory Agency.

16 (11) DURATION OF BRIDGE BANK HOLDING COMPANY.—Subject to paragraphs (13)  
17 and (14), the status of a bridge bank holding company as such shall terminate at the end  
18 of the 2-year period following the date it was granted a charter. The Appropriate Federal  
19 Regulatory Agency may, in its discretion, extend the status of the bridge bank holding  
20 company as such for 3 additional 1-year periods.

21 (12) TERMINATION OF BRIDGE BANK HOLDING COMPANY STATUS.—The status of  
22 any bridge bank holding company as such shall terminate upon the earliest of—

23 (A) the merger or consolidation of the bridge bank holding company with

1 a company that is not a bridge bank holding company;

2 (B) at the election of the Appropriate Federal Regulatory Agency, the sale  
3 of a majority of the capital stock of the bridge bank holding company to a  
4 company other than the Appropriate Federal Regulatory Agency and other than  
5 another bridge bank holding company;

6 (C) the sale of 80 percent, or more, of the capital stock of the bridge bank  
7 holding company to a person other than the Appropriate Federal Regulatory  
8 Agency and other than another bridge bank holding company;

9 (D) at the election of the Appropriate Federal Regulatory Agency, either  
10 the assumption of all or substantially all of the liabilities of the bridge bank  
11 holding company by a company that is not a bridge bank holding company, or the  
12 acquisition of all or substantially all of the assets of the bridge bank holding  
13 company by a company that is not a bridge bank holding company, or other entity  
14 as permitted under applicable law; and

15 (E) the expiration of the period provided in paragraph (11), or the earlier  
16 dissolution of the bridge bank holding company as provided in paragraph (14).

17 (13) EFFECT OF TERMINATION EVENTS.—

18 (A) MERGER OR CONSOLIDATION.—A merger or consolidation as provided  
19 in paragraph (12)(A) shall be conducted in accordance with, and shall have the  
20 effect provided in, the provisions of applicable law. For the purpose of effecting  
21 such a merger or consolidation, the bridge bank holding company shall be treated  
22 as a corporation organized under the laws of the State of Delaware (unless the law  
23 of another State has been selected by the bridge bank holding company in

1 accordance with paragraph (2)(F)), and the Appropriate Federal Regulatory  
2 Agency shall be treated as the sole shareholder thereof, notwithstanding any other  
3 provision of State or Federal law.

4 (B) CHARTER CONVERSION.—Following the sale of a majority of the  
5 capital stock of the bridge bank holding company as provided in paragraph  
6 (12)(B), the Appropriate Federal Regulatory Agency may amend the charter of  
7 the bridge bank holding company to reflect the termination of the status of the  
8 bridge bank holding company as such, whereupon the company shall have all of  
9 the rights, powers, and privileges under its constituent documents and applicable  
10 State or Federal law. In connection therewith, the Appropriate Federal  
11 Regulatory Agency may take such steps as may be necessary or convenient to  
12 reincorporate the bridge bank holding company under the laws of a State and,  
13 notwithstanding any provisions of State or Federal law, such state-chartered  
14 corporation shall be deemed to succeed by operation of law to such rights, titles,  
15 powers and interests of the bridge bank holding company as the Appropriate  
16 Federal Regulatory Agency may provide, with the same effect as if the bridge  
17 bank holding company had merged with the State-chartered corporation under  
18 provisions of the corporate laws of such State.

19 (C) SALE OF STOCK.—Following the sale of 80 percent or more of the  
20 capital stock of a bridge bank holding company as provided in paragraph (12)(C),  
21 the company shall have all of the rights, powers, and privileges under its  
22 constituent documents and applicable State or Federal law. In connection  
23 therewith, the Appropriate Federal Regulatory Agency may take such steps as

1 may be necessary or convenient to reincorporate the bridge bank holding  
2 company under the laws of a State and, notwithstanding any provisions of State or  
3 Federal law, the state-chartered corporation shall be deemed to succeed by  
4 operation of law to such rights, titles, powers and interests of the bridge bank  
5 holding company as the Appropriate Federal Regulatory Agency may provide,  
6 with the same effect as if the bridge bank holding company had merged with the  
7 State-chartered corporation under provisions of the corporate laws of such State.

8 (D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the  
9 assumption of all or substantially all of the liabilities of the bridge bank holding  
10 company, or the sale of all or substantially all of the assets of the bridge bank  
11 holding company, as provided in paragraph (12)(D), at the election of the  
12 Appropriate Federal Regulatory Agency the bridge bank holding company may  
13 retain its status as such for the period provided in paragraph (11) or may be  
14 dissolved at the election of the Appropriate Federal Regulatory Agency.

15 (E) AMENDMENTS TO CHARTER.—Following the consummation of a  
16 transaction described in subparagraph (A), (B), (C), or (D) of paragraph (12), the  
17 charter of the resulting company shall be amended to reflect the termination of  
18 bridge bank holding company status, if appropriate.

19 (14) DISSOLUTION OF BRIDGE BANK HOLDING COMPANY.—

20 (A) IN GENERAL.—Notwithstanding any other provision of State or  
21 Federal law, if a bridge bank holding company's status as such has not previously  
22 been terminated by the occurrence of an event specified in subparagraph (A), (B),  
23 (C), or (D) of paragraph (12)—

1 (i) the Appropriate Federal Regulatory Agency may, in its  
2 discretion, dissolve the bridge bank holding company in accordance with  
3 this paragraph at any time; and

4 (ii) the Appropriate Federal Regulatory Agency shall promptly  
5 commence dissolution proceedings in accordance with this paragraph  
6 upon the expiration of the 2-year period following the date the bridge bank  
7 holding company was chartered, or any extension thereof, as provided in  
8 paragraph (11).

9 (B) PROCEDURES.—The Appropriate Federal Regulatory Agency shall  
10 remain the receiver of a bridge bank holding company for the purpose of  
11 dissolving the bridge bank holding company. The Appropriate Federal  
12 Regulatory Agency as such receiver shall wind up the affairs of the bridge bank  
13 holding company in conformity with the provisions of law relating to the  
14 liquidation of covered bank holding companies. With respect to any such bridge  
15 bank holding company, the Appropriate Federal Regulatory Agency as receiver  
16 shall have all the rights, powers, and privileges and shall perform the duties  
17 related to the exercise of such rights, powers, or privileges granted by law to a  
18 receiver of a covered bank holding company and, notwithstanding any other  
19 provision of law, in the exercise of such rights, powers, and privileges the  
20 Appropriate Federal Regulatory Agency shall not be subject to the direction or  
21 supervision of any State agency or other Federal agency.

22 (15) AUTHORITY TO OBTAIN CREDIT.—

23 (A) IN GENERAL.—A bridge bank holding company may obtain unsecured

1 credit and issue unsecured debt.

2 (B) INABILITY TO OBTAIN CREDIT.—If a bridge bank holding company is  
3 unable to obtain unsecured credit or issue unsecured debt, the Appropriate Federal  
4 Regulatory Agency may authorize the obtaining of credit or the issuance of debt  
5 by the bridge bank holding company—

6 (i) with priority over any or all of the obligations of the bridge  
7 bank holding company;

8 (ii) secured by a lien on property of the bridge bank holding  
9 company that is not otherwise subject to a lien; or

10 (iii) secured by a junior lien on property of the bridge bank holding  
11 company that is subject to a lien.

12 (C) LIMITATIONS.—

13 (i) IN GENERAL.—The Appropriate Federal Regulatory Agency,  
14 after notice and a hearing, may authorize the obtaining of credit or the  
15 issuance of debt by a bridge bank holding company that is secured by a  
16 senior or equal lien on property of the bridge bank holding company that  
17 is subject to a lien only if—

18 (I) the bridge bank holding company is unable to otherwise  
19 obtain such credit or issue such debt; and

20 (II) there is adequate protection of the interest of the holder  
21 of the lien on the property with respect to which such senior or  
22 equal lien is proposed to be granted.

23 (D) BURDEN OF PROOF.—In any hearing under this subsection, the

1 Appropriate Federal Regulatory Agency has the burden of proof on the issue of  
2 adequate protection.

3 (16) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an  
4 authorization under this subsection to obtain credit or issue debt, or of a grant under this  
5 section of a priority or a lien, does not affect the validity of any debt so issued, or any  
6 priority or lien so granted, to an entity that extended such credit in good faith, whether or  
7 not such entity knew of the pendency of the appeal, unless such authorization and the  
8 issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

9 (i) SHARING RECORDS.—Whenever the Appropriate Federal Regulatory Agency has been  
10 appointed as conservator or receiver for a covered bank holding company, the Federal Reserve  
11 Board and the company’s primary federal regulatory agency, if any, shall each make all records  
12 relating to the company available to the conservator or receiver which may be used by the  
13 conservator or receiver in any manner the conservator or receiver determines to be appropriate.

14 (j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

15 (1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order,  
16 whether interlocutory or final, entered in any case brought by the Appropriate Federal  
17 Regulatory Agency against a covered bank holding company’s director, officer,  
18 employee, agent, attorney, accountant, or appraiser or any other person employed by or  
19 providing services to a covered bank holding company shall be filed not later than 30  
20 days after the date of entry of the order. The hearing of the appeal shall be held not later  
21 than 120 days after the date of the notice of appeal. The appeal shall be decided not later  
22 than 180 days after the date of the notice of appeal.

23 (2) SCHEDULING.—A court of the United States shall expedite the consideration of



1 any case brought by the Appropriate Federal Regulatory Agency against a covered bank  
2 holding company’s director, officer, employee, agent, attorney, accountant, or appraiser  
3 or any other person employed by or providing services to a covered bank holding  
4 company. As far as practicable, the court shall give such case priority on its docket.

5 (3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations  
6 stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the  
7 ends of justice that would be served by making such a modification would outweigh the  
8 best interest of the public in having the case resolved expeditiously.

9 (k) FOREIGN INVESTIGATIONS.—The Appropriate Federal Regulatory Agency, as  
10 conservator or receiver of any covered bank holding company and for purposes of carrying out  
11 any power, authority, or duty with respect to a covered bank holding company—

12 (1) may request the assistance of any foreign financial authority and provide  
13 assistance to any foreign financial authority in accordance with section 8(v) of the  
14 Federal Deposit Insurance Act as if the covered bank holding company were an insured  
15 depository institution, the Appropriate Federal Regulatory Agency were the appropriate  
16 Federal banking agency for the company and any foreign financial authority were the  
17 foreign banking authority; and

18 (2) may maintain an office to coordinate foreign investigations or investigations  
19 on behalf of foreign financial authorities.

20 (l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The  
21 Appropriate Federal Regulatory Agency may not enter into any agreement or approve any  
22 protective order which prohibits the Appropriate Federal Regulatory Agency from disclosing the  
23 terms of any settlement of an administrative or other action for damages or restitution brought by

1 the Appropriate Federal Regulatory Agency in its capacity as conservator or receiver for a  
2 covered bank holding company.

3 (m) LIQUIDATION OF CERTAIN COVERED BANK HOLDING COMPANIES OR BRIDGE BANK  
4 HOLDING COMPANIES.—Notwithstanding any other provision of law (other than a conflicting  
5 provision of this section), the Appropriate Federal Regulatory Agency, in connection with the  
6 liquidation of any covered bank holding company or bridge bank holding company with respect  
7 to which the Appropriate Federal Regulatory Agency has been appointed as receiver, shall—

8 (1) in the case of any covered bank holding company or bridge bank holding  
9 company that is or has a subsidiary that is a stockbroker (as that term is defined in section  
10 101 of title 11 of the United States Code) but is not a member of the Securities Investor  
11 Protection Corporation, apply the provisions of subchapter III of chapter 7 of title 11 of  
12 the United States Code in respect of the distribution to any “customer” of all “customer  
13 name securities” and “customer property” (as such terms are defined in section 741 of  
14 such title 11) as if such covered bank holding company or bridge bank holding company  
15 were a debtor for purposes of such subchapter; or

16 (2) in the case of any covered bank holding company or bridge bank holding  
17 company that is a commodity broker (as that term is defined in section 101 of title 11 of  
18 the United States Code), apply the provisions of subchapter IV of chapter 7 of title 11 of  
19 the United States Code in respect of the distribution to any “customer” of all “customer  
20 property” (as such terms are defined in section 761 of such title 11) as if such covered  
21 bank holding company or bridge bank holding company were a debtor for purposes of  
22 such subchapter.

23 (n) BANK HOLDING COMPANY FUND.—

1 (1) ESTABLISHMENT.—There is established in the Treasury a separate fund called  
2 the Bank Holding Company Fund, which shall be available without further appropriation  
3 for the cost of actions authorized by this title upon a determination made under section  
4 1203(b) to—

5 (A) the Appropriate Federal Regulatory Agency as conservator or receiver  
6 under section 1204; and

7 (B) the Corporation,  
8 to carry out the authorities contained in this title, including the payment of administrative  
9 expenses and, for purposes of subparagraph (B), the Corporation’s payment of principal  
10 and interest on obligations issued under paragraph (3) and the exercise of authorities  
11 under section 1204.

12 (2) PROCEEDS.—Amounts received by the Appropriate Federal Regulatory  
13 Agency and the Corporation (including amounts borrowed under paragraph (3) and  
14 assessments received under subsection (o), but excluding amounts received by any  
15 covered bank holding company when the Appropriate Federal Regulatory Agency is  
16 acting in its capacity as conservator or receiver for such company, and excluding amounts  
17 credited to the appropriate financing account as a means of financing credit activity, as  
18 applicable) shall be deposited into the Fund, subject to apportionment.

19 (3) CAPITALIZATION OF FUND.—

20 (A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—In order to  
21 capitalize the Fund upon the Secretary making the determination provided for in  
22 section 1203(b), the Corporation is authorized to issue obligations to the  
23 Secretary.

1 (B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary  
2 may, in the Secretary’s discretion and under such terms and conditions that the  
3 Secretary may require, purchase or agree to purchase any obligations issued under  
4 subparagraph (A), and for such purpose the Secretary is authorized to use as a  
5 public debt transaction the proceeds of the sale of any securities hereafter issued  
6 under chapter 31 of title 31, United States Code, and the purposes for which  
7 securities may be issued under chapter 31 of title 31, United States Code, are  
8 extended to include such purchases.

9 (C) INTEREST RATE.—Each purchase of obligations by the Secretary under  
10 this paragraph shall be upon such terms and conditions as to yield a return at a  
11 rate not less than a rate determined by the Secretary, taking into consideration the  
12 current average yield on outstanding marketable obligations of the United States  
13 of comparable maturity.

14 (D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may  
15 sell, upon such terms and conditions and at such price or prices as the Secretary  
16 shall determine, any of the obligations acquired under this paragraph.

17 (E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the  
18 Secretary of such obligations under this paragraph shall be treated as public debt  
19 transactions of the United States, and the proceeds from the sale of any  
20 obligations acquired by the Secretary under this paragraph shall be covered into  
21 the Treasury as miscellaneous receipts..

22 (4) INVESTMENT.—The Corporation may request the Secretary to invest such  
23 portion of the Fund as is not, in the Corporation’s judgment, required to meet the current

1 needs of the Fund. Such investments shall be made by the Secretary in public debt  
2 securities, with maturities suitable to the needs of the Fund as determined by the  
3 Corporation, and bearing interest at a rate determined by the Secretary, taking into  
4 consideration current market yields on outstanding marketable obligations of the United  
5 States of comparable maturity.

6 (o) RISK-BASED ASSESSMENTS.—

7 (1) RECOVERY OF EXPENDED FUNDS FROM BANK HOLDING COMPANIES.—The  
8 Corporation shall take steps to recover the amount of funds expended out of the Fund  
9 under subsection (n) and which have not otherwise been recouped. Such steps shall  
10 include one or more risk-based assessments on bank holding companies based on their  
11 total liabilities in such amount and manner, and subject to such terms and conditions as  
12 the Corporation determines, by regulation, are necessary to pay in full the obligations  
13 issued by Corporation to the Secretary, within 60 months from the date of the Secretary's  
14 determination under section 1203(b).

15 (2) ASSESSMENT THRESHOLD.—The Corporation shall assess each bank holding  
16 company whose non-Corporation assessed liabilities on a consolidated basis are greater  
17 than \$10 billion as of the end of the previous calendar quarter.

18 (3) BASELINE FOR ASSESSMENTS.—The Corporation shall determine the amount of  
19 each risk-based assessment on a bank holding company by using as a baseline the  
20 difference between:

21 (A) the total balance-sheet liabilities of the bank holding company as of  
22 the end of the previous calendar quarter; and

23 (B) the sum of:

1 (i) \$10,000,000,000; and

2 (ii) the amount of any liabilities of the bank holding company or  
3 any subsidiary of the bank holding company, as of the end of the previous  
4 calendar quarter, that form the basis of assessments imposed by the  
5 Corporation under section 7 of the Federal Deposit Insurance Act (12  
6 U.S.C. § 1817).

7 (4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under  
8 paragraph (1), the Corporation may differentiate among bank holding companies by  
9 taking into consideration the following—

10 (A) different categories and concentrations of assets;

11 (B) different categories and concentrations of liabilities, both insured and  
12 uninsured, contingent and noncontingent;

13 (C) leverage;

14 (D) size, complexity, risk profile, and interconnectedness to the financial  
15 system;

16 (E) the threat each poses to the stability of the financial system; and

17 (F) any other considerations that the Corporation deems appropriate.

18 (5) ASSESSMENT DEDUCTION.—A bank holding company may deduct from its  
19 assessment an amount equal to the amount that it or any subsidiary paid to any State  
20 insurance guarantee fund association due to conservation, rehabilitation, or liquidation of  
21 a covered bank holding company or any subsidiary of the covered bank holding  
22 company.

23 (6) COLLECTION OF INFORMATION.—The Corporation may impose on bank

1 holding companies described in paragraph (2) such collection of information  
2 requirements that the Corporation deems necessary to carry out this subsection after a  
3 determination under section 1203(b).

4 (7) RULEMAKING—The Corporation shall, in consultation with the Federal  
5 Reserve Board, prescribe regulations to carry out this subsection.

6 (p) NO FEDERAL STATUS.—

7 (1) AGENCY STATUS.—A covered bank holding company (or any covered  
8 subsidiary thereof) that receives assistance, is placed into conservatorship or receivership,  
9 or both, under section 1204 is not a department, agency, or instrumentality of the United  
10 States for purposes of statutes that confer powers on or impose obligations on  
11 government entities.

12 (2) EMPLOYEE STATUS.—Interim directors, directors, officers, employees, or  
13 agents of a covered bank holding company that is placed into conservatorship or  
14 receivership are not, solely by virtue of service in any such capacity, officers or  
15 employees of the United States. Any employee of the Appropriate Federal Regulatory  
16 Agency, acting as conservator or receiver, or of any Federal agency who serves at the  
17 request of the conservator or receiver as an interim director, director, officer, employee,  
18 or agent of a covered bank holding company that is placed into conservatorship or  
19 receivership shall not—

20 (A) solely by virtue of service in any such capacity lose any existing status  
21 as an officer or employee of the United States for purposes of title 5, United  
22 States Code, or any other provision of law, or;

23 (B) receive any salary or benefits for service in any such capacity with

1           respect to a covered bank holding company that is placed into conservatorship or  
2           receivership in addition to such salary or benefits as are obtained through  
3           employment with the Appropriate Federal Regulatory Agency or other Federal  
4           agency.

5   **SEC. 1210. CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF**  
6                           **ASSETS FROM CONSERVATOR, RECEIVER, OR LIQUIDATING**  
7                           **AGENT.**

8           (a) IN GENERAL.— Section 1032 of title 18, United States Code, is amended in paragraph  
9   (1) by deleting “or” before “the National Credit Union Administration Board,” and by inserting  
10 immediately thereafter “or the Appropriate Federal Regulatory Agency, as defined in section  
11 1202 of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009  
12 (\_\_\_ U.S.C. § \_\_\_(1)(A)),”.

13           (b) CONFORMING CHANGE.—The title of section 1032 of title 18, United States Code, is  
14 amended by deleting “of financial institution”.

15   **SEC. 1211. MISCELLANEOUS PROVISIONS.**

16           (a) BANKRUPTCY CODE AMENDMENTS.—Section 109(b)(2) of title 11 of the United States  
17 Code is amended by adding “covered bank holding company” as that term is defined in section  
18 1202(6) of the Resolution Authority for Large, Interconnected Financial Companies Act of  
19 2009,” after a “domestic insurance company”.

20           (b) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT.—Section 403(a) of  
21 the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is  
22 amended by inserting “section 1209(c) of the Resolution Authority for Large, Interconnected  
23 Financial Companies Act of 2009, section 1367 of the Federal Housing Enterprises Financial



1 Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)), “after “section 1821(e) of this title.

1           **TITLE XIII—ADDITIONAL IMPROVEMENTS**

2                   **FOR FINANCIAL CRISIS MANAGEMENT**

3   **SEC. 1201. AMENDMENT TO SECTION 13 OF THE FEDERAL RESERVE ACT.**

4           Section 13 of the Federal Reserve Act (12 U.S.C. 343) is amended in the third paragraph,  
5 relating to the Federal Reserve’s emergency lending authority, by inserting after “five members,”  
6 the following: “and upon the prior written approval of the Secretary of the Treasury,”.