

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”.

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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.**

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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)”.