TITLE IX

ADDITIONAL IMPROVEMENTS TO FINANCIAL MARKETS REGULATION

SEC. 901. SHORT TITLE.

This title may be cited as the “Investor Protection Act of 2009”.

Subtitle E—Improvements to the Asset-Backed Securitization Process

SEC. 951. REGULATION OF CREDIT RISK RETENTION.


“SEC. 15F. CREDIT RISK RETENTION.

“(a) IN GENERAL.—Within 180 days of the enactment of this Act, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer of an asset-backed security (as defined in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto), to retain an economic interest in a material portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells or conveys to a third party.

“(b) STANDARDS FOR REGULATIONS.—Regulations prescribed under subsection (a) shall—
“(1) prohibit a securitizer directly or indirectly from hedging or otherwise transferring the credit risk that such securitizer is required to retain with respect to any asset;

“(2) require a securitizer to retain at least 5 percent of the credit risk on any asset that is transferred, sold, or conveyed through the issuance of an asset-backed security by such securitizer;

“(3) specify the permissible forms of the risk retention that are required under this section (e.g., first loss position or pro rata vertical slice) and the minimum duration of the required risk retention;

“(4) apply regardless of whether the securitizer is an insured depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

“(5) provide for a total or partial exemption for securitizations of assets issued or guaranteed by the United States, an agency of the United States, or a United States Government-sponsored enterprise, as may be appropriate;

“(6) provide for a total or partial exemption of other securitizations as may be appropriate in the public interest or for the protection of investors; and

“(7) provide for the allocation of risk retention obligations between a securitizer and an originator in cases where a securitizer purchases assets from an originator, as may be appropriate.

“(c) EXEMPTIONS, EXCEPTIONS, AND ADJUSTMENTS.—

“(1) IN GENERAL.—The Federal banking agencies shall have authority to jointly adopt or issue exemptions, exceptions, or adjustments to the requirements
of this section, including exemptions, exceptions, or adjustments for classes of
institutions or assets relating to the 5 percent risk retention threshold and the
hedging prohibition of subsection (b).

“(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies shall—

“(A) help ensure high quality underwriting standards for
securitizers and originators of assets; and

“(B) facilitate appropriate risk management practices by such
securitizers and originators, improve access of consumers to credit on
reasonable terms or otherwise serve the public interest.

“(d) ENFORCEMENT.—

“(1) The Federal banking agencies shall enforce the regulations prescribed under subsections (a) and (b) with respect to any securitizer that is an insured
depository institution, as defined in section 3(c) of the Federal Deposit Insurance
Act (12 U.S.C. 1813(c)).

“(2) The Commission shall enforce the regulations prescribed by the
Federal banking agencies under subsections (a) and (b) with respect to any
securitizer, except those specified in paragraph (1).

“(3) The authority of the Commission under this section shall be in
addition to its existing authority to enforce the Federal securities laws.

“(e) DEFINITIONS.—For the purposes of this section—
“(1) The term ‘Federal banking agencies’ means the Board of Governors of the Federal Reserve System, the National Bank Supervisor, and the Federal Deposit Insurance Corporation.

“(2) The term ‘securitizer’ means an issuer or an underwriter of an asset-backed security (as defined in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto).

“(3) The term ‘originator’ means a person who sells an asset to a securitizer.”.

SEC. 952. PERIODIC AND OTHER REPORTING UNDER THE SECURITIES EXCHANGE ACT OF 1934 FOR ASSET-BACKED SECURITIES.


(a) in paragraph (d), by inserting “, other than securities of any class of asset-backed security (as defined in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto),” after “securities of each class”;

(b) by inserting at the end of subparagraph (d) the following—

“The Commission may by rules and regulations provide for the suspension or termination of the duty to file under this subsection for any class of issuer of asset-backed security (as defined in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto) upon such terms and conditions and for such period or periods as it deems necessary or appropriate in the public interest or for the protection of investors.

The Commission may, for the purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuer of asset-backed security (as defined in section 229.1101(c) of title 17, Code of Federal Regulations, or any successor thereto).”;

and
(c) in paragraph (d), by inserting after the fifth sentence the following—

“The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security. In adopting regulations under this subsection, the Commission shall set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes. The Commission shall require issuers of asset-backed securities at a minimum to disclose asset-level or loan-level data necessary for investors to independently perform due diligence. Asset-level or loan-level data shall include data with unique identifiers relating to loan brokers or originators, the nature and extent of the compensation of the broker or originator of the assets backing the security, and the amount of risk retention of the originator or the securitizer of such assets.”.

SEC. 953. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.

The Commission shall prescribe regulations on the use of representations and warranties in the asset-backed securities market that:

(1) require credit rating agencies to include in reports accompanying credit ratings a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from representations, warranties, and enforcement mechanisms in similar issuances; and

(2) require disclosure on fulfilled repurchase requests across all trusts aggregated by originator, so that investors may identify asset originators with clear underwriting deficiencies.
SEC. 954. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.

(a) Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking paragraph (5); and

(2) by renumbering paragraph (6) as paragraph (5).